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Under what general conditions should we expect to observe international commitments of this kind? Republican liberal theory suggests three conditions: (1) governments fear future domestic political uncertainty, (2) the position of the national government is supported by a consensus of foreign governments, and (3) international cooperation helps induce domestic actors to support the maintenance of current policies.

Where else in world politics might these three conditions be met? Two types of examples must suffice. Where nondemocratic governments cooperate to enhance their domestic credibility, a mirror image of human rights institutions may arise. Stephen David argues that "weak and illegitimate" leaders of developing countries often view internal enemies as more dangerous than external ones and are therefore likely to select international alliances that undermine domestic opponents.[76] The Holy Alliance is a nineteenth-century example of international cooperation designed to block the seemingly inevitable spread of domestic liberalism and nationalism – inside and outside its membership. ***

Further examples of efforts to use international regimes to bolster domestic policy credibility are found in international trade and monetary policy.[77] Mexico, for example, in exchange for its commitment to the North American Free Trade Area (NAFTA), gained relatively few economic concessions from the United States and Canada. This has led many analysts to argue that NAFTA should be seen less as a quid pro quo and more as a means of establishing the credibility of the Mexican commitment to trade and economic liberalization against the future potential of backsliding.[78] Mexican reform within NAFTA was just such a case where the three conditions were met: policy credibility was questionable, the consensus among foreign governments (the United States and Canada) was closer to the views of the domestic (Mexican) government than those of Mexican protectionists, and the costs of unilateral defection were perceived as large.

The process of European integration rested similarly on centralizing power in national executives, who consistently employed "foreign policy" decision-making institutions to handle issues traditionally decided in "domestic" forums.[79] *** In European monetary cooperation, weak-currency countries like France and Italy have been among the strongest

[76] David 1991.
[77] Rodrik 1989.
[78] For example, Haggard 1997.
[79] See Moravcsik 1994; and Goldstein 1996.

proponents of deeper exchange-rate cooperation – often with the intention of using external policy to stabilize domestic macroeconomic policy and performance ***, [– and deeper agricultural cooperation – both of which shifted the perceived costs of defection.[80]]

Realism and Idealism in International Relations Theory

The third and broadest implication of this analysis is that it counsels caution about the uncritical acceptance of certain ideational explanations for the emergence of international norms. Recent scholarship has been quick to assume that if realist (or regime) theory fails to explain international cooperation – say, in areas like human rights and environmental policy – the motivation for cooperation must lie in ideational socialization to altruistic beliefs. This assumption, once termed "idealist" or "utopian," seems plausible at first glance. ***

Yet scholars should not jump too quickly to the conclusion – as many recent studies of foreign aid, arms control, slavery, racism, and human rights invite them to do – that altruism must motivate the establishment of morally attractive international norms.[81] The tendency to jump to this conclusion demonstrates the danger of conducting debates about world politics around the simple dichotomy of realism versus idealism (or realism versus constructivism), as seems the current norm.[82] Presumptive evidence for the importance of altruistic or "principled" motivations vis-à-vis a realist account may melt away, as we have seen, as soon as the underlying theory is tested against more sophisticated rationalist, yet nonrealist (in this case, liberal) theories of self-interested political behavior. Moreover, to establish methodologically the existence of altruistic motivations and socialization processes, rather than alternative liberal theories, one must do more than cite public professions of idealism, document the actions of moral entrepreneurs, or invoke the desirability of the ultimate end. Talk and even mobilization are often cheap and often redundant or futile; accordingly, such evidence is often misleading.

[80] See Frieden 1993; Collins 1988; Moravcsik 1998a, chap. 4, 6; and Krugman 1994, 189–94.

[81] What drives cooperation is prior domestic institutional convergence. Hence the nature of domestic regimes is not an intermediate variable between fundamental socialization and state behavior but the critical variable that determines the nature of interdependence in the first place.

[82] This is a view ideational theorists are coming to accept. Finnemore and Sikkink 1998, 916–17.

Cross-national comparison and primary-source documentation of decision making are the critical tests.

