International Legal Compliance: An Annotated Bibliography

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Does international law matter, or is it just a "fairy ship upon a fairy sea: a beautiful construct of the legal imagination floating upon a sea of false assumptions[?]"\textsuperscript{1} International legal compliance (ILC),\textsuperscript{2} the newest and most rapidly developing subfield in international law, was born in the early 1990s from the revived debate between legalization theorists, a group committed to the belief that the transformation wrought by the end of the Cold War has rendered international law independently capable of constraining and shaping the behavior of states, and their critics, a group committed to the contrary notion that international law remains primarily an aspirational enterprise subordinate to politics and epiphenomenal to state practice.

In attempting to prevail on the question of the efficacy of international law, legalists and skeptics alike have set about propounding and testing an array of interrelated theories. In the process, the questions of whether, why, and under what circumstances states elect to comply with international law have emerged as the most central and pressing issues within the

\textsuperscript{1} C.G. WEERAMANTRY, UNIVERSALISING INTERNATIONAL LAW 34 (2004).

\textsuperscript{2} The field that has organized around the question of international legal compliance has never been so named. ILC is the original designation of the author of this Article.
international legal academy. Building upon the insights of international relations theory and the methodologies of the social sciences, the field of ILC has organized around competing answers to these meta-questions, and the body of ILC scholarship now consists of eight books and nearly one hundred articles.

This bibliography lists and annotates the major entries within the ILC corpus. For each entry, a brief summary with one or more numbers corresponding to the list of major ILC themes listed below is provided. Although the bibliography is intended to be complete and comprehensive, it does not list every article that can arguably be included within the ILC corpus. Short articles duplicative of the previous work of scholars have been omitted, as have articles that are either tangentially connected to ILC or are largely descriptive rather than analytical. Although the majority of ILC scholars are legal academics, an effort has been made to include the works of authors in related fields such as international relations and economics.

The methodology is as follows. A search of Westlaw, Lexis, and Worldcat was conducted to identify every potential book and article in the field of ILC. Each source was then read to ensure it fit within the field. Additional articles cited or discussed by the authors of each source were noted for possible inclusion. A preliminary draft of the bibliography was sent to each author for comments, corrections, and suggestions for additional authors and sources.

To be included in the bibliography, each source was required to address one or more of the themes that constitute the field of ILC. These themes, along with the number and letter scheme employed to denote them, are as follows:

1. General theory. Many ILC scholars have advanced competing theories to explain and predict patterns of compliance and noncompliance in international relations. These various theories, described in the annotations accompanying relevant bibliographic entries, can be organized into the following series of theoretical clusters: (a) realism, (b) enforcement theory, (c) rational choice theory, (d) liberal theory, (e) managerial theory, (f) reputational theory, (g) transnational legal process, (h) legitimacy theory, (i) constructivism, (j) organizational-cultural theory, and (k) personality theory.

2. Empirical analysis. ILC scholars are increasingly moving
beyond mere descriptive work or thought experimentation and are subjecting ILC theories to empirical analysis. Several have applied the methodological tools of the social and natural sciences, including multivariate statistics, rigorous comparative analysis, and detailed case studies, to develop testable and falsifiable general propositions regarding relationships between rules and behaviors and to inform proposals for regime modification.

3. Skeptics. A minority of ILC scholars insist that compliance is the exception rather than the rule and that international law is little more than an aspirational venture. Some, without rejecting outright the causal significance of law in regard to state behaviors, contend that legalization inversely correlates with regimes normative principle compliance.

4. Critical perspectives. Several scholars treat the question of compliance as the point of entry to challenge international law as illegitimate for failing to include or for subordinating a plethora of subnational organizations, groups, and peoples.

5. Relationship to domestic law and institutions. A number of scholars link compliance with international law to the structure or function of domestic law or institutions, typically by treating incorporation of international law within the domestic legal system as a necessary condition precedent to compliance or by describing domestic courts as the only effective sites for enforcement.

6. High/low politics. The assumption central to the discipline of international law that regards international relations as uniformly susceptible to legal regulation may well be false. Some ILC scholars contend very directly that a hierarchy of issue-areas orders the international legal system and that patterns of cooperation have been far easier to generate and sustain in “low politics” issue areas, generally understood as economic, cultural, and social issues, than in questions of “high politics,” defined narrowly as matters of war and peace. Other scholars, without directly asserting a high/low politics distinction, simply confine their analyses of findings to the particular “low politics” issue-areas under investigation and refrain from generalizing to other issue-areas.

7. Survey. Many of the authors provide an overview, description, and a critique of some or all of the various ILC theories.

8. Human agency. A small group of scholars with
interdisciplinary backgrounds regards the state as an abstraction without the capacity to exercise a choice between alternatives and treats the question of compliance as one of human agency. For human agency theorists within the ILC field, people, rather than states, make compliance decisions, and the objective of their scholarship is to produce an account for the micro-foundations of personality that are causally linked to compliance.

9. Methodological and epistemological issues. Part of the literature within the ILC field is dedicated to the operation of the concept of compliance as a testable phenomenon, the design of experiments to test causal relationships between legal regimes and state behaviors, the selection and application of analytical methods to assess compliance data, the systematic and rigorous interpretation of research findings, the validation of data, methods, and conclusions, and the articulation and evaluation of knowledge claims.

10. Effectiveness. A group of empirically-minded scholars have called into question whether “compliance” is an adequate conceptual framework within which to evaluate whether international legal regimes further their normative policy objectives. Because a high level of compliance with a given regime may simply reflect the failure to require states to undertake anything more than modest departures from what they would have done in the absence of an agreement, and because certain agreements that impose significant constraints may meet with relatively low levels of compliance without sabotaging the norms states-parties seek to advance, the concept of “effectiveness,” defined as the degree to which a regime is successful in transforming state behaviors consistent with the norms that underlie the regime, has been introduced as a substitute for compliance.

The following annotations, of course, cannot begin to do justice to the rich body of thought they summarize. At most, they identify several major themes in each source. Readers are encouraged to read the complete works themselves.
II. Annotated Bibliography


Develops a modified rational choice theory of compliance that assumes that self-interested states can be motivated to cooperate, provided that uncertainties as to other states' intentions and actions that impede cooperation can be reduced through a combination of verification and assurance procedures. Employs iterated prisoners' dilemma to the study of several arms control regimes to support the hypothesis that enhanced monitoring and verification are complementary strategies that promote compliance by increasing transparency, equalizing information, and enhancing payoffs for cooperation. Suggests that the appropriate package of measures is specific to each treaty member and that general theories of compliance are perhaps beyond the state of the discipline, at least in the area of arms control.


Imports insights from Critical Legal Studies [CLS] metatheory to reinforce the central premise of legitimacy theory and transnational legal process theory: that compliance is a function of the degree to which substance and process of a legal regime is generally perceived as fair and inclusive of all stakeholders. Suggests that existing international institutional designs lack legitimacy because they fail to incorporate many subnational groups. Faults the principle of equitable distribution for broadening the inclusiveness of institutions with regard to states but perpetuating the exclusion of subnational organizations, groups, and people. Suggests, but does not specify, that a deconstructivist program for enhancing the fairness of international law is the proper direction for the marriage of CLS and ILC theories.


Surmises that compliance rates are positively correlated with
national wealth. Cautions that many states, without regard to wealth, often substitute instrument compliance, defined as the ratification of an international agreement to "satisfy the public face of international law," and appease domestic constituencies without the intent to actually alter national behaviors for genuine compliance.


Lists major causal factors of noncompliance as ignorance of legal obligations, skepticism as to the efficacy of enforcement measures, and absence of effective monitoring and dispute-resolution mechanisms. Suggests that domestic incorporation of international law is a necessary condition precedent to compliance. Regards the project of effecting compliance with the laws of war as the major challenge of the contemporary international legal order.


