Ian Hurd

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Politics, Law, Practice

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Preface

This book examines the most important international organizations (IOs). It asks what obligations states take on when they join, as well as what tools of enforcement the organizations have and how states behave toward those obligations. Each chapter is organized around the three questions of obligation, compliance, and enforcement. For each organization, it examines the legal treaty that founds it and provides a detailed case study that shows how it operates in practice. The book provides an introduction to the politics of international organizations and to the international legal setting in which they exist.

The book looks at the law and politics of:

- the United Nations,
- the World Trade Organization,
- the European Union and other regional organizations,
- the International Court of Justice,
- the International Criminal Court,
- the International Labor Organization,
- the International Monetary Fund, and
- the World Bank.

International organizations begin as promises that states make to each other. Each organization is brought into being by an inter-state treaty that sets out the authority of the organization and the obligations of its members. Over time, however, they can become much more than this, and may have powers in practice which are not explicitly contained in the original treaty. In this book, we will see that international organizations can include rules and laws that limit what governments can do, courts that decide when states are breaking those rules, and sources of status and symbols for states to fight over. The organizations can also sometimes be much less than anticipated in their charters; the landscape of international treaties is thick with discarded promises. To understand the choices that states make requires that we understand the rules that shape their options and influence their decisions. This means we must understand what the main international organizations are and what they do. That is the goal of this book.

This book believes that the best pedagogy on international organizations begins by looking at *what international organizations do* rather than at what others say about them or what we might hope that they do. This concern with the practical side of international relations motivates this book. It looks at the legal structures that shape the international organizations and also at the political interests of their powerful players. It is only worth learning about international organizations if we have reason to believe that they are consequential for the crises, dilemmas, and results of international relations that matter in the world. This means putting IOs into their real-world contexts in order to see how their powers and rules influence the practice of world politics. It also means paying close attention to the charters and treaties that set up the organizations since these define the limits of their powers and so are crucial to what they can do in the world.

International organizations are central to contemporary politics. They limit state sovereignty and they also enhance it; they help define what states are and how they work. Even when countries choose to violate the rules of international organizations, they cannot ignore them. States often break their commitments but they usually incur costs by doing so, not least to their reputations, and they also often try to justify their policies with creative interpretations of the rules. Ironically, these costs and justifications help to show how seriously governments take their obligations even when they try to skirt around them. Much of what is interesting about world politics comes from how governments are at once constrained by these international organizations and yet try to use them as tools to further their own interests. This book looks at the interaction between the rules of international organizations and the governments that make them, break them, and are shaped by them.

Acknowledgments

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International organizations may represent the high ambitions of peace, equality, and sustainability, but like all political institutions they are in the end tools which can be used well or poorly, and for good purposes or bad. This book is therefore inspired by and dedicated to the individuals who strive to use, shape, and guide international organizations toward progressive outcomes.

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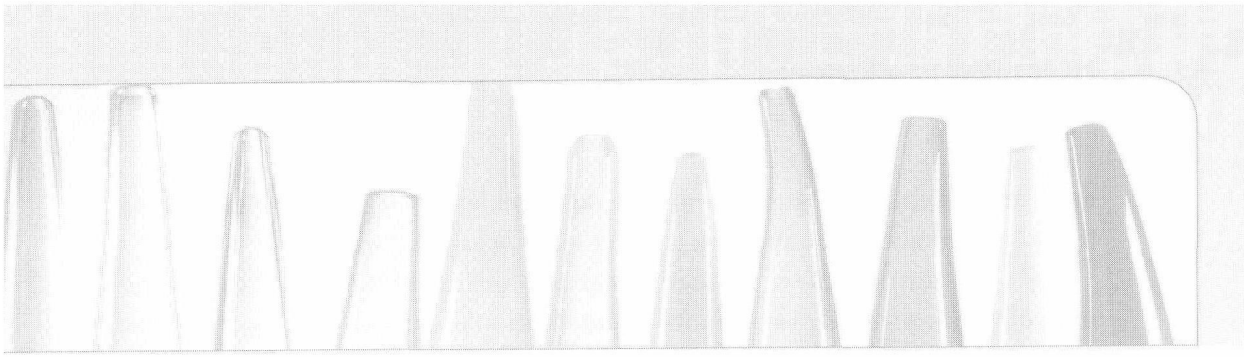

1 Introduction to international organizations

All international organizations exists in the conceptual and legal space between state sovereignty and legal obligation. They are created by the commitments made by sovereign states, and their purpose is to bind those states to their commitments. This chapter examines three forces in world politics: the commitments states make to international organizations, the choices states make regarding compliance and non-compliance with those commitments, and the powers of enforcement held by each international organization. Some international organizations are able to coerce their member states into complying with their commitments: for instance, the UN Security Council has a military component and the IMF has coercive leverage over its borrowers. But far more commonly they are left to find ways to cajole or induce compliance from their members. In each organization, the particular relationship between obligation, compliance, and enforcement is different, and these differences create interesting patterns of politics.