In the case of the establishment of the ECHR, the proper theory and method reverses an idealist conclusion that might appear to offer a plausible alternative to realism.[83] What seems at first to be a conversion to moral altruism is in fact an instrumental calculation of how best to lock in democratic governance against future opponents – a practice hardly distinct from similar practices in the most pecuniary areas of world politics, such as trade and monetary policy. I am not denying, of course, that ideas and ideals matter in foreign policy; I am challenging only a particular idealist argument. Surely some domestic support for democratic governance may be ideological, even idealistic, in origin. But if we can learn a single lesson from the formation of the world's most successful formal arrangement for international human rights enforcement, it is that in world politics pure idealism begets pure idealism – in the form of parliamentary assemblies and international declarations. To establish binding international commitments, much more is required.

[83] For example, Legro and Moravcsik 1999.

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Regime Design Matters: Intentional Oil Pollution and Treaty Compliance

Ronald B. Mitchell

> Too many people assume, generally without having given any serious thought to its character or its history, that international law is and always has been a sham. Others seem to think that it is a force with inherent strength of its own. . . . Whether the cynic or sciolist is the less helpful is hard to say, but both of them make the same mistake. They both assume that international law is a subject on which anyone can form his opinions intuitively, without taking the trouble, as one has to do with other subjects, to inquire into the relevant facts.
>
> —J. L. Brierly

Regime design matters.[1] International treaties and regimes have value if and only if they cause people to do things they would not otherwise do. *** [Whether] a treaty elicits compliance or other desired behavioral changes depends upon identifiable characteristics of the regime's

[1] This article summarizes the arguments made in Ronald B. Mitchell, *Intentional Oil Pollution at Sea: Environmental Policy and Treaty Compliance* (Cambridge, Mass.: MIT Press, forthcoming).

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compliance systems.[2] As negotiators incorporate certain rules into a regime and exclude others, they are making choices that have crucial implications for whether or not actors will comply.

For decades, nations have negotiated treaties with simultaneous hope that those treaties would produce better collective outcomes and skepticism about the ability to influence the way governments or individuals act. Both lawyers and political scientists have theorized about how international legal regimes can influence behavior and why they often do not.[3] ***

[Researchers interested in compliance] face two critical questions. First, given that power and interests play important roles in determining behavior at the international level, is any of the compliance we observe with international treaties the result of the treaty's influence? Second, if treaties and regimes can alter behavior, what strategies can those who negotiate and design regimes use to elicit the greatest possible compliance? This article addresses both these questions by empirically evaluating the international regime controlling intentional oil pollution. Numerous efforts to increase the regime's initially low levels of compliance provide data for comparing the different strategies for eliciting compliance within a common context that holds many important explanatory variables constant. The goal of the treaties underlying this regime has been to reduce intentional discharges of waste oil by tankers after they deliver their cargoes. Since the late 1970s, these treaties have established two quite different compliance systems, or "subregimes," to accomplish this goal. One has prohibited tanker operators from discharging oil in excess of specified limits. The other has required tanker owners to install expensive pollution-reduction equipment by specified dates. Treaty parties viewed both subregimes as equally legitimate and equally binding. * The two subregimes regulated similar behavior by the same nations and tankers over the same time period. The absence of differences in power and interests would suggest that compliance levels with the two subregimes would be quite similar. * According to collective action theory, these cases are among the least likely to provide support for the hypothesis that regime

[2] *** [Oran Young,] *Compliance and Public Authority: A Theory with International Applications* (Baltimore, Md.: Johns Hopkins University Press, 1979), p. 3.

[3] See, for example, Abram Chayes and Antonia Handler Chayes, "On Compliance," *International Organization* 47 (Spring 1993), pp. 175–205; Young, *Compliance and Public Authority;* Roger Fisher, *Improving Compliance with International Law* (Charlottesville: University Press of Virginia, 1981); and W. E. Butler, ed., *Control over Compliance with International Law* (Boston: Kluwer Academic Publishers, 1991).

design matters: subregime provisions required the powerful and concentrated oil industry to incur large pollution control costs to provide diffuse benefits to the public at large.[4] Indeed, the lower cost of complying with discharge limits would suggest that compliance would be higher with those limits than with equipment requirements.

*** [Violations] of the limits on discharges have occurred frequently, attesting to the ongoing incentives to violate the agreement and confirming the characterization of oil pollution as a difficult collaboration problem.[5] A puzzle arises, however, from the fact that contrary to expectation compliance has been all but universal with requirements to install expensive equipment that provided no economic benefits. *** [The] significant variance across subregimes can only be explained by specific differences in subregime design. *** [The] equipment subregime succeeded by ensuring that actors with incentives to comply with, monitor, and enforce the treaty were provided with the practical ability and legal authority to conduct those key implementation tasks. *** [The] regime elicited compliance when it developed integrated compliance systems that succeeded in increasing transparency, providing for potent and credible sanctions, reducing implementation costs to governments by building on existing infrastructures, and preventing violations rather than merely deterring them.