Maps out the immediate post-Cold War origins of ILC and surveys convergence of international law and international relations scholarship in the form of several emerging theories, including managerialism, liberalism, enforcement theory, and constructivism. Suggests that the various divergent ILC theories may ultimately converge around transnational legal process theory, which posits that internalization of cooperative norms in domestic law and legal institutions fosters the progressive evolution of rule-governed cooperation.


Hypothesizes that failure to accede to international legal regimes may be the functional equivalent of noncompliance, particularly for hegemonic states. Notes that recent empirical scholarship has called into question the presumption that compliance is the rule rather than the exception, yet notes further that empiricism in the ILC field is impeded by limitations on data, selection biases, difficulties in generalizing from limited data sets and from one issue-area to another, and methodological obstacles to conceptualizing compliance. Describes the state of the
discipline as rife with theoretical divergence yet ripe for future discoveries on the basis of a dynamic interdisciplinary research agenda.


Sketches the limitations of the enforcement model of ILC in regard to international marine environmental protection, including lack of clarity as to jurisdiction, the costliness of sanctions, and the abundance of violations by non-state actors. Proposes that successful enforcement requires more effective detection of noncompliance which, in turn, requires enhanced monitoring. Posits that NGOs have a role to play as compliance monitors.


Surveys and critiques theories of ILC. Argues that constructivism, which regards compliance as a function of the congruence between the socially-constructed normative preferences of key states and individuals, on the one hand, and formal legal rules, on the other, provides the greatest insight into explanation and prediction of patterns of state compliance.


Examines the 1980-1988 Iran-Iraq War and the 1990-1991 Gulf War and rejects the central premise of enforcement theory: sanctions or the threat of reprisal are sufficient to induce compliance with legal obligations. Suggests that variance in compliance with the laws of war as between states is attributable primarily to individual-level psychological attributes of decision-makers responsible for compliance decisions. Concludes that, in certain situations, failures to comply with legal regimes may be inexplicable through strategic, military, political, or even rational justification.


Treats individuals as the primary subjects of the laws of war. Develops one of the earliest articulations of enforcement theory within the ILC canon. Regards compliance with the
international laws of war as a function of whether the domestic laws of national states create adequate punitive sanctions and whether domestic military institutions effectively investigate and prosecute offenses.


Argues that the most effective means of achieving compliance with international environmental law is a flexible and ad hoc strategy of law-enforcement based on partnership rather than traditional, repressive means of law-enforcement, such as unilateral sanctions or reprisals. Describes as "compliance control" procedures of reporting, monitoring, fact-finding, and consultation designed to reduce conflict and tension between states. Describes as "compliance assistance" the provision of environmental education and training, personnel, administrative and legislative support, and technology transfers to less-developed states.


Argues that compliance with international criminal law is a function of the degree to which the substantive rules are widely perceived as legitimate. Predicts that formalization of international criminal law will correlate with increased compliance. Concludes that the success of international criminal legal institutions, such as the International Criminal Court, will hinge upon voluntary compliance which, in turn, will require its substantive law as well as its procedures to be widely perceived as legitimate.

Bird, Robert C., Procedural Challenges to Environmental Regulation of Space Debris, 40 Am. Bus. L.J. 635 (2003). (1i, 8).

Dismisses sanctions or other mechanisms recommended by enforcement theory as useful ways of promoting cooperation regarding the control of space debris. Counters with a constructivist account that credits epistemic communities of scientists with responsibility for generating norms, securing compliance with legal rules and incorporating these norms through the mobilization of shame or the use of peer pressure. Argues that government officials who must ultimately determine whether to comply with resulting regimes are sensitive to and dependent upon the scientific community and will be
discouraged from noncompliance by their scientific advisors, who would suffer shame if they did not dissuade officials from noncompliance.


Surveys and critiques existing ILC theories. Develops a personality-based theory to explain and predict compliance with the law of war regime governing anticipatory self-defense. Describes the use of simulation research to test and refine personality theories of ILC.


Suggests that U.S. interest in international legal compliance is structurally subordinate to its commitment to federalism and its dualist legal system. Implies that monist legal systems are, ceterus paribus, more likely to comply with international law than dualist systems, which regard domestic law as occupying the apex in the hierarchy of legal sources.


Contends that the WTO Dispute Settlement Process has failed to achieve compliance because it has yet to earn the general perception of legitimacy, both substantive and procedural. Queries whether available sanctions may be less onerous than reputational penalties for noncompliance. Implies that international economic law may trigger sovereignty concerns that predispose self-interested states toward noncompliance.


 Examines the negotiations toward the Kyoto Protocol compliance regime. Queries, as a result of the empirical evidence, whether high rates of compliance with legal regimes may be a function of the limited degree of behavioral modification demanded thereby and whether compliance with legal regimes is inversely related to the extent to which
substantive commitments require states to depart from the conduct in which they would have engaged absent the regime. Theorizes that the proper compliance strategy for any given regime is situated along a "persuasive continuum," stretching from purely facilitative measures at one extreme to purely punitive measures at the other.


Attributes compliance with international human rights law to multiple sources of causation, including the diffusion of behavioral norms, the reconstruction of individual and group identities around its protective principles, the incorporation of international treaties in domestic legal systems, and the increased availability of international and regional judicial fora with jurisdiction over claims of violations by states. Suggests that the effectiveness of international human rights law is further affected by intervening contextual variables, such as the political and cultural nature of domestic governments and the relative threat to the survival of states at a given moment. Concedes the difficulty in submitting this hypothesis to empirical testing.


Examines the consequences of the participation of non-state actors upon the formation of customary international law. Predicts a "compliance paradox" wherein the engagement of non-state actors increases the perception of fairness in the development of custom but erodes consensus, weakens the normative strength of resulting legal rules, and allows state governments greater freedom to be selective in accepting only those legal obligations that correspond with their interests. Queries whether the participation of non-state actors in the formation of customary international law may ultimately erode the pursuit of justice through law.


Surveys ILC theories by identifying a series of variables relevant to the phenomenon of compliance. Treats linkages between the norms that underlie legal regimes and a host of procedural, moral, and material considerations as the most
relevant to explanations and predictions of compliance.


Posits that states are naturally imbued with a propensity to comply with international law. Regards instances of noncompliance as exceptional and attributable not primarily to deliberate violation but rather to either a lack of precision in ambiguous or indeterminate treaties or a lack of technical capacity that prevents states willing to comply from physically doing so. Considers enforcement measures or sanctions an expensive “waste of time” and maintains that consultation, negotiation, and persuasion are sufficient to adjust preferences and steer states back into conformity. Concludes that, because compliance problems are largely managerial, enhancement of the capacities of weaker and poorer states and organization of compliance efforts by powerful states willing to bear management costs are the keys to enhancing the effectiveness of international law.


Evaluates the success of the U.N. system in providing for collective security. Suggests that compliance failures are often the product of a failure of domestic sovereignty in which the central government loses the capacity to prevent violations of law by subnational actors. Argues that while the international legal regime governing collective security is not self-enforcing, state behaviors can be causally transformed by law to the extent that the regime is (1) perceived as legitimate and, thus, the costs associated with behavior consistent with the regime decrease accordingly, or (2) the regime enhances collective action and, thereby, decreases the costs of employing enforcement measures.

D’Amato, Anthony, The Concept of Human Rights in International Law, 82 Colum. L. Rev. 1110 (1982). (1a, 3).

