

Laissez-Faire, State Capitalism, and the Making of International Organizations

The Dynamics of a Struggle

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Introduction

In *International Organization and Industrial Change: Global Governance Since 1850*, Craig Murphy offers a *longue durée* view of world institutions as emerging and evolving not from the changing phases of multilateralism – as mainstream social sciences and humanities tend to think – but from the changing scales of industrial capitalism and the impersonal pressure to improve the conditions of life on the margins of private property relations.¹ From this perspective, international organizations (IOs) have not only been crucial to the integration of markets and infrastructures, but they have also ‘helped mitigate conflicts that go along with the expansion of the industrial systems [...] Their history is part of the dialectic between capitalism and alternative ways of organizing economic and political life’.² Indeed, a historical materialist approach to IOs as evolving from the co-constitutive functioning of capitalism’s laws of motion and agents’ politics unfolds new pathways for understanding stability and change in the world order.

Unsurprisingly, the law’s place in capitalist social relations have been at the core of the Marxist literature in international law. Two main camps have emerged: the ‘form camp’ and the ‘content camp’. The former argues that liberal (international) law *by form* abstracts from historical social relations by treating groups in different relations to the means of production (in terms of ownership, access, and accumulation of surplus value) as juridically equal and as such enables the

¹ C. N. Murphy, *International Organization and Industrial Change: Global Governance since 1850* (Oxford University Press, 1994). 34–35.

² C. N. Murphy, *Global Institutions, Marginalization, and Development* (Routledge, 2005). 34.

reproduction of the capitalist relations of production.³ Those in the ‘content camp’ take issue not with the ‘form’ of law but with the ways in which the content of law comes to embed the interests of the capital and the ruling class.⁴

While the literature produced within both camps has greatly contributed to the study of capitalist social relations, the discipline of international law would benefit from going beyond the narrow realm of ‘law’ and engaging with the broader landscape of production relations, and elements such as the structure of the world order, processes of capitalist expansion, and hegemony, amongst others. Most notably, international lawyers have historically viewed the capitalist state as a homogenous category, losing sight of different trajectories of Anglo-American capitalism (*laissez-faire* capitalism) and the mainland European, Asian, and African capitalism (state capitalism) and what such variations in socio-political ordering mean for the form and content of international law.

This chapter borrows from historical materialist International Relations (IR), and particularly the works of the Dutch IR scholar Kees van der Pijl, to argue that capitalist social relations reproduce on the ground through not only commodification but also socialization or mitigating the dislocating effects of the capitalist mode of production. Across territories, capitalism expands through the struggles between two modes of organizing production relations: *laissez-faire* and state capitalism. The history of IOs since the mid-nineteenth century should, indeed, be seen in the context of such struggles. More specifically, the organization of production relations by the market in *laissez-faire* capitalism tends to peripheralize non-capitalist territories leading to the organization of production relations by emerging ethno-national bureaucratic vanguards (state capitalism) and geared towards territorially confined accumulation. After discussing these premises,

³ C. Miéville, *Between Equal Rights: A Marxist Theory of International Law* (Brill, 2005). 111. See also, R. Knox, ‘Marxism, International Law, and Political Strategy’ (2009) 22 *Leiden Journal of International Law* 413–36; N. Tzouvala, *Capitalism As Civilisation: A History of International Law* (Cambridge University Press, 2020).

⁴ See, S. Marks, ‘International Judicial Activism and the Commodity-Form Theory of International Law’ (2007) 18 *The European Journal of International Law* 199–211. B. S. Chimni, ‘Capitalism, Imperialism, and International Law in the Twenty-First Century’ (2012) 14 *Oregon Review of International Law* 17–44.

the piece empirically engages with them in the context of three historical developments in the post-1945 period, capturing the flow of manufactured commodities and raw materials as well as the machinery of such flows, i.e. marine logistics. The three histories are: liberalization of global telecommunications, the rise of open shipping registries in the transport of raw material, and the mass logging of tropical forests. The idea is not to offer full historical accounts, but rather to reconstruct the three histories through the proposed framework.

Capitalism's Laws of Motion and the Making of the International Relations

For IR historical materialism, the history of the modern international relations has been a history of political and impersonal struggles between two developmental variations of state/society complexes: Lockean and Hobbesian, as referring to two rather distinct political theories prescribing different modes of organization of production relations. The term 'Lockean' refers to John Locke's *Two Treatise of Government* and 'Hobbesian' to Thomas Hobbes's *Leviathan* or *The Matter, Forme and Power of a Commonwealth Ecclesiasticall and Civil*.

As the famous story goes, modern international relations emerged at the end of the Early Modern times or the late seventeenth century, and was marked by a transition from kin-based papal-monarch authority-territory towards impersonal administrative-judicial state apparatus exercising exclusive authority over certain territory.⁵ The rise of petty commodity production and the decline of feudal regimes of accumulation in England was followed by the 1688 Glorious Revolution, the establishment of a constitutional monarchy, and the maturing of a capitalist class out of the aristocracy who went on to invest in commercialized lands and domestic production. These material and social transformations gave birth to a Lockean state/society, marked by a

⁵ On capitalism and geopolitics see, J. Rosenberg, 'Social Structures and Geopolitical Systems: A Critique of the Realist Theory of International Relations' (September 1992). B. Teschke, *The Myth of 1648: Class, Geopolitics and the Making of Modern International Relations* (Verso, 2003). K. Van Der Pijl, *Transnational Classes and International Relations* (Routledge, 1998). K. Van der Pijl, *Nomads, Empires, States Modes of Foreign Relations and Political Economy* (Pluto Press, 2007), vol. I&II. M. Pal, *Jurisdictional Accumulation: An Early Modern History of Law, Empires, and Capital* (Cambridge University Press, 2020).

small government, a self-regulating market, and an entrepreneurial individual.⁶ In the Lockean mode, 'production is organized organically and without interference from public authority'; state is subordinated to the bourgeoisie society, and its primary role is to protect 'the independence of relations of production'.⁷ Mass immigration from England and colonization of the New World extended the English historic bloc to other territories.⁸ In parallel, British foreign policy moved away from territorial expansion towards maintaining a certain configuration of power in the pre-capitalist Europe to enable the creation of new spheres of production and exchange by English capitalism.