COMPLIANCE THEORY AND DEFINITIONS

Explaining the puzzle of greater compliance with a more expensive and economically inefficient international regulation demands an understanding of existing theories about *** compliance in international affairs. Realists have inferred a general inability of international regimes to influence behavior from the fact that the international system is

[4] Michael McGinnis and Elinor Ostrom, "Design Principles for Local and Global Commons," Workshop in Political Theory and Policy Analysis, Bloomington, Ind., March 1992, p. 21. Olson's argument that small groups supply public goods more often than large groups assumes that group members benefit from providing the good, which is not true in the oil pollution case; see Mancur Olson, *The Logic of Collective Action: Public Goods and the Theory of Groups* (Cambridge, Mass.: Harvard University Press, 1965), p. 34.

[5] See Arthur A. Stein, *Why Nations Cooperate: Circumstance and Choice in International Relations* (Ithaca, N.Y.: Cornell University Press, 1990); and Robert Axelrod and Robert O. Keohane, "Achieving Cooperation Under Anarchy: Strategies and Institutions," in Kenneth Oye, ed., *Cooperation Under Anarchy* (Princeton, N.J.: Princeton University Press, 1986).

characterized by anarchy and an inability to organize centralized enforcement. *** ["Considerations of power rather than of law determine compliance."[6]] *** Treaties are epiphenomenal: they reflect power and interests but do not shape behavior.

This view does not imply that noncompliance is rare ***. Although nations will violate rules whenever they have both the incentives and ability to do so, *** "the great majority of the rules of international law are generally observed by all nations."[7] For the realist, behavior frequently conforms to treaty rules because both the behavior and the rules reflect the interests of powerful states. More specifically, compliance [arises because:] (1) a hegemonic state *** induces other states to comply; (2) the treaty rules codify the parties' existing behavior or expected future behavior; or (3) the treaty resolves a coordination game in which no party has any incentive to violate the rules. ***

Treaty rules correlate with but do not cause compliance. Therefore, efforts to improve treaty rules to increase compliance reflect either the changed interests of powerful states or are misguided exercises in futility. The strength of this view has led to considerable attention being paid to whether rules influence behavior and far less being paid to design features that explain why one rule influences behavior and another does not.

In contrast, international lawyers and institutionalists contend that the anarchic international order need not lead *** to nations violating agreements whenever doing so suits them. Other forces – such as transparency, reciprocity, accountability, and regime-mindedness – allow regimes to impose significant constraints on international behavior under the right conditions.[8] Implicit in the institutionalist view is the assumption *** [that a given constellation of power and interests] leaves room for nations to choose among treaty rules that will elicit different levels of

[6] Hans Joachim Morgenthau, *Politics Among Nations: The Struggle for Power and Peace,* 5th ed. (New York: Alfred A. Knopf, 1978), p. 299. See also Kenneth Waltz, *Theory of International Politics* (Reading, Mass.: Addison-Wesley Publishing Co., 1979), p. 204; and Susan Strange, "Cave! Hie Dragones: A Critique of Regime Analysis," in Stephen D. Krasner, ed., *International Regimes* (Ithaca, N.Y.: Cornell University Press, 1983), pp. 337–54 at p. 338. For a contrasting view, see Young, *International Cooperation,* p. 62.

[7] Morgenthau, *Politics Among Nations,* p. 267.

[8] See, for example, Abram Chayes and Antonia Chayes, "Compliance Without Enforcement: State Behavior Under Regulatory Treaties," *Negotiation Journal* 7 (July 1991), pp. 311–30; Young, *International Cooperation;* Robert O. Keohane, "Reciprocity in International Relations," *International Organization* 40 (Winter 1986), pp. 1–27; and Krasner, *International Regimes.*

compliance. High compliance levels can be achieved even in difficult collaboration problems in which incentives to violate are large and ongoing. *** [Institutionalists] do not exclude the possibility that regimes, rather than mere considerations of power, [can cause] compliance.[9]

[Is behavior ever any different than it would have been without an agreement?] If we define "treaty-induced compliance" as behavior that conforms to a treaty's rules because of the treaty's compliance system, institutionalists view treaty-induced compliance as possible. *** [Realists] see all compliance as "coincidental compliance," *** behavior that would have occurred even without the treaty rules.

