Front. Law China 2009, 4(4): 543–567
DOI 10.1007/s11463-009-0029-9

RESEARCH ARTICLE

LIU Zhiyun

"Legitimacy" of international law: The source, development and the paths to overcome crisis —Analysis from the perspective of international institutional theory*

Abstract The source or basis of the force of international law or legitimacy of international law is a basic issue in international jurisprudence and the heart of controversy among scholars pro and con international law. In the development of the discipline of international law, this issue has been extensively discussed along various academic paths. In the background of globalization, the demonstration on the "legitimacy" of international institutions by the school of international institution in the field of international relations, including the "source of legitimacy", the acquisition of legitimacy or legalization, and even the "legitimationskrise", sheds helpful light on further study of the "legitimacy" of international law.

Keywords international law, international institution, legitimacy, legitimationskrise

摘要 国际法的效力来源或效力根据即"合法性"问题，是国际法学中的一个基本问题，也是国际法虚无主义者与国际法的支持者争论的焦点所在。在国际法学的发展史上，许多学者沿着不同的研究路径对此问题做出了各种各样的论证。 在全球化背景下，来自国际关系理论中的国际机制学派对国际机制的"合法性"的论证，包括"合法性的根源"、合法性的取得即"合法化"，乃至"合法性危机"的论述，为国际法的"合法性"问题的深入研究提供了有益启示。

* This paper is supported by the Program for New Century Excellent Talents in University (NCET-08-0477).

Received January 20, 2009 and accepted April 22, 2009

LIU Zhiyun (✉)
School of Law, Xiamen University, Xiamen 361005, China
E-mail: liuzy420@yahoo.com

关键词 国际法，国际机制，合法性，合法性危机

Due to the dissatisfaction with the pessimistic view of realists on international cooperation, some scholars of international relations started to review the significance of international institution to international relations in supporting and promoting international cooperation from the late 1970s. It may be deemed that such trend of research, on the premise of the core assumptions of realism on meanings of power, anarchy and state-centric doctrine, is to rejuvenate the theoretical exploration of idealism on laws, rules and standpoints of institution. (Beck, Arend, Lugt, 1996) In the 1980s when international political and economic situations underwent tremendous changes, such research enjoyed rapid development and a new school with strong vitality in the field of international relation theory—international institution theory began to take shape. Up to now, the school has not fallen to be a fashion lasting briefly as predicted by Strange. (Strange, 1982) On the contrary, for the close relationship with international jurisprudence, it has gradually become one of the schools to actively interact with international jurisprudence and achieved important results in the field of contemporary international relation theory. From the perspective of international jurisprudence, many aspects of international institution theory are worth transplanting, referring and learning by scholars of international law in their relevant researches, including research achievements on core propositions concerning the formation, development, effectiveness, legitimacy, independence, limitations and institutional interaction of international institutions, typically the "legitimacy" of international institutions and relevant analyses.

In early research on international institutions, legitimacy is deemed as a vested element of international institutions, i.e. as long as an international institution exists, its legitimacy does exist consequently. For neo-realism, whether an international institution, which is attached to power distribution, is legitimate or not is of no importance; and for neo-liberalism, the effectiveness of an international institution determines its significant position, or in another word, the legitimacy of an international institution is based on its effectiveness. (Men, 2002) Hence, it seems the legitimacy of an international institution is an issue not requiring for further deliberation. However, with the understanding of international institutions deepened, and due to the demand for effectiveness research on international institutions on the one hand and the dilemma of "legitimacy crisis" encountered in the practice of international institutions on the other hand, various aspects concerning the "legitimacy", such as the "source of legitimacy", "legitimationskrise", and even the "acquisition of legitimacy" or "legalization", have gradually become the focus of research by schools of international institution, including the three dominant schools, namely,

neo-realism, neo-liberalism and constructivism.[1] (Bodansky, 1999) By level, as "legitimacy is by itself the basis of effectiveness" (Bodansky, 1999), the research on the legitimacy of international law is the basis for research on the effectiveness of international law. Thus, only when the "legitimacy" of international law is proved can the issues concerning the effectiveness of international law as well as its scope of effectiveness be discussed. Besides, because of such relevancy between the legitimacy and effectiveness of international law, the issue on legitimacy of international jurisprudence is always expressed as the issue of "source of force" or "basis of force". In fact, the research on "legitimacy" is always an important topic in international jurisprudence and different theoretical schools have put forward various viewpoints and demonstrations to it.[2] (Wang, 1995; Shao, Yu, 2002; Mcdougal, Lasswell, 1996) Undoubtedly, those viewpoints and demonstrations are of certain reasonableness, and they have had different influences, like the schools, at some time or in an area. However, no viewpoint of those schools can always dominate

[1] Generally, it is held that there are two reasons for the research on "legitimacy" to become the focus of research on international institution recently: Firstly, so far, the vulnerability of international institution forces scholars of international relations to resolve at first the issue whether international institution may be of any influence, thus, the role/function of international institution is the paramount issue to solve; secondly, since legitimacy is based on consent, international institution as the result of common consent of states does not involve the issue of legitimacy at first, and till now, it has become the focus upon occurrence of "democratic deficit".

[2] As for the legitimacy of international law, or the root or basis of its force, schools of international jurisprudence have given answers. For instance, naturalists hold that international law is a natural law or a part of natural law, or the application of natural law among states. "Nature" is the basis of force or the source of legitimacy of international law, embodying "human conscience", "human rationality" and "human common sense of law". For another example, solidarists of a big influence in Europe also believe that all laws are based on social solidarity without exclusion of international law. The basis of the force of international law or its "legitimacy" is from the "legal conscience of mankind", which is originated from international social solidarity. Normativists of a great influence hold the basis of force of international law is the highest-ranking international law norms, which are both legal norms and ethnic norms, or in another word, the norms generated from the "sense of justice" or "legal conscience" of mankind—pacta sunt servanda. However, neo-positivists oppose taking the concept from nature as the basis of the force of international law, holding that what plays a role in reality is the wills of states, and the "common wills" of states or the will of a state is the basis of the force of international law and the source of legitimacy. Still some other scholars stress the decisive function of the global political power on international law, and since the core of international politics is state power, the force of international law is based on the balance of the powers of states, the so-called "balance of power". However, the New Haven School, which advocates the policy-oriented doctrine, believes that international law is the presentation of the external policies of states and the force of international law depends on the external policies of states, while the policies of some states are dominant in international relations, hence they play a major role in terms of the force of international law. For illustrations on the "legitimacy" of international law by various schools, refer to Wang Tieya (1995), Shao Shaping,Yu Minyou, ed. (2002), Mcdougal M S, Lasswell H D (1996).

beyond the limitation of time and space; on the contrary, they have developed in debates and competition. With time passing by, there may be more viewpoints to be proposed in discussing the legitimacy of international law. Besides, to assimilate nutrition from researches on the legitimacy of international institution is also an effective way to probe into the legitimacy issue of international law.