To tackle peripheralization caused by the de-territorializing nature of Lockean capitalism, a series of from-above or bourgeoisie revolutions gave birth to another form of state/civil society complex in contender states such as France in the aftermath of the 1789 French Revolution and throughout the 1800s. France transformed from a pre-capitalist agrarian society with disparate and overlapping territorial claims into an absolutist regime pursuing territorially confined capitalist accumulation, before the 1848 Revolution paved the way for a republic. Similar transformations materialized in Prussia/Germany, Japan, Russia/USSR, and China, amongst others.⁹ In the Hobbesian state/society complex, a strong state is put in place, and it is the sovereign rather than the capital that commands the organization of production relations in line with ethno-nationalist objectives. Territorially confined accumulation in the Hobbesian periphery is intended to overcome the temporally delayed capitalist advancement while ensuring survival in a 'transnational space dominated by the Anglo-Saxon ruling class'.¹⁰ Yet, after the Second World War, mainland Europe underwent transformation again. As the US-led IOs such as the Organisation for European Economic Co-operation dismantled the Hobbesian mode of capitalism in mainland Europe in favour of laissez-faire capitalism, the rise of ethno-national states in Asia, Africa, South America and the rest of the developing world became the harbinger of a new wave of Hobbesian state/society complexes.¹¹

⁶ Van Der Pijl, *Transnational Classes*, 66. ⁷ Ibid. ⁸ Ibid, part III.

⁹ Ibid, 79–84. ¹⁰ Van der Pijl, *Transnational Classes*, 81.

¹¹ On the changing direction of mainland Europe, see, K. Van Der Pijl, 'A Lockean Europe' (2006) 37 *New Left Review* 9–37. S. Sakellariopoulos and P. Sotiris, 'European Union as Class Project and Imperialist Strategy' (2018).

While different in socio-political organization, Lockean and Hobbesian state/society complexes are both formed around centralized ownership and control of means of production and similar processes of capitalist advancement. How does capitalism develop?

Capitalism moves across time and space and transforms social relations around means of production through commodification and socialization. Commodification involves *subjugating* the use value of things to an exchange value, through a ‘constantly in the making’ social activity that detaches the thing from the natural and historical condition.¹² Commodification and the dislocating effects it generates necessitates socialization (*Vergesellschaftung*). Socialization involves creating social coherence on the margins of the dominant mode of production, for example, by managing labour antagonism, ecological externalities of industrial production, and creating a shared image of production relations.¹³ The need for socialization lies in the fact that ‘[u]nder the discipline of capital and the commodity form, the real subjects cannot execute the planning/normative function for themselves [which has] evolved into a special task of a special category of *functionaries subordinate to the ruling class – the cadres*’.¹⁴ The post-1945 histories of liberalization of telecommunication networks and services, the rise of open shipping registries in the transport of raw materials, and the expansion of the global tropical timber trade are histories of not only continuous commodification and socialization but also broader struggles between the Lockean and Hobbesian state/society complexes, shaped by episodes of resistance against the de-territorializing nature of laissez-faire capitalism, followed by its ultimate victory.

Liberalization of the Global Telecommunications: The Defeat of the Hobbesian Mode

The post-World War II history of liberalization of the global telecommunication regime as developed in and beyond the International Telecommunication Union (ITU) has been a history of the defeat of

¹² See, C. Hermann, *Critique of Commodification: Contours of a Post-Capitalist Society* (Oxford University Press, 2021). Xi.

¹³ S. Mau, *Mute Compulsion: A Marxist Theory of the Economic Power of Capital* (Verso Books, 2023). 144.

¹⁴ Van der Pijl, *Transnational Classes and International Relations*, 16.

the statist telecommunication in mainland Europe and most of the developing world by the Lockean end-to-end telecommunications, where the laying of networks and delivery of services followed supply and demand and not national strategies set by the state. Liberalization of telecommunication networks and services in the last quarter of the twentieth century involved a decade-long process of commodification of what used to be characterized as ‘utilities’, followed by new rules and institutions to integrate nationally organized telecommunication sectors into the privatized global telecommunication regime, while also managing privatization anxieties amongst the masses in and beyond the developing world.¹⁵

Since the mid-nineteenth century, when the first transboundary telegraph networks were laid, all the way through to the mid-twentieth century, telephone and telegraph services were delivered by state-owned telecommunication enterprises. The International Telegraph Union (IT), the predecessor of the ITU, was established by the initiative of the nephew of Napoleon, Bonaparte III of France, in 1865 to institutionalize the reign of national telecommunication administrations, and as part of the broader European project for a transition to industrial capitalism.¹⁶ The Union was intended to act as an ‘international cartel of national telegraph agencies’.¹⁷ For almost a century, the organization of networks was viewed as a sovereign choice, and under the ITU’s operational norms, members states were protected against competition by each other’s telecommunications administrations, equipment manufacturers, or operators based in their territories.¹⁸ Crucial to nation-building, telecommunication infrastructures

¹⁵ See, S. Rhodes, *Social Movements and Free-Market Capitalism in Latin America Telecommunications Privatization and the Rise of Consumer Protest* (State University of New York Press, 2006).

¹⁶ The founding instrument of the IT, the International Telegraph Convention, was adopted by twenty mainland European countries in 1865: France, Austria, Baden, Denmark, Greece, Hanover, Italy, Saxony, Russia, Prussia, Sweden-Norway, Spain, Denmark, Belgium, Bavaria, Portugal, the Netherlands, Switzerland, Turkey, and Württemberg.

¹⁷ J. Hills, *The Struggle for Control of Global Communication: The Formative Century* (University of Illinois Press, 2010). 59.

¹⁸ For example, a 1927 CCIF Recommendation had mandated that ‘[i]nternational telephone communication circuits should not be lent for a given relation unless the number of circuits serving this relation makes it feasible; that ... it should not be possible for [central bureaus] to have the technical possibility of controlling the calls exchanged; [t]he stations so linked cannot

also became one of the first assets to be nationalized in post-colonial Asia and Africa.

