

International Law

This week's readings:

- Simmons, Beth A. (2000). "International Law and State Behavior: Commitment and Compliance in International Monetary Affairs." *American Political Science Review* 94(4): 819–835.
 - von Stein, Jana. (2005). "Do Treaties Constrain or Screen? Selection Bias and Treaty Compliance." *American Political Science Review* 99(4): 611–622.
 - Huth, Paul K., Sarah E. Croco, and Benjamin J. Appel. (2011). "Does International Law Promote the Peaceful Settlement of International Disputes? Evidence from the Study of Territorial Conflicts since 1945." *American Political Science Review* 105(2): 415–435.
-

Big questions:

1. Does international law actually shape state behavior in an anarchic system?
2. Why do states comply with international legal obligations, especially when enforcement is weak?
3. How do different theories explain the relationship between international law and state actions?

What is International Law?

International law refers to the body of rules generally regarded and accepted as binding in relations between states and between nations. There are two main types:

- **Codified International Law:** Written agreements, primarily treaties, where states explicitly establish rules and obligations (e.g., UN Charter, Geneva Conventions, Law of the Sea).
- **Customary International Law:** Rules derived from the general and consistent practice of states followed out of a sense of legal obligation (*opinio juris*), even without a formal treaty (e.g., diplomatic immunity, prohibition of genocide before the Genocide Convention).

Key Institutions

- **International Court of Justice (ICJ):** The principal judicial organ of the UN. Adjudicates disputes **between states**. Enforcement relies on the UN Security Council.
- **International Criminal Court (ICC):** Prosecutes **individuals** for the most serious international crimes (genocide, crimes against humanity, war crimes). Relies on national cooperation for enforcement and faces criticisms of bias (e.g., anti-African bias).

Does International Law Constrain States?

A central question in IR is whether international law (IL) genuinely influences state behavior or merely reflects existing state interests and power dynamics.

The Case for IL's Influence

Some scholars argue IL **does** constrain states and facilitate cooperation:

- **Reputation and Credibility (Simmons, 2000):** States commit to IL (like IMF Article VIII on monetary policy) to signal their intentions and build credibility, particularly with markets. Violating commitments incurs reputational costs, making compliance more likely. Market forces and regional norms can act as enforcement mechanisms. Commitment raises the costs of policy reversal.

- **Focal Points and Bargaining (Huth, Croco, Appel, 2011):** IL provides focal points that **help states coordinate expectations** and overcome bargaining problems, especially in complex disputes like territorial conflicts.
 - Widely known legal principles clarify issues and reduce information problems.
 - When legal principles are clear and one state has an asymmetric legal advantage, IL provides bargaining leverage and facilitates peaceful settlement. This effect can be stronger than military advantage in promoting peaceful resolution.
 - IL offers a common standard for evaluating claims, moving beyond pure power politics.
- **Domestic Politics:** IL can empower domestic constituencies who favor compliance, embedding international norms into domestic law and politics. Democratic leaders with weak legal claims may prefer third-party adjudication (like the ICJ) to **provide domestic political cover for concessions** (Huth et al., 2011).

The Skeptical Take: Selection Bias and Screening (von Stein, 2005)

Critics argue that observed compliance doesn't prove IL's constraining power:

- **Selection Effects:** States tend to sign treaties that align with their existing interests or policies they would have pursued anyway (Downs, Rocke, Barsoom 1996; von Stein 2005). High compliance rates might simply reflect this selection process, not the law's independent influence.
- **Endogeneity:** The decision to sign a treaty is not random; it's influenced by factors (observable and unobservable, like "political will" or commitment to norms) that also affect compliance.
- **von Stein's Re-analysis of Simmons:** Using statistical methods to control for selection bias, von Stein finds that the independent constraining effect of IMF Article VIII commitment is significantly overstated. Much of the observed compliance is attributable to the underlying factors that led states to sign in the first place.
- **Screening vs. Constraining:** IL might function less by imposing *ex post* costs for violation (constraint) and more by acting as a screening device. The costs or requirements for joining an agreement might deter states unlikely to comply, ensuring that signatories are already predisposed to compliance (*ex ante* screening).

Why Comply (or Not)? Mechanisms and Factors

Beyond the core debate, several factors influence compliance:

- **Enforcement:** Often weak and decentralized. Relies on reciprocity, reputation, domestic enforcement, or action by international bodies (often hampered by power politics, e.g., UNSC veto).
- **State Capacity:** Compliance requires administrative, technical, and financial resources. States may fail to comply not out of defiance, but due to lack of capacity (Simmons case studies mention this; slides highlight it).
- **Regime Type:** Democracies, particularly those with strong rule of law and independent judiciaries, may be more likely to internalize and comply with IL (Simmons 2000; Huth et al. 2011).
- **Clarity and Asymmetry:** As Huth et al. argue, the clarity of legal principles and the asymmetry of legal claims significantly impact IL's effectiveness in resolving disputes.

International Law in Practice

Despite debates about its effectiveness, IL is invoked constantly in international affairs:

- **Israel-Gaza Conflict:** IL concepts like self-defense, proportionality, war crimes, and genocide are central to debates and legal actions (e.g., ICJ case brought by South Africa).
- **Ukraine War:** Issues of aggression, sovereignty, war crimes, and potential ICC action against individuals are prominent.
- **South China Sea:** Disputes involve interpretations of the UN Convention on the Law of the Sea (UNCLOS) regarding maritime boundaries and territorial claims.
- Even states often accused of violating IL frequently attempt to justify their actions using legal arguments, suggesting they feel some need to pay lip-service to its norms (Slides).

Conclusions

- The effectiveness of international law remains a contested topic in IR.
- Proponents emphasize its role in building reputation, providing focal points for cooperation, and influencing domestic politics.
- Skeptics highlight selection bias, arguing that compliance often reflects pre-existing interests rather than legal constraint, and suggest IL may function more as a screening mechanism.
- Factors like state capacity, regime type, clarity of rules, and the specific issue area all mediate the impact of international law.
- Despite enforcement challenges, IL provides a crucial framework and language for international interactions and dispute resolution.