International Organizations and Respect for International Law

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Introduction

The study of international organizations has always been at the crossroads of international relations theory and international law, although this was not always apparent. Almost all formal international organizations are the product of treaty. Some are tasked explicitly with the duty to create regulations that sometimes become binding legal obligations (Alvarez 2006:219). A few are empowered to interpret and enforce treaties. And this says nothing about the more informal role of international organizations as advocates of norms, sponsors of conventions, or students of the law.

Beginning in the 1990s, the two fields have had an increasingly active dialogue, with the result that each has insinuated itself into the other (Slaughter 1993a; Keohane 1997). That this convergence occurred after the end of the Cold War is no coincidence, since by that point the stale question of whether international law is relevant was settled in the affirmative. This allowed scholars to ask the much more interesting question: When and how does law matter? And in answering this question, many turned to the role of international institutions as players in the international legal drama.

The study of international organizations has yet another key characteristic: It is almost always more pragmatic than doctrinaire. At one point or another, most of the prominent voices in the field have borrowed from each of the dominant theoretical traditions of both international relations and international law. At various points in his career, for example, Robert O. Keohane has applied liberal, rational choice, legitimation, constructivist, sociological, realist, and institutionalist paradigms and insights. Much the same can be said of Joseph Nye, Anne-Marie Slaughter, Robert Cox, Stephen Krasner, Chadwick Alger, and Ernst Haas; the latter famously carried out a midcareer intellectual shift away from functionalist theory to learning theory (Haas et al. 1977). This eclecticism has helped bring about the beginnings of a consensus on some of the fundamental premises of the role of international organizations in international law. Whether power trumps norms and whether one's long-term reputation for rule compliance trumps short-term needs are still open questions, but in general there is a sense that international organizations and law generally matter a great deal, and that even the most law-disregarding state must take into account how its actions will be viewed and/or punished by other states acting through multilateral bodies (Luck 2004).

With this background, this particular chapter will focus broadly on how and why international organizations help make international law matter. This naturally includes the question of compliance, meaning the consistency of state practice with international rules, but also the issue of whether states take seriously IO-sponsored international regimes generally. This will take us to a variety of ancillary questions, which I list here:

1 What role do international organizations play in the formulation and clarification of international law?

2 How do international organizations influence the willingness of states and other international actors to accept international rules?
3 To what extent do international organizations bring states into compliance with international law?

This general approach applies the sequential model of law – conceptualization and creation followed by interpretation and application, followed finally by enforcement and compliance – that permeates much of the discussion on the topic, although, as we will see, competing perspectives warrant consideration.

Among the points we will make over the course of this review are the following:

1 Although they cannot always overcome the forces of sovereignty and great-power interests, international organizations have emerged as important instigators of international norms and rules.
2 International organizations are uniquely adapted to advocate international law from both idealistic and pragmatic perspectives.
3 International and domestic public actors as well as international and domestic private actors interact in important ways with each other to create a culture of compliance.
4 International organizations' efforts to monitor and enforce compliance can be seen as one point in dynamic cycles of international law and practice.
5 The management versus enforcement debate is a false dichotomy as both seem essential to effective promotion of compliance by international organizations.

International Organizations and the Development of International Law

International organizations have directly injected themselves into rule creation by proposing new or revised norms, sponsoring diplomatic conferences, promulgating regulations, and providing authoritative interpretations of existing rules (Jolly et al. 2005; Alter 2006:334–6; Alvarez 2006:188, 219, 304). We will review each element in turn.

Constructivist thinking predicts that ideas will shape and reshape the world, from the identities of the actors to their preferences and the rules governing what means are acceptable to pursue them (Ruggie 1997; Finnemore and Sikkink 1998; Risse 2000; Barnett and Finnemore 2004). International organizations, and their secretariats in particular, are thought to play a part in this, whether they were specifically designed to do so or not. The International Law Commission (ILC), for example, was specifically intended to identify international customs and address particular needs in the hope that it would draft treaty language that diplomats could use as a starting point for negotiation (Alvarez 2006:304). For example, the United Nations General Assembly asked the ILC to draft a convention for an international criminal court (Arsanjani 1999:22). When the product was not forthcoming, the UNGA put additional pressure on the ILC, which promptly finished its work. The ILC draft left open several key issues, including the future organization's jurisdiction and rules of procedure – issues that would require five additional negotiating sessions, including a UNGA ad hoc committee, to ultimately resolve.

Delegating such functions to international organizations is relatively common, and can be found at the International Maritime Organization (IMO), the International Labor Organization, the World Health Organization, and many other specialized agencies. While constructivists generally stop at exposing this type of phenomenon, one can turn to principal-agent theory to explore why this may be the case. States (principals) delegate tasks to international organizations (agents) in order to improve efficiency through specialization, promote collective decision making, resolve disputes, enhance

credibility, and move policy in particular directions (Hawkins et al. 2006:13). While in most cases agents cannot act until principals have resolved their key policy differences, one might find other situations where agents are given more latitude and power to provide solutions to policy problems. For example, where the issue is primarily a coordination game and the actual solution is of minor importance, states may agree to walk away and let the agent take over. We have found this in such purely technical organizations as the Universal Postal Union or International Telecommunication Union (perhaps it is no surprise that these were some of the first multilateral regulatory agencies, since their assignments were relatively uncontroversial). Consider, for example, the decision to use English as the universal language of the airline sector. While there may have been some symbolic value in having airport towers and pilots speak a particular language, it was more important that one single language be chosen once and for all.

Another scenario involves "collective decision dilemmas plagued by social intransitivities where delegation is a means of overcoming policy differences" (Hawkins et al. 2006:20). This is different from hiding behind an agent who is tasked to give bad news (the International Monetary Fund's [IMF] stabilization plans, say), since in those cases the agents are merely mouthpieces for nervous governments. Rather, it refers to a method for solving politically intractable but urgent problems, such as poverty in southern Europe in the 1970s, where principals simply delegated authority to an agent (the European Commission) to find the most equitable solution (the European Regional Development Fund), knowing full well that the result would not satisfy everyone.

On the other hand, "when the agent pool is small or agents possess significant expertise, agents can lobby principals for more authority and utilize their resources and knowledge to influence principals' preferences or strategies" (Hawkins et al. 2006:31). In some cases, principals are well aware of this tendency and either allow it or obstruct it, depending on their policy aims. The IMO, for example, was tasked with the assignment to develop regulations governing maritime safety, among other things. But at the same time, since the maritime powers had already created and nurtured the Comité Maritime International (CMI) – an umbrella organization of national maritime law associations – to do much the same thing, this gave the IMO relatively little leverage. But as it gained experience and a reputation for thorough, professional work, it gradually edged out the CMI until it established itself as the dominant source of new maritime regulation and law (Stiles forthcoming).