While the ITU institutionalized the material capability of public-owned telecommunications in mainland Europe, the organization of telephony and telegraphy was different in the Lockean state/society complexes, most notably the United States and the United Kingdom. They relied on telephone monopolies at home (AT&T and British Telecom) while maintaining different models of international telephone services abroad. Due to the private ownership of their telegraph networks, neither of the two countries became founding members of the ITU. The UK, however, joined the Union in 1868 when it nationalized its domestic telegraph, and to represent its interests in India.¹⁹ The 1868 Convention adopted by the Vienna Plenipotentiary Conference also made it possible for companies to accede to the convention without being able to take part in standard setting.

The pace of technological advancement in the post-1945 US telecommunications, caused partly by the country's recent war effort but also by the Cold War, introduced a new level of political and impersonal pressure against the Hobbesian global telecommunication order and the normative infrastructure underpinning it. To respond to companies' telecommunication needs, the ITU's 1949 Telephone and Telegraph Regulations allowed the lease of telegraph circuits to one company from another.²⁰ However, inter-company resale of the telephone circuits remained prohibited. In a few years, the 1956 Recommendations allowed a 'multiple-user lease' by different private entities engaging in the same activity or in the same business. Yet, the Recommendation banned connection to public networks, imposed a surcharge on the leased traffic, and mandated that calls using leased

in any case be stations normally made available to the public', Comité Consultatif International des Communications Téléphoniques à grande distance [International Telephone Consultative Committee](CCIF), *Assemblée Plénière de Côme, 5–12 septembre 1927* (CCIF, 1927), pp. 117–19. Recommendation No. 13 on 'Rental of international communications circuits for the private service not including submarine sections'.

¹⁹ Telegraph Act 1870 (33 & 34 Vict c 88).

²⁰ International Telecommunication Convention 1947, Annex, Telegraph Regulations 1949: Final Protocol to the Telegraph Regulations (signed 5 August 1949, entered into force 1 July 1950), Resolution No 9, 'Lease of Telegraph Circuits'.

circuits ‘must be concerned exclusively with the personal affairs of the subscribers or those of their firms’.²¹

All these developments materialized as the newly independent states in Africa and Asia in the 1950s and 1960s had begun to pose a challenge to the status quo in the ITU. They contested the historical position of the ITU as a mere forum for industrialized countries’ public telecommunications administrations or private telecommunications operators to compete for favourable rules and standards – what the US delegate once called ‘the old boys club’.²² They called for restructuring the ITU to allow the development of an overarching telecommunications policy and a strong secretariat to assist the Global South in developing their national telecommunications sectors along the Hobbesian lines.²³ In other words, they sought to tackle the threat of a Lockean global telecommunication order through inter-governmental intervention geared towards promoting and protecting statist telecommunication. The upcoming neoliberal turn in global telecommunications, however, soon rendered their visions of self-sufficiency obsolete.

What triggered privatization and deregulation of networks and services was the advent of the satellite and digital telecommunication technologies in the Lockean heartland, the growing pressure from the US administration for liberalization of global telecommunication, but also the de-territorializing nature of laissez-faire capitalism as travelling across networks and services. The commercial use of satellites for telecommunications was made possible by the positioning of satellite systems in the geostationary orbit (GEO). The first satellite to transmit voice signals was launched from the US in December 1958. With the establishment of the National Aeronautics and Space Administration the same year, a series of projects to develop satellite

²¹ CCIF, XVIIIth Plenary Assembly (3–14 December 1956), Recommendation 21, ‘Lease of International Communication Channels for Private Service’, cited in J. Hills, *Telecommunications and Empire* (University of Illinois Press, 2007). 93. The provision was formalised into CCITT Recommendation D.1 in 1965.

²² G. O. Robinson, ‘Regulating International Airwaves: The 1979 WARC’ (1981) 21 *Virginia Journal of International Law* 1–54. 34.

²³ See, J. Hills, ‘Dependency Theory and Its Relevance Today: International Institutions in Telecommunications and Structural Power’ (1994) 20 *Review of International Studies* 169–86.

technology started.²⁴ The potential for mass commercial use created a strong incentive for the US administrations to shape the path. In 1962, the US Congress set up the Communication Satellite Corporation (COMSAT) as a private corporation. However, in 1962, the Kennedy administration turned COMSAT into an intergovernmental organization with weighted voting called INTELSAT. Seventy-four nations joined. Circumventing the one-nation-one-vote ITU, INTELSAT soon became an exclusive club of existing and rising satellite powers, where investment shares determined the voting power.²⁵ The organization of the space regime around private capital had implications beyond space. It generated new geographies of accumulation for large firms and multinationals.

In parallel, the marriage of digital technologies with telecommunications, commercialized in the 1960s, became an important source of change.²⁶ The change from ‘analogue’ to ‘digital’ transformed both switching and transmission in telecommunication networks, allowing cheaper operation of networks and growing user base in the long term. Scrambling for the vast opportunities generated by digitalization, large American firms and multinationals lobbied for liberal telecommunications networks on an end-to-end basis so they could access networks on their own terms but also circumvent the surcharge they paid to subsidize national telecommunications. Starting in the mid-1970s, some mainland European public telecommunications operators unsuccessfully sought to contain the pressure of liberalization by upgrading their networks.²⁷

The first salvo against the *ancien régime* was finally fired by the US Federal Communications Commission in 1980, when it unilaterally extended the US’ rules on resale and sharing of networks with private firms to international services, in violation of the consensus built into the Recommendations of the Consultative Committee for International Telephony and Telegraphy (CCITT) for almost

²⁴ ‘Development of Satellite Communication’ in *Britannica*, 17 July 2020, www.britannica.com/technology/satellite-communication. Accessed 31 August 2021.

²⁵ J. Hills, ‘The Telecommunications Rich and Poor’ (1990) 12 *Third World Quarterly* 71–90, 71.

²⁶ See, R. Mansell, *The New Telecommunications: A Political Economy of Network Evolution* (SAGE Publications, 1994).

²⁷ See, G. Natalicchi, *Wiring Europe: Reshaping the European Telecommunications Regime* (Rowman & Littlefield, 2001).

a century.²⁸ The AT&T was also broken up into multiple firms by the US court, triggering a search for global markets by the US manufacturers and service providers.²⁹ The UK followed suit and so did Japan and gradually mainland Europe. With changing material capability, ideas and institutions had to also change. The same year, the US requested the Organisation for Economic Cooperation and Development (OECD) Trade Committee to study trade barriers in services. The US Coalition of Service Industries, represented by Citibank, played a substantial role in the process.³⁰ The final OECD report, as well as another study carried out by GATT, demonstrated good prospects for negotiation on liberalization of trade in services.³¹ Four years later, twenty-five OECD member states expressed their resolve to include trade in services in the upcoming Uruguay Round and negotiate the expansion of such trade ‘under conditions of transparency and progressive liberalisation’,³² against the wish of twenty-three developing countries.

