

INTERNATIONAL LAW AND INTERNATIONAL RELATIONS

Edited by **Beth A. Simmons**
and **Richard H. Steinberg**

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International Law and International Relations

This volume is intended to help readers understand the relationship between international law and international relations (IL/IR). As a testament to this dynamic area of inquiry, new research on IL/IR is now being published in a growing list of traditional law reviews and disciplinary journals. The excerpted articles in this volume, all of which were first published in *International Organization*, represent some of the most important research since serious social science scholarship began in this area more than twenty years ago. They are important milestones toward making IL/IR a central concern of scholarly research in international affairs. The contributions have been selected to cover some of the main topics of international affairs and to provide readers with a range of theoretical perspectives, concepts, and heuristics that can be used to analyze the relationship between international law and international relations.

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International Law and International Relations, edited by Beth A. Simmons and Richard H. Steinberg

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Edited by

BETH A. SIMMONS and RICHARD H. STEINBERG



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Abstracts

Structural Causes and Regime Consequences: Regimes as Intervening Variables (1982)

by Stephen D. Krasner

International regimes are defined as principles, norms, rules, and decision-making procedures around which actor expectations converge in a given issue-area. As a starting point, regimes have been conceptualized as intervening variables, standing between basic causal factors and related outcomes and behavior. There are three views about the importance of regimes: conventional structural orientations dismiss regimes as being at best ineffectual; Grotian orientations view regimes as an intimate component of the international system; and modified structural perspectives see regimes as significant only under certain constrained conditions. For Grotian and modified structuralist arguments, which endorse the view that regimes can influence outcomes and behavior, regime development is seen as a function of five basic causal variables: egoistic self-interest, political power, diffuse norms and principles, custom and usage, and knowledge.

The Demand for International Regimes (1982)

by Robert O. Keohane

International regimes can be understood as results of rational behavior by the actors – principally states – that create them. Regimes are demanded in part because they facilitate the making of agreements, by providing information and reducing transaction costs in world politics. Increased

interdependence among issues – greater “issue density” – will lead to increased demand for regimes. Insofar as regimes succeed in providing high-quality information, through such processes as the construction of generally accepted norms or the development of transgovernmental relations, they create demand for their own continuance, even if the structural conditions (such as hegemony) under which they were first supplied change. Analysis of the demand for international regimes thus helps us to understand lags between structural change and regime change, as well as to assess the significance of transgovernmental policy networks. Several assertions of structural theory seem problematic in light of this analysis. Hegemony may not be a necessary condition for stable international regimes; past patterns of institutionalized cooperation may be able to compensate, to some extent, for increasing fragmentation of power.

Democratic States and Commitment in International Relations (1996)

by Kurt Taylor Gaubatz

Making credible commitments is a formidable problem for states in the anarchic international system. A long-standing view holds that this is particularly true for democratic states in which changeable public preferences make it difficult for leaders to sustain commitments over time. However, a number of important elements in the values and institutions that have characterized the liberal democratic states should enhance their ability to sustain international commitments. Indeed, an examination of the durability of international military alliances confirms that those between democratic states have endured longer than either alliances between nondemocracies or alliances between democracies and nondemocracies.

On Compliance (1993)

by Abram Chayes and Antonia Handler Chayes

A new dialogue is beginning between students of international law and international relations scholars concerning compliance with international agreements. This article advances some basic propositions to frame that dialogue. First, it proposes that the level of compliance with international agreements in general is inherently unverifiable by empirical procedures. That nations generally comply with their international

agreements, on the one hand, or that they violate them whenever it is in their interest to do so, on the other, are not statements of fact or even hypotheses to be tested. Instead, they are competing heuristic assumptions. Some reasons why the background assumption of a propensity to comply is plausible and useful are given. Second, compliance problems very often do not reflect a deliberate decision to violate an international undertaking on the basis of a calculation of advantage. The article proposes a variety of other reasons why states may deviate from treaty obligations and why in many circumstances those reasons are properly accepted by others as justifying apparent departures from treaty norms. Third, the treaty regime as a whole need not and should not be held to a standard of strict compliance but to a level of overall compliance that is “acceptable” in the light of the interests and concerns the treaty is designed to safeguard. How the acceptable level is determined and adjusted is considered.

Is the Good News About Compliance Good News About Cooperation? (1996)

by George W. Downs, David M. Ročke, and Peter N. Barsoom

Recent research on compliance in international regulatory regimes has argued (1) that compliance is generally quite good; (2) that this high level of compliance has been achieved with little attention to enforcement; (3) that those compliance problems that do exist are best addressed as management rather than enforcement problems; and (4) that the management rather than the enforcement approach holds the key to the evolution of future regulatory cooperation in the international system. While the descriptive findings are largely correct, the policy inferences are dangerously contaminated by endogeneity and selection problems. A high rate of compliance is often the result of states formulating treaties that require them to do little more than they would do in the absence of a treaty. In those cases where noncompliance does occur and where the effects of selection are attenuated, both self-interest and enforcement play significant roles.