The main problems of international economics and international politics are at some level also problems of international organization. As interdependence increases, the importance of international organizations increases with it. We find international organizations in one form or another at the heart of all of the political and economic challenges of the twenty-first century. From international credit markets to endangered species to torture, today's leading controversies all involve some measure of international cooperation and commitment, managed through a formalized international organization (IO). Some IOs work well and some work hardly at all; some need reform, some need abolishing, and some

need strengthening. To understand how the world works requires understanding the politics, powers, and limits of international organizations.

The book introduces ten of the most important international organizations, including those most important to international economics, international security, and international law. It considers their legal powers, their practical effects, and their political controversies. The organizations are:

- the World Trade Organization (WTO),
- the International Monetary Fund (IMF),
- the United Nations (UN),
- the European Union (EU),
- the World Bank (WB),
- the International Court of Justice (ICJ),
- the International Criminal Court (ICC),
- the International Labor Organization (ILO),
- the African Union (AU), and
- the Association of Southeast Asian Nations (ASEAN).

Each chapter is structured around three key questions:

(1) What are the **obligations** that countries consent to when they join the organization?
(2) Do states in practice **comply** with these obligations?
(3) What powers of **enforcement** does the organization have?

This approach allows us to look at both the law and the politics of these organizations. It begins with an examination of the obligations that states take on when they become members of the organization. The details of these obligations come from the legal treaties and charters that found the organizations. These obligations are usually presented in clear language (for instance, the UN Charter says members must "refrain from the threat or use of force" to settle their disputes) but they inevitably leave a good deal of room for arguments over interpretation – for the Charter, we need to know much more about what counts as a "threat of force" and how self-defense should fit with this obligation. Despite the ambiguity that exists in all these commitments, we should still begin our study of international organizations by looking at what states have really committed to doing or not doing. It is only through a familiarity with the legal terms of IO treaties that we can evaluate the competing claims put forward by states regarding those obligations. States show a strong inclination to present their own behavior as fully compliant with their legal obligations, and they equally

suggest that their counterparts in a dispute are breaking the rules. Most IOs are not equipped with a legal body that has the authority to make authoritative judgments in disputes over compliance (the EU and the WTO stand out as exceptions to this rule). Most often, contestation over compliance spills over from the organization to the wider worlds of international law and international relations. International organizations are also usually given only very weak instruments of enforcement, and they rely on more subtle tools that work through persuasion, reputation, and status in order to induce compliance. As a result, the politics of compliance with international organizations are complicated and represent the fusion of international law and politics.

Obligations

The IOs in this book were all founded by inter-state treaties. These treaties spell out in explicit, "black-letter" law the goals and powers of the organization and the obligations and rules that member states must take on. When governments join international organizations, they promise to accept whatever rules or obligations are included in these treaties. These may include rules that are explicitly set out in the treaty, as when the Statute of the International Court of Justice says that decisions of the court are final and binding on the states in the dispute (Arts. 59 and 60), and they may as well include indirect obligations that arise in the course of the operation of the organization, as when the UN Charter gives the Security Council the authority to create new legal obligations on UN members (Arts. 25, 39, 49). The former are known in advance by states when they join the organization, while the latter are more open-ended and involve some risk that future practice might create obligations on states that they were not expecting. In both cases, however, it is imperative to any understanding of the role and power of the organization that we pay close attention to its founding treaty. The legal terms in each treaty are the authoritative source of the obligations that states owe to each other and will be finely parsed long into the future by diplomats, activists, and states who look to use them to serve their own purposes.

These treaties, such as the UN Charter, the IMF Articles of Agreement, and the Rome Statute of the ICC, spell out the commitments their members are taking on and the powers that are being granted to the organizations themselves. Once in place, the practice of the organizations is governed by the terms of the treaty, and the obligations of the members are defined by the commitments they made in the treaties. As a result, any examination of the powers and problems of international organizations must begin with the rules included in the treaties. These rules range from the commitment in the UN Charter to "accept and carry out the decisions of the Security Council" (Art. 25), to the commitments that states write with the International Monetary Fund that require policy changes in exchange for loans, to the promise to bring new labor conventions proposed by the International Labor Organization to one's national legislature for consideration (Art. 19 of the ILO Constitution).