Such possibility of reference is rooted in the close relationship between international institutions and international law, and the analyses to the two disciplines are, in fact, researches on similar (even identical) matter from different perspectives, as "Institutionalists and international lawyers subscribe to a common ontology of the international system: The actors, the structure within which those actors act, and the process of their interactions." (Burley, 1993) Thus, there is a good commensurability between them and cross-disciplinary cooperation is mutually helpful and beneficial. Interestingly, the examples given in the researches on international institutions usually coincide with the objects under study of international law. For instance, the League of Nations and the systems it represented, the UN and the systems it represents, and the WTO and the systems it represents are all objects studied the most frequently or examples most frequently listed by the two disciplines, which proves beyond doubt the strong reasonableness and feasibility to seek reference from researches on the legitimacy of international institutions.

1 Root of "legitimacy" of international law: A reference to relevant analysis on international institution theories

Recently, the "root of legitimacy" of international institutions is the focus of concerns of schools involved in international institutions, and every school has drawn conclusions consistent with the key viewpoints and concepts in their research paradigm from their research perspective. By epistemology, the paths to analysis on the "root of legitimacy" of international institutions can be divided into two main categories, namely, rationalism and reflectivism. The former is represented by the hegemonic stability theory in neo-realism and the international institution theory in neo-liberalism, and the latter, the international institution theory in constructivism. Undoubtedly, those achievements based on different epistemologies coincide with certain realities, contain certain reasonable factors and provide certain references to demonstrating the "root of legitimacy" of international legal systems and international organizations.

1.1 Root of the "legitimacy" of international law: Interpretation and enlightenment of the neo-realism on international institutions

Since "legitimacy" has become the focus of research on international institution

theory, every international institution school has been trying to use their core concepts to explain issues concerning the roots and embodiments of the legitimacy of international institutions, so is the international institution theory of neo-realism—the "hegemonic stability theory".

With respect to the roots of the legitimacy of international institutions, the "hegemonic stability theory" emphasizes the importance of recognition of international institutions by participating states while insisting on power dominance of hegemonic states or power distribution among large powers. On the one hand, the hegemonic stability theory holds that to acquire the legitimacy of an international institution or recognition of an international institution by participating states, the international institution shall reflect not only the interests of hegemonic states, but also those of participating states. Of course, scholars holding the hegemonic stability theory do not deem hegemonic states' maintenance of such international system is due to their selflessness or basic morals, but stress that in respect of the objective effects of the hegemonic system and related legal systems established and maintained by hegemonic states by virtue of their own "power" and "prestige", there are both objectives of hegemonic states for realizing their interests and factors consistent with the public interests of international communities, or there is "mutual interests" between hegemonic states and other states.[3] (Gilpin, 2003) On the other hand, these scholars hold that international institutions are created by "common decision-making" as hegemonic states have to avoid unilateral decision-making as much as possible so as to obtain recognition from participating states. Furthermore, hegemonic states are aware that only when international institutions are formulated by means of common decisions (in form at least) can other states within the hegemonic system believe they are respected and such international institutions may reflect some of their interests. No state can make the best tactics to its interests and achieve the best results entirely independent of the choices of other states. It is impossible to work out any international institution of sufficient legitimacy by unilateral decision-making, the substantive connotation of which is that decision-makers of a state are required to seek for opportunities to establish cooperation relations with other states, just as they choose self-protection tactics when facing conflicts. (Snidal, 1985) Thus, even in the period when hegemonic power absolutely dominates, "hegemonic cooperation" is of critical importance, especially in routine management and crisis handling of the international system. (Eichengreen, 2000)

[3] However, the specific focuses of different scholars are different. For example, Kinallelerger emphasizes that the actions of hegemonic states are driven by two interests, while scholars including Gilpin and Krasner hold that hegemonic states mainly aim to promote their own interests, especially the interests in politics and security.

Undoubtedly, the viewpoint of the "hegemonic stability theory" that the legitimacy of international institutions is derived from the power dominance of hegemonic states or power distribution among large powers, the "mutual interests" of dominant states and other participating states embodied in international institutions, and the "common decisions" of other participating states during the establishment and maintenance of international institutions as well as the confirmation by the agencies concerned of the participating states according to their treaty examination and approval procedures, which can be deemed as a part of the root of the legitimacy of international law and organizations. In fact, for any international legal system and any international organization of extensive influence to be generally recognized by international communities (or by participating states at least) in human history, the roles of the above-mentioned factors are indispensable. For instance, the smooth establishment of the UN was indispensable from the supports of four big powers including China, the UK, the UN and the USSR, especially the crucial role of the US, whose power was far beyond others then. Though the support of the US was dominant, it did not exclude the participation of other states (mainly the founding members), and the interests of member states were also reflected in decision-making procedures and institutional structure. During the operation of the UN and its legal systems, though the role of power is critical, every decision-making has been carried out according to the procedures prescribed in the Charter of the United Nations, and dominant states have tried to observe and maintain the operations of systems and procedures, in form at least. With respect to non-founding members, their voluntary participation to the Charter of the United Nations and the confirmation by their agencies concerned according to their treaty examination and approval procedures also indicate their recognition of the UN and its legal systems. Meanwhile, the significance of the existence of either the UN system or the Bretton Woods system is that they are "pubic goods" at first and contain the substantial interests of both dominant and participating states. Just as what is pointed out by the scholars holding the hegemonic stability theory, in the trade liberalization supported and dominated by the US and with GATT talks as the platform, the US has, undoubtedly, obtained great benefits due to its advantaged position in global market competition. However, for the union of partnership countries, the US has to endure the discrimination of Europe and Japan against its exports. In fact, over 20 years since World War II, due to the political and security considerations, the US had subjected lots of its narrow economic interests to the economic interests of its partners, and it had indeed created an international economic order system from which the other states can get sufficient benefits. (Gilpin, 2006)

Though the interpretation that "mutual interests", "common decision" and "power" combine to constitute the root of the legitimacy of hegemonic system

and international legal systems maintaining the former may not be perfect, it is, beyond doubt, of certain reasonableness. From practical perspective, such demonstration may provide an idea of interpretation or an analysis framework of certain persuasion to analyze the root of "legitimacy" of the following issues: The gold standard system established and maintained by the UK by virtue of its powerful state strength in the second half of the 19th century, the legal system of international finance and international trade established by the US after World War II, and even the establishment and maintenance of the UN and its legal systems. On the contrary, the reason why the unequal treaties imposed on weak states by strong powers as well as something like colonial or semi-colonial institutions including "sphere of influence" failed to obtain general recognition by related states in history is that those treaties lack the elements necessary for achieving legitimacy, or even if such treaties or institutions were temporarily recognized, they could not work for long, since such recognition failed to satisfy the basis of "mutual interests" required by acquiring legitimacy, which lays the potential of "legitimationskrise".