Constructivists and institutionalists also focus on the role and personality of the leaders of international organizations. Where opportunities exist for them to step into the policy arena, much depends on the willingness of certain individuals to take action and whether their ideas will be taken seriously. To illustrate, the first UN secretary-general, Trygve Lie, felt that his proper role was primarily administrative (Muldoon 2007). On the other hand, personally committed to tolerance, forgiveness, human rights, and state sovereignty, Boutros Boutros-Ghali took a very active role, culminating in the drafting of the Agenda for Peace and Agenda for Democratization (Lang 2007). He specifically pushed a humanitarian intervention model that he readily acknowledged was "proto-law" (*lex ferenda*) in the hope of focusing government attention on new ways to address crises such as the one in Kosovo (Zacklin 2001). Institutionalists, and for that matter realists, will be quick to point out that the reward for his activism was the denial of a second term – sending a clear message to his successor that personal energy will only be tolerated to a point. As explained by Rivlin, the importance of the secretary-general in international affairs is directly proportional to the importance of the UN generally (Rivlin 1995:100).

Many international organizations have had considerable influence on international rules. Thakur and Weiss argue that we are beginning to see a unique "UN policy" on issues ranging from fighting terrorism to dealing with HIV/AIDS (Thakur and Weiss

2009). Even more intriguing is the sense that what originates as mere "recommendations" or "guidelines" can gradually take on the force of binding legal obligation – even for states that never gave their explicit consent (Alvarez 2006:219). This stems in part from the fact that the IOs inject themselves directly into the functioning of the broader regime, with all its broad range of actors:

> Unlike the classic state-centric sources of law, many of the institutional standards discussed have their greatest effects not on the inter-state level but, like national administrative law, directly on non-state actors. In an increasing number of instances, what IOs do affect, directly or indirectly, are individuals and private companies – and often without the need for mediating domestic implementation efforts within the states in which they reside. (Alvarez 2006:245)

Once ship builders adopt IMO regulations, pharmaceutical companies accept WHO guidelines, and airlines implement International Civil Aviation Organization (ICAO) standards, the rules become the *de facto* law, even without specific intervention by states. From a rationalist perspective, these institutions can alter the payoff matrix for key nonstate players, and they discover that, for example, unless they adopt these regulations, they are likely to lose business (Stiles forthcoming). As we will see below, there exist numerous private regulators – insurance companies, classification societies, auditors, banks, and credit-rating agencies – that carry out their own enforcement activities. If all these actors embrace the international standard, the effect can be remarkably powerful (Gardner 2007:176–7). To put it in terms of social construction, institutions can create new actors, new roles, new duties, and new powers:

> Our cases also yield clear evidence of social learning in the evolution of regimes. Sometimes social learning is fundamentally a matter of devising new means with which to pursue unchanging objectives [. . .] A more far-reaching form of social learning, on the other hand, occurs in cases where the operation of a regime leads to major changes in how the problem a regime addresses is understood and, as a result, in ideas about how to cope with it. (Young 1999b:262)

Finally, IOs have from the outset sponsored international diplomatic conferences where conventions are debated and resolved. While in general this role is relatively passive, several changes have occurred in recent years. To begin, IOs have altered the procedures and players. By instigating and approving the involvement of national legislators, technical experts, corporate and labor representatives, and activists of various stripes, IOs have expanded the number of actors who may offer proposals, provide supporting materials, engage in debate, and in a few cases even vote on final language (Alvarez 2006:276). From its beginnings, the International Labor Organization provided for each state to be represented by voting members – two from the government, one from business, and one from labor. The International Whaling Commission allowed Greenpeace activists to represent several developing nations during the 1980s once they received credentials from the respective governments. And the World Bank has organized various panels of nongovernmental organization (NGO) representatives to consult with the agency on matters of concern. This shift in institutional structure and process has contributed to shifts in humanitarian law, particularly with respect to the antipersonnel landmine ban and the International Criminal Court (ICC; Deitelhoff 2009; Rutherford 2009). If nothing else, most international organizations, and particularly the United Nations, promote an ethic of discourse and tolerance (Sandholtz and Sweet 2004). This can only go so far, however, and we have seen states push back against the expansion of participation. For example, states have succeeded in excluding NGOs from conferences – most notably, when the World Trade Organization (WTO) opted to move its annual ministerial meetings to Doha, Qatar.

Taken together, IOs have become progressively more involved in creating international law, both directly and indirectly, and both immediately and progressively. This is driven in part by the advantages IOs offer to states to resolve collective goods problems as well as efforts by IOs themselves to take the initiative to expand the sphere of law in international life. In addition, constructivist and sociological predictions appear to be borne out in part at least as IOs develop new legal concepts and regulations as well as interface directly with nonstate actors – both nonprofit and for-profit – to create *de facto* legal regimes.

That said, more work needs to be done to clarify the conditions under which ideas and socialization will trump more traditional interest-driven dynamics. As pointed out in the recent work on the ethics of the UN secretaries-general, although all were motivated by their own internal moral compass, they routinely encountered resistance and obstacles from governments, guerrillas, terrorists, and other powerful actors who were more than willing to defend their interests at the point of a bayonet (Kille 2007). Likewise, environmental organizations – even where the principles and concepts are understood and clearly articulated – find the dizzying array of diverse actors (e.g., consumers, governments, firms, energy companies, the poor, and scientists), each with very different and often vital interests, to be too much to manage or control (Young 1999a). Just when interests can be altered is a key question that has not been fully resolved.

International Organizations and the Dissemination of International Law

This section addresses current research on activities of international organizations that fall between the development of international law and efforts to ensure its compliance. These activities involve primarily advocacy targeted at states and are explained in part by theories of legitimation, socialization, and networking. Peterson summarizes these functions:

> In the abstract, intergovernmental organizations enjoy several advantages over individual governments or nonstate actors as regime managers. Their secretariats can be central and mutually acceptable aggregation, analysis, and dissemination points for information flowing in from member governments and nongovernmental sources; their plenaries and committees provide forums for inclusive discussions, exercises of peer pressure, and efforts to work out disputes; and their character as international organizations that draw participants from all affected countries permits them to endow activity with a political legitimacy of representing the "international community," which individual governments and nongovernmental organizations cannot do. (Peterson 1997:116)

Legitimation

"[R]ules are not enforced yet they are mostly obeyed" (Franck 1990:33). One reason for this paradox is that rules, once they are created and accepted, and especially when IOs advocate them actively, exert "compliance pull" (Burgstaller 2004:101). This is to say that where rules are produced in a fair manner and include provisions that are inherently just, governments generally accept them (Franck 1990). As explained by Goldstein and Keohane,