This essentially meant a decline in relevance of the ITU and its Hobbesian logic, in favour of GATT and the Lockean end-to-end telecommunication order, underpinned by a de-territorializing entrepreneurship. To catch up with the pressure, the Union opted for change.³³ The 1982 Plenipotentiary Conference in Nairobi reproduced a 1932 provision from the Union’s Constitution into the ITU Convention, requiring a change also in the operational rules such as Telephone and Telegraph Regulations and Recommendations. The ‘special arrangements’ clause had stipulated, ‘[t]he High Contracting Parties respectively reserve the right of making separately, between them, special arrangements of all kinds, on service points that are not of interest to

²⁸ W. J. Drake, ‘Global Private Networks and International Public Institutions: Leased Circuits and the International Telecommunications Regime’ Private Networks and Public Objectives, Columbia Institute for Tele-Information Working Paper No. 513, (Columbia University, 1992).

²⁹ See, J. Ratto-Nielsen, *The International Telecommunications Regime: Domestic Preferences and Regime Change* (Lulu, 2006). Chapter 3.

³⁰ Hills, *Telecommunications and Empire*. 180.

³¹ T. L. McLarty, ‘Liberalized Telecommunications Trade in the WTO: Implications for Universal Service Policy’ (1998) 15 *Federal Communications Law Journal*.

³² Ministerial Declaration on the Uruguay Round (20 December 1986) GATT MIN.DEC, Part II.

³³ P. Cowhey and J. D. Aronson, ‘The ITU in Transition’ (1991) 15 *Telecommunications Journal* 298–310. 301.

the generality of States ...'.³⁴ As liberalization of telecommunications was being discussed by the GATT Uruguay Round, the 1988 ITU World Administrative Telegraph and Telephone Conference in Melbourne revised the International Telephone and Telegraph Regulations to recognize the right of the member states to retreat from the collective and open their networks to foreign capital, and providers to choose to deliver services to the public. The new regulations also made international rates 'cost-based'.³⁵

Breaking away from its century-old function to coordinate the work of national telecommunication administrations, the Union's Secretariat also began not only to assist developing countries in revising their national laws to allow access and foreign direct investment (commodifying public-owned networks and services), but also to manage broader anxieties around liberalization of infrastructure by promoting narratives of entrepreneurship and competition as inductive to development.³⁶

As ITU revised its rules in Melbourne, the Uruguay Round negotiations in Marrakech adopted the 1994 GATS Agreement along with an Annex on Telecommunications. The annex targeted value-added services such as data, image, and video. It committed Member States to give access to 'any service supplier of any other Member' for the 'use of public telecommunications transport networks and services on reasonable and non-discriminatory terms and conditions'.³⁷ Foreign service providers were given the right to 'establish, construct, acquire, lease, operate, or supply telecommunications transport networks or services' in a member state's territory should they agree.³⁸ Restrictions were allowed only to ensure the 'technical integrity of network', *only if they were necessary and not just a disguise to influence the competition*.³⁹ Basic telecommunication, i.e. voice telephony, was kept out of the agreement. But not for long! The impersonal pressure of Lockean organization travelled across not only geographies but also technologies. The Marrakech meeting adopted a document titled 'Decision on Negotiations on Basic Telecommunications' with a timeline for

³⁴ International Communication Convention, Madrid 1932, Article 13.

³⁵ Article 4 (3).

³⁶ K. Lee, *Global Telecommunications Regulation: A Political Economy Perspective* (Pinter, 1996).

³⁷ WTO, Annex on Telecommunication 1994, para. 5(a). ³⁸ *ibid* para. 2.

³⁹ *ibid* para. (d).

negotiation of liberalization of telecommunications. In a sharp move, fifty-seven governments acceded to a reference paper that committed them to putting in place competitive safeguards and providing access to markets 'with interconnection at any technically feasible point in the network'.⁴⁰ Forty-seven of these countries also committed themselves to offering immediate access to their basic telecommunications.⁴¹ On 15 February 1997, the WTO Agreement on Basic Telecommunications opened 'the biggest chunk of the global market', accounting for 93 per cent of the telecommunication networks across the globe.⁴²

Rise of Open Shipping Registries: The Reign of the Lockean Mode

Unlike the global telecommunication regime, norms and processes of world shipping have emerged and evolved around laissez-faire capitalism since the rise of modern long-haul shipping in the nineteenth century. In the post-1945 era, open shipping registries in the transport of raw materials (bulk shipping) became a vivid manifestation of the organization of production relations by supply and demand, destabilizing what was historically known as national shipping. Although the system came to be challenged in the 1950s through to the 1970s by the proponents of the Hobbesian shipping order who favoured a national link between vessels and flags (and the crews and trade they carried), the 1980s neoliberal turn rendered aspirations for nationally organized marine logistics obsolete, culminating in the victory of open shipping registries.

The growth of the world shipping into a modern and rationalized industry in the nineteenth century (as opposed to the pre-modern shipping carried out by state-sponsored monopoly trading companies and dominated by piracy and mercantilist under-pricing) was the product of revolutionary technological developments in England.⁴³

⁴⁰ WTO *Reference Paper: Negotiating Group on Basic Telecommunications* (30 April 1996) WTO Doc S/NGBT/18 para 2.2.

⁴¹ S. K. Black, *Telecommunications Law in the Internet Age* (Morgan Kaufmann Publishers, 2002). 189.

⁴² W. J. Drake, 'The Rise and Decline of the International Telecommunications Regime' in C. Marsden (ed.), *Regulating the Global Information Society*, (Routledge, 2000), pp. 125–75. 156.

⁴³ S. G. Sturme, *British Shipping and World Competition* (The Athlone Press, 1962).