1.2 Root of the "legitimacy" of international law: Interpretation and enlightenment of the neo-liberalism on international institutions

For neo-liberalists, the legitimacy of an international institution is rooted in its effectiveness, and discussion on such issue from the perspective of interests is the necessary orientation of the neo-liberalists. (Men, 2002) In this regard, Keohane, the representative of neo-liberalism, takes the following path of analysis: The realization of cooperation shall be based on mutual interests, while the mere existence of mutual interests will not necessarily lead to cooperation; and hence the existence of institutions is required, and the role or the function of institutions is just the root of the legitimacy of institutions. In short, "it is legitimate as it is objectively required." However, since mutual interests may be associated sometimes with cooperation, and sometimes with disputes and controversies, cooperation can not be deemed as the result of interests simply. In fact, due to possible strong uncertainties and the difference of actors' capabilities to access information in international cooperation environment, obstacles may exist in collective actions and strategic estimations, actors will undoubtedly be prevented from realizing their common interests. Thus, Keohane held that it was not enough to take "common interests" or "mutual interests" only as the root of legitimacy of international institutions, and the aforesaid situations existing in international cooperation environment determined the necessity of the existence of international institutions, since institutions might reduce uncertainties and limit information asymmetry. (Keohane, 2001)

In turn, Keohane also demonstrated one of the embodiments of the legitimacy

of international institutions from the perspective of effectiveness of international institutions, that is, the observance by participating states. He elaborated that based on the theories of market failure and rational choice in economics, a functional theory concerning international institutions may be developed, which may answer the question why governments of states are willing to establish and observe international institutions. In another word, institutions can make contributions to the appearance and progress of cooperation not because of observance of rules by states but through change of decision-making environment where decisions are made by states on the basis of their own interests. Thus, the reason for governments concerned to value international institutions is not because they may force other states to observe those rules but because such institutions provide a possibility for governments to reach mutually beneficial cooperation. In such sense, international institutions grant power to governments rather than constrain the actions of governments. (Keohane, 2001) Moreover, in the background that international institutions have generally suffered "legitimationskrise" due to insufficiency of channels for public participation and lack of transparency, neo-liberalists have also started to link "democratic deficit" with the root of legitimacy of international institutions. They point out that international institutions, especially "democratic deficit" in the WTO system, are the root of their "legitimationskrise". Factors such as insufficiency of the transparency of procedures, obstacles for the participation of interest groups and lack of statesmen who are able to link international institutions with constituency lead to the occurrence of "democratic deficit", and the process of manipulation of international institutions by big powers or strong states and elites as government officials is related to the democratic development of international communities. In the situation where legitimacy relies on process, responsibilities are a core issue. The way to avoid deadlocks requires that institutions including the WTO shall be more political-oriented and international organizations shall seek for a balance between transparency and participation. (Keohane, Nye, 2008)

Undoubtedly, the position held by the neo-liberalism international institution theory that the legitimacy of international institutions is based on their effectiveness, and the practice of demonstrating the embodiments of legitimacy are the recognition and observance of international institutions by participating states by use of the cost-efficiency rule are, in fact, consistent with the thinking on demonstrating the effectiveness of international law from the perspective of law economics. However, according to such way of thinking of interpretation, a logic paradox will be left inevitably. As we know, the legitimacy of international law and organizations is the ground or basis of their effectiveness, while according to such interest analysis approach, the effectiveness of international law and organizations become the ground of their legitimacy. Obviously, such

inference falls into the strange circle of thinking as "which comes first, chicken or egg?" In fact, such practice is the extension of the early viewpoints which applied apriorism to treat the legitimacy of international institutions. Of course, we may need some spirits of "more emphases on research of practical issues rather than isms" as Mr. Hu Shi initiated (Hu, 1919), because the issue concerning the legitimacy of international law and organizations is by itself closely related and inseparable to the issue of effectiveness. The legitimacy is the ground of effectiveness and the degree of effectiveness in practice of international law and international organizations can be predicted through proving their legitimacy, while through proving the effectiveness of international law and international organizations, we may find some paths to prove their legitimacy. Purely at the theoretical level, we may find there is a dialectic relationship between them, where legitimacy is the basis of effectiveness and effectiveness is one of the embodiments of legitimacy.

Furthermore, as far as the thinking on the root of legitimacy of international law and international organizations is concerned, compared with pure law economics, neo-liberalism has something different and worth learning: Firstly, facing the phenomenon of "democratic deficit" existing in international communities in recent years, it has tried to discuss the relationship between democratization and the legitimacy of international institutions, hence providing a feasible path to resolve the "legitimationskrise" encountered by many international legal systems and organizations; secondly, facing the limitation of rationalism, the neo-liberalists has recently tried to interpret the root of legitimacy of international institutions by combining "notions" and substance, hence getting rid of the impasse of pure materialism (Goldstein, Keohane, 2005), which is worth learning by law economics in relevant researches.

1.3 Root of the "legitimacy" of international law: Interpretations and enlightenment of the constructivism on international institutions

As for the international institution theory of constructivism, "recognition" or "internalization" is the source or basic manifestation of the legitimacy of international institutions. (Checkel, 2001) When discussing on the formation of international norms, constructivists borrow a "life cycle" model of norms: They hold the formation of international norms shall go through three development stages, namely, "rise stage of norms", "popularization stage of norms" and "internalization stage of norms". Specifically, the main works in the first stage or "rise stage of norms" is the persuasion by norm advocators, that is, they have to convince key states (dominant states of norms) to accept new norms; the feature of the second stage or "popularization stage of norm" is the working of imitation

mechanism, that is, dominant states of norms have to persuade other states to become followers through social progress; and the third stage or "internalization stage of norms" is the highest stage when norms are rapidly disseminated and broadly accepted, and actors are able to internalize norms completely, turning them into something taken for granted. Then, observance of norms will become an automatic action (Finnemore, Sikkink, 2006), and international norms will obtain the status and position of "legitimacy" in those states.