> In general, when institutions intervene, the impact of ideas may be prolonged for decades or even generations [. . .] In sum, ideas that become institutionalized play a role in generalizing rules and linking issue areas. When collective action requires persuasion rather than mere coercion, and when consistency of policy is demanded on the basis of principles institutionalized in the form of rules, reasons must be given for proposed

> courses of action; when reasons are required, ideas become important. (Goldstein and Keohane 1993:20, 23)

In the case of Bretton Woods institutions, for example, many policies were inspired by New Deal thinking by American policy makers who were tasked with creating the new regimes (Slaughter 1993b). Roach's study of the ethical powers of the ICC offers some intriguing considerations in this regard. He argues that at this point, the ICC enjoys only "weak cosmopolitanism," meaning that it has not entirely overcome the tensions between states and imbued the international system with its moral purposes. As he put it,

> This, however, does not mean that the ICC's weak cosmopolitanism will remain weak or strictly formalistic. Rather, it signifies how the practical application of the ICC's universal morality will derive from its political legalism or its self-directed application of its rules of procedures. This, as I have been arguing[,] is where its moral authority or autonomy will converge with its political actions and goals in the direction of a cosmopolitan end. (Roach 2006:111)

Whether this scenario is realistic is an open question. Many IOs suffer from the same problem as most governments: lack of access to outsiders. This can be broken down into several dimensions – lack of input in the appointment of staff and leaders, lack of access at the policy-making level, lack of transparency of decision-making procedures and internal data, and lack of capacity to sanction or overrule inappropriate decisions. Taken together, this amounts to a "democracy deficit" that undermines the legitimacy of IO policies (Zweifel 2006:177). IOs may run the risk of becoming dogmatic and doctrinaire or finding themselves disconnected from the political reality in which they operate. During the 1970s, the UN General Assembly empowered developing countries and allowed them to set the agenda on issues ranging from development to human rights. The process alienated the very states whose resources would be needed to implement these new norms, however (Keohane and Nye 2001:108). This prompted many developed countries to either ignore the UN or create alternate institutions to accomplish their purposes. "Exceeding the limits of what is necessary, not to mention abuse of control, undermines the authority and effect of control. In resolving the question of the advisability of creating new control organs and the extent of their functions, it is essential to take into account that control, especially international, is a very precious commodity" (Lukashuk 1991:11).

While the jury is still out on whether IOs enhance the legitimacy of law through their procedures, efforts by IOs to enhance the legitimacy of law through the quality of their regulations are being challenged. At the very least, many rules are designed without a serious consideration of how they might be implemented. The International Convention for the Prevention of Pollution of the Sea by Oil (OILPOL), the convention on ocean pollution, proved largely ineffective because they targeted the release of waste on the high seas – a practice that could not be monitored from the shore (Young 1999b:252). The International Convention for the Prevention of Pollution from Ships (MARPOL), on the other hand, focused on regulating the construction of ships to address waste release features and proved far more effective (Mitchell 1994:456–7).

Some have pointed out that the failure of some IOs to develop effective rules has given rise to the private regime – a network of private actors regulating each other with or without IO endorsement. As explained by Mattli,

> Standards-setting in an increasingly globalized world, however, teaches us that 1) the failure of intergovernmental institutional arrangements may be as pervasive as market failures; 2) international private sector actors may themselves be capable of remedying

> so-called market failures through the creation of private governance bodies; 3) transnational private governance, in turn, may fail society because of capture and coordination dilemmas, necessitating public remedies; and 4) with regard to the level of governance, demands of globalization need not undermine national institutional arrangements, but may in fact strengthen them. These lessons suggest that only a comparative institutional analysis that weighs the costs and benefits of both private and public remedies of market or institutional failures across levels can provide a framework to address questions of efficiency, effectiveness, and optimal design of governance. (Mattli 2003:224–5)

Victor et al. (1998b) describe these networks of rule making and enforcement as "systems of implementation review" (SIRs). These are decentralized systems that include IOs, to be sure, but also governments, NGOs, private firms, and so forth. In some cases, such as the Ramsar Convention on wetlands protection, rules and procedures are developed gradually and involve a feedback loop between the IO and the other stakeholders (Victor et al. 1998b:17). Where it may appear that the IO has failed to remain seized of the issue, this may be because the responsibility has been shifted to some other actor in the system, as in the case of the Global Compact on climate change, endorsed by over 2000 firms from 80 countries (Levit 2007:405). In other cases, IOs collaborate with private actors and are informed by them, as in the case of the Berne Union (Levit 2007:401).

At any rate, one of the problems that all IOs face is that as their regulations penetrate deeper and deeper into the sovereign prerogatives of states, they will likely hit legal bedrock.

> The old talisman of "sovereignty" will surely rear its ugly head – under the banner of nonintervention, Asian values, EU-trashing, or some such term. International lawyers can no longer dismiss these claims, and they have no bold new paradigm to guide them in creating a more comprehensive legal order. Thus, they must accept that the suffusion of norms into decision making is a long-term process. (Ratner 1998:78–9)

This raises a central question in the study of the role of IOs in promoting international law: To what extent does their doing so change anything? While we will address the issue of compliance more directly in the final section of the essay, it is worth noting some of the more skeptical writing on the subject. Foremost among these is the work of Downs and other rational choice thinkers. Their main argument is that states are careful about committing to rules they will probably be unable to implement. Figures 1–3 describe graphically several scenarios. In Figure 1, we see a case where states simply determine what the practice is, and then set a rule that codifies it. IOs are often required to simply sign off on state practice, or at best keep their misdeeds private (Downs et al. 1996). In a few cases, the process of clarifying the rules might

