International Law and International Relations

Edited by

BETH A. SIMMONS and RICHARD H. STEINBERG

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International Law and International Relations

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

Beth A. Simmons is Professor of Government and Director of the Weatherhead Center for International Affairs at Harvard University, Cambridge, Massachusetts.

Richard H. Steinberg is Professor of Law at the University of California, Los Angeles, and Senior Scholar in the Division of International, Comparative and Area Studies at Stanford University, Stanford, California.

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

Contributors

Volume Editors

Beth A. Simmons is Professor of Government and Director of the Weatherhead Center for International Affairs at Harvard University, Cambridge, Massachusetts.

Richard H. Steinberg is Professor of Law at the University of California, Los Angeles, and Senior Scholar in the Division of International, Comparative and Area Studies at Stanford University, Stanford, California.

Contributors

Kenneth W. Abbot is Professor of Law at Arizona State University, Tempe, Arizona.

Peter N. Barsoom is Director of Credit Card Services at Merrill Lynch, New York, New York.

Abram Chayes (1922–2000) was Professor of Law at Harvard University, Cambridge, Massachusetts.

Antonia Handler Chayes is Adjunct Lecturer in Public Policy at the John F. Kennedy School of Government at Harvard University, Cambridge, Massachusetts.

Paul F. Diehl is Professor of Political Science at the University of Illinois at Urbana-Champaign.

George W. Downs is Professor of Politics at New York University, New York, New York.

Martha Finnemore is Professor of Political Science and International Affairs at George Washington University, Washington, D.C.

Virginia Page Fortna is Assistant Professor of Political Science at Columbia University, New York, New York.

Geoffrey Garrett is Professor of International Relations at University of Southern California, Los Angeles, and President of the Pacific Council on International Policy, Los Angeles, California.

Kurt Taylor Gaubatz is Associate Professor of International Studies at Old Dominion University, Norfolk, Virginia.

Judith Goldstein is Professor of Political Science, Sakurako and William Fisher Family Director of International, Comparative and Area Studies, and The Kaye University Fellow in Undergraduate Education at Stanford University, Stanford, California.

Robert H. Jackson is Professor of International Relations and Political Science at Boston University, Boston, Massachusetts.

R. Daniel Kelemen is University Lecturer and Tutorial Fellow at Lincoln College, University of Oxford.

Robert O. Keohane is Professor of International Affairs at Princeton University, Princeton, New Jersey.

Barbara Koremenos is Assistant Professor of Political Science at the University of Michigan, Ann Arbor.

Stephen D. Krasner is Director of Policy Planning at the United States Department of State, Washington, D.C., and Professor of Political Science at Stanford University, Stanford, California.

Charlotte Ku is Executive Vice President and Executive Director of the American Society of International Law, Washington, D.C.

Jeffrey W. Legro is Associate Professor of International Relations at the University of Virginia, Charlottesville, Virginia.

Charles Lipson is Professor of Political Science at the University of Chicago, Chicago, Illinois.

Lisa L. Martin is Professor of Government and a member of the Executive Committee of The Weatherhead Center for International Affairs at Harvard University, Cambridge, Massachusetts.

Walter Mattli is the Fellow in Politics at St. John's College and Professor of International Political Economy, Oxford University, Oxford, England.

Ronald B. Mitchell is Professor of Political Science at the University of Oregon, Eugene, Oregon.

Andrew Moravcsik is Professor of Politics at Princeton University, Princeton, New Jersey.

Kal Raustiala is Professor of Law and Global Studies at the University of California, Los Angeles.

David M. Rocke is Professor of Biostatistics, Professor of Applied Science, and Co-Director of the Institute for Data Analysis and Visualization at the University of California, Davis.

Christopher Rudolph is Professor of International Politics at American University, Washington, D.C.

Heiner Schulz is Assistant Professor of Political Science at University of Pennsylvania, Philadelphia, Pennsylvania.

Anne-Marie Slåughter [Burley] is Dean of the Woodrow Wilson School of Public and International Affairs at Princeton University, Princeton, New Jersey.

James McCall Smith is Assistant Professor of Political Science and International Affairs at George Washington University, Washington, D.C.

Duncan Snidal is Associate Professor of Political Science and a member of the Committee on International Relations at the University of Chicago, Chicago, Illinois.

Stephen J. Toope is Professor of Law at McGill University, Quebec, Canada.

David G. Victor is Associate Professor of Political Science at Stanford University and director of the Program on Energy and Sustainable Development at the Center for Environmental Science and Policy, Stanford, California.

Alexander Wendt is the Ralph D. Mershon Professor of International Security and the Mershon Center Professor of Political Science at Ohio State University, Columbus, Ohio.

Mark W. Zacher is Professor Emeritus of Political Science, Senior Research Fellow at the Centre of International Relations, and Faculty Fellow, St. John's College, University of British Columbia, Vancouver, Canada.

Daniel Zamora is an associate at the law firm of Tobin & Tobin, San Francisco, California.