By then, we may find that constructivists have, in fact, denied the viewpoint of positivists that the binding force of international institutions comes from sanctions. (Arend, 1996) They hold that sanctions are not a necessary condition for a binding international norm. In fact, the binding force, even of domestic laws, does not come from sanctions, but largely relies on their legitimacy. It can be imagined that even if only a small percentage of people in a country believe a specific legal rule is illegitimate and refuse to observe it, there is hardly any coercive power to force them, small in percentage but large in absolute number, to observe it. Thus, it is the legitimacy of rules rather than sanctions that guarantees their binding forces. Similarly, the binding force of international norms is not acquired by sanctions. It is enough as long as states deem international legal rules are binding and believe sanctions would be imposed if they violate those rules. (Arend, 1996) In short, the "legitimacy" of international norms comes from states' recognition and their notion of recognizing those international norms as "laws". For example, the "legitimacy" of the sovereignty system is generated from the common consciousness of the community of states that respect systems, the procedural rules on state acts and the linkage among such factors as the basic features to define international systems and the basic principles to define the status of nations in a system.

Comparatively, the viewpoint of constructivists from the perspective of reflectivism epistemology is that "recognition" and "internalization of rules" is the root of legitimacy of international institutions, which is more of constructive significance for research of international law scholars on the legitimacy of international law. Though in research on the legitimacy of international law, naturalists and other schools following the same theoretical veins including social solidarist school of law and normativist school of law seek for the root of legitimacy of international law from abstract concepts, for example, the "human conscience", "human rationality" and "human common sense of law" held by naturalists, the "legal conscience of nations" held by the solidarists and the "pacta sunt servanda" held by normativists, which are more or less connected with the analytical path of reflectivism, those viewpoints are too abstractive, and though they may not be deemed as unreasonable, it seems people are required to have an excessively large leap of thinking or an excessively large imaginative space, and there lacks a proper path to link phenomenon and abstract. However,

the demonstrations of constructivists on "recognition", "internalization of rules" and the process of internalization eliminate such disconnection between reality and abstract.

According to the thinking of constructivists, the reason why international law can exert its force or the ground of its effectiveness is the embedding of related international legal system in the internal consciousness of states, and international law shall be observed because states believe it is "law". According to the relevant international legal system, states can not only recognize their status as state within a system or "state outside law", but also judge where their national interests lie, namely, the benefits from observing systems and possible costs to pay for violating such systems (inclusive of physical costs and such spiritual costs as reputation). Therefore, when taking actions, states have considered international legal systems as an important factor, or in another word, international legal systems form or impact state's actions. Once the relevant international legal systems are internalized in the inner psychology of a state, the issue concerning their legitimacy can be solved naturally and the source of effectiveness takes its ground. Meanwhile, such "internalization of rules" of international law is, in fact, an ongoing process: First, the establishment of the relevant international law system; second, popularization and promotion by dominant or key states; third, acceptance by quite a number of states and its effectiveness; and last, internalization in the thinking and consciousness of external actions of member states. Thus, we may say, for a responsible state or a state with good reputation for observing international law, a kind of "concept of rule of law" similar to that in domestic society has been deeply imbedded in its diplomatic thinking, while a state without sense of responsibility for international communities or a state "outside law" that always violates international law is short of such kind of rule of law concept in its diplomatic thinking, and the relevant international law has not been recognized by it, or at least lacks "legitimacy" in its eyes.

2 Orientation of "legalization" of international institutions and development of international law in recent years

Due to the pressure from democratization of international communities on the one hand and the demand to overcome the "legitimationskrise" of many international institutions at present on the other hand, endeavors have been made to legitimize international institutions in recent years. Besides, the research of international institution scholars on such trend has provided a basis of reasonableness or legitimacy for the development of international law and international organizations.

2.1 Inference of the orientation and proofs in practice of "legalization" of international institutions in recent years

"Legalization" is the process of acquisition and maintenance of legitimacy. (Men, 2002) At international level, legalization is a concept of order that enables international relations and order to be established on a legal basis, which requires that the external actions of states and distribution and coordination of interests among states shall be regulated by legal means and stresses that only when legalization is realized can reasonable and orderly international relations be realized, hence constituting the important value pursuits of international institutions. (Liu, 1999) In brief, legalization refers to the degree of observance of international institutions or systems, the accuracy of rules and the functions interpreted, supervised and implemented by an independent third party, in another word, "obligation", "precision" and "delegation" are the three elements of legalization.[4] In fact, what legalization of international institutions expresses is the process of those institutions from the original status of lack of legitimacy to acquiring or enhancement of legitimacy through enhancing such factors including "obligation", "precision" and "delegation". If legalization is the approach to acquire legitimacy, legitimacy is the aim of the legalization process. Legalization is dynamic while legitimacy is static. Through observing a specific link of the dynamic process of legalization, we may judge the degree of legitimacy, including legitimationskrise, lack of legitimacy, and insufficiency or sufficiency of legitimacy. (Men, 2002)

However, most international institution scholars still believe that not all international institutions in every field tend to become legitimized, since in some fields, due to the excessively high costs of legalization, it is even of an important significance to remain in the state of non-legalization.[5] (Puchala, Hopkins, 1983)

---

[4] "Obligation" means states or other main bodies of international law are subject to a rule or commitment or a series of rules or commitments. Specifically, it means they accept the legal binding force of those rules or commitments. In case of violation, they will be supervised or sanctioned by all factors of international law including general rules, processes and consensuses. "Precision" means those rules make clear definitions of the requirements, delegation or prohibition on states or other main bodies of international law. "Delegation" means an independent third party is delegated to interpret and implement rules, settle disputes, and formulate further rules (if delegated). See Abbott K W, Keohane R O, Slaughter A M, Snidal D (2000), pp.401–419; Goldstein J, Kahler M, Keohane R O, Slaughter A M (2000), pp. 385–399.

[5] International institutions have been divided into two categories: Formal regimes and informal regimes. The former refers to international institutions created by legislation, maintained by entities including councils and representative meetings, and supervised by international or regional organizations; and the latter refers to those created by common understanding which is objectively existed among participants, enhanced by common interests or "gentlemen agreements" and maintained by mutual supervision. Due to merits possessed by formal

Therefore, the extension of legalization is unbalanced. Moreover, there is no positive correlation between legalization and international cooperation. For example, in the era of GATT, by reliance on dominance of big powers and by means of a black box full of "democratic deficit" and under intense condemnation by developing countries and "transnational civil society", a set of international legal systems on trade has been established, which is the most efficient and systematic up to now. However, due to the fact that the interests of developing countries and various social issues has not been sufficiently considered, which is caused by the "black-box operation", such institution has been severely criticized for its defects in "democracy" and "fairness". Till the establishment of the WTO, to make up for those defects and relax conflicts on the one hand, attempts have been made to enhance the transparency of the institution by increasing information exchange channels conducive to the participation of developing countries and "transnational civil society" in legislation. However, the enhancement of democracy may not only incorporate some topics of other fields into the legislative process through cross topics, but further aggravate the dilemma of liberalization. (Kahler, 2000) The recent practices of the WTO democratic regime which has been slightly improved but still unsatisfactory, including the fruitless Seattle meeting in 1999 and Cancun meetings in 2003 and even the frustrated Doha Round Negotiation, also manifest the dilemma where the legislative efficiency has been seriously restricted. On the other hand, to overcome the state of loose disciplines of the GATT era, the WTO has strengthened its nature of enforcement. However, as pointed out by western scholars: "The enforcement structures of the GATT/WTO thus face a difficult dilemma: To allow states to deviate from commitments when doing so would be efficient or to deter abuse of this flexibility. If enforcement is too harsh, states will comply with trade rules even in the face of high domestic economic and political costs, thus losing its general support to liberalization; and if the enforcement is too lax, states will cheat, leading to a different dynamic that could similarly undermine the system." (Golstein, Martin, 2000) Nevertheless, in international economy field, the orientation of legalization of international institutions has been recognized by most scholars and has become an important field of research on international institution legalization. (Goldstein, Kahler, Keohane, Slaughter, 2000)