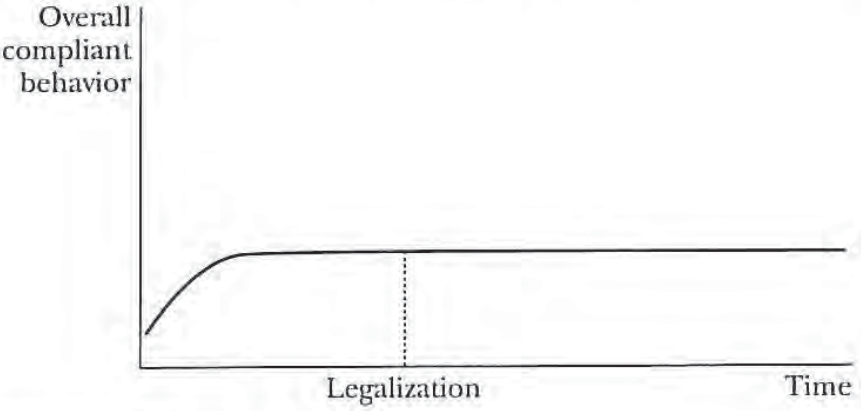

Figure 1 Codification of Routine Practice

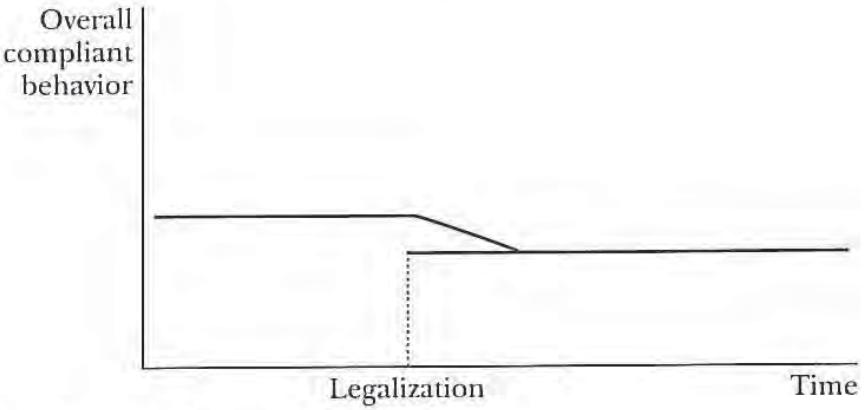

Figure 2 Least Common Denominator

actually lead to a decline in state practice, as accommodations are made for the weakest states (see Figure 2). Note, for example, the tightening of the definition of *genocide* from the Nuremberg Trials to the Genocide Convention: Attacks against political groups were excluded from the latter definition (Stiles 2008). Likewise, the UN Security Council took steps to delegitimize intervention for humanitarian purposes even though such actions were implied in the Genocide Convention (Powers 2003). Thus, by 1978 the US could condemn the intervention by Vietnam into Cambodia as unlawful even though it stopped a genocide. Thus, states deliberately prevent IOs from pushing them beyond what they can already perform, with the result that patterns of perfect compliance are merely "inadvertent, coincidental, or an artifact of the legal rule or standard chosen" (Raustiala 2000:391).

In still other cases, perhaps where IOs have been relatively more influential, the international community arrives at standards of conduct that no state is currently practicing. One can think of the Universal Declaration of Human Rights or UN Security Council Resolution 1373 on antiterrorism measures. In such a case, the IO may be tasked with the onerous responsibility of continually advocating an ideal that states only cynically endorsed. In cases of "cheap talk," the letter of the law may have been designed for some short-term political advantage but not to change outcomes (Mearsheimer 1994–5).

But in a few cases the law is not meant to simply provide window dressing for self-serving governments, but actually represents a vision shared by many, albeit a difficult one to attain (see Figure 3). We will talk more about the "managerial" school in the next section, but for now it is enough to say that IOs might play a very important role in these scenarios by providing encouragement, training, resources, and other

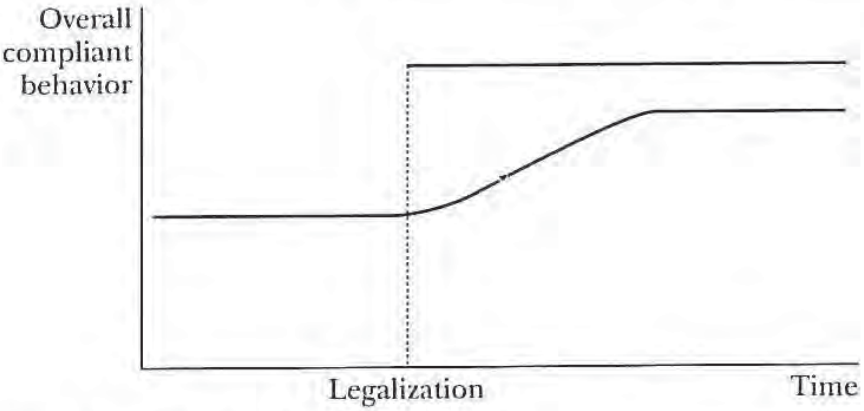

Figure 3 Noncompliance and Aspirational Law

inducements to bring about change. Further, it is even possible that many of the problems the rule was designed to address may be solved even while many, if not most, states never come into full compliance (Raustiala 2000:429).

Taken together, the legitimation school seems to be facing an uphill climb to become the dominant tradition.

Coleman and Doyle (2004) argue that a certain degree of noncompliance may in fact be consistent with an effective legal regime. International organizations are often in a position of balancing what is possible against what is desirable. If they push states too far, IOs may breed exhaustion and ultimately apathy on the part of states, while setting standards that merely endorse existing practices may breed cynicism and contempt for the law (Coleman and Doyle 2004). Well-intentioned noncompliance may move international conduct the farthest. Note that in endorsing the UN's anti-terror standards adopted shortly after the September 11 attacks, every state knew it was noncompliant at the time – but the vast majority set about making useful changes, even though most are still formally noncompliant (Stiles and Thayne 2006).

Socialization

The basic premise of socialization theory holds that

> Although there is no international "government," there is an international "society"; law includes the structure of that society, its institutions, forms, and procedures for daily activity, the assumptions on which the society is founded and the concepts which permeate it, the status, rights, responsibilities, obligations of the nations which comprise that society, the various relations between them, and the effects of those relations. (Hencken 1979:26)

IOs are a key element of this society, not only because they bring so many actors together but also because they help to identify, clarify, and apply international norms. They can help bring about a consensus on these norms – sometimes pushing a norm over the "tipping point" of widespread acceptance (Ray 1989; Risse et al. 1999). Once this point is reached, states that were confident of their old positions are put on the defensive in the new legal environment. According to Price (2004), even the great powers have been pulled toward compliance out of fear of social castigation.

IOs can provide material incentives for membership, but also create identities and standards of conduct that go beyond simple payoffs (Schimmelfennig 2005). As put by Young, "The social-practice perspective [. . .] approaches regimes as arrangements that affect behavior through nonutilitarian mechanisms like inducing actors to treat prescriptions as authoritative, enmeshing actors in communities that share a common discourse, or stimulating processes of social learning" (1999b:270). "IOs promote compliance passively by increasing interaction opportunities, lengthening the shadow of the future, and raising costs for reneging on agreements" (Mitchell and Hensel 2007:734).

There is some evidence that states mimic each other – particularly other states in the same region (the peer group) – and regional IOs have helped identify a regional standard of conduct to make self-assessment less ambiguous (Simmons 2000, 2002; Raworth 2001). This is particularly important in the early stages of a country's membership, as explained by Simmons in reference to compliance with IMF liberalization policies:

> Significant influence is concentrated in the first few fragile years after a restriction is lifted. Countries that have failed to live up to their obligations seem especially determined to reestablish their credibility. Law seems to matter at a defining moment: Legal commitments can push a country onto a behavioral trajectory of compliance from which it is decreasingly likely to deviate. (2000:832)

Some states pursue a "politics of prestige," a pattern noted by both realists and socialization scholars (Morgenthau 1978:77–91; Busby 2009), in that their concern for acceptance and even admiration from their peers prompts them to take a leadership role in areas that are inherently altruistic. Canada led the way in negotiations on the landmine ban and ozone depletion, and sponsored an important conference on humanitarian intervention, in part to burnish its reputation as an advocate of global justice (International Commission on Intervention and State Sovereignty 2001; Busby 2009). The Netherlands hosted the ICC facilities for much the same reason.