Suggests that the limited reach of universal judicial jurisdiction and the paralysis of the U.N. collective security system due to the exercise of veto powers, hobble the effectiveness of sanctions, the primary coercive modality within the enforcement model of compliance. Notes that the only universally effective mechanism for ensuring compliance with international law
remains the traditional system of retortion and reprisal. Concludes that the ineffectiveness of enforcement suggests not that scholars and practitioners should abandon efforts to enhance compliance but that compliance with international human rights law is ultimately a matter not of law but of politics and morality.


Surveys ILC theories using a “Transactional Norm Forming Model” that amalgamates elements of constructivism and transnational legal process theories. The model contends that compliance is a function of the social construction of states and relevant elites that is consistent with the normative content of legal regimes as well as the degree to which these regimes are incorporated in domestic legal systems. Traces the intellectual roots of the proposed theory.


Postulates that the “transformationalist” premise, that weak or “soft law” regimes in which horizontal negotiation, cooperation, and “carrots” induce states to cooperate are more effective than vertical regimes in which coercive enforcement measures, “sticks,” are used to discipline noncompliers, is demonstrably false. Demonstrates systematic empirical support for this critical postulate by analysis of various environmental and arms control agreements. Concedes the power of discourse and negotiation to promote interest transformation in individual and small group settings but faults transformational theory for failing to account for how convergence of interests and identities at the individual and group level percolates upward to influence the preferences of states. Concludes that regimes designed with the transformational model may actually retard compliance.


Critiques the selection bias in managerial theory that leads to overestimation of the extent of compliance with international law. Contends that compliance, particularly in issue-areas of “high politics,” is highly improbable in the absence of robust
enforcement mechanisms that establish a deterrent regime. Employs the concept of “depth of cooperation” to examine several legal regimes and concludes that states may, in order to preserve the perception of compliance, be avoiding substantive commitments that would obligate significant behavioral transformations.


Calls for a shift from the concept of compliance to one of “effectiveness,” defined as the degree to which legal regimes effect behavioral transformations consistent with the norms underlying those regimes. Suggests that the effectiveness of legal regimes is not as great as legalization theorists maintain. Adopts the managerialist position that enhancement of state capacities should be a primary method of enhancing the effectiveness of environmental pollution prevention regimes and proposes means to achieve greater effectiveness of international environmental law.


Examines the function of non-compliance procedures in several international environmental treaties. Concludes that the majority of noncompliance is unintentional and the consequence of technical and resource incapacities. Eschews enforcement as costly and counterproductive. Advocates a “partnership method” for managing compliance whereby enhancing the capacity of noncompliers takes precedence over enforcement and consultation and negotiation, rather than sanctions, are employed to resolve compliance disputes.


Describes the primary epistemological problem in measuring compliance as uncertainty as to the specific behavioral obligation required by the legal rule in question. Contends that resolution of uncertainty requires the intervention of a neutral and objective third party that can render an authoritative interpretation of the substantive meaning of the obligation at
issue between parties. Suggests that independent international law experts, provided they are not in service to their states of nationality, or, in the alternative, supranational institutions, negotiations, or the quasi-legislative process of customary international legal formation can compensate for the deficiencies of international adjudication of compliance disputes.


Defends the causal significance of norms in prompting compliance with international law. Surveys and critiques existing theories of ILC. Adopts the insights of neo-Darwinism to advance the hypothesis that cooperative norms evolve in the manner of natural species and constitute a form of cultural inheritance upon which compliance can be grounded and extended.

Fisher, Roger, Improving Compliance with International Law (1981). (1g/k, 3, 5, 8).

Attributes responsibility for compliance with international law to the individuals at the apex of the state hierarchy, to whom international legal regimes are ultimately directed and upon whom decisions with regard to compliance ultimately rest. Highlights the causal significance of religious, moral, cultural, and psychological sources of normative prescription and proscription to individual compliance decisions. Regards reputational concerns, threat of enforcement, and reciprocal effects of compliance as theoretically significant but considers the degree to which normative content reflected in international legal regimes is incorporated in domestic legislation and given effect in domestic courts and institutions as the most important determinants of state compliance.


Posits a direct correlation between a regime's legitimacy—defined as the widespread perception that its institutions arose and operate in accordance with just procedures and that its rules are clear and connected to principles of reason, justice, morality, or other first principles—and compliance. Predicts that, as between two legal regimes that are equally legitimate, the regime expressing the most moral content will reap the greatest compliance. Explains the evolution of legitimacy as a discursive process in which a variety of actors, including individuals and
groups, conceive of and propound norms and exhort others to adhere to them on the ground that they are procedurally and substantively fair and in so doing create a transnational perception that legal regimes incorporating such norms are or would be legitimate.


Draws from and integrates managerial theory, enforcement theory, and more kinetic rational choice theories to offer a dynamic game-theoretic model hypothesizing that self-interested and rational states anticipate that incentives to defect from international agreements evolve over time and that, as a consequence, states plan for legal commitments to evolve in order to preserve positive incentives to comply while limiting the costs of enforcement. Applies game-theory models to explain empirical data concerning compliance with international environmental law and trade law and contends that states pursue three types of compliance strategies: Type I - focused on adjusting states' incentives to comply by altering payoff structures (the expected costs and benefits of (non)compliance); Type II - focused on facilitating cooperation by reducing transaction costs and uncertainty as the legal regime evolves; and Type III - focused on maintaining cooperation and improving regime effectiveness by dynamically adjusting commitments over time. Queries, albeit tacitly, whether scholars should abandon the development of a unified theory of ILC in favor of issue-area-specific theories.


Previews a series of symposium articles that address compliance with the Agreement on Trade Related Aspects of Intellectual Property. Postulates a link between compliance and the substantive legitimacy of the legal rules in question. Posits that enforcement of international intellectual property law is ultimately too costly standing alone and that a combination of modalities, including public enforcement, private enforcement, and voluntary compliance is the optimal strategy for enhancing effectiveness. Suggests that the conception of international
intellectual property law as fundamentally "Western" or capitalist stands as a barrier to the internalization of norms favoring voluntary compliance in underdeveloped states.


Rejects the realist presumption that the international system is anarchic and presumes, instead, that states are inherently prone to coordinate, if not necessarily cooperate. Offers a game-theoretic explanation for the phenomenon of compliance with adjudicative decisions of international judicial fora, which lack enforcement power. Contends that states seek the independent, unbiased expertise of international judicial fora in order to resolve factual ambiguities and preserve the prospects for future coordination. Concludes that a general theory of compliance may potentially be constructed that will offer explanations and predictions across a broad range of issue-areas of international relations.


Reviews Stephen Krasner, Sovereignty: Organized Hypocrisy (1999). Surveys theories of ILC. Expresses realist skepticism about the independent efficacy of international law, particularly in relation to the use of force. Criticizes international legal academics for deliberately failing to employ methodological techniques necessary to develop falsifiable theories. Elaborates a series of methodological obstacles to developing and testing ILC theories in the path of international legal academics.


Addresses compliance with customary international law from a rational choice perspective and with empirical methods. Rejects the notion that states feel any compliance pull and rejects the notion that norms are significant sources of behavioral constraint. Posits that domestic courts are, in effect, agents whose purpose it is to implement national interests through their interpretation and application of customary international law. Adopts the realist conclusion that law is epiphenomenal and treats compliance as the result of the convergence of state interests with rules.

Dismisses the causal significance of norms in explanations of state compliance with international agreements. Regards treaties and other positive or formal sources of law as no more binding than, and consequently no more likely to secure compliance than, informal agreements. Explains formal legalization as a means of signaling seriousness about the commitment to be bound by international agreements but discounts reputational considerations where a reputation for compliance is not inherently valuable in the given issue-area. Argues that the coincidence of the self-interests of rational states is the root cause of cooperative behavior and identifies the convergence of interests as the key to enhancing compliance.


