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LEGALIZATION OF DEVELOPMENT IN THE WTO

BETWEEN LAW AND POLITICS

By
Amin Alavi



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Between Law and Politics

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Abbreviations

ACWL	Advisory Centre on WTO Law
AD	Anti-Dumping Agreement
AG	Agreement on Agriculture
AITIC	Agency for International Trade Information and Co-operation
ASEAN	Association of Southeast Asian Nations
CVD	Countervailing Duties
DG	Director-General
DSB	Dispute Settlement Body
DSM	Dispute Settlement Mechanism
DSU	Dispute Settlement Understanding
EC/EU	European Community/European Union
ECJ	European Court of Justice
GATT	General Agreement on Tariffs and Trade
GATS	General Agreement on Trade in Services
GC	General Council
GSP	Generalized System of Preferences
ICJ	International Court of Justice
ICTSD	International Centre for Trade and Sustainable Development
ILO	International Labour Organization
IMF	International Monetary Fund
IO	International Organization
ITO	International Trade Organization
LA	Licensing Agreement
LDC	Least-Developed Country
MFN	Most-Favoured Nation Treatment
NGO	Non-Governmental Organization
NIEO	New International Economic Order
NT	National Treatment

S&DT	Special and Differential Treatment
SCM	Agreement on Subsidies and Countervailing Measures
SG	Safeguard Agreement
SSA	Sub-Saharan Africa
TRIMs	Agreement on Trade-Related Investment Measures
TRIPs	Agreement on Trade-Related Aspects of Intellectual Property Rights
UK	United Kingdom
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
US	United States of America
USSR	Union of Soviet Socialist Republics
VCLT	Vienna Convention on Law of Treaties
WHO	World Health Organization
WTO	World Trade Organization
WWI	World War One
WWII	World War Two

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Chapter 1

Introduction

1.1 THE CONTEXT

Many issue areas in the international sphere have become subject to regulation since World War II, as reflected in the large number of formal arrangements established by states, such as inter-governmental organizations.¹ This indicates that to an increasing degree, states are basing their cooperation on rules. In many cases, the rules are defined in treaties which are the backbone of formal international organizations. By becoming members of these organizations or signing the treaties, states commit themselves to follow the rules they contain, in accordance with the principle of *pacta sunt servanda* (Latin for ‘pacts must be respected’). This has invited both legal and political scholars to study rule-based inter-governmental cooperation.

For lawyers, treaties and their rules are one of the main sources of international law,² whereas international relations scholars regard these legal arrangements as a growing trend in international politics that must be understood: the

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1. J. Pavhouse, et al., ‘International Governmental Organizations’, in *The Politics of Global Governance*, ed. P.F. Diehl (Boulder: Lynne Rienner Publishers, Inc., 2005), 9-24.
 2. The main sources of international law are stated in Art. 38.1 of the Statute of the International Court of Justice (ICJ), which states that ‘The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:
 - (a) international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
 - (b) international custom, as evidence of a general practice accepted as law;
 - (c) the general principles of law recognized by civilized nations;
 - (d) subject to the provisions of Art. 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law’. (See Ch. 2.)

legalization of the international sphere.³ Basically, these two lines of enquiry deal with the same issues and ask similar questions: how do regulated issue areas work? How do states safeguard their interests? What role do rules play in the international system?

However, since law and politics are two faces of the same coin, neither of these two disciplines is by itself able to offer a complete account of our international system. While some scholars, mainly lawyers, confronted with the respect of states for international law, but faced with many situations in which states do not comply with the rules, seek reasons for non-compliance,⁴ other scholars, mainly political scientists, ask why states *do* comply with rules.⁵ Thus, one has to combine the two disciplines to provide a more complete picture of the legalization

3. J.N. Clarke, et al., *Global Governance in the Twenty-First Century* (New York: Palgrave, 2004); M. Finnemore, et al., 'Alternatives to "Legalization": Richer Views of Law and Politics', *International Organization* 55, no. 3 (2001): 743-758; J. Goldstein, et al., 'Introduction: Legalization and World Politics', *International Organization* 54, no. 3 (2000): 385-399; R.O. Keohane, *Power and Governance in a Partially Globalized World* (London: Routledge, 2002); J.G. Ruggie, *Constructing the World Polity: Essays on International Institutionalization* (New York: Routledge, 1998); M. Shapiro, et al., *On Law, Politics, & Judicialization* (New York: Oxford University Press, 2002); A. Stone Sweet, 'Judicialization and the Construction of Governance', *Comparative Political Studies* 32, no. 2 (1999): 147-184.
4. E. Benvenisti, et al., *The Impact of International Law on International Cooperation: Theoretical Perspectives* (Cambridge: Cambridge University Press, 2005); L. Henkin, *International Law: Politics and Values* (Dordrecht: Martinus Nijhoff Publishers, 1995); D.E. Ho, 'Compliance and International Soft Law: Why Do Countries Implement the Basle Accord?' *Journal of International Economic Law* 5, no. 3 (2002): 647-688; H.H. Koh, 'Why Do Nations Obey International Law?' *The Yale Law Journal* 106, no. 8 (1997): 2599-2659; D. Shelton, *Commitment and Compliance: The Role of Non-binding Norms in the International Legal System* (Oxford: Oxford University Press, 2003); D. Shelton, 'Law, Non-Law and the Problem of "Soft Law"', in *Commitment and Compliance*, ed. D. Shelton (Oxford: Oxford University Press, 2003), 1-18; E.B. Weiss, 'Rethinking Compliance with International Law', in *The Impact of International Law on International Cooperation: Theoretical Perspectives*, eds E. Benvenisti, et al. (Cambridge: Cambridge University Press, 2004), 134-165.
5. J.E. Alvarez, *International Organizations as Law-Makers* (Oxford: Oxford University Press, 2005); A. Chayes, et al., *The New Sovereignty: Compliance with International Regulatory Agreements* (Cambridge: Harvard University Press, 1995); A. Chayes, et al., 'On Compliance', *International Organization* 47, no. 2 (Spring 1993): 175-205; J.T. Checkel, 'Why Comply? Constructivism, Social Norms and the Study of International Institutions' (1999), on file with the author; G.W. Downs, et al., 'Reputation, Compliance, and International Law', *Journal of Legal Studies* 31 (Jan. 2002), 95-114; G.W. Downs, et al., 'Is the Good News about Compliance Good News about Cooperation?', in *International Institutions: An International Organization Reader*, eds L.L. Martin, et al. (Cambridge: The MIT Press, 1996), 279-306; P.M. Haas, 'Choosing to Comply: Theorizing from International Relations and Comparative Politics', in *Commitment and Compliance*, ed. D. Shelton (Oxford: Oxford University Press, 2003), 43-64; B.A. Simmons, 'Compliance with International Agreements', in *International Law: Classic and Contemporary Readings*, eds C. Ku, et al. (Boulder: Lynne Rienner Publishers, 1998), 181-199; J. Tallberg, 'Paths to Compliance: Enforcement, Management, and the European Union', *International Organization* 56, no. 3 (2002): 609-643; O.R. Young, 'Compliance in the International System', in *International Law: A Contemporary Perspective*, eds R.A. Falk, et al. (Boulder: Westview Press, 1977), 99-112.