---

regimes such as precision, authority and predictability and under the background of increasingly close mutual dependence of states, though informal regimes are still applicable to some fields for maintaining relations among states, in more fields, there is a trend of formalization of informal regimes, which is just the orientation of "legalization" of international institutions as described by international relation scholars. As to the classification of "formal regimes" and "informal regimes", see Donald J. Puchala and Raymond F. Hopkins (1983), p. 65.

In fact, recent research on legalization of international institutions is the extension of the debate between neo-liberalists and neo-realists on which is more important, institution or power. In practice, theoretical hypotheses or inferences concerning the legitimacy of international institutions are not rootless, but based on certain reality. Recently, many international institutions that aim at promoting cooperation have increasingly enhanced their "legalization" and "judicialization", or sought for a constitutional form. Not only has the European Court of Justice (ECJ) tried to promote community of law with the courts of member states, but also have many international institutions including WTO, NAFTA and WB increasingly relied on legal systems for dispute settlement. (Slaughter, Tulumello, Wood, 1998) The history of GATT/WTO as the largest international economic institution so far is the process of legalization from power to rule. Though GATT has created a reciprocity-based international forum for further negotiations from the very beginning, as an interim applicable institutional arrangement, it was dominated by the negotiation approach driven by pragmatism with political and diplomatic style in its early activities. In such period, power orientation was the inherent feature of institutions and divergences and disputes were always settled by way of mutual benefits. (Hill, 2001) However, after rounds of negotiations of GATT, and with the increase of the number of member states and the expanding coverage of agreements concluded, a trend oriented by rules is forming. Nevertheless, it is obviously too early to allege GATT has become an institution totally based on rules, but at most, there is a trend toward rule orientation (Hill, 2001), because what is presented in the whole system is still "loose disciplines" and even whether to start dispute settlement procedures or whether to implement the results of the investigation by the panels relies on the consensus of member states. However, the agreements reached in the Uruguay Round, especially the achievement of the Dispute Settlement Understanding (DSU), have actually established a legal framework of revolutionary significance. Though WTO systems still contain power-oriented factors, and the conflicts within the systems still primarily need to be solved by negotiations and consensus, the purpose of the dispute settlement body is to serve the rule of law. On the one hand, the DSU clearly requires that the dispute settlement mechanism shall aim at providing security and predictability to the multilateral trading system, the panel shall address the relevant provisions in any covered agreement to the dispute, and the appellate body shall limit its examination to law issues and judicial interpretations.[6] On the other hand, the dispute settlement mechanism "serves to preserve the rights and obligations of Members under the covered agreements, and to clarify the existing provisions of those agreements in accordance with

[6] See Article 3(2), Article 7 (2) and Article 17(6) of the DSU.

customary rules of interpretation of public international law."[7]

In view of effects, the establishment of the dispute settlement mechanism means not only the weakening of political authority of members and judicialization of international relations, but also the accelerating legal construction of international organizations and the structural internationalization of states. (Chorev, 2000) Consequently, we hold, on the whole, the WTO has realized its shift from power-orientation to rules-orientation and entered into a legalization stage of a higher level. In fact, the Singapore Ministerial Declaration has clearly expressed the WTO system as "the rules-based system" when mentioning the WTO regime.[8]

Thus, we may arrive at the following conclusion: The orientation of "legalization" of international institutions is not only the theoretical inference of international institution scholars, but also a fact proved by practice. Some scholars have even reached the following conclusion: The WTO mechanism typical of legalization of international institutions, especially the establishment of WTO dispute settlement mechanism, is the demonstration of global neo-liberalism. (Chorev, 2000) The results of research on the recent "legalization" of international institutions by international institution scholars are worth reference by international law scholars in their relevant researches.

2.2 Orientation of "legalization" of international institutions and development of international law

Undoubtedly, the legalization of international institutions is a concept of values required by a new international order demonstrated by the gradual formation and maturity of international institutions, and it will further promote the normalization and orderly development of international relations, provide the ground for the reasonableness and legitimacy of the development of international law and international organizations, and indicate the features and direction of their development.

Firstly, the legalization of international relations is the realistic premise of international institutions to regulate the international order in practice. Compared with other fields, it is generally believed that the establishment of institutions is more stable in the field of international economy where international institution theories work well. Though the legalization of international institutions is the extension of the notion of rule of law in international relations, it does not pursue absolute authority like domestic laws but pursues the objective of acceptance and

[7] See Article 3(2) of the DSU.

[8] WTO Ministerial Conference, Singapore—Draft Singapore Ministerial Declaration, WT/MIN (96)/DEC/W, 13/12/1996. http://docsonline.wto.Org/GEN_searchResult.asp, 2003-10-21.

observance by participating states. (Liu, 1999) In the trend of globalization, to coordinate distribution of interests, relax conflicts and promote mutual development, nations shall have a relatively unified international legal system of certain authority, which provides a reasonableness ground for the development of international law. Then, undertaking international cooperation and legislation is not merely the desire of developed countries, but the necessary requirement for global social and economic development and the common interests of nations, though there will be contradictions and conflicts concerning specific interests of nations in the progress of such cooperation and legislation. However, in view of the whole situation, to oppose international cooperation and legislation is, in fact, to close door and isolate oneself, which is never a good decision for the social and economic development of a country in the background of globalization. Therefore, the demand for normalization of international relations and the necessity of international cooperation lay a reasonableness ground for the development of international law in globalization. Though superficially, every nation has its right of free choice, in essence, participation in international cooperation and legislation has become the necessary response of most nations when facing globalization.