The construction of steam-powered vessels running on coal-generated steam engines and propellers enabled long-haul trips, followed by the adoption of standardized practices, tariffs, and rules within the European economic system. Although the normative foundation for ‘freedom of the sea and navigation’ was laid three centuries prior,⁴⁴ the material infrastructure for a liberal shipping order, underpinned by self-regulation and rationalized norms and practices, was concretely laid following the defeat of Napoleon in 1815 and the challenge of mercantilism in the Hobbesian mainland Europe. Britain’s naval hegemony between the mid-nineteenth century and the Second World War meant norms, institutions, and practices governing long-haul shipping formed around Lockean self-regulation, mostly in London insurance and indemnity clubs, and without much interference from states.⁴⁵ One of the earliest maritime institutions, *Comité Maritime International* (CMI), was set up by European lawyers in 1897 to integrate commercial and maritime law to bring ‘stability and security in the relations between the men who commit themselves and their belongings to the capricious and indomitable sea’.⁴⁶ CMI developed authoritative rules on bills of lading, liens, mortgages, and tort cases arising from collisions or stowaways – all forming the corpus of admiralty law – which were automatically accepted by governments.

In the post-WWII era, the transport of raw materials or ‘bulk shipping’ – as opposed to ‘cargo shipping’ concerned with carriage of packaged and manufactured commodities – became an emblem of organization of production relations by the market, competition, and comparative advantage. Bulk vessels carry unpackaged materials with low value to weight ratio (crude oil, refined oil, liquid natural gas, iron ore, timber, and grains, amongst others), shipped from a specific producer to specific buyers. While the cargo sector has historically been dominated by European shipping firms that formed cartels (shipping conferences), the sea transport of raw materials for most of the twentieth century materialized in a free market and was reigned over by American oil majors and other multinationals that integrated

⁴⁴ R. P. Anand, *Origin and Development of the Law of the Sea: History of International Law Revisited* (Springer, 1983).

⁴⁵ See, S. G. Sturme, *British Shipping and World Competition* (The Athlone Press, 1962).

⁴⁶ See, F. Berlingieri, ‘Work of the Comité Maritime International: Past, Present, and Future’ (1982) 57 *Tulane Law Review* 1260–73.

extraction, processing, transport, and marketing of raw materials. As marine wages and industry standards increased the costs of shipping in the Atlantic area, a large portion of the bulk vessels including oil tankers flagged out to Panama, Liberia, Honduras, and Costa Rica, amongst others.⁴⁷ In times of good business, the cheapest tankers and crews and relaxed flags helped bulk firms gain an upper hand in the market, and in times of bad business (for example in the aftermath of the 1973 oil crisis), they became crucial to compensating the financial loss.⁴⁸ Flags of convenience, however, became the object of contestation between, on the one hand, the US, American firms, and open registry states, and, on the other hand, traditional maritime states in Europe witnessing the decline of their national shipping and the new and developing world facing major hurdles in developing national maritime sectors to carry their trade.

Although the self-regulatory underpinning of world shipping could pose structural hurdles to intergovernmental intervention, the range of international shipping bodies set up by allies to coordinate merchant shipping during the war years created an amicable atmosphere for the creation of an IO on the margins of the private shipping enterprise. More importantly, the US-led campaign for trans-nationalization of production and exchange and the explosive rise in marine traffic for that purpose required socialization and managing externalities such as oil pollution on the seas. Moore called this ‘maintaining a modicum of security and mopping up the mess around the enclaves of wealth extraction’.⁴⁹ It was in this context that the Intergovernmental Maritime Consultative Organization (IMCO) was set up with an altered mandate. Article 1 on ‘purposes of the organization’ carefully delineated the tasks of the IMCO on the margins of Lockean shipping. Paragraph (a) read ‘to provide machinery for co-operation among, Governments in the field of governmental regulation and practices

⁴⁷ On the origin and history of open shipping registries see, R. Carlise, *Sovereignty for Sale: The Origins and Evolution of the Panamanian and Liberian Flags of Convenience* (Naval Institute Press, 1981). R. P. Carlise, “‘American Century’ Implemented: Stettinius and the Liberian Flag of Convenience’ (1980) 54, no. 2 *The Business History Review* 175–91.

⁴⁸ B. N. Metaxas, *Flags of Convenience: A Study of Internationalisation* (Gower Publishing Company, 1985).

⁴⁹ D. Moore, ‘The Second Age of the Third World: From Primitive Accumulation to Global Public Goods?’ (2004) 25 *Third World Quarterly* 101.

relating to *technical matters* of all kinds affecting shipping engaged in international trade and to encourage the general adoption of the highest practicable standards in matters concerning maritime safety and efficiency of navigation'. As the oil spills such as the 1967 Torrey Canyon came to reshape the fate of the oceans in the Golden Age of Capitalism, the IMCO's gained an even higher relevance in restoring social coherence to the oceans. The organization helped develop the 1973 International Convention for the Prevention of the Pollution from Ships (MARPOL) and the International Convention for the Safety of Life at Sea, which set new safety standards for bulk shipping, without undermining its transnational modus operandi.⁵⁰

Outside the IMCO, however, the very organization of open shipping registries came under attack by mainland European and later developing states in international courts and institutions, but also on the shores of the industrialized world by labour strikes.⁵¹ The challenge was initially posed by a bloc of traditional maritime states such as the Netherlands and Norway but also the UK whose national shipping industry and labour were losing to the laissez-faire modus operandi of flags of convenience shipping. Earlier in the 1950s, the International Law Commission became a battleground for the definition of 'genuine link between the vessel and flag'. The output was the 1958 UN Convention on the High Seas, which recognized the right of states to fix the conditions of their shipping registries on their own, but required 'a genuine link between the State and the ship' by way of effective exercise of jurisdiction and administrative control.⁵² As the IMCO was beginning its work in 1959, another legal conflict arose: should states with open shipping registries be considered among the 'largest ship-owning nations' for the purpose of membership in one of the organization's most important bodies, the Maritime Safety Committee. A request for advisory opinion was made to the International Court of Justice in 1960, in response to which the court stood by the laissez-faire spirit of freedom of navigation and the right

⁵⁰ See, M. W. Zacher and R. M. M'Gonigle, *Pollution, Politics, and International Law: Tankers at Sea* (University of California Press, 1979).