The Concept of Legalization (2000)

by Kenneth W. Abbot, Robert O. Keohane, Andrew Moravcsik, Anne-Marie Slaughter, and Duncan Snidal

We develop an empirically based conception of international legalization to show how law and politics are intertwined across a wide range of

institutional forms and to frame the analytic and empirical articles that follow in this volume. International legalization is a form of institutionalization characterized by three dimensions: obligation, precision, and delegation. Obligation means that states are legally bound by rules or commitments and are therefore subject to the general rules and procedures of international law. Precision means that the rules are definite, unambiguously defining the conduct they require, authorize, or proscribe. Delegation grants authority to third parties for the implementation of rules, including their interpretation and application, dispute settlement, and (possibly) further rule making. These dimensions are conceptually independent, and each is a matter of degree and gradation. Their various combinations produce a remarkable variety of international legalization. We illustrate a continuum ranging from “hard” legalization (characteristically associated with domestic legal systems) through various forms of “soft” legalization to situations where law is largely absent. Most international legalization lies between the extremes, where actors combine and invoke varying degrees of obligation, precision, and delegation to create subtle blends of politics and law.

Legalized Dispute Resolution: Interstate and Transnational (2000)

by Robert O. Keohane, Andrew Moravcsik, and
Anne-Marie Slaughter

We identify two ideal types of international third-party dispute resolution: interstate and transnational. Under interstate dispute resolution, states closely control selection of, access to, and compliance with international courts and tribunals. Under transnational dispute resolution, by contrast, individuals and nongovernmental entities have significant influence over selection, access, and implementation. This distinction helps to explain the politics of international legalization – in particular, the initiation of cases, the tendency of courts to challenge national governments, the extent of compliance with judgments, and the long-term evolution of norms within legalized international regimes. By reducing the transaction costs of setting the process in motion and establishing new constituencies, transnational dispute resolution is more likely than interstate dispute resolution to generate a large number of cases. The types of cases brought under transnational dispute resolution lead more readily to challenges of state actions by international courts. Transnational dispute resolution tends to be associated with greater compliance with

international legal judgments, particularly when autonomous domestic institutions such as the judiciary mediate between individuals and the international institutions. Overall, transnational dispute resolution enhances the prospects for long-term deepening and widening of international legalization.

**Legalization, Trade Liberalization, and Domestic Politics:
A Cautionary Note (2000)**

by Judith Goldstein and Lisa L. Martin

If the purpose of legalization is to enhance international cooperation, more may not always be better. Achieving the optimal level of legalization requires finding a balance between reducing the risks of opportunism and reducing the potential negative effects of legalization on domestic political processes. The global trade regime, which aims to liberalize trade, has become increasingly legalized over time. Increased legalization has changed the information environment and the nature of government obligations, which in turn have affected the pattern of mobilization of domestic interest groups on trade. From the perspective of encouraging the future expansion of liberal trade, we suggest some possible negative consequences of legalization, arguing that these consequences must be weighed against the positive effects of legalization on increasing national compliance. Since the weakly legalized GATT institution proved sufficient to sustain widespread liberalization, the case for further legalization must be strong to justify far-reaching change in the global trade regime.

Alternatives to “Legalization”: Richer Views of Law and Politics (2001)

by Martha Finnemore and Stephen J. Toope

The authors of “Legalization and World Politics” (*International Organization*, 54, 3, summer 2000) define “legalization” as the degree of obligation, precision, and delegation that international institutions possess. We argue that this definition is unnecessarily narrow. Law is a broad social phenomenon that is deeply embedded in the practices, beliefs, and traditions of societies. Understanding its role in politics requires attention to the legitimacy of law, to custom and law’s congruence with social practice, to the role of legal rationality, and to adherence to legal processes, including participation in law’s construction. We examine three applications of “legalization” offered in the volume and show how a fuller

consideration of law's role in politics can produce concepts that are more robust intellectually and more helpful to empirical research.

Quasi-States, Dual Regimes, and Neoclassical Theory: International Jurisprudence and the Third World (1987)

by Robert H. Jackson

Decolonization in parts of the Third World and particularly Africa has resulted in the emergence of numerous "quasi-states," which are independent largely by international courtesy. They exist by virtue of an external right of self-determination – negative sovereignty – without yet demonstrating much internal capacity for effective and civil government – positive sovereignty. They therefore disclose a new dual international civil regime in which two standards of statehood now coexist: the traditional empirical standard of the North and a new juridical standard of the South. The biases in the constitutive rules of the sovereignty game today and for the first time in modern international history arguably favor the weak. If international theory is to account for this novel situation, it must acknowledge the possibility that morality and legality can, in certain circumstances, be independent of power in international relations. This suggests that contemporary international theory must accommodate not only Machiavellian realism and the sociological discourse of power but also Grotian rationalism and the jurisprudential idiom of law.

Which Norms Matter? Revisiting the "Failure" of Internationalism (1997)

by Jeffrey W. Legro

Scholars tend to believe either that norms are relatively inconsequential or that they are powerful determinants of international politics. Yet the former view overlooks important effects that norms can have, while the latter inadequately specifies which norms matter, the ways in which the norms have an impact, and the magnitude of norm influence relative to other factors. Three different norms on the use of force from the interwar period varied in their influence during World War II. The variation in state adherence to these norms is best explained by the cultures of national military organizations that mediated the influence of the international rules. This analysis highlights the challenge and importance of examining the relative effects of the often cross-cutting prescriptions imbedded in different types of social collectivities.