More controversial is the notion that states care deeply about their reputations because they worry about other states raising the "discount rate" of future negotiations (Keohane 1984). As explained by Guzman,

> When a state fails to comply in one period, other states observe this and draw negative inferences about the likelihood of future compliance. That is, the reputation of the violating state is diminished. This model of compliance has the appealing feature that violations are "punished" through these sanctions but the sanctions themselves are not costly to the sanctioning states. So when states enter into international agreements, they are in effect pledging their reputation as a form of bond. If they violate the agreement, they give up some of this reputational collateral. (Guzman 2008:40–1)

Critics of this view argue that there are many types of reputations that states seek to foster, not all of which involve rule compliance or fidelity to agreements. On the contrary, some states nurture a reputation for independence, contrariness, and even obstinacy (Goldsmith and Posner 2005:102–4). Further, there is evidence that having a good reputation with respect to one issue area does not readily transfer to other issue areas (Downs and Jones 2002). Where the payoff of a stronger reputation is offset by higher upfront costs, states will defy regimes and IOs – including even international courts (Tan 2008). The fact that states are selective about complying with particular rules is strong evidence that there is more to the story than the search for a uniform reputation. Such defiance can be seen as an opening volley in an attempt to recraft the regime (Sandholtz and Stiles 2008). After all, many rules conflict with each other, such as the principles of sovereignty and voluntarism, which are still alive and well (Murphy 2004:349; Koskenniemi 2005:565).

Networking

As is the case in their role as rule creators, IOs interact with a variety of actors in their efforts to disseminate and promote norms. As put by Young,

> [R]egimes can empower a variety of nonstate actors and contribute to the development of unofficial communities that include a mix of experts and policymakers who can function as pressure groups, sources of institutional innovations, and watchdogs in the day-to-day operations of regimes. (Young 1999b:255)

In many cases, IOs help foster epistemic communities and transnational advocacy networks that in turn speak out in favor of the norm and work to induce cooperation by national governments (Haas 1992; Koh 1996:194; Keck and Sikkink 1998; Spiro 2004). NGOs and technical experts have been recruited by IOs – or at least given access – in the creative phase. But these agencies have continued to be active once the agreements were completed. They have carried on the fight to ensure ratification of the agreements and their subsequent implementation. Some have argued that domestic nonstate actors have played a critical role as watchdogs and litigators, taking their governments to task (and sometimes to court) for failure to uphold international agreements. As put by Abbott and Snidal,

> Legal commitments mobilize legally oriented interest and advocacy groups, such as the organized bar, and legitimize their participation in domestic decision making. They also expand the role of legal bureaucracies within foreign offices and other government agencies. Finally, so long as domestic actors understand legal agreements to be serious undertakings, they will modify their plans and actions in reliance on such commitments, increasing the audience costs of violations. (2000:428)

International organizations are in a unique position to provide validation, resources, moral support, and strategic advice to such domestic and transnational actors. UNICEF staff, including especially Executive Director James P. Grant, provided considerable support to NGOs and local groups – not only to draft the Convention on the Rights of the Child but also afterward to implement it. His successor, Carol Bellamy, re-oriented much of the organization's activities around the "rights agenda," providing a great deal of support directly to nonstate actors (Black 1996). This is also true of many international governmental human rights agencies that provide objective, public evidence to support the claims of oppressed minorities and women.

IOs can also tilt the balance of domestic power in favor of certain substate actors by virtue of their dispute settlement mechanisms. At the extreme, IOs can provide public fora to private individuals to sue their own governments over failure to comply with certain agreements, including the European Court of Justice (ECJ), the European Court of Human Rights (ECHR), and the Human Rights Committee (Alter 2000:507). Activist courts may sometimes take advantage of these cases to alter the meaning of constitutional provisions (Berman 2006:1289). In Europe, we see domestic courts routinely citing each other and the ECJ in their effort to expand civil liberties and other provisions – this is at the heart of what is known as *transnational legal process theory* (Koh 1997; Slaughter 2004a).

IOs can also empower actors unintentionally. The World Trade Organization, through the rulings of its dispute settlement bodies, clarifies and specifies the parameters of acceptable trade practice and its effects, with the result that some groups may learn they have more to gain or lose than they originally thought (Goldstein and Martin 2000).

Finally, IOs can legitimize and buttress efforts by subnational entities such as bureaucracies and provincial governments. There is evidence that where the major political parties in a semidemocratic state are of mixed opinion about the benefits of liberal norms, membership in an IO that rewards democratization can help tilt the country in a democratic direction (although implementation of reforms will likely be stop-and-go) (Schimmelfennig 2006:829). In the area of environmental reform, the state of California, for example, has embraced the Kyoto Accords unilaterally and endeavored to adopt stricter emissions standards than the US federal government (Collier 2005). Likewise, Kerala state in India has taken far more initiatives to implement World Bank and UN millennial development goals than the rest of India. There is evidence that epistemic communities cut across governments and IOs and that global warming scientists, arms control experts, and human rights lawyers have closer agreement on the best policies than each one does with her respective governments and national communities (Haas et al. 1977; Haas 1992). However, this evidence is far from overwhelming at this point, and it isn't always clear whether individuals in these positions are responding to international norms or simply adopting creative ways of carrying out instructions from their superiors. As put by rationalist Posner,

> [T]he disaggregated state model, as currently developed, has no particular implications for the question why states comply with international [laws] or with international norms that have not been legalized. The usual argument – which is that if you look at nonstate factors, you will understand why states comply with international law or norms more than realists – is no more plausible than the opposite view. (Posner 2005:842)

All that this particular critique implies is that more empirical work needs to be done to determine the degree to which IOs empower local actors as part of a network and when.

International Organizations and International Law Compliance

Moving to the last phase of the process, we will now consider how IOs go about encouraging states to keep their promises and comply with international norms and regulations. This is done through a variety of mechanisms, including monitoring, assessment, legalized dispute settlement, management, and enforcement.

Monitoring

Determining whether states are complying with rules and whether doing so has helped address the original problem requires information (Lukashuk 1991:7). Information is costly to collect and analyze, and it can be costly to states that would prefer that their noncompliant behavior be obscured. As explained by Victor et al., "[T]he SIR (system of implementation review) rarely has the data it needs to function well as a compliance and verification system [. . .] international institutions can substantially enhance data quality and comparability" (1998b:18–19). Most institutionalists agree that a central purpose of IOs is to provide information about state conduct in relation to previous agreements (Burgstaller 2004:100). This explains why almost all IOs have some capacity to gather data.