Abstracts

Structural Causes and Regime Consequences: Regimes as Intervening Variables (1982)
by Stephen D. Krasner

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

The Demand for International Regimes (1982)
by Robert O. Keohane

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

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

Democratic States and Commitment in International Relations (1996)
by Kurt Taylor Gaubatz

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

On Compliance (1993)
by Abram Chayes and Antonia Handler Chayes

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

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

Is the Good News About Compliance Good News About Cooperation? (1996)
by George W. Downs, David M. Rocke, and Peter N. Barsoom

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

The Concept of Legalization (2000)
by Kenneth W. Abbot, Robert O. Keohane, Andrew Moravcsik, Anne-Marie Slaughter, and Duncan Snidal

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

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

Legalized Dispute Resolution: Interstate and Transnational (2000)
by Robert O. Keohane, Andrew Moravcsik, and Anne-Marie Slaughter

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

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

Legalization, Trade Liberalization, and Domestic Politics: A Cautionary Note (2000)
by Judith Goldstein and Lisa L. Martin

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

Alternatives to "Legalization": Richer Views of Law and Politics (2001)
by Martha Finnemore and Stephen J. Toope

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

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

Quasi-States, Dual Regimes, and Neoclassical Theory: International Jurisprudence and the Third World (1987)
by Robert H. Jackson

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

Which Norms Matter? Revisiting the "Failure" of Internationalism (1997)
by Jeffrey W. Legro

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

The Territorial Integrity Norm: International Boundaries and the Use of Force (2001)
by Mark W. Zacher

Scholars and observers of the international system often comment on the decreasing importance of international boundaries as a result of the growth of international economic and social exchanges, economic liberalization, and international regimes. They generally fail to note, however, that coercive territorial revisionism has markedly declined over the past half century – a phenomenon that indicates that in certain ways states attach greater importance to boundaries in our present era. In this article I first trace states' beliefs and practices concerning the use of force to alter boundaries from the birth of the Westphalian order in the seventeenth century through the end of World War II. I then focus on the increasing acceptance of the norm against coercive territorial revisionism since 1945. Finally, I analyze those instrumental and ideational factors that have influenced the strengthening of the norm among both Western and developing countries.

Why Are Some International Agreements Informal? (1991)
by Charles Lipson

Informal agreements are the most common form of international cooperation and the least studied. Ranging from simple oral deals to detailed executive agreements, they permit states to conclude profitable bargains without the formality of treaties. They differ from treaties in more than just a procedural sense. Treaties are designed, by long-standing convention, to raise the credibility of promises by staking national reputation on their adherence. Informal agreements have a more ambiguous status and are useful for precisely that reason. They are chosen to avoid formal and visible national pledges, to avoid the political obstacles of ratification, to reach agreements quickly and quietly, and to provide flexibility for subsequent modification or even renunciation. They differ from formal agreements not because their substance is less important (the Cuban missile crisis was solved by informal agreement) but because the underlying promises are less visible and more equivocal. The prevalence of such informal devices thus reveals not only the possibilities of international cooperation but also the practical obstacles and the institutional limits to endogenous enforcement.

The Politics of Dispute Settlement Design: Explaining Legalism in Regional Trade Pacts (2000)
by James McCall Smith

Dispute settlement mechanisms in international trade vary dramatically from one agreement to another. Some mechanisms are highly legalistic, with standing tribunals that resemble national courts in their powers and procedures. Others are diplomatic, requiring only that the disputing countries make a good-faith effort to resolve their differences through consultations. In this article I seek to account for the tremendous variation in institutional design across a set of more than sixty post-1957 regional trade pacts. In contrast to accounts that emphasize the transaction costs of collective action or the functional requirements of deep integration, I find that the level of legalism in each agreement is strongly related to the level of economic asymmetry, in interaction with the proposed depth of liberalization, among member countries.

Loosening the Ties that Bind: A Learning Model of Agreement Flexibility (2001)
by Barbara Koremenos

How can states credibly make and keep agreements when they are uncertain about the distributional implications of their cooperation? They can do so by incorporating the proper degree of flexibility into their agreements. I develop a formal model in which an agreement characterized by uncertainty may be renegotiated to incorporate new information. The uncertainty is related to the division of gains under the agreement, with the parties resolving this uncertainty over time as they gain experience with the agreement. The greater the agreement uncertainty, the more likely states will want to limit the duration of the agreement and incorporate renegotiation. Working against renegotiation is noise – that is, variation in outcomes not resulting from the agreement. The greater the noise, the more difficult it is to learn how an agreement is actually working; hence, incorporating limited duration and renegotiation provisions becomes less valuable. In a detailed case study, I demonstrate that the form of uncertainty in my model corresponds to that experienced by the parties to the Nuclear Non-proliferation Treaty, who adopted the solution my model predicts.

Driving with the Rearview Mirror: On the Rational Science of Institutional Design (2001)
by Alexander Wendt

The Rational Design project is impressive on its own terms. However, it does not address other approaches relevant to the design of international institutions. To facilitate comparison I survey two "contrast spaces" around it. The first shares the project's central question – What explains institutional design? – but addresses alternative explanations of two types: rival explanations and explanations complementary but deeper in the causal chain. The second contrast begins with a different question: What kind of knowledge is needed to design institutions in the real world? Asking this question reveals epistemological differences between positive social science and institutional design that can be traced to different orientations toward time. Making institutions is about the future and has an intrinsic normative element. Explaining institutions is about the past and does not necessarily have this normative dimension. To avoid "driving with the rearview mirror" we need two additional kinds of knowledge beyond that developed in this volume: knowledge about institutional effectiveness and knowledge about what values to pursue. As such, the problem of institutional design is a fruitful site for developing a broader and more practical conception of social science that integrates normative and positive concerns.

The Dynamics of International Law: The Interaction of Normative and Operating Systems (2003)
by Paul F. Diehl, Charlotte Ku, and Daniel Zamora

This article describes the basic components of the operating and normative systems as a conceptual framework for analyzing and understanding international law. There are many theoretical questions that follow from the framework that embodies a normative and operating system. We briefly outline one of those in this article, namely how the operating system changes. In doing so, we seek to address the puzzle of why operating system changes do not always respond to alterations in the normative sphere. A general theoretical argument focuses on four conditions. We argue that the operating system only responds to normative changes when response is "necessary" (stemming from incompatibility, ineffectiveness, or insufficiency) for giving the norm effect and when the change is roughly coterminous with a dramatic change in the political environment (that is,