Surveys and critiques ILC theories. Explains compliance with international law as the choice of rational states that maximizes their interests in the accumulation of power or other goods. Tests a comprehensive theory of international law with empirical evidence across a range of issue-areas, including human rights and trade, and offers normative prescriptions on the basis of findings.


Argues that states are susceptible to socialization designed to encourage them to embrace and comply with normative requirements in the issue-area of human rights. Differentiates a program of normative “acculturation” from earlier constructivist theories. Distinguishes coercion and persuasion, the two most common implementation mechanisms, from acculturation and describes how a program that mobilizes social and cultural pressures can lead states to conform their conduct. Specifies some of the psychological micro-processes through which acculturation reconstructs individual, and ultimately state, identities and preferences.


Critiques the hypothesis that increased legalization may
correlate with decreased compliance. Surveys existing ILC theories. Defines the central empirical project within ILC as the identification of the necessary conditions for the domestic incorporation of international norms into state practice. Cautions against the use of traditional quantitative methods of theory generation and testing, such as multivariate statistics, given the state of the discipline and the paucity of data.


Tests the hypothesis that a distinction must be drawn between “high politics” and “low politics” in respect to state propensities to comply with international legal regulation, with effects most pronounced in the issue-area of national security. Examines the organizational-cultural approach to explaining the transnational tendencies of national military bureaucracies to eschew particular methods and means of warfare even where such methods and means are not unlawful. Concludes that states are socially constructed by the preferences of national military bureaucracies, that these preferences are organized at the international level, and that even in the issue-area of national security states can be socialized to comply with legal rules that tap these common normative preferences.


Identifies failures of compliance with the laws of war as emanating from three causes: (1) lack of discipline or pathology of individual soldiers; (2) deliberate state policies intended to gain strategic advantage over enemy states; and (3) lack of clarity as to the substantive content of the legal rules. Regards the threat of reprisal as the most potent force for ensuring compliance with the laws of war, and regards reputational concerns and normative commitments as far less significant sources of restraint. Treats armed conflict as qualitatively different in terms of its ability to be regulated from other issue-areas of law.

Guzman, Andrew T., A Compliance-Based Theory of International Law, 90 Cal. L. Rev. 1823 (2002). (lf, 2, 6, 7).

Surveys existing theories of compliance. Rejects the theoretical significance of sub-state levels of analysis and presumes that states are self-interested unitary actors. Contends that states
comply with international law in order to develop and preserve the benefits of a reputation for compliance and that the potential compliance is, thus, to some degree bounded by the importance of reputation within particular issue-areas of international relations. Concedes that reputation is less important in issue-areas of "high politics," such as armed conflict, arms control, and territory, than in issue-areas of "low politics," such as economics and environmental protection. States that future ILC research should concentrate within issue-areas in which state reputation matters.


Surveys ILC theories and describes the state of knowledge regarding international legal compliance as underdeveloped and under theorized. Enumerates epistemological and methodological problems in evaluating compliance, including problems in conceptualizing compliance, false reporting, and unintentional noncompliance. Describes methodological tools whereby the study of compliance can be systematized, including process tracing, aggregate analysis of treaties, multivariate analysis, and counterfactual studies. Suggests that the primary impediment to compliance is the unwillingness of states to pay the political costs to discipline self-interested elements of domestic polities for whom compliance runs counter to their interests.


Describes methodological issues in measuring compliance and demands that ILC theories be supported by empirical evidence. Surveys ILC theories to map the contours of the ILC field and sketch a research agenda. Postulates an institutionalist theory that suggests that wealthy, liberal democratic states may be simultaneously more capable of complying and more domestically responsive to the preferences of individuals and groups who desire compliance. Thus, wealthy, liberal democratic states are systematically more likely to comply than poorer, non-liberal states.

Hypothesizes that state interests in ensuring compliance are directly proportional to the complexity of an international legal regime and the costs of complying. Emphasizes that, in multilateral treaties, state practice of parties can have the effect of modifying international legal obligation, making it still more difficult to evaluate compliance. Advocates semi-formal peer review procedures whereby parties to multilateral conventions can convene to specify obligations, establish more transparent procedures for determining compliance, and “fine-tune” enforcement measures.


Classifies ILC literature into rational actor and normative models and surveys their primary hypotheses. Analyzes empirical evidence of state practice under human rights and environmental treaties. Synthesizes key elements of rational choice and reputational theories and concludes that state compliance decisions are shaped by the legal incentives engendered by domestic and transnational enforcement of international law as well as by the non-legal incentives created by the reactions of external political actors in response to state compliance decisions. Offers suggestions for future research in the ILC subfield.


Surveys existing ILC theories in the five areas of human rights law: genocide, torture, fair and public trials, civil liberties, and political representation of women. Notes the lack of methodological sophistication of international legal scholarship and advocates the introduction of empirical methods to harden the discipline. Conducts quantitative investigation of compliance human rights treaties and concludes that, although external normative pressures are successful in inducing state accessions, state behavior is largely unaffected by legalization. Indicates that states are largely unaffected because a lack of
effective monitoring and enforcement erodes any incentives for self-interested states to modify conduct to meet treaty obligations.


Initiates the first major investigation of the phenomenon of compliance with international law. Begins the development of a multivariate explanation for compliance that incorporates variables from several levels of analysis, notably national values and cultural traditions regarding attitudes toward law and authority and attributes of the political personalities of individual decision-makers who wield state power. Concludes that compliance with international law is the rule rather than the exception and that the most fruitful method of enhancing compliance is likely to be the fostering of domestic cultures of compliance.


Reviews institutional and economic determinants of implementing the Balse Accord of 1988. Highlights the lack of empirical research in the ILC subfield and notes that selection bias erodes the significance of available studies. Challenges the liberalist premise that democracies are inherently more compliant with international law and counters that democratic regimes are more corrupt and more fragmented domestically and consequently less likely to comply than non-democratic states. Argues, instead, that reputational concerns are central to the establishment of compliance with “soft law” regimes and that a reputation for compliance confers benefits in the form of a “stamp of approval” that other states recognize as an indicator of business worthiness.


Complements rational choice theory by considering whether actors are motivated by a desire to preserve their reputations. Suggests that preferences in favor of legal compliance can be induced by law in the sense that law modifies decisional strategies. Posits that compliance behavior in the issue-area of international environmental law can be molded and create self-enforcing expectations that reduce the need for enforcement. Models a reputational theory of international environmental law.

Explains slow pace of Japanese domestic incorporation of human rights norms in terms of a traditional and homogenous culture resistant to wholesale importation of external concepts. Suggests that engagement of human rights NGOs has been important to political transformation but has not had similar influence on courts due to the dualist nature of the Japanese legal system. Indirectly calls into question whether transnational legal processes are universally effective in enhancing compliance.


Surveys major ILC theories while noting and accounting for the underdevelopment of the field of ILC. Distinguishes “high politics” from “low politics” and suggests that knowledge is likely to remain more limited in issue-areas where obligations are less clear, such as in the case of customary international law or in the case of newer sources of law. Calls on legal and international relations scholars to commit more resources to empirical study and to the empirical description of compliance patterns as a necessary precondition to bolder theorization.


Conflates compliance and effectiveness. Outlines the methodological and epistemological difficulties in evaluating compliance with the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, most crucially the lack of access to complete data and the difficulty in evaluating partial compliance. Proposes that the increased efficacy of “Strasbourg” law can be inferred from the growth in the membership of states’ parties to the European Convention and from the fact that disputes are submitted for judicial review. Concedes that the ultimate determinant of compliance may be the perception of legitimacy of a given legal regime and recognizes that legitimacy is a subjective assessment not susceptible to determination through legal, as opposed to psychological, analysis.