> International organizations use various forms of control in accordance with their functions and on the basis of the charter. They conduct the implementation of respective norms, discuss reports of member States on the results of the implementation, and adopt respective resolutions. Some organizations have special inspector personnel to verify the effectuation of norms on site. (Lukashuk 1991:7)

The data may be country specific or not, it may be law-related or not, and it may be outcome-related or not. States generally establish the parameters of this data gathering for their own purposes. Consider, for example, the Convention Against Torture (CAT). As explained by Hathaway, the CAT monitoring body does not carry out its own data gathering, although Amnesty International provides it with some of its own original information. Instead, it requires governments to submit regular reports on their own performance. These reports are kept confidential. And, as it happens, few states (about a third) actually submit them – with no particular repercussions on those that don't (Hathaway 2004). The same is true for many human rights organizations, mostly because the sensitivity of the information is high and could be used by domestic groups to put pressure on the reporting governments. In the case of monitoring and punishing organized crime, states have jealously guarded their territorial jurisdiction by denying to the UN the capacity to gather data independently. States gave the UN's Center for International Crime Prevention in Vienna a budget of only $100,000 and a staff of four professionals before the 9/11 attacks, and saddled it with leadership that was known to be unprofessional (Bassiouni 2002). There was little risk the agency would encroach on national prerogatives.

Where regulations are beneficial to certain actors, it is more likely that reporting will be reliable and complete, as in the case of MARPOL (Mitchell 1994:457). Where the IO is directly involved in an activity, such as postconflict nation building or development, the data will likewise be more accurate, although one can imagine that some material that is embarrassing to the organization (such as scandals related to

the oil-for-food program in Iraq) may be suppressed. There may also be some differences in reporting depending on the nature of the agreement. Where states commit to carrying out domestic reforms only, we should expect that they will resist close scrutiny from IOs in order to preserve their autonomy and avoid providing information to domestic pressure groups. On the other hand, where the agreement involves an exchange of resources with another state, actors may well seek a great deal of information. If this were to be provided by an IO with a reputation for impartiality, so much the better. This will be particularly true for states that lack the resources to gather their own data on the performance of other states and fear that they will be unable to detect cheating (Abbott and Snidal 2000:431).

In some cases, IOs can take advantage of this tendency by delegating to others. For example, with respect to the Kyoto Protocol, although governments don't always report their own performance accurately, the WTO also monitors and assesses state performance with respect to some global warming gasses. Likewise, the IMF and the World Bank monitor compliance with antiterror measures created by the UN Security Council (Andreas and Nadelmann 2006:53). By "triangulating" these data, it is easier to establish state performance (Doelle 2005:280). But, as pointed out by Chayes and Chayes,

> Ultimately, no system of verification, no matter how abundantly endowed, will be able to verify completely all the activities subject to regulation. No matter how sophisticated the verification program, there will be uncertainties and disagreements about the state of information that is developed. (1995:196)

Assessment

States sometimes resist providing data because they understand that they are often used to assess compliance. Should IOs expose noncompliant behavior – especially if it is clearly injurious to other actors – this would open the offending state to countermeasures or retortion (Cassese 2001:241–4). This would be the case even if the IO itself did not explicitly condemn the actions. At the very least, exposure of noncompliant behavior could damage the recalcitrant state's reputation, as seen above.

Where IOs take the next step to evaluate state conduct, the stakes are clearly much higher. Most IOs have been reticent to take this step for fear of alienating member-states. The Counter-Terrorism Committee created in UN Security Council Resolution 1373 has the authority to critique the performance of states with respect to their implementation of various antiterror conventions. It has opted not to, however, in order to maintain a cordial working relationship with its members (Cortright et al. 2007:46). That said, the detailed reports the agency produces and posts online can be read and interpreted with an eye to comparing and ranking states (Stiles and Thayne 2006). With respect to the Financial Action Task Force (FATF – a G7 creation to monitor money laundering by terrorist groups), the organization does not provide holistic assessments, although it does announce whether countries are complying with specific elements and targets (Gardner 2007:175). Rather, it relies on peer review by members, which has proven slow, laborious, and incomplete.

In spite of these obstacles, a number of IOs have engaged in systematic assessment of state performance, typically by focusing on policy outcomes. The IMF, WTO, World Bank, UN Security Council, and others routinely publish studies of state performance, along with explicit assessments of their compliance with existing agreements (Alvarez 2006:441–520). At the same time, it is not uncommon for these reports to be criticized for being "politicized." This is particularly true for the Human Rights Commission, which was ultimately disbanded and replaced. All of this material is consistent with both realist and rationalist approaches to studying IOs since it is clear that states

determine when and to what degree assessment takes place, even where broad authority is initially granted.

Legalized Dispute Settlement

In a few cases, states have created IOs with the express purpose of resolving disputes, many of which require the interpretation and application of law. States generally reserve the right to opt out of appearing before such tribunals and when they do appear they generally reserve the right to ignore the rulings. At the very least, states retain the power to enforce the rulings. In spite of these constraints, some judicial bodies have developed considerable power and effectiveness.

As with any court, international tribunals are dependent on the information that is provided. Where an adversarial system is used, the supply of information is often considerable as both disputants have a vested interest in providing data to support their side. The only serious constraint is the lack of capacity to generate these data, as is sometimes the case with developing countries when they confront developed countries at the WTO (Pauwelyn 2000). But some courts, such as the ICJ, receive third-party submissions, thereby leveling the playing field and ensuring that many key facts emerge.

In making rulings, courts must take care to acknowledge the realities of the environment. The ECHR, for example, waited several years before issuing rulings against its members, and began with those states that were most committed to civil liberties. It waited decades before ruling against such countries as Turkey and Russia, knowing that any adverse ruling would more likely result in the state's withdrawal and no substantive reform (Stiles and Wells 2007). Rationalists have argued that international tribunals reach for "low-hanging fruit" – unambiguous defections from the norms that cause relatively little pain to the system and that can be more easily remedied (Carrubba 2005). But in some cases, courts overreach (Goldstein and Martin 2000). The WTO, for example, ruled against the EU on the issue of genetically modified foods – a policy that was nonnegotiable in Europe (Esserman and Howse 2003). On the bovine growth hormone issue, losing the case did not prompt Europeans to comply – rather, they have simply absorbed American countermeasures (Guzman 2008:49).

Because states have denied them the power, courts must rely on other actors to implement their rulings (Young 1999b:266). For example, when the ECJ issues damage awards, these must be enforced by national courts (Alter 2000:506; Raworth 2001:192). When it offers a new interpretation of European Union law, it is up to the governments and courts of each member state to adjust their approaches in comparable cases in the future, which may or may not occur (Guzman 2008:49). When the ICJ issues rulings, it is left to the national governments to implement them by drafting new agreements or otherwise changing practice (Paulson 2004).