Secondly, the basic purposes and core connotations of legalization are the normalization of international relations and the effectiveness of international institutions. (Liu, 1999) For example, the requirements of such normalization and effectiveness demonstrate two features in international legislation which aims at creating global social and economic order: (1) They are manifested as the principles, rules, announcements and decision-making procedures of international law with certain mandatory binding force or nature of "soft law", which will be of certain mandatory or moral binding force on state acts upon acceptance by a state. Meanwhile, seeking for the authority of rules will become a trend. For instance, by establishing the trade policy assessment system and the dispute settlement mechanism, the WTO has improved the reputation of member states by means of legislation, and hence increased the costs of betrayal. (Abbott, Snidal, 2000) (2) They are manifested as incorporating the acts beyond the coverage of specific rules into the binding scope as well as the increasing binding force on the acts originally within the binding scope. (Goldstein, Kahler, Keohane, Slaughter, 2000) In a word, the improvement of the authority, coverage and degree of international law are not only the necessary demand for the normalization of international relations, but also a factual trend in the background of rapid development of globalization. Meanwhile, such trend, in turn, lays the foundation for enhancement of the legitimacy of international law.

Thirdly, just as Keohane has pointed out: "Institutionalists have not promoted international institutions to an authoritative position above states; on the contrary, states have established institutions to realize their objectives. In the dilemma of

coordination and cooperation in the condition of mutual reliance, governments require that international institutions enable them to realize interests by limited acts. Those institutions serving the objectives of states reduce transaction costs mainly through providing information conditions rather than mandatory rules, so as to facilitate the formation and maintenance of agreements". (Keohane, 2001) International regime should not be interpreted as elements of a new international order "beyond the nation-state", as components of systems in which sovereignty remains a constitutive principle. (Keohane, 1999) Thus, the legalization of international institutions does not mean the transfer and abandonment of national sovereignty, but emphasize the respect for national sovereignty. In practice, it is required that equal participation of states in transnational issues, as well as the common responsibilities, shall be emphasized in international legislation since international legislation is the product of coordination and consent of wills of states for the purpose of establishing a global social and economic legal order system that respects sovereignties of states, so as to realize the common interests of states in globalization rather than establishing a "world law" system over nations. If such objective is deviated, the effectiveness and legitimacy of international law will be under suspicion.

Lastly, the objectives of legalization of international institutions are to realize orderly international relations and normalization of international behaviors and enhance the security and predictability of actors in international cooperation. (Liu, 1999) With respect to efficiency, legalized international cooperation can reduce information costs, define rights and obligations and supervise or sanction treacherous behaviors, hence decreasing transaction costs, which undoubtedly, conforms to the demands of globalization for establishing a global social and economic legal order, and are also the purposes pursued by international law and the necessary benefits of the rule of law of international communities.

3 "Legitimationskrise" of international legal systems and international organizations in globalization as well as the countermeasure paths

Recently, the issue of legitimacy has attracted attentions among schools of international institutions, partly because in the background of rapid development of globalization many international institutions, including international law and organizations under the view of international law scholars, are facing "legitimationskrise". In this regard, Gilpin commented: "For effective decision-making and to respect the will of member states to keep their national secrets, all the important international institutions including WTO, IMF and WB are basically working secretly. Nonetheless, more and more people have taken to

realize that their daily life, culture and social welfare have to serve the secret decisions made by shameful international bureaucrats. Such anxiety impels them to strongly revolt against globalization, which threatens the foundation of international systems to manage global economy." (Gilpin, 2003) Specifically, legitimationskrise is a kind of direct "identitaskrise", where the legitimate normative process fails to maintain the loyalty of the public at a necessary level when carrying out control orders sent by its own system, which does not occur due to menace from system integration but suffers suspicion in the formal democracy that ensures the achievement of the purposes or objectives of the system. (Habermas, 2000) To acquire legitimacy, a political organization shall meet two conditions at least: "(1) Norms and orders shall be established on the positive side; and (2) in a legal community, people must believe in the legitimacy of norms and orders, that is, they shall believe the correct procedures of the forms of legislation and enforcement". (Habermas, 2000) In globalization, the reasons for the "legitimationskrise" of international institutions including international legal systems and international organizations, in another word, the failure of participating states as well as their people with related interests to recognize them, or the deterioration of such recognition, are mainly in two aspects: On the one hand, in many existing international institutions, there is serious "democratic deficit" and insufficient participation of a number of states and their people. On the other hand, in globalization, the observance of international institutions by some large powers is insufficient and the authority of international institutions has been challenged. (Men, 2002) Similarly, the "legitimationskrise" of current international legal systems and international organizations shall be solved from the above-mentioned two aspects.

3.1 Path to overcome the "democratic deficit" in international legal systems and international organizations

Though there is a general dissatisfaction on "democracy", undoubtedly, democracy is the root of legitimacy in modern society. (Bodansky, 1999) Hence, to overcome the "legitimationskrise", the issue of "democratic deficit" shall be solved. To overcome the "democratic deficit" in many existing international legal systems and international organizations, international communities shall grant more opportunities to undeveloped countries and NGOs for them to express their standpoints and viewpoints in negotiations at the international level as well as the decision-making procedures of international organizations.

On the one hand, the participation of NGOs in international legislation and the decision-making of international organizations shall be properly expanded. Compared with the governments only responsible for domestic constituency and the economic entities responsible for the market, NGOs are obviously more

capable to express the real wills of the public, represent the interests of the public in social development, especially that of the group at the edge of the society, and conduct moral supervision over governments. (Xu, 2002) NGOs have been becoming an outstanding player in the world undergoing globalization in promoting human rights and environmental protection. By lobbying and appealing, they have exerted increasingly important influences on negotiations and legislations of states and international organizations on social issues. (Al-Jurf, 1999) Certainly, considering the limitations of NGOs, including the interest groups they represent and their capability of participation, as well as the situation where the damages to the realization of justice are caused by the low efficiency of decision-makings of current international organizations and the low efficiency itself, to select proper NGOs to participate and to seek for way of appropriate participation are crucial to maintaining the normal operation of international institutions and the efficiency of international legislation. With respect to selection of proper NGOs to participate, the relevancy between the groups and interests represented by NGOs and the topics to negotiate as well as the degree of such relevancy shall be deemed as important standards to judge whether they can participate in legislation or decision-making. With respect to the way of participation by NGOs, it is critical to maintain the "right to urge" of NGOs in international legislation and the decision-making mechanism of international organizations, because in the current international community of Locke's sovereignty state system at least, the sovereignty system and the issue of "representation" of NGOs have set up insurmountable obstacles for NGOs' participation in direct decision-making. Specifically, NGOs may be invited but can not directly participate in the negotiation of international affairs, or they may become observers in international legislation negotiations and decision-making of international organizations but can not become the behavior subject with the same position, responsibilities and obligations as states. Indeed, in the aspect of execution of treaties and business or resolutions of international organizations and in the dispute settlement process of international organizations, NGOs may play a role of assistor or supervisor, which can be deemed as an extension or subsequent supervision mode of the participation of the public in legislation or decision-making and the improvement of the transparency in legislation and decision-making procedures.