When assessing the impact of international organizations, we must be realistic about these obligations. It is easy to criticize the UN General Assembly, for instance, on the grounds that it passes many resolutions with substantive clauses that are ignored by UN member states. However, this complaint makes little sense when we remember that the UN Charter gives the General Assembly (GA) only the power to "make recommendations" to states, and does not give it the power to take decisions or impose new obligations (Art. 10). UN members do not commit themselves to carry out General Assembly resolutions; these resolutions are not legally binding obligations. As we shall see in Chapter 5, many of the UN's member states would likely not have joined the organization if the General Assembly had been given the power to compel them through binding resolutions. The existence of the GA, and its majority-rule voting system, is premised on it being a body that makes recommendations rather than one that takes decisions. The Assembly's influence therefore cannot realistically be assessed by measuring compliance and non-compliance with its resolutions – we need instead to use tools that notice the subtle power it has to define legitimate and illegitimate behavior, and the contribution this makes to the broader political environment of state behavior. Similarly, it is difficult to understand US behavior toward the International Criminal Court without close attention to the how the Rome Statute defines the powers of the Court relative to the states that are its members.[1] The US helped create the Court, and has a strong affinity for the goals of the organization. It has used it via the UN Security Council with respect to Sudan and Darfur. And yet it is highly ambivalent toward the organization itself. It has refused to become a member and for many years it actively punished other states who did choose

to become members. These apparently contradictory positions toward the ICC can be reconciled by looking at the particular obligations of members set out in the Rome Statute: the American view is that the Rome Statute gives too much autonomy to the ICC's prosecutor and judges. A complex balance between state power and prosecutor's power is defined deep in the fine print of the treaty. The technical language in the Statute where states' obligations are defined has outsized political implications in international relations.

Compliance

With a well-grounded understanding of the legal obligations of states, we can then consider why, when, and how well states comply with those obligations. Compliance is almost always looked at as a choice of states, but this book also looks at how IOs might shape world politics in ways that are not understood by the imagery of "choice." There are two moments where state consent is explicit in and around international organizations: at the moment of joining the organization and at the point where states see the opportunity to follow or to violate its rules.

It is common to think about international organization at those moments where a state is faced with strong incentives to go against some rule of an international organization. This is often in the context of an international crisis where a country wants to violate the rules. This was the case, for instance, with the American decision to invade Iraq in 2003 despite the fact that the UN Security Council refused to grant the necessary authorization. These are often dramatic moments as they pit state choices directly against international rules. Not surprisingly, the record of state compliance with IOs at such moments is mixed: given sufficient incentive, states are often willing to ignore their legal obligations – though we should not ignore those very interesting (and probably equally frequent) instances where states choose to comply despite the incentive to violate. The chapters which follow examine these moments of choice, where states are faced with a choice between compliance and violation. However, they also do more by examining how international organizations have a prior

influence over the resources with which states conduct their disputes and how state behavior is understood.

The focus on these moments of explicit consent or choice by states does not account for everything of interest that passes in the relationship between states and international organizations. Therefore, each chapter of this book also looks at more subtle ways that international organizations influence compliance by states and other actors in world politics. Many of the interesting effects that IOs have on states occur in a different register than that of conscious strategic choice – the organizations in this book all operate in part by shaping the environment in which states exist, the interests and goals states have, and the background sense of what is reasonable and normal in international politics. For instance, the decisions of the UN Security Council over the years have helped construct the idea of humanitarian intervention and as a result the international response to new crises is heavily conditioned by this idea and by its limits.[2] Similarly, the ICJ advisory opinion on the legality of the Israeli wall was not legally binding on Israel but it contributed to shaping the political environment in which Israel has pursued its policies. These effects can sometimes be subtle, but they are an important component of the practical life of modern international relations and they must be taken into account as we consider the effects of IOs in the world. As we consider state compliance with international organizations, we need to be attentive to these more subtle effects as well as the more dramatic moments where states choose to violate or comply with their obligations.

Enforcement

Few international organizations are authorized to take effective enforcement action against state members who fail to live up to their obligations. A few have robust means of enforcing the rules against violators: for instance, the IMF can withhold further loans from a non-compliant state; the UN Security Council can authorize military action against a state that threatens international peace and security (such a threat is by itself a violation of the Charter);

and the WTO can authorize trade sanctions against members who violate their commitments. But the more normal condition is that members face at most a very indirect threat of punishment for their violations – for instance, the threat of a loss of reputation that might come from being publicly branded as a rule-breaker.[3] IO enforcement often involves playing on the apparent desire of states to be seen by their colleagues in a positive light, as good international citizens. This may be very powerful indeed, but it follows a different logic than more direct kinds of enforcement threats.