The track record of international courts is mixed. Paulson has found that between 1987 and 2002, governments complied with ICJ rulings to the full extent in 7 out of 12 cases, although compliance was partial in the other cases (Paulson 2004). Compliance was highest on matters involving disputes over economic contracts. The US has clearly become skeptical of third-party dispute settlement (Murphy 2004:351), but still generally complies with adverse court rulings (Stiles 2000). In only three cases – having to do with American actions taken in connection with the Sandinista regime in Nicaragua – did the US utterly defy the rulings. As realists would have predicted, states are most reticent to submit matters relating to national security to international judicial review and just as reluctant to comply with adverse rulings on this issue.

A key element of the work of international tribunals is the interpretation of law (Abbott and Snidal 2000:427). Although international court rulings are not precedential, strictly speaking, it is understood that in some cases they serve to inform future

law. "Judicial decisions" are explicitly included as a source of law under the Statute of the International Court of Justice (see Article 38 (1)). National courts routinely incorporate them in their decisions (Slaughter 2003). The WTO's dispute settlement bodies, like the ECJ, are called upon almost daily to interpret treaty law as it pertains to particular disputes. In the process, they have clarified such questions as when governments may employ safeguards, whether environmental regulations are legitimate barriers to trade, and what constitutes intellectual property (Croley and Jackson 1996; Smith 2004). The ECJ has expanded the definition of *pay equity* to include fringe benefits and perquisites. As put by Caporaso, "Few would disagree with the proposition that the ECJ has pioneered a gender-equality jurisprudence" (2003:383). Likewise, the ECHR has redefined *privacy* and other key concepts in civil rights law (Stiles and Wells 2007).

Some have argued that this activism is misplaced and is based on a misunderstanding of the essential purpose of international adjudication. They argue that these courts have applied a national court model of constitutional interpretation when the better model should have been arbitral panels. International courts should engage more in "negotiated settlements" than in handing down authoritative rulings or new interpretations of law (Alvarez 2006:529). Since they cannot enforce their own rulings but must rely on the cooperation of others, they must not exceed what can realistically be done. Further, even the most powerful court is merely a "trustee" of the international community, which retains the option to rewrite relevant treaties, submit new cases, and enforce rulings (Goldstein and Martin 2000; Alter 2006). International adjudication is still essentially political (Abbott 1999:371; Simpson 2007). Recall the point made earlier by Coleman and Doyle that IOs must take care not to set standards that are politically unrealistic since doing so may dissuade states from engaging in well-intentioned noncompliance (Coleman and Doyle 2004).

While it is clear that there will be some areas that will always resist penetration by IOs, it is nonetheless apparent that states have created important spaces for them to monitor, assess, and adjudicate compliance. What comes next is perhaps the most controversial issue: Should IOs punish noncompliance, reward compliance, provide support and assistance, or do a mix of all? We will begin with punishment and reward.

Enforcement

International law has always provided for states to take action against others who, by their violation of norms, have damaged their interests. This can include retortion (legal but unfriendly measures) or countermeasures (acts that would normally be illegal but are made legal so long as they redress a wrong). Countermeasures can include mere tit-for-tat reprisals or actions taken in behalf of the broader international community, and can employ diplomatic, economic, or military elements (Cassese 2001:234–44). Further, punitive actions may be authorized to address behavior that undermines the interests of the international community even if it is not strictly unlawful.

While other entries in this volume directly address humanitarian intervention, international criminal prosecutions, and other punitive measures carried out by the international community, we will focus on the general phenomenon of sanctioning. We have already seen that international tribunals impose sanctions – or at least authorize states to impose them (Raworth 2001:192). The same is true for some nonjudicial bodies as well. The IMF is particularly energetic in this regard (Gould 2006). The UN Security Council has applied Chapter VII sanctions with considerable frequency in the post-Cold War era.

But sanctions are inherently costly – to both the target and the originator (Guzman 2008:44). Such measures are matters of high politics and usually require the engagement of key states to be decided. As put by Chayes and Chayes,

> We already have shown that coercive sanctions are infrequently provided for in regulatory treaties and even less frequently invoked. When they are, it is a matter of the highest politics, and the decision is made directly by the members. Similarly, although economic incentives bulk large among instruments available to domestic bureaucracies, few international treaty organizations dispose of significant financial resources. (1995:276)

The decision to impose sanctions also involves overcoming critical collective goods problems. In many cases, what is required is a few actors willing and able to shoulder the burden of "belling the cat," as put by Sandler (2004:146). While having a large number of states supportive of the action may build morale, it is no substitute for a set of countries willing to absorb considerable loss and pain in order to bring a rogue state to heel. Failure to find such willing volunteers has undercut numerous attempts at sanctions. This was particularly true in the case of sanctions against the regimes of Saddam Hussein or Slobodan Milošević during the 1990s (Dimitrijevic and Pejic 1995:147; Mingst and Karns 2000:103). This has led some to conclude that sanctions are generally not feasible or worthwhile (Pape 1997; Krasner 1999:105–6).

The story of sanctions is, of course, more complex. There is evidence that where states are heavily dependent on the international system for certain key resources – particularly if they export a few nonessential goods to a few wealthy countries – it may not take much coordination to put a stranglehold on the sanctions target. Likewise, where the coalition imposing sanctions is clearly united and willing to endure pain – especially if this involves the most powerful states in the system and targets immediate neighbors – then even a fairly resilient target state will find it must acquiesce (Hufbauer et al. 2008). At the very least, sanctions can open fissures in the ruling coalition, as we saw in the cases of Libya (McNamara 2007:112–13) and South Africa (Mingst and Karns 2000:179–81).

Management

Finally, we consider the view that what promotes compliance more than anything – and can be best provided by IOs – are inducements, capacity building, and persuasion. This approach assumes that almost all states want to comply with almost all the commitments they make (Chayes and Chayes 1995). Whether it is to secure the material benefits of compliance, enhance their reputations, or deflect domestic protest, governments seek to bring their domestic policies in conformity with the international commitments they have made (Koh 1997:2636). From this perspective, states come into compliance with norms through a seven-step process: IOs and states monitor behavior, assess it in relation to the norm, identify deficiencies and failings, determine the feasibility of compliance in terms of state capacity, provide assistance to bridge the gap between existing and necessary capacity, and, in some cases, alter the rules themselves so that they fall within the range of what states can realistically do (Koh 1997:2637). This typically requires some third party that is widely trusted to interpret rules impartially – something many IOs, as we have seen, are in a position to do (Lazarev 1991:20). It is up to IO staff members to forge ties with their counterparts within national governments and to promote cross-national links between comparable state officials (Chayes and Chayes 1995:279–81). Nurturing these government networks can reap substantial results:

> Overall, by harnessing hard power, building compliance capacity, and diffusing ideas and technologies around the world, government networks are likely to strengthen the rule of international law in ways long demanded and expected of traditional international institutions. (Slaughter 2004b:303–4)

Consider, for example, the UN's approach to combating terrorism. As mentioned earlier, although it has the authority to recommend sanctions, the Counter-Terrorism

Committee has opted for capacity-building measures instead, with generally favorable results (Cortright et al. 2007:45), although it needs more resources and tighter cooperation between states to finish the job, according to Rosand and Millar (2007:75).