On the other hand, the participation of developing countries in international legislation and decision-makings of international organizations shall be expanded and their ability to participate shall be improved. At present, it is a very big regret that both the multilateral legislative negotiations and decision-making systems of international organizations lack sufficient participation of developing countries. Meanwhile, the frustration of WTO Doha round negotiation shows that the democracy of legislation or decision-making shall also be closely related to

efficiency. The low efficiency in international multilateral legislation and decision-making of international organizations is obvious to all, and democracy without consideration of efficiency will hinder or delay the establishment of international legal order. Therefore, in our opinion, to solve the issue of participation of developing countries, international communities shall closely combine the two aspects as follows: Firstly, to have successful international legislative negotiations and decisions of international organizations in the future, such negotiations and decision-makings shall be more democratic and transparent, for which the democratic principles of international legislation shall be restructured, including establishment of a basic premise for formulating international rules that all the signing parties shall enjoy the complete right to participate in the formulation or decision-making processes of agreements and to adequately express their views on the contents of the agreements. To this end, it is very important to reform the existing negotiation and decision-making mechanism in favor of developed countries of international organizations including the UN, IMF, WTO and WB, so as to provide a space and an effective way for developing countries to convey their standing positions and viewpoints. Secondly, when the transparency of negotiations and decision-making mechanism of international organizations is enhancing, it is necessary to improve their work efficiency, because the practice of sole pursuit for democracy while neglecting work efficiency of international organizations may undoubtedly bring harms to the interests of developing countries, leading to more unfairness when pursuing fairness. In the jargon of the public choice theory, a "democratic paradox" will follow, for undemocratic results produced by democratic procedures. (Atik, 2001)

It shall be noted that though many international organizations suffer the issue of democratic deficit, their functions in elimination of democratic deficit shall be emphasized. For instance, though there is much dissatisfaction with the work of the UN and the UN also has many difficulties in its development, as most of the important international organization for maintaining world peace and development do, the UN has made many achievements in promoting democratization and legalization of international relations. Specifically, the UN has not only made important contributions in such aspects as election assistance, support to countries without democratic tradition to create democratic culture and help in setting up democratic institutions and systems, but also tried to establish a stable international democracy in inter-state relations. Its measures mainly include: Equal participation of all actors in the life of the community; peaceful settlement of conflicts, promotion of effective cooperation among governments for realizing common objectives, elimination or at least reduction of the disparities between developing countries and developed ones, acknowledgement of equal rights shared by the people and individuals of states and reasonable

work and responsibility sharing among states. Moreover, the UN has tried to give full play to the roles of regional organizations, NGOs and social organizations and let them participate in regional and international policies.[9] (Tang, Zhao, 2004)

3.2 Enhancement of the authority of international legal systems and international organizations

During the democratization of international communities, the values of the legitimacy of international legal systems and international organizations are increasingly conspicuous and the influcence of those systems and organizations has been increased. However, whether their legitimacy will be stably enhanced is still impacted by the degree of observance by member states. (Men, 2002) Thus, it is a necessary and effective way in overcoming the legitimationskrise confronted by international legal systems and international organizations, and enhancing the severity of punishments against violation of rules and thus improving the degree of observance by participating states. To this end, the parties to GATT have made key steps. Firstly, the WTO Agreement, which came into force on January 1995, explicitly requires WTO members to ensure the consistence of their laws, regulations and administrative procedures with their obligations prescribed in the attached agreements, which removes the tough issue of "grandfather clause" in the GATT era and greatly strengthens the authority and legitimacy of the WTO. Secondly, the WTO dispute settlement mechanism has been established according to the DSU. Compared with the dispute settlement mechanism in the GATT era, either the "compulsory jurisdiction" obtained by the WTO dispute settlement body by the applying the "negative consensus" instead of "positive consensus" of GATT, or the delicate procedural designing with strict time limitations and the institutional designing in pursuit of judicial independence, is a substantial breakthrough. As far as the operation effects of WTO dispute settlement mechanism are concerned, though such effects are not so satisfied, the values of rule of law including "authority", "effectiveness" and "fairness" are the basic features or orientation of the system. Beyond doubt, the repeal of "grandfather clauses" in the GATT and the enhancement of the dispute settlement mechanism by the WTO systems have greatly strengthened the basis of the "legitimacy" of the WTO and WTO systems. Such practice is of obvious reference significance for the UN and UN legal systems, as well as other international organizations or relevant international legal systems that face the "legitimationskrise" at the time of reform.

[9] For deliberation on the role of the UN on those aspect, please refer to Tang Xianxing and Zhao Xiaopei (2004), pp. 341–343.

4 Conclusion

Undoubtedly, with improvement of international social institutionalization level, the legitimacy of international law will always be a hot issue in international jurisprudence. In the past and at present, many schools of international jurisprudence gave and are giving consideration to it from different perspectives with provision of their answers. However, we shall be clear that every analysis path is of its reasonableness as well as inevitable limitations, so is the reference from the research achievements on legitimacy of international institutions. Only by combining every aspect can we reach a more comprehensive and systemic understanding. For example, with respect to the issue of root of legitimacy of international law, such elements as power, interests and notions play different roles respectively. Besides, just as the "legitimacy" remains a hot topic in international institution theories, the progress on such research will offer larger space for thinking relating to international law. Up to now, the research on international institutions has influenced the development of international jurisprudence and international law, and the further reform of international institution theories will surely bring more positive significance to the progress of international law as well as theoretical research. Of course, such influence and effects are mutual. In fact, the cross-disciplinary research of international institutions and international jurisprudence has contributed much to the development of the international law theories of liberalism and the international relations theories of constructivism (Barker, 2000), which is, consequently, one of the far-reaching significances of such cross-disciplinary researches.