Distinguishes compliance from effectiveness and suggests that a high rate of compliance may be an indication that the legal regime in question obligates little change in state behavior or is so open to interpretation that any conduct can be described as compliant. Examines multilateral treaties regulating commercial fishing and contends that for legal regimes to be effective, they must require conduct that is congruent with the self-interest of member-states. Further argues that enforcement of international law is dependent not upon threats of sanctions but instead upon the deployment of positive incentives sufficient to motivate states to comply and to prosecute noncompliant nationals.


Counters the perception of “soft law” as insufficient to generate state compliance. Surveys the history of state practice under the Antarctic Treaty and concludes that “soft law” enables states to reach more precise agreements than might be possible in “hard law” format, that state compliance with “soft law” agreements is better than expected, and that “soft law” agreements form the customary law nucleus for future binding obligations.


Links the effectiveness of the enforcement model to the transparency of the underlying norms for the violation of which sanctions are imposed, the speed with which enforcement is undertaken, the comprehensiveness of the sanctions regime, and the willingness of powerful states to make material contributions to the success of enforcement. Considers the U.N. system to be an important site for maximizing the perception of legitimacy of resulting enforcement measures.


Criticizes liberalism as under-theorized in regard to the process whereby individuals and groups acquire their preferences regarding international legal compliance. Rejects the centrality
of the state to explanations of contemporary international relations. Theorizes that transnational epistemic communities consisting of uniquely situated individuals and groups highly committed to normative programs organize within issue-areas and diffuse their influence across national boundaries through a combination of persuasion, socialization, and electoral pressure. Attributes state compliance preferences and behavior to the influence of these epistemic communities and ascribes the evolution of norms, and compliance with these norms, to the effects of the process whereby states and their preferences are socially constructed.


Builds upon transnational legal process and managerial theories and attributes compliance to the phenomenon described as “enmeshment,” which occurs when a state finds that its interests and the substantive rules of an international legal regime are closely related. Differentiates between issue-areas and suggests that the greatest likelihood that a state will become enmeshed in a particular international legal regime exists in issue-areas of “low politics.” Concludes that harnessing the capacity of enmeshment to enhance regime effectiveness requires a high degree of formalization—that is, the treaty language must be as precise as parties will tolerate.


Theorizes that self-enforcing regimes—treaties that create organs with powers to impose direct sanctions on non-compliers—by bypassing domestic sites of normative interpretation and national identity and interest assertion, may create negative consequences for compliance. Suggests that enhancing compliance may require that this “normative feedback loop” be reintegrated into the functioning of self-enforcing regimes by creating exemptions from the operation of legal rules or allowing non-state actors that would normally participate in the domestic interpretive process greater opportunities to introduce national constituency preferences into international value and identity formation. Proposes a modified constructivist theory that explains compliance with self-enforcing regimes as a function of the degree to which the
normative feedback loop is reintegrated and national constituencies are allowed to construct shared expectations and understandings of the rules that constitute international law.


Modifies the realist premise that legal rules are epiphenomenal to state practice by positing that, as states become "enmeshed" in legal regimes, they come to rely upon the benefits of regime membership, which cumulatively outweigh the costs of compliance even in individual "hard cases." Suggests that legal regimes, themselves, develop causal significance in explaining and predicting compliance even within the realist account of international relations and international law. Supports this modified realist argument with empirical examples from a series of regimes, including the European Union, World Trade Organization, Law of the Sea Convention, International Monetary Fund, and International Criminal Court.


Suggests that empirical studies of compliance might treat compliance decisions as the dependent variable and the relative power of state, the nature of international institutions, the clarity of legal obligations, the strength of underlying norms, and links to domestic considerations as independent variables. Surveys ILC theories. Notes that building and testing theories requires the synthesis of the methods of international law and international relations—to determine whether compliance has occurred requires legal judgment—while analyzing causal relationships between rules and behaviors requires a resort to social scientific methods.


Bifurcates ILC into "instrumentalist" and "normative" optics, with the former consisting of a cluster of realist, rational choice, and enforcement theories skeptical about the significance of norms in fostering rule-governed cooperation, and the latter a cluster of liberal, legal process, managerial, reputational, and constructivist theories that regard norms as having a causal effect upon state behaviors and as capable of exerting a "pull" toward compliance. Critiques both optics. Regards policy elites
as crucial players in establishing and maintaining compliance. Elaborates an agenda for future interdisciplinary research.


Challenges the notion of compliance as the mere correspondence of behavior with legal rules and argues for the concept of “effectiveness” as the benchmark of legal regimes. Surveys existing theories of ILC, including realism, liberalism, constructivism, managerialism, and transnational legal process. Cautions against empirical research that fails to account for causes and effects of legal rules and warns against purely positivist theories that ignore considerations of justice and morality.


Calls for a more nuanced understanding of the role of domestic courts as agents in the enforcement of international law. Suggests that domestic courts, because they regard international law as persuasive and not binding authority, ultimately transform and heterogenize international law. Implies that the enforcement model of international legal compliance that relies on domestic courts, or “transjudicialism,” must either make room for variations in the degree and direction of compliance across states or else give way to international judicial fora.


Reviews two schools of thought on international compliance—supranational adjudication and managerial model of compliance. Contends that the role of international adjudication in promoting compliance with international environmental law is limited, in significant part, because states are unwilling to jeopardize relations with other states by bringing claims against them. Examines the function of various international regimes that permit NGOs and/or individuals to trigger judicial review. Concludes that permitting non-state actors and other private parties to bring claims before international judicial tribunals or
less formal dispute resolution mechanisms will enhance the effectiveness of the managerial model of compliance by creating a more factually complete and less confrontational environment.


Surveys ILC theories. Maintains that the key actors in compliance are not just states, as realism postulates, but also NGOs, institutions, and individuals. Hypothesizes that repetitive interactions within transnational epistemic communities consisting largely of foreign policy elites give rise to norms favoring cooperation and that the internalization of these norms in domestic law and legal institutions fosters the progressive evolution of rule-governed cooperation. Suggests that states can be induced not merely toward compliance but into obedience, defined as voluntary compliance in the absence of sanctions.


Divides ILC field into two camps, the first camp is comprised of managerialist and transnational legal process theories and dedicated to the defense of the premise that international law is really law and that states generally comply. The second camp is populated by realists and rational choice theorists skeptical of the causal significance of international law. Surveys the origins and development of international law and elaborates on the Chayes' managerial theory and Franck's legitimacy theory. Presents and heuristically tests transnational legal process theory, which postulates that repetitive interactions within transnational epistemic communities consisting largely of foreign policy elites give rise to norms favoring cooperation and that the internalization of these norms in domestic law and legal institutions fosters the progressive evolution of rule-governed cooperation. Concludes that states can be socialized toward obedience and not merely to enhanced compliance.


Contends that non-legal sources of behavioral prescription and proscription exert greater influence upon states than do legal sources. Stresses the importance of norm inculcation within domestic legal regimes to the promotion of compliance.

Describes international law in 1989 as a primitive legal system and attributes primary importance to domestic legal systems in regard to the enforcement of international legal norms. Conceptualizes noncompliance with international legal norms as a gambit to transform, or bargain for the transformation of, norms and rules rather than an act of lawlessness. Cautions that attempts to enforce compliance through coercive measures are bound to fail and urges scholars to fashion alternative methods.


Critiques the “nationalist” conception of international relations, which assumes the exclusion of states and advances a revisionist model in which states, as general sovereigns, play an important role in the interpretation of customary international law, in the implementation of non-self-executing treaties, and in the administration of private international law more generally. Situates the primary locus of compliance with international law in the constituent states of the United States and, in particular, with state courts and legislatures. Suggests that domestic legislation may be more effective in promoting compliance. Concludes that affording a broader reign to the states in the implementation of international law may better comport with traditional notions of federalism while simultaneously enhancing the legitimacy of international law.