The debate between these theories highlights the demands placed on research that seeks to identify those design characteristics of a regime, if any, that are responsible for observed levels of compliance. I define compliance, the dependent variable, as an actor's behavior that conforms with an explicit treaty provision. Speaking of compliance with treaty provisions rather than with a treaty captures the fact that parties may well comply with some provisions while violating others. A study of "treaty compliance" would aggregate violation of one provision with compliance with another, losing valuable empirical information.[10] Restricting study to the explicit rules in a treaty-based regime allows the analyst to distinguish compliance from noncompliance in clear and replicable ways. Obviously, a focus on explicit rules ignores other potential mechanisms of regime influence, such as norms, principles, and processes of knowledge creation.[11] ***

[This article differentiates] among three parts of any compliance system: a primary rule system, a compliance information system, and a noncompliance response system. The primary rule system consists of the actors, rules, and processes related to the behavior that is the substantive target of the regime. *** [The] primary rule system determines the pressures and incentives for compliance and violation. The compliance

[9] See, for example, Louis Henkin, *How Nations Behave: Law and Foreign Policy* (New York: Columbia University Press, 1979), p. 47; Young, *International Cooperation,* p. 62; and Chayes and Chayes, "Compliance Without Enforcement," p. 31.

[10] At the extreme, if all parties violated treaty provision A and complied with treaty provision B, they could all be classified as in partial compliance, ignoring the important variance incompliance rates.

[11] See Haas, Keohane, and Levy, *Institutions for the Earth;* George W. Downs and David M. Rocke, *Tacit Bargaining, Arms Races, and Arms Control* (Ann Arbor: University of Michigan Press, 1990); Charles Lipson, "Why Are Some International Agreements Informal?" *International Organization* 45 (Autumn 1991), pp. 495–538; and Chayes and Chayes, "On Compliance," pp. 188–92.

information system consists of the actors, rules, and processes that collect, analyze, and disseminate information on instances of violations and compliance. [The] compliance information system *** determines the amount, quality, and uses made of data on compliance and enforcement. The noncompliance response system consists of the actors, rules, and processes governing the formal and informal responses *** employed to induce those in noncompliance to comply. *** These categories provide the framework used in *** this article to evaluate the oil pollution regime's sources of success and failure in its attempt to elicit compliance.

TWO SUBREGIMES FOR INTERNATIONAL OIL POLLUTION CONTROL

For most people, oil pollution conjures up images of tanker accidents such as that of the *Exxon Valdez*.[12] *** [Although] oil from such accidents poses a concentrated but localized hazard to the marine environment, the waste oil traditionally generated during normal oil transport has posed a more diffuse but ubiquitous threat. After a tanker delivers its cargo, a small fraction of oil remains onboard, adhering to cargo tank walls. Ballasting and tank-cleaning procedures mixed this oil – averaging about 300 tons per voyage – with seawater, creating slops. These in turn were most easily and cheaply disposed of by discharging them overboard while at sea. * By the 1970s, the intentional discharges made on thousands of tanker voyages were putting an estimated million tons of oil into the oceans annually.[13] [The impact of these chronic but low-concentration discharges and that of accidents on seabirds and resort beaches have produced regular international efforts at regulation.] *

Intentional oil discharges were one of the first pollutants to become the subject of an international regulatory regime.[14] In the International

[12] The *Exxon Valdez* wrecked in Prince William Sound, Alaska, on 24 March 1989, [spilling thirty five-thousand tons of oil.]

[13] National Academy of Sciences, *Petroleum in the Marine Environment* (Washington, D.C. National Academy of Sciences, 1975). See also National Academy of Sciences and National Research Council, *Oil in the Sea: Inputs, Fates, and Effects* (Washington, D.C.: National Academy Press, 1985).

[14] For the history of oil pollution control from the 1920s through the 1970s, see Sonia Zaide Pritchard, *Oil Pollution Control* (London: Croom Helm, 1987); for a history from the 1950s through the 1970s, see R. Michael M'Gonigle and Mark W. Zacher, *Pollution, Politics, and International Law: Tankers at Sea* (Berkeley: University of California Press, 1979).