The absence of direct enforcement power is often held up as evidence of the irrelevance, or at least the marginal importance, of international organizations and as a justification for paying little attention to their rules and decisions. Without the threat of enforcement, why would states ever concede to international organizations when their interests point in the direction of violation? It is easy to dispense with this objection on empirical grounds – that is, it is easy to show that states do indeed often comply with international organizations despite the lack of enforcement. What is harder to explain is *why* they do it. For example, most countries that lose a case at the International Court of Justice end up changing their policies as required by the Court despite the fact that the ICJ's powers of enforcement are essentially nil.[4] *Why* this result obtains is hard to know. It may be that states feel highly committed to the idea of the rule of law and so they are naturally motivated to follow through with Court rulings. It may be that states fear that other countries will be less inclined to enter into agreements with them if they are thought to have reneged on commitments in the past. It may be that the only cases that make it all the way through the ICJ process are ones that the parties are comfortable having resolved by the Court, in which case the compliance rate is merely an artifact of the selection process that filters its cases. Any of these mechanisms might produce the high rate of "compliance without enforcement" that we observe around the ICJ. They differ greatly, though, in what they mean for the power and authority of the Court. And to figure out which one is the correct explanation for any particular case requires a close look at the working of the ICJ and at the details of the case and its parties. This kind of examination is done in Chapter 8 of this book.

Sovereignty and consent

The tensions between state obligations and state sovereignty provide the fuel that drives world politics in and around international organizations. State sovereignty is defined by the legal and normative framework that says states

are the final authority over their territory and the people within it. States are sovereign in the sense that they are not subject to any higher political or legal authority. As a result, they have the exclusive right to make decisions over all domestic matters without interference from the outside, and attempts by other states to apply their laws or policies across the border are usually seen as illegal and possibly aggressive moves of extra-territoriality. The laws and practices of state sovereignty lead to a clear distinction between domestic and foreign affairs. This is as clear (in concept, at least) as the borders on the map that delineate physical territory into separate countries. Sovereignty is an international institution in the broadest sense of the word "institution": it is a set of rules that organizes social and political practice. It is not, however, a formal organization as I use the term in this book. The institution of sovereignty demarcates a domestic realm in which states have absolute authority and an international realm in which the problems of interdependence get worked out. In practice, of course, there is always some room for argument about the limits of the domestic sphere, and of the absoluteness of sovereignty over domestic affairs themselves, and we shall see in the following chapters that a good deal of the work of international organizations arises because of these arguments. For instance, since changes in one state's domestic monetary policy such as the interest rate can have large and immediate effects on the economic conditions in other states, it is not self-evident how to draw the line between the rights of one state to set its own interest rate and the rights of others to be independent from outside influence. The principle of non-intervention is a logical corollary of state sovereignty. It is clear what non-intervention means when it comes to military invasion from the outside, but its implications are less clear when it comes to the more complex forms of cross-border influence that arise under "complex interdependence."[5] The demand for international organizations arises due to the unavoidable interdependencies between states, and their utility is measured by their contribution to managing them.

Because states are understood to be the highest political and legal authorities in the modern states system, the rules of international law and of international organizations are always subordinate to the rights of states. This creates many of the tensions that animate world politics. To the extent that international laws exist, they exist because states have consented to them, and (for the most part) international laws apply only to those states that have consented to them. State consent is therefore the crucial element that brings international obligations into existence. Possible exceptions do exist: for instance, the UN Charter includes a clause that requires that members of the organization "shall ensure

that states which are not Members of the United Nations act in accordance with" the principles of the UN Charter (Art. 2(6)). This article is written carefully so that it creates a legal obligation on members rather than non-members, and is therefore consistent with the traditional interpretation of sovereignty, but its effect is to set some standards of behavior on non-members. Its status is provocatively ambiguous. As a general rule, however, international organizations create obligations on states only because the states have agreed to be bound by them. Under the system of state sovereignty, states are free to withhold or to withdraw their consent to these rules as they see fit. This leads to the familiar problem of international organization (and of international law more generally) of figuring out how an IO can enforce its rules against a member state whose subordination under the rules rests on its consent to them. State sovereignty both empowers international law (when states consent to be bound by the rules of an international organization) and undermines it (when states withdraw or withhold that consent and so the rule ceases to apply to them). All of the politics, practice, and law of international organizations takes place in the puzzling shadow of state consent.

State consent is involved in international organizations at two distinct moments. First, states must choose whether to join the organization or not. Each state has the right to make this choice based on its assessment of its own interests (though of course the organization and its existing members may set rules on which states they will accept as members). Switzerland, for instance, for many years declined to join the United Nations, changing its mind only in 2002. When a state refuses to join an organization, it generally has no legal obligation to pay any attention to what it says.[6] Second, after joining an international organization, states have a choice each time they are confronted with the need to comply or not comply with its rules. These two kinds of choices lead to very different assessments about violation and compliance: states are violating their international obligations when they break rules that they have already consented to, but it cannot be said that they are breaking the rules if they have chosen not to join the organization in the first place. The need to consent means that states can choose to violate international rules and they can also choose to make the rules not apply to them. The second form cannot really be called a violation of international law.

The difference is interesting in the practice of world politics. For instance, Canada has long accepted that the International Court of Justice would have automatic jurisdiction over its disputes with any other state that had similarly accepted this automatic jurisdiction. This is known as an "optional clause"