Argues that “compliance” is too narrow an approach to the study of the relationship of nonbinding norms to state behavior and that the concept of “influence” is more appropriate to the analysis of “soft law.” Admits the difficulty in measuring the influence of soft law due to the limited dissemination of its normative pronouncements, particularly in the field of international labor law. Suggests that the translation of soft law into customary international law may promote their effectiveness but notes that this hypothesis is not yet supported by empirical research.

Adopts the transnational legal process premise that the internalization of international rules and norms within the domestic legal systems of states is the most propitious avenue toward compliance. Examines the constitutionalization strategy employed by the Argentine legal system and attributes compliance failures to acknowledge deficits rather than deliberate inaction. Concludes, consistent with constructivist theory, that epistemic communities of human rights activists are essential to the support of internalization strategies and ultimately to compliance.


Examines empirical data concerning the Arrangement on Guidelines for Officially Supported Export Credits—a “soft-law” framework for cooperation in the international trade and finance issue-area—and explains a systematic pattern of compliance as a function of the flexibility, pragmatism, and consensus-based participatory decision-making procedures of the Arrangement. Suggests that narrow rational choice accounts of state compliance are belied by evidence suggesting that states continue to cooperate even in the absence of short-term benefits not merely because they desire the longer-term benefits of cooperation but because participation in the regime restructures their preferences and their identities through a dynamic and interactive process to create inherent interests in compliance and in membership in a social community committed to incrementally strengthening regime norms. Concludes that explanations of the Arrangement and of the importance of legal rules to the establishment and effectiveness of other “soft-law” agreements require integration of reputational and managerial theories.


Attributes failure of enforcement mechanisms to create compliance with international environmental law to the inadequacy of resources. Suggests that the key to promoting
compliance lies in the nurturing of transnational norm-generating communities that inculcate norms more deeply into state decision making and the institution of domestic incentives that reward cooperative behavior. Concludes that the deepest cooperation requires iterative, state-to-state negotiation and the reconstruction and convergence of national identities.


Articulates a theory of “new institutionalism” hypothesizing that the development of transnational networks of domestic bureaucracies, courts, and administrative agencies, along with the officials who staff them, are becoming the primary agents for the promulgation of new normative and legal regulations. Rejects the “logic of consequences,” which regards compliance behaviors as the result of the rational calculation and pursuit of interests, whether by individuals, organizations, or states, in favor of a “logic of appropriateness,” which suggests that compliance behavior, along with the identities, rules, and institutions that are theoretically significant in the explanation of international relations more generally, is shaped by social and moral norms that causally influence individual preferences. Describes points of intersection between the two logics and concludes that the complexity of international relations is such that theoretical islands, rather than a meta-theory, should be the focus of ILC scholars.


Rejects the causal significance of law in relation to state behaviors. Contends that states make decisions regarding compliance with international law solely in terms of whether such action will tilt the balance of power in their favor. Argues that empirical evidence lends little or no support to the proposition that cooperation can be built and sustained upon a normative foundation.

Mitchell, Ronald, Compliance Theory: An Overview, in Improving Compliance with International Law (James Cameron Jacob Werksman & Peter Roderick eds., 1996). (7, 9, 10).

Surveys ILC theories. Links sources of compliance failures to
issues of faulty regime design. Resists the tendency to equate state behavior consistent with legal rules with compliance and argues that claims regarding the effectiveness of legal regimes must be subjected to empirical analysis.


Challenges the legalist assertion that compliance is the rule rather than the exception. Surveys and briefly critiques existing theories. Supplements rational choice theories by propounding a “signaling theory” that explains compliance with human rights treaties even in the absence of pressure as a strategy intended to maintain and enhance status within a highly interrelated community of states.


Cautions that too much scholarly attention is focused on the continuing refinement and promulgation of international legal regimes and too little upon compliance - the “greatest challenge for the future of international law.” Queries whether “high politics” issue-areas may be less able to be regulated through law than issue-areas of “low politics.” Contends that informal political measures, such as reprisal or reciprocal conduct, may be more effective in promoting long-term compliance than formal institutional mechanisms.


Undertakes empirical analysis of compliance with the laws of war and concludes that compliance can be secured only through voluntarism or through effective enforcement measures. Treats states as the relevant level of analysis. Describes the laws of war as a series of prescription and proscriptions with regard to particular “battle strategies” and offers a rational choice explanation of compliance and noncompliance as self-interested calculations of the benefits and costs of electing particular battle strategies. Predicts noncompliance when the benefits are greater than the associated costs imposed in reprisal. Suggests that the capacity of law to regulate state behavior in the issue-area of armed conflict may be more limited than in other issue-areas.

Examines trends in ILC and notes a theoretically significant shift toward nontraditional methods of enhancing compliance, including "soft law" and third-party dispute resolution mechanisms. Notes further that the proliferation of non-state actors and non-European states as subjects and authors of international law may impose duties to comply upon actors that lack the capacity to comply with legal regimes. Suggests that the path to enhancing the efficiency of international law may be through non-binding regimes that delegate disputes over compliance to neutral institutions and seek to induce compliance through positive incentives, rather than through coercion.


Recognizes the fragility of the legal regime governing the laws of war in relation to state sovereignty and the imperatives of security. Challenges the orthodox view that reprisal is the sole method for ensuring compliance with the laws of war. Concludes that the norms underlying the laws of war are so fundamental to the maintenance of international order and justice that states must be willing to refrain from reprisal and submit violations to judicial determination if these normative principles are to be protected and promoted.


Argues that compliance with international environmental law is the rule rather than the exception and that most compliance is voluntary in nature. Rejects enforcement, whether through formal international legal institutions or informal reprisals, as a means of enhancing compliance due to a host of limiting factors, including an absence of jurisdiction or the inability to impose effective sanctions for violations. Posits that domestic courts may prove the most effective means of securing compliance
with international environmental law if doctrinal and political obstacles to adjudication of claims, such as standing, *forum non conveniens*, and sovereign immunity, can be reduced.


Stresses that proper empirical measurement of the effectiveness of a legal regime requires distinguishing *lex ferenda* from crystallized international legal obligations. Distinguishes effectiveness, measured as changes in state behaviors caused by the rules of legal regimes, from compliance, measured as the mere correspondence of behaviors and rules. Suggests that the most difficult obstacle facing legal architects is the renegotiation of the normative content of existing legal regimes and of customary international law to take into consideration the divergent normative preferences of non-Western states that did not participate equally in the formation of these regimes.


Develops a rational choice theory of compliance that explains the laws of war as a pre-war agreement to abstain from enumerated "battle strategies" and predicts that states will comply with rules that limit the resort to particular methods or means only if the benefits gained through the resort to these methods or means are less than the sanction costs imposed by other states in reprisal. Expresses skepticism that states will generally comply with the laws of war. Calls for more empiricism and greater parsimony in ILC.


Surveys some initial applications of rational choice theory to ILC. Assumes that state behavior is essentially identical to that of individuals, who are further presumed to be rational actors in that they are self-interested and make conscious welfare-maximizing choices. Rejects the theoretical relevance of sub-state levels of analysis. Challenges the premise of reputational theory that reputation is unitary and that states have a single reputation across issue-areas. Discounts the significance of
norms as a basis for building and maintaining compliance with international law.


Presents a critical legal studies theory of international law that rejects the primacy of states in the international system, disputes the liberal notion that an objective moral consensus regarding justice is possible, and challenges the determinacy of international legal obligations. Suggests that compliance may not, in fact, be possible given the utter indeterminacy and incoherence of international law.