Convention for the Prevention of Pollution of the Seas by Oil (OILPOL) of 1954, nations addressed the coastal oil pollution problem by limiting the oil content of discharges made near shore.[15] [Numerous regulatory revisions have been negotiated] within diplomatic conferences sponsored by the Intergovernmental Maritime Consultative Organization (IMCO) or within its committees and those of its successor, the International Maritime Organization (IMO). By the late 1970s, the regime's major provisions, now contained in the International Convention for the Prevention of Pollution from Ships (MARPOL), consisted of restrictions on both tanker operations and tanker equipment that relied on quite different compliance systems.[16] Although rule-making has remained consistently international, governments and nonstate actors have played crucial roles in the implementation and enforcement of the regime: tanker owners and operators have been the targets of the regulations while maritime authorities, classification societies, insurers, and shipbuilders have monitored and enforced the regulations.

The Discharge Subregime

[MARPOL'S discharge subregime] evolved from the initial regulations of 1954. That agreement constituted a compromise between the United Kingdom – which wielded strong power in oil markets but had strong environmental nongovernmental organizations pushing it to reduce coastal pollution – and Germany, the Netherlands, the United States, and other major states that viewed any regulation as either environmentally unnecessary or as harmful to their *** shipping interests. Although the United Kingdom had sought to restrict tanker discharges throughout the ocean, the final agreement limited the oil content of discharges made within fifty miles of any coastline to 100 parts oil per million parts water (100 ppm). In 1962, the British pushed through an amendment

[15] "International Convention for the Prevention of Pollution of the Sea by Oil," 12 May 1954, *Treaties and Other International Agreements Series (TIAS),* no. 4900 (Washington, D.C.: U.S. Department of State, 1954).

[16] See *International Convention for the Prevention of Pollution from Ships (MARPOL),* 2 November 1973, reprinted in *International Legal Materials (ILM),* vol. 12 (Washington, D.C.: American Society of International Law, 1973), p. 1319 (hereafter cited by abbreviation, volume, and year); and *Protocol of* 1978 *Relating to the International Convention for the Prevention of Pollution from Ships,* 17 February 1978, reprinted in *ILM,* vol. 17, 1978, p. 1546 (hereafter cited together as *MARPOL* 73/78).

applying this 100 ppm standard to discharges made by new tankers regardless of their distance from shore.

The principle underlying the 1962 amendment – that crude oil could float far enough that discharge zones would not effectively protect coastlines – had gained sufficient support by 1969 that nations agreed to limit discharges by all tankers throughout the ocean. The pressure to amend the 1954/62 agreement came from two different sources. On one side, the thirty-five million gallons of oil spilled by the grounding of the *Torrey Canyon* off Britain and France [in 1967] and growing environmentalism, especially in the United States, supported a push for stronger regulations.[17] The previously resistant United States replaced the United Kingdom as the leading activist state and especially sought to ensure that amendments would address the growing evidence of enforcement problems ***.

On the other side, oil companies rightly interpreted the 1962 amendments as a wake-up call that discharge standards would soon be replaced by expensive equipment requirements. In response, Shell Marine International developed and promoted an operational means by which tankers could reduce oil discharges without *** new equipment.[18] The load-on-top procedure (LOT) involved consolidating ballast and cleaning slops in a single tank, *** [decanting the water from beneath the oil,] and loading the next cargo on top of the remaining slops. The beauty of LOT was that it [wasted less cargo,] thereby advancing both [environmental and economic goals.] *** The problem was that normal operation of LOT produced discharges that exceeded the 100 ppm standard. If this criterion had remained in effect, tankers would have had to install expensive new equipment ***. With the support of France, the Netherlands, Norway, and the now less-activist United Kingdom, oil and shipping companies therefore also sought to amend the treaty. Oil companies considered LOT so effective that they wanted diplomats to scrap the 1954/62 zonal approach altogether. The pressures for greater environmental protection, however, led them to support the more limited objective of redefining the limits on discharges from the 100 ppm "content" criterion to one that could be monitored using existing onboard equipment.[19]

In a unanimously accepted compromise in 1969, more stringent and enforceable regulations were framed in terms that averted equipment

[17] M'Gonigle and Zacher, *Pollution, Politics, and International Law,* p. 100.

[18] J. H. Kirby, "The Clean Seas Code: A Practical Cure of Operation Pollution," in *Third International Conference on Oil Pollution of the Sea: Report of Proceedings, Rome 7–9 October 1968* (Winchester, England: Warren and Son, 1968), pp. 201–19.

[19] Kirby, "The Clean Seas Code," p. 206.