⁵¹ See, B. A. Boczek, *Flags of Convenience: An International Legal Study* (Harvard University Press, 1962). See, N. Lille, 'Bringing the Offshore Ashore: Transnational Production, Industrial Relations and the Reconfiguration of Sovereignty' (2010) 54 *International Studies Quarterly* 683–704.

⁵² Article 5.

of states to decide conditions of their shipping registries.⁵³ By the end of 1960s, Liberian and Panamanian flagged vessels had grown from 15 million gross tonnage to 32 million.⁵⁴ Soon enough, the recession of the late 1960s and oil crisis of 1973 resulted in rapid flight to the flags of convenience to save the profitability rate.⁵⁵

While traditional maritime states in Europe were gradually moving in the direction of improving the operation of flags of convenience vessels as opposed to phasing them out, antagonism was growing amongst the new and developing countries.⁵⁶ Although they accounted for 90 per cent of the raw materials carried by tankers in the post-1945 era, they owned only 6 per cent of the bulk market.⁵⁷ To promote national shipping and a world shipping order in that direction, in the early months of the UN Conference on Trade and Development (UNCTAD), a shipping committee was set up in a coup-like move by the Secretariat and developing countries, with a mandate to conduct studies on world shipping and potentially develop regulatory frameworks in support of the Global South's national shipping.⁵⁸ This was part of the broader efforts within UNCTAD to tackle laissez-faire capitalism underpinning the work of Bretton Woods institutions through promoting state developmentalism.⁵⁹ From the late 1970s through to the early 1980s, the Group 77 in UNCTAD advocated for an international treaty that could phase out open registries in the bulk sector through a gradual transfer of ownership or employment of national crews. Yet, as the North–South negotiations over terms of global economy collapsed in the early

⁵³ Constitution of the Maritime Safety Committee of the Inter-Governmental Maritime Consultative Organization, Advisory Opinion of 8 June 1960: I.C.J. Reports 1960, p. 150.

⁵⁴ E. Gold, *Maritime Transport: The Evolution of International Marine Policy and Shipping Law* (Lexington Books, 1981). 271.

⁵⁵ T. Volscho, 'The Revenge of the Capitalist Class: Crisis, the Legitimacy of Capitalism and the Restoration of Finance from the 1970s to Present' (2015) 43 *Critical Sociology* 249–66.

⁵⁶ See, B. Gosovic, *UNCTAD: Conflict and Compromise. The Third World's Quest for an Equitable World Economic Order through the United Nations* (A. W. Sijthoff, 1972).

⁵⁷ UNCTAD, Merchant & Fleet Development, TD/222 (May 1979). 3.

⁵⁸ D. Tresselt, *The Controversy over the Division of Labour in International Seaborne Transport* (Institute for Shipping Research Bergen, 1970).

⁵⁹ Q. Slobodian, *Globalists: The End of Empire and the Birth of Neoliberalism* (Harvard University Press, 2018).

1980s, the efforts for an anti-flag of convenience treaty resulted in a feeble instrument that sufficed to improve the link between open shipping registries and flagged out vessels, while promoting the increasing share of the rest of the developing world in bulk transport.⁶⁰ Titled the '1986 UN Convention on Conditions of Registry of Ships', the convention sought to combine the right of states to decide the conditions of their shipping registries and neoliberal principles of efficiency in world shipping,⁶¹ with interventionist measures such as the '*strengthening the genuine link* between a State and ships flying its flag'.⁶² In that direction, the convention required the recruitment of a satisfactory portion of crews from the nationals of the flag states and increased ownership and management of bulk firms by nationals of the flag states, and as such the document came to accept the foundation of open shipping registries.⁶³ By the time the convention was opened for ratification, the opposition from UNCTAD's Secretariat and Global South governments to flags of convenience had declined, as open registries were becoming the norm in transport of raw materials and the Global South itself was being integrated into neoliberal narratives of entrepreneurship.⁶⁴ The convention has yet to enter into force.⁶⁵ The momentary Hobbesian challenge to the Lockean world of shipping and the efforts to restore national shipping failed to disrupt the centuries-old foundations of laissez-faire on the global ocean.

⁶⁰ M. Franczak, *Global Inequality and American Foreign: Policy in the 1970s* (Cornell University Press, 2022); H. Rowen, 'Reagan's Success at Cancun', *Washington Post* (19 October 1981).

⁶¹ 'United Nations Convention on Conditions for Registration of Ships, Adopted by the United Nations Conference on Conditions for Registration of Ships on 7 February 1986, TD/RS/CONF/23'. Preamble & Article 4.

⁶² Article 1. ⁶³ Articles 7, 8, & 9.

⁶⁴ On the changing ideology of the UNCTAD Secretariat on the topic, see, S. R. Tolofari, *Open Registry Shipping: A Comparative Study of Costs and Freight Rates* (Gordon and Breach Science Publishers, 1989).

⁶⁵ Currently the number stands at fifteen countries, falling short of the requirement for entry into force. Countries that have ratified or acceded to the 1986 convention are: Albania, Bulgaria, Côte d'Ivoire, Egypt, Georgia, Ghana, Haiti, Hungary, Iraq, Liberia, Libya, Mexico, Morocco, Oman, and Syria). Countries that have only signed the convention subject to further actions are: Algeria, Bolivia, Cameroon, Czech Republic, Indonesia, Poland, Russian Federation, Senegal, and Slovakia. See, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XII-7&chapter=12&clang=_en

Mass Logging of Tropical Forests: The Rise of the Hobbesian Mode

Just as mainland Europe created the ITU to institutionalize the state's control over infrastructures in the mid-nineteenth century, the creation of the International Tropical Timber Organization (ITTO) from the mid-1960s through to the mid-1980s, amidst the rise of the global tropical timber trade, was the product of post-colonial states in the tropics seeking to institutionalize their reign over resources and encase mass extraction through aid and trade. As GATT, alongside other Bretton Woods institutions, came to promote the supremacy of the market and price in socio-political ordering, so UNCTAD and the international commodity agreements developed under its auspices and as part of the broader movement for a New International Economic Order were intended to tackle laissez-faire capitalism through state developmentalism. The struggle for 'permanent sovereignty over natural resources' and growth for that purpose were ultimately premised on commodification.⁶⁶ Yet, while those gathering around the NIEO agenda opposed any retreat from economic growth and environmentalism without the reform of the international economic order in the 1970s and 1980s, the growing anxieties around tropical deforestation but also the ascent of neoliberalism in the 1990s came to render the Global South's militancy against liberal environmentalism obsolete, making way for the 'sustainable forest management' in and beyond the ITTO and the 1992 UN Conference on Environment and Development (UNCED). But where did the ITTO come from?