Queries whether international law can expect to secure compliance in cases of ethnic conflict and human rights issues and concludes in the affirmative. Surveys and organizes ILC field into normative and positive theoretical clusters. Analyzes the functions of the High Commissioner on National Minorities for the Organization on Security and Cooperation in Europe and suggests that, because they fail to operationalize “soft law” norms, existing theories are unable to explain significant forces that induce compliance with emerging, if not codified, sources of behavioral regulation. Articulates a “mediation theory” which postulates that individuals are relevant actors in international relations and that certain high-status normative “intermediaries” can play theoretically significant roles in promoting compliance.


Differentiates the prospects for nurturing compliance in regard to issue-areas of “high politics” and “low politics.” Describes the dilemma for states facing grave crises in which the only alternatives appear to be non-compliance with legal regimes, particularly human rights or humanitarian law, or willing acceptance of national catastrophe. Suggests that compliance may be possible even during crises and national emergencies provided states can be induced, before the crises or emergencies arise and fundamentally transform attitudes regarding compliance, to “tie their own hands” through pre-commitments.
to restraint.


Extends domestic constitutional law "precommitment theory" into the realm of international human rights and humanitarian law. Notes that some states enter into international treaties without intent to comply solely to secure reciprocity or to gain the benefits of association rather than on the basis of agreement with underlying norms. Builds upon reputational and signaling theories. Suggests the seemingly related questions, of why states "bind their hands" in advance of future temptations to engage in specific conduct by entering into international legal obligations and why states comply, may be entirely separate lines of inquiry.


Surveys ILC theories to assess the influence of informal transnational links between state officials upon compliance. Draws empirical support from state practice for the proposition that realism, managerialism, and transnational legal process theory each imply a positive role for these transgovernmental networks in enhancing compliance with treaties and with less formal transnational agreements. Concludes, particularly in issue-areas of great complexity and in regard to "low politics," that transgovernmental networks will increasingly come to substitute for treaties as the modality to coordinate cooperation and that scholars must retool existing ILC theories to adapt to this transformation.


Re-orient focus from compliance to effectiveness as the better gauge of the function of legal regimes to modify state behavior toward norm-governed cooperation. Surveys three existing ILC theories: rationalism, normativism, and liberalism. Evaluates studies to test heuristically the effectiveness of international environmental treaties. Concludes that an empirical and multidisciplinary approach drawing upon the insights of international relations theories is required for international legal regimes to become more effective.

Identifies the proliferation of “soft law” agreements, in which states seek to express normative commitments without accepting legal limitations on their sovereignty, as a principle impediment to compliance. Notes that the complexity of many recent international legal regimes, coupled with the implementation costs such regimes impose upon members, further weakens the prospects for compliance. Expresses skepticism about the prospects for compliance but stresses that financial and technical assistance for underdeveloped states is an imperative if compliance, particularly with international environmental law, is to advance.


Examines several arms control agreements to support a theory that draws from managerialism and rational choice theory and posits that treaty parties are in an iterative relationship in which they learn over time to deepen the natural and rational propensity to cooperate. Suggests states produce long-term public gains by developing rules and procedures to make the rational preference for cooperation more effective. Concludes that obligations will gradually increase over time as the depth of cooperation evolves and that compliance is a rational outcome.


Suggests that the indeterminacy of international law is such that the concept of compliance is inadequate to the development and testing of theories and notes that many states—not just the U.S.—have mixed records of compliance. Concludes that the absence of a clear distinction between legal and illegal behavior in many issue-areas of law introduces methodological difficulties into the ILC field. Suggests that mitigation of methodological difficulties may require selecting cases in which a consensus is possible regarding the facts of compliance or noncompliance.

Distinguishes the study of compliance of "soft law," or nonbinding declarations of norms, from treaty-based international legal obligations. Disputes the managerialist assertion that compliance cannot be measured empirically. Recognizes the heightened difficulty in operationalizing "soft law" compliance and in acquiring, evaluating, and scoring compliance data. Concedes that establishing causality between "soft law" rules and behaviors is particularly difficult and potentially beyond the methodological capacity of the discipline.


Develops an ILC taxonomy that divides the field into naturalist and positivist theories and their variants. Enumerates several theoretically significant variables to the explanation and prediction of state compliance, including national-cultural attitudes toward law and legal authority, the salience of reputation in the personal calculus of head decision-makers, and the likelihood of sanctions or reprisals in the event of noncompliance. Concludes that compliance is the inherent preference of states because the very existence of law creates a normative force that impels them toward compliance.


Embraces the managerialist hypothesis that attributes compliance failures to a lack of technical capacity. Generalizes from the World Bank experience to suggest that enforcement measures are ill-suited to enhancing compliance with international environmental law. Recommends packages of technical support and transnational dispute resolution mechanisms to enable states to harmonize interests and expectations and, thereby, enhance compliance.
Simmons, Beth A., Capacity, Commitment, and Compliance: International Institutions and Territorial Disputes, 46 J. Conflict Resol. 829 (2002). (1c/f, 2, 6, 9).

Contends that rational, self-interested states enter into international legal agreements to achieve outcomes and reap gains not available through independent action or informal negotiation alone. Argues further that the mere existence of legally binding rules are causally significant in transforming state preferences and decisions, even in regard to issue-areas of “high politics” such as territory, because rules impose costs upon decisions not to comply. Predicts that as operant norms diffuse and solidify, reputational costs associated with noncompliance rise along with the prospects for compliance.

Simmons, Beth A., International Law and International Relations: Scholarship at the Intersection of Principles and Politics, 95 Asil 271 (2001). (2, 3, 6, 9).

Laments the shallowness of interdisciplinary collaboration between international law and international relations in the investigation of the phenomenon of compliance. Describes the skepticism of international legal scholars as the proposition that legal rules can be operationalized as variables and integrated into theoretical models that, in turn, can be tested with the assistance of social science methodologies. Suggests that if interdisciplinary collaborations continue to find that law exerts no or little independent causal influence upon state compliance behaviors, the likelihood of future collaboration within the ILC field will diminish.


Conceptualizes international financial law as a signaling device used by states-parties to relevant treaties designed to demonstrate “good citizenship” to markets and other states and, in turn, to reap the associated benefits of trade and investment. Surveys and faults much of the literature in ILC for methodological and epistemological shortcomings, including lack of sufficient rigor and an absence of empiricism. Explains and predicts compliance as the strategy to preserve these reputational benefits and concludes that those states most sensitive to reputational effects will be most likely to comply.

Posits that the key actors regarding compliance are not states but rather individuals, institutions, organizations, and other components of civil society. Contends that it is the nature of the domestic politics predominating within state borders that determines the composition of representative governments and, in turn, the willingness of states to subordinate sovereignty to normative and, thus, legal regulation. Theorizes that liberal democracies are inherently more committed to the “rule of law,” more prone to absorb international legal obligations into their domestic legal orders and to diffuse these obligations through foreign policy bureaucracies, and more willing to permit interest groups to mobilize mass electoral support for international legal norms than non-democratic states. Explains and predicts compliance as a function of the degree to which the aggregation of the preferences of key domestic individuals and groups directs the representative state toward norm-following and legal regulation.


Describes transnational government networks—informal links between counterpart state officials that transcend national boundaries—as important resources for enhancing capacity for compliance and building upon the natural propensity of states toward voluntary compliance. Suggests further that government networks reinforce cooperative norms and strengthen the international rule of law by disseminating administrative resources and information.

Slaughter, Anne-Marie & Raustiala, Kal, International Law, International Relations, and Compliance, in Handbook of International Relations 538 (Walter Carlsnaes et al. eds., 2002). (7, 9, 10).

Conceptualizes the field of ILC and surveys existing theories. Traces the intellectual history of ILC. Sketches a research agenda.