References

Abbott K W, Keohane R O, Slaughter A M, Snidal D (2000). The Concept of Legalization. International Organization, 54(3): 401–419

Abbott K W, Snidal D (2000). Hard and Soft Law in International Governance. International Organization, 54(3): 421–436

Al-Jurf S (1999). Citizens, National Governments, and International Financial Institutions: Changing Conceptions of Development in the 1990s. Transnational Law & Contemporary Problems, (9): 193–196

Arend A C (1996). Toward an Understanding of International Legal Rules. In: International Rules: Approaches from International Law and International Relations, edited by Robert J. Beck, Anthony Clark Arend and Robert D. Vander Lugt. New York: Oxford University Press, Inc., 291–292

Atik J (2001). Democratizing the WTO. The George Washington International Law Review, 33(3–4): 451–472

Barker J C (2000). International Law and International Relations. London: Continuum

Publishing Company, 79
Beck R J, Arend A C, Lugt R D, ed. (1996). International Rules: Approaches from International Law and International Relations. New York: Oxford University Press, Inc., 225
Bodansky D (1999). The Legitimacy of International Governance: A Coming Challenge for International Environmental Law. American Journal of International Law, 93(3): 596–627
Burley A M (1993). International Law and International Relations Theory: A Dual Agenda. American Journal of International Law, (87): 205–239
Checkel J T (2001). Why Comply? Social Learning and European Identity Change. International Organization, 55(3): 553–588
Chorev N (2000). Institutionalizing Global Neo-liberalism: The Structural Transformation of the WTO and its Inherent Contradictions. http://net4dem.org/mayglobal/Events/Conference%202004/papers/NitsanChorev.pdf, 2008-03-12
Eichengreen B (2000). Hegemonic Stability Theories of the International Monetary System. In: International Political Economy: Perspectives on Global Powers and Wealth, edited by Jeffry A. Freden and David A. Lake, 4th edition. New York: Bedford/St. Martin's, a division of Thomson Learning, 243
Finnemore M, Sikkink K (2006). International Norm Dynamics and Political Change (in Chinese). In: [US] Peter J. Katzenstein, Robert O. Keohane and Stephen D. Krasner ed., Exploration and Contestation in the Study of World Politics. Qin Yaqing et al., trans., in Chinese. Shanghai: Shanghai People's Publishing House, 303–315
Gilpin R (2003). Global Political Economy: Understanding the International Economic Order. Yang Yuguang and Yang Jiong, trans., in Chinese. Shanghai: Shanghai People's Publishing House, 105, 424
Gilpin R (2006). The Political Economy of International Relations. Yang Yuguang et al., trans., in Chinese. Shanghai: Shanghai People's Publishing House, 84
Goldstein J, Kahler M, Keohane R O, Slaughter A M (2000). Introduction: Legalization and World Politics. International Organization, (54)3: 385–399
Goldstein J, Keohane R (2005). Ideas and Foreign Policy: An Analytical Framework. In: [US] Judith Goldstein and Robert O. Keohane ed., Ideas and Foreign Policy: Beliefs, Institutions, and Political Change. Liu Dongguo, Yu Jun et al., trans., in Chinese. Beijing: Peking University Press, 3–30
Golstein J, Martin L L (2000). Legalization, Trade Liberalization, and Domestic Politics: A Cautionary Note. International Organization, 54(3): 603–632
Habermas J (2000). Legitimationskrise. Liu Beicheng and Cao Weidong, trans., in Chinese. Shanghai: Shanghai People's Publishing House, 65, 128
Hill M (2001). Power, Rules and Principles—Which Orientation for WTO/GATT Law? Journal of International Economic Law, 4(1): 111–130
Hu Shi (1919). More emphases on research of practical issues rather than "isms". Originally it was published on the Weekly Review (No.31) dated July 20, 1919 and later in the Collected Works of Hu Shi, Vol. 2. http://www.teen.cn/data/detail.php?id=3884, 2007-07-15
Kahler M (2000). Conclusion: The Causes and Consequences of Legalization. International Organization, 54(3): 661–683
Keohane R O (1999). Cooperation and International Regime. In: Classic Readings of International Relations, edited by Phil Williams, Donald M. Goldstein and Jay M. Shafritz. Belmont: Wadsworth, a division of Thomson Learning, 296
Keohane R O (2001). After Hegemony: Cooperation and Discord in the World Political Economy (in Chinese). Su Changhe, Xinqiang, He Yao et al., trans., in Chinese. Shanghai: Shanghai People's Publishing House, 13

Keohane R O (2001). Institutional Theory and the Realist Challenge after the Cold War. In: David A. Baldwin (ed): Neo-realism and Neo-liberalism. Xiao Huanrong, trans., in Chinese. Hangzhou: Zhejiang Renmin Press, 274

Keohane R O, Nye Jr. J S (2008). The Club Model of Multilateral Cooperation and the World Trade Organization: Problems of Democratic Legitimacy. John F. Kennedy School of Government Harvard University, Working Paper. http://www.hks.harvard.edu/visions/publication/keohane-nye.pdf, 2008-04-26

Liu Jie (1999). Reconstruction of the Order of International Institutions in the Time of Economic Globalization (in Chinese). Shanghai: Shanghai Academy of Social Sciences Press, 92, 93

Mcdougal M S, Lasswell H D (1996). The Identification and Appraisal of Diverse Systems of Public Order. In: International Rules: Approaches from International Law and International Relations, edited by Robert J. Beck, Anthony Clark Arend and Robert D. Vander Lugt. New York: Oxford University Press, Inc., 110–141

Men Honghua (2002). Latitude of Peace: A study on UN collective security system. Shanghai: Shanghai People's Publishing House, 113, 114, 116, 120–121

Shao Shaping,Yu Minyou, ed. (2002). Issues concerning International Law. Wuhan: Wuhan University Press, 5–6

Slaughter A M, Tulumello A S, Wood S (1998). International Law and International Relations Theory: A New Generation of Interdisciplinary Scholarship. American Journal of International Law, (92): 367–397

Snidal D (1985). The Game Theory of International Politics. World Politics, 38(1): 25–57

Strange S (1982). Cave! Hic Dragons: A Critique of Regime Analysis. International Organization, (36): 479–496

Tang Xianxing, Zhao Xiaopei (2004). Globalization governance and democracy and rule of law in international relations—global perspective on reform of international political system. In: Zhao Yugang and Yuan Jianhua (editors-in-chief): Surpassing Westphalia system?—interpretation of international relations in the 21st century (Fudan International Relations Review, Vol.4). Beijing: Current News Press, 341–343

Wang Tieya (1995). International Law. Beijing: Law Press, 8–9

Xu Chongli (2002). Economic integration and the development of contemporary international economic law. Science of Law, (5): 118–119

Author

Liu Zhiyun, Ph.D of law, is a professor and tutor of doctorate candidates in the law School of Xiamen University. He specializes in the crossing areas of international relation theory and international law, as well as public international law, international economic law, financial law and investment law. Since 1999, his over 100 articles, in English or Chinese languages, have been published in the periodicals in and out of China, including the *Social Sciences in China*. Meanwhile, his two monographs have been published, namely, Research on the Theory of the Liberalization of International Economic Law (2005), the International Law from the Perspective of Modern International theory (2006). Prof. Liu has been enrolled in some projects: 2007's Program for New Century

Excellent Talents in Fujian Province University (NCETFJ), 2008's Program for New Century Excellent Talents in University (NCET), and in March 2009 being enrolled in the Group of the High Level Talents of Creativity and Venture in Fujian Province.