Soon after its creation in 1964, UNCTAD occupied itself with the development of international commodity agreements in response to the ongoing fall of commodity prices and the deepening laissez-faire underpinning of the global economic ordering as organized by the Bretton Woods institutions. UNCTAD's approach to the South's commodity challenge was famously shaped by the theory of commodity prices developed separately by the Argentinian economist and the first executive director general of UNCTAD Raul Prebisch and the German economist and future UN staff Hans Singer.⁶⁷ The theory argued that

⁶⁶ S. Pahuja, *Decolonising International Law Development, Economic Growth and the Politics of Universality* (Cambridge University Press, 2011), 128.

⁶⁷ See, H. Singer, *Relative Prices of Exports and Imports of Under-Developed Countries: A Study of Post-War Terms of Trade between Under-Developed*

the price of commodities since the 1940s, and in general, tends to decline faster than the manufactured products; that specialization in primary commodities were not conducive to industrialization – as claimed by many industrialized countries in the broader global division of labour. The way to break free from the unequal exchange between the two worlds was to undergo an episode of state-assisted extractivism and intergovernmental intervention to finance import-substitution industrialization.⁶⁸

In 1966, UNCTAD's Integrated Programme for Commodities (IPC) was set up 'with a view to improving the terms of trade of developing countries and ... eliminate the economic imbalance between developed and developing countries'.⁶⁹ The IPC was intended to increase the capacity of the developing world in producing and marketing their raw materials, increase the prices, and enable processing at home countries for that purpose. Timber was the last item on the 18-item agenda and was added at the request of Congo Basin countries, which had been unsuccessful in establishing timber industries at home. As the process was becoming slow, Japan – the biggest consumer of tropical timber – tabled a resolution at the UN General Assembly for an international tropical timber agreement in 1983.⁷⁰ Two preparatory meetings were held in Geneva and the International Tropical Timber Agreement (ITTA) came into being.⁷¹ Reflecting a vivid Hobbesian logic, Article 1 of the ITTA read, 'for the benefit of both producing and consuming members and *bearing in mind the sovereignty of producing members over their natural resources*'. Reflecting a pure logic of commodification, Article 2 restricted the work of the organization to 'tropical timber' and 'promoting the expansion and diversification

and Industrialized Countries (H.M.S.O. for United Nations, 1949). J. Toye and R. Toye, 'The Origins and Interpretation of the Prebisch-Singer Thesis' (2003) 35 *History of Political Economy* 437–67.

⁶⁸ Towards a New Trade Policy for Development, Report by the Secretary General of the United Nations Conference on Trade and Development (1964), E/CONF.46/3'.

⁶⁹ UNCTAD, Report of the 145th Plenary Meeting, Part One: 'Action taken by the Conference' (Resolution 93 (IV), 30 May 1976), Annex V(I). 7.

⁷⁰ See, D. Poore, *Changing Landscape: The Development of the International Tropical Timber Organization and Its Influence on Tropical Forest Management* (Earthscan Publications Ltd, 2003); F. Gale, *The Tropical Timber Trade Regime* (Springer, 1998).

⁷¹ International Tropical Timber Agreement, 1983 (with annexes).

of tropical timber trade'. The provision created a material and ideological structure whereby 'forests' could only be dealt with in the form of 'extracted timber' destined for global markets, and questions of forest ecologies or forest-dwelling communities were excluded. ITTO was established as a commodity organization with weighted voting, which meant the largest timber producing and consumer countries had the highest vote in deciding not only the terms of the global tropical timber trade but also the extent of sustainable production.⁷² In Colchester's words, 'the more a country destroyed tropical forests, the more votes it got'.⁷³

The ITTO's early years revolved around tapping into new forests and lesser-known species, based on pre-project and project proposals developed by the producing countries or the Secretariat. Forty-two projects for promotion of tropical timber were already approved during the negotiations within UNCTAD. Sawmills were funded, wood villages were built, and loggers were trained in sawing difficult species and seasoning mixed species, amongst others.⁷⁴ Headquartered in a business skyscraper in Yokohama, Japan, and directed by the former deputy director of Malaysian forest department Freezailah Che Yeom, the ITTO functioned as a hub for a diffusion of Japanese and Southeast Asian entrepreneurship and state developmentalism – embedding what Cumings called a 'Bureaucratic Authoritarian Industrializing Regime' – to tropical Africa and South America.⁷⁵ The Secretariat embarked on a path of producing knowledge on marketable breeds, available timber reserves, and production capacity.

Yet, as the 1990s drew close, the commodification logic of the organization had to be accompanied with some degree of conservationism. Deforestation in Southeast Asia and South America, particularly the Amazon forests, and the impact of the ongoing debt of tropical countries on their forests had created global anxieties. Just in the 1980s, the global annual rate of logging had increased from 11 to 17 million hectares. To contain the fears, the ITTO began commissioning

⁷² 1983 ITTA, Annex B.

⁷³ M. Colchester, 'The International Tropical Timber Organization: Kill or Cure for the Rainforests' (1990) 20 *The Ecologist* 167.