Builds upon dynamic theories of cooperation and iterated game theory to develop a rational choice account that explains arms control agreements as the result of self-interested states learning
o cooperate and jointly share the relative gains available through compliance with gradually evolving legal regimes. Suggests treaties are but a part of a broader pattern of non-legal relationships between parties and that formal institutions are unnecessary to support compliance, as parties value and desire to maintain and improve this relational pattern and converged expectations and the informal mechanism of reciprocity are adequate to the task. Indicates that it may be possible to extrapolate the study’s findings to complex issue-areas, such as trade, environmental management, and technology.

Stone, Christopher D., Common But Differentiated Responsibilities in International Law, 98 Am. J. Int’l L. 276 (2004). (c/e, 2, 6).

Criticizes procedural rational choice approaches. Expands the concept of “common but differentiated responsibilities,” which postulates that states are impressed with equal obligations but vary in their capacities for compliance and suggests that enforcement costs will be reduced if more capable states make allowances for the less capable. Elaborates a model for negotiating differential responsibilities that amalgamates managerial and rational choice theories. Applies the model to the Kyoto Protocol.


Attributes responsibility for state compliance and non-compliance with international law to the elites at the apex of state power. Contends that, in practice, the principle of the formal equality of states gives way to a hierarchy in which powerful states are able to prevent the effectiveness of international treaties by mobilizing opposition, as in the case of the United States and the Kyoto Protocol. Advocates an international legislative body, termed Global Peoples Assembly, with the power to create and enforce laws directly against states and individuals. Calls for “compliance from the inside out” whereby states, stripped of their status as the sole authors and primary enforcers of international law, would lose the power to determine whether their nationals complied in favor of this representative assembly, through which the will of their nationals would be given direct effect.

Examines the introduction by the International Court of Justice of the mechanism of Assurances and Guarantees of Non-Repetition (AGNR) as a novel remedy for breach of customary international legal obligations. Surveys legitimacy theory and transnational legal process theory and concludes that the use of AGNRs is neither sufficiently legitimated nor adequately internalized as an operative norm within the international community to support the broader process of legalization.


Contends, on the basis of empirical evidence, that the dispute between legitimacy theory and rational choice theory over the causal significance of norms to state behaviors can be reconciled through adoption of a thick theory of rationality. Argues that, under some circumstances, even rational self-interested states may determine that complying with customary law may maximize their welfare because they regard affording respect to international legal processes or to particular normative principles as inherently valuable or, even more likely, because reputation matters. Suggests that maximization of international cooperation must take into account the possibility that even self-interested states may actively seek to adhere to customary legal obligations.


Assesses the competing claims of enforcement theory, which hypothesizes that the threat of sanctions induces compliance, and managerial theory, which contends that the inherent propensity of states to comply can be maximized through positive inducements, the provision of technical assistance, and the establishment of fora to aid negotiation and harmonization of policies and interests. Examines the practice of the European Union, a regime that incorporates elements of both enforcement and management in a "management enforcement ladder," and concludes that the inclusion of both mechanisms creates the most effective regime. Compares the E.U. to other international
legal regimes, including the World Trade Organization, the European Court of Justice, and the European Court of Human Rights, to conclude that the E.U. experience, though historically distinct, is replicable and that regimes in issue-areas such as trade, environmental protection, and human rights will achieve greatest effectiveness through a holistic approach to compliance.


Advances the managerialist premise that the primary obstacle to compliance with environmental law is technical incapacity. Notes that failures in compliance with environmental regimes have serious trans-border consequences. Enumerates a myriad of sources of and explanations for inadequate compliance support offered by existing international and regional organizational mechanisms. Suggests that enhanced compliance with international environmental law will likely require developed states and even private actors to offer positive inducements—"carrots"—to states with low technical capacities.


Accepts the rational choice assumption that legal decisions are market-like choices but faults rational choice theory for failing to offer a clear and testable definition of rationality. Concludes that the influences of reputation are less salient with regard to states than in regard to individuals. Challenges scholars in the ILC field to model their theories properly by specifying testable and falsifiable hypotheses.


Explains the proliferation of “soft law” agreements and the indeterminacy of international legal regimes are essential to attract and preserve powerful states as members by allowing them to avoid circumstances in which they perceive no alternative other than patent noncompliance. Rejects the transnational legal process prediction that obedience is the ultimate objective of international law and suggests, instead, that the possibilities for compliance will always be tempered by the realities of state self-interests.

Advocates the centrality of international law to the construction of the post-Cold War international order. Surveys the critical legal studies critique of realism. Develops the liberalist premise that the first step in the diffusion of and compliance with international legal obligations is the incorporation of international law in the domestic legal systems of states. Advances the core premise common to legitimacy theory and constructivism which holds that the perception by domestic elites in the judicial and executive branches of government that international legal obligations are legitimate is necessary to induce voluntary compliance.


Surveys empirical studies that support the assertion that legal rules fail to marshal sufficient deterrent threats to enforce compliance. Contends that effective legal regimes require voluntary compliance, which, in turn, requires the promotion of a “culture of compliance” rooted in normative perceptions of law, and the institutions that administer law, as moral and legitimate. Identifies lack of trust in institutions and officials as a principal obstacle to the enhancement of legal legitimacy and proposes “moral development strategies” to re-establish trust.


Describes the concept of compliance in scalar, rather than dichotomous, terms and contends that whether states adhere to their international agreements is a matter of degree. Distinguishes effectiveness from compliance and urges scholars to focus on the former. Argues that the most effective agreements may be those that are tolerant of some defection. Disputes the liberalist premise that democracies and free market polities are inherently more compliant than non-democratic states and challenges the conclusion of enforcement theory that coercion is necessary to support cooperation. Concludes that regime architects must be prepared to consider a range of strategies for inducing compliance and tailor each agreement to its membership.
Wendt, Alexander, Constructing International Politics, 20 Int’l Sec. 71 (1995). (1i, 8).

Hypothesizes that the fundamental structures of international relations are social rather than material and that these structures shape the identities and preferences of actors. Contends that the subjective preferences of individuals, groups, and states can be constructed by transnational, interactive, and transformative social processes, cumulatively known as globalization, to favor cooperation and compliance with the normative content of legal regimes. Enunciates an important role for human agency in the social processes of construction of preferences favoring compliance with law.


Distinguishes ‘effectiveness” from “compliance” in the context of arms control treaties. Identifies a number of factors that enhance compliance, including inclusion of all relevant states in treaty membership and maximization of the clarity of legal obligations. Highlights methodological difficulties in assessing compliance, including suí generis nature of cases, absence of available data, and differential capacities of states. Briefly surveys ILC theories and propounds a series of testable hypotheses generally favoring “hard law” over “soft law” as more likely to foster compliance.


Differentiates “hard” enforcement—international adjudication and sanctions—from “soft” enforcement—reporting, monitoring, and verification backed by financial incentives to compliance—in international environmental law. Examines the application of “soft” enforcement mechanisms in the context of the ozone regimes. Suggests that the selection of a flexible definition of “noncompliance,” coupled with “soft” enforcement mechanisms employed by treaty-created institutions governed democratically and multilaterally by states-parties and free to employ not only principles of law but also principles of equity in
evaluating compliance, may well be the ideal approach to fostering cooperation more generally in the issue-area of environmental protection.

Young, Oran R., Compliance and Public Authority (1979). (1k, 3, 5, 8).

Discounts the causal significance of legal regulation in regard to the behavior of actors in social relations generally. Treats individuals, the ultimate subjects of all law and the actors responsible for compliance decisions, as the relevant focus of ILC theories. Hypothesizes that a host of individual psychological variables that tap a series of beliefs, motives, and images, such as the desire to generate reciprocity, altruism, reputational concerns, fear of sanctions, social pressures, or moral obligations, better explain and predict the phenomenon of compliance decision-making than variables drawn from other levels of analysis.

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