The experience of the FATF brings us to the next point. Bureaucrats and government regulators are only the first line of attack. Private regulators such as insurance companies, auditors, loan officers, and credit-rating agencies need training – sometimes best provided by an IO – to ensure that the data they are generating are useful to themselves and governments, and that they are applying reasonable standards of conduct (Gardner 2007:176–7). Nonprofit advocacy groups can also benefit from specific training programs, as are provided under the World Bank's Global Environmental Facility and other environmental support projects (Young 1999b:264). The press, the legal bar, and other institutions routinely receive training as part of nation-building operations (Marten 2004:6).

The courts are also a key player in many of these areas, and IOs can play a key role in providing them the tools they need to act independently. Not only can they offer subject matter training and political support vis-à-vis their governments, but also the rulings and regulations issued by IOs can be framed in such a way that it is easy for domestic courts to apply them to local cases (Berman 2006:1296). Taken together,

> Legal commitments mobilize legally oriented interest and advocacy groups, such as the organized bar, and legitimize their participation in domestic decision making. They also expand the role of legal bureaucracies within foreign offices and other government agencies. Finally, so long as domestic actors understand legal agreements to be serious undertakings, they will modify their plans and actions in reliance on such commitments, increasing the audience costs of violations. (Abbott and Snidal 2000:428)

Finally, tangential to this managerial approach is the notion that a key role played by IOs is the education and persuasion of political elites. Ultimately, the aim is to persuade legislators and political executives to transfer international codes to domestic statutory law. This process, known as *internalization*, requires not only capacity but also political will, which IOs are uniquely positioned to help achieve (Burgstaller 2004:102; Camestaro 2007:133). As pointed out earlier, IOs can help reframe debates by legitimizing certain approaches while undermining others (Berman 2006:1294). This has already happened with respect to providing humanitarian intervention, protecting war wounded, alleviating poverty, preserving species, preventing climate change, and preserving cultural heritage sites (Berman 2006; Thakur and Weiss 2009). Once this is completed, the compliance process shifts away from a question of state–IO relations to a matter of intrastate policy. Since domestic courts almost always have considerable powers at their disposal to bring about policy change, their engagement increases the chances of success and reduces the burden on the international community.

The punishment versus management debate may be on the verge of resolution as an increasing number of studies indicate that neither seems to work in isolation. The most successful projects have included threats – however latent – of serious penalties for outright defiance, along with inducements and support for those who seem to be making a good-faith effort to comply. This point was made some time ago by Downs et al. (1996) and has been demonstrated empirically by Marten (2004) and Doelle (2005) with respect to nation building and environmental protection, respectively. It is a lesson that can also be inferred from various studies on environmental regimes published over the years by MIT Press (Young 1997, 1999a; Victor et al. 1998a; Durant et al. 2004).

Conclusions

As pointed out at the outset, the study of international law creation, advocacy, and compliance has become central to the study of IOs in the last 15 years, driven in

part by a desire to go beyond general descriptions of regimes and abstract treatises on law to a more empirically grounded and, dare we say, policy-relevant work. The answers we have found in the literature point to some promising, if still ambivalent, conclusions:

1 International organizations have emerged as important instigators of international norms and rules, although more needs to be known about the political and resource constraints they face. More research is needed to determine when IOs can break free of political constraints. The principal-agent literature offers a particularly promising new direction in this respect. But more could be said about how IOs accumulate and mobilize tangible resources, including generating funds from nonstate sources.
2 International organizations are uniquely adapted to advocate international law from both idealistic and pragmatic perspectives. But it seems that this capacity is limited by a wide variety of constraints, including especially the ability of the staff to carry out first-rate research. More could be done to compare the reputations of IO staffs and explain the variation.
3 International and domestic public actors as well as international and domestic private actors interact in important ways to create a culture of compliance. In particular, more needs to be understood about the ways nonstate private and nonprofit actors are integrated into these systems and why.
4 The management versus enforcement debate is a false dichotomy as both seem essential to effective promotion of compliance by international organizations.
5 And, finally, more work needs to be done to place IOs' efforts to monitor and enforce compliance as part of a general cycle of rule creation and modification (Koskenniemi 2005; Sandholtz and Stiles 2008). Broadening the research question in that way may allow scholars to better incorporate insights from legal research, sociology, and international political economy that can sometimes be sidelined in the pursuit of rationalistic or institutional explanations.

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Online Resources

At avalon.law.yale.edu, accessed Aug. 18, 2009. This is a comprehensive online database of historical documents relating to international law and organization, including treaties, charters, and case law materials.

At www.iciss.ca/menu-en.asp, accessed Aug. 18, 2009. This site is maintained by the International Commission on Intervention and State Sovereignty to disseminate its work on humanitarian intervention law. It is linked to several important studies as well as other agencies and UN bodies that address the same issues.

At www.echr.coe.int/echr, accessed Aug. 18, 2009. The European Court of Human Rights provides copious documentation for each of the hundreds of cases it has heard since the 1970s. It is an example of a powerful international court.

At www.imo.org, accessed Aug. 18, 2009. The International Maritime Organization maintains an extensive database of conventions, regulations, reports on state performance, and reports on maritime accidents and attacks. It also provides documents related to meetings of various bodies within the IMO.

At www.icao.org, accessed Aug. 18, 2009. Like the IMO, the ICAO monitors state performance, especially with respect to airliner safety. Its "audit scheme" provides detailed assessments of each country's airlines.

At www.un.org/sc/ctc, accessed Aug. 18, 2009. The Counter-Terrorism Committee of the UN Security Council logs all of the reports it receives from each UN member state regarding its efforts to comply with UNSC Resolution 1373 and subsequent resolutions. The record includes the country-by-country response provided by the CTC staff regarding the quality of these reports and the appropriateness of national policies.

At www.icj-cij.org/homepage/index.php?lang=en, accessed Aug. 18, 2009. The International Court of Justice maintains a website that provides detailed accounts of every case, including supporting documentation provided by disputants and third parties.

At www.wto.org, accessed Aug. 18, 2009. The World Trade Organization provides a "dispute settlement gateway" with access to one of the largest data sets on compliance with international trade law.

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