⁷⁴ For a list of projects funded by the ITTO, see, www.itto.int/project_search/

⁷⁵ B. Cumings, 'The Origins and Development of the Northeast Asian Political Economy: Industrial Sectors, Product Cycles, and Political Consequences' (1984) 38 *International Organization* 1–40.

several expert reports on ways to manage the ecological externalities of logging without undermining the logic and scale of industrial logging,⁷⁶ and as preparations for the 1992 UNCED took off the ground, the ITTO's Council adopted a declaration that committed the organization in a non-binding manner to ensuring that 'the total exports of tropical timber products should come from sustainably managed resources by the Year 2000'.⁷⁷

UNCED became a battleground between developing countries, led by Malaysia and Brazil, insisting on old rhetorics of 'permanent sovereignty over natural resources' and proponents of liberal environmentalism in the North, calling for 'sustainable forest management' and an international treaty on tropical forests. The Bush administration, specifically, viewed a forest convention as a low hanging fruit to catch up with the pressure of environmentalism at home, while using tropical forest conservation as an alternative to carbon emission education.⁷⁸ More specifically, the initiatives around UNCED reflected a shift from the 1970s narratives of 'limits to growth' towards 'managing ecological crises' on the margin of the market and without retreat from the growth. It was ultimately the spirit of free trade and the ongoing GATT Uruguay Round that set the limit to environmentalism. Instead of an international treaty, the summit finally opted for a weaker instrument titled *the Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests* (known as Forest Principles), which blended tropical states' extractivism with some degrees of liberal environmentalism in tropical forests. The adoption of the declaration was followed by renegotiation of the ITTA, the

⁷⁶ D. Poore, P. Burgess, J. Palmer, S. Rietbergen, and T. Synnott, *No Timber without Trees: Sustainability in the Tropical Forest (a study for ITTO)* (Earthscan Publications Ltd, 1989). Oxford Forestry Institute, 'Incentives in Producer and Consumer Countries to Promote Sustainable Development of Tropical Forests, Pre-Project Report Commissioned by the International Tropical Timber Organization' (Oxford Forestry Institute, February 1991). 'The Case for Multiple-Use Management of Tropical Hardwood Forests – A Study Prepared by the Harvard Institute for International Development [HIID] – January 1988' (World Bank, records of the Agriculture and Rural Development Sector, 1988).

⁷⁷ ITTC(XXVIII)/28, 30 May 2000.

⁷⁸ D. S. Davenport, 'An Alternative Explanation for the Failure of the UNCED Forest Negotiations' (2005) 5 *Global Environmental Politics* 105–30; R. Weissman, 'Summit Games: Bush Busts UNCED' (August 1992).

founding instrument of the ITTO, in 1994 to recognize 'sustainable forest management' and with the objective to ensure sustainability of globally traded timber, a lousy goal that the organization continued to grapple with in the years that followed.⁷⁹

The retreat from 'absolute sovereignty' was part of a broader neoliberal shift in the South's politics within UNCTAD following the Eighth Conference in Cartagena, Colombia in February 1992. The Conference adopted the 'New Partnership for Development' which acknowledged the role of private enterprise and free market in the South's economic growth,⁸⁰ what Lemoine characterized as 'the offering by the developing countries of the olive branch and its acceptance by the developed countries'.⁸¹ UNCTAD's move away from the NIEO militancy was followed by the summit of the Non-Aligned Movement in Jakarta in September 1992, where, in the shadow of the breakdown of Yugoslavia and the debt problem, a collective decision was made to move towards 'a constructive North/South dialogue based on interdependence, mutual interest and shared responsibility'.⁸² With juridification of global free trade in the 1990s, one can argue that both developing states' demands for a New International Economic Order and the industrialized world's compromised environmentalism were ultimately subsumed into neoliberal entrepreneurship and crisis management.⁸³

Conclusion

While historical materialist approaches to international law have long unblackboxed the nature and function of 'law' in capitalist social relations and the 'Rule of Law' at the core of the liberal politics for that purpose, the 'state' as a socio-material structure has yet to become

⁷⁹ See, Poore, *Changing Landscape*, chapter 9.

⁸⁰ UNCTAD, 'A New Partnership for Development: The Cartagena Commitment', 8th session, Cartagena de Indias, Colombia, 22 February 1992

⁸¹ J. Lemoine, 'International Trade Regimes in Retrospect' in E. M. Chossudovsky, J. Lemoine, and M. A. Boisard (eds.), *Multilateral Diplomacy: The United Nations System at Geneva: A Working Guide*, (Brill, 1998), 410.

⁸² Conference of Heads of State or Government of Non-Aligned Countries, 10th session, NAC 10/Doc.12/Rev.1, 'The Jakarta Message: A Call for Collective Action and the Democratization of International Relations', Jakarta, Indonesia, 6 September 1992.

⁸³ V. Menotti, 'Globalization and the Acceleration of Forest Destruction since Rio' (1998) 28 *Ecologist* 354–62.

a central problematic in Marxist international law. IR historical materialism and historical sociology from the works of the proponents of the Uneven and Combined Development and the Amsterdam School on European integration to the neo-Gramscian IR all offer rich ways of reconceptualizing IOs and the international law by essentially reasoning from local relations of production up to the world order and IOs.⁸⁴ This chapter sought to introduce, rather briefly, such ways of thinking into international institutional law by arguing that capitalism moves in times and space, transforming social relations around means of production through constant commodification and socialization. Beyond the ground-level, the world order and IOs for that purpose have been and continue to be shaped by struggles between two modes of capitalist social relations: one grounded in the organization of such relations by the market (and embedding a de-territorializing logic of advancement) and the other rooted in the organization of production relations by bureaucratic vanguards, along ethno-national lines and geared towards territorial regimes of accumulation.

I sought to demonstrate these dynamics by scrabbling around three histories from post-WWII regimes of flow of manufactured products, raw commodities, and marine logistics. I argued that liberalization of telecommunications, the rise of flags of convenience in world shipping, and the mass logging of tropical forests in the post-WWII era reflected not only the continuous oscillation between commodification and restoring social coherence through standard setting, but also the struggles between laissez-faire and state capitalism, ending in the gradual yet ultimate victory of the former as underpinned by the supremacy of the market in socio-political organization since the last quarter of the twentieth century.

⁸⁴ B. Jessop and H. Overbreek (eds.), *Transnational Capital and Class Fractions: The Amsterdam School Perspective Reconsidered* (Routledge, 2019); A. Budd, *Class, States and International Relations: A Critical Appraisal of Robert Cox and neo-Gramscian Theory* (Routledge, 2013); J. Rosenberg, 'Social Structures and Geopolitical Systems: A Critique of the Realist Theory of International Relations' (September 1992); B. Teschke, *The Myth of 1648: Class, Geopolitics and the Making of Modern International Relations* (Verso, 2003); J. Rosenberg, 'Uneven and Combined Development' in K. Matin and A. Anievas (eds.), *Historical Sociology and World History: Uneven and Combined Development over the Long Durée* (Rowman & Littlefield, 2016), pp. 17–30.