

International Law

Academic year 2021-2022

Compliance with International Law: Theories and Mechanisms

DI128 - Autumn - 6 ECTS

Monday 10h15 - 12h00

Course Description

Although international law lacks centrally organized enforcement mechanisms, it is generally assumed that international law is largely complied with. Why this is so is, however, less straightforward. This course will critically examine the main theories of compliance that have been offered in the literature and closely study the mechanisms of compliance available in international law. The ultimate objective is to problematize and refine the very notion of compliance with international law and reflect on its relevance as an indicator of the impact of international law in international affairs.

> PROFESSOR

[Fuad Zarbiyev](#)

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> ASSISTANT

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Syllabus

ASSESSMENT

Assessment for this course will be based on an individual research paper (80 %) and the performance of each student as discussant for a research paper presented by another student (20 %). Topics on offer will be distributed prior to the second session. Students should come to the second session prepared to choose a topic for their research paper among those that are on offer or suggest a topic relating to one of the broad themes of the seminar. Before the third session each student should choose a research paper for which they will serve as discussant. More information about the requirements regarding the structure and content of the research papers and the role of discussants will be provided during the introductory session.

While class participation is wholeheartedly encouraged, it is not part of the grading. However, I am enough of an idealist to believe that grades are not the only driving factor for students. By taking the pressure of grading out of the equation, I expect that everyone will feel encouraged to participate in class discussions and contribute to making the seminar a success.

SESSIONS

1. Unpacking the Concept of Compliance in International Law I

27 September

- Jean Carbonnier, Effectivité et Ineffectivité de la Règle de Droit, L'Année sociologique (1940/1948-), 1957-58, Troisième série, Vol. 9 (1957-58), pp. 3-17
- Louis Henkin, How Nations Behave, New York: Published for the Council on Foreign Relations by Columbia University Press (1979), pp. 39-49
- Benedict Kingsbury, *The Concept of Compliance as a Function of Competing Conceptions of International Law*, Mich. J. Int'l L., (19) 345, (1998), pp.345-372
- Georges Perec, "Approaches to What?", in Ben Highmore (ed), The Everyday Life Reader, Routledge (2002), pp. 176-178
- Kal Raustiala & Anne-Marie Slaughter, International Law, International Relations and Compliance, in Walter Carlsnaes, Thomas Risse and Beth A.Simmons (eds), Handbook of International Relations, Sage (2002), pp.538-558
- Kal Raustiala, "Compliance & Effectiveness in International Regulatory Cooperation", Case Western Reserve Journal of International Law, Vol. 32, No. 3 (2000), pp. 387-440 **only pp. 387-399*

2. Unpacking the Concept of Compliance in International Law II

4 October

- Jeffrey L. Dunoff, "Is Compliance an Indicator for the State of International Law?", in Heike Krieger, Georg Nolte and Andreas Zimmermann (eds), The International Rule of Law: Rise or Decline? Foundational Challenges, Oxford University Press (2019), pp. 183-203
- Robert Howse & Ruti Teitel, Beyond compliance: rethinking why international law really matters?, Global Politics, 1 (2010), 127-136
- Michael Reisman, The Quest for World Order and Human Dignity in the Twenty-first Century: Constitutive Process and Individual Commitment, General Course on Public International Law (Volume 351), 2012, pp. 87-94
- Jacob Katz Cogan, Noncompliance and the International Rule of Law, Yale Journal of International Law, Vol.31(1) (2006), pp.189-210
- Robert E Goodin, Toward an International Rule of law: Distinguishing International Law-Breakers from would-be law-makers, Journal of Ethics, 9 (2005), pp.225-246

3. Reputation

11 October

- Rachel Brewster, "Unpacking the State's Reputation", Harvard International Law Journal, Vol. 50, No. 2 (2009), pp. 231-270
- Kristina Daugirdas, "Reputation as a Disciplinarian of International Organizations", The American Journal of International Law, Vol. 113, No. 2 (2019), pp. 221-271
- Andrew T Guzman, How International Law Works: A Rational Choice Theory, Oxford University Press (2008), Chapter 3, pp. 71-118
- Fuad Zarbiyev, International Law in an Age of Post-Shame, ESIL Reflections, Vol.9:3 (2020)

4. Reciprocity

18 October

- Robert O Keohane, "Reciprocity in International Relations", *International Organization*, Vol. 40, No. 1(Winter 1986), pp. 1-27
- Francesco Parisi and Nita Ghei, "The Role of Reciprocity in International Law", *Cornell International Law Journal*, Vol. 36, No. 1 (2003), pp. 93-124
- Michel Virally, "Le Principe de Réciprocité dans le Droit International Contemporain", *Recueil des Cours* (1967), pp. 22-97

5. Retaliation

25 October

- Denis Alland, "Countermeasures of General Interest", *European Journal of International Law*, Vol. 13, No. 5 (2002), pp. 1221-1239
- Lori Fisler Damrosch, "Enforcing International Law through Non-forcible Measures", *The Hague Academy Collected Courses* (1997), pp. 41-101
- International Law Commission (ILC), *Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries* (2001), Articles 22 and 49 and Commentary thereto

6. Legitimacy

1 November

- Daniel Bodansky, "Legitimacy in International Law and International Relations", in Jeffrey L Dunoff and Mark A Pollack (eds), *Interdisciplinary Perspectives on International Law and International Relations. The State of the Art*, Cambridge University Press (2012), pp. 321-341
- Thomas M Franck, "Legitimacy in the International System", *American Journal of International Law*, Vol. 82, No. 4 (1988), pp. 705-759

7. Socialization as a Compliance Tool

8 November

- Ryan Goodman and Derek Jinks, *Socializing States: Promoting Human Rights through International Law*, Oxford University Press (2013), Chapter 2, Chapter 3, Chapter 4 & Chapter 8

8. The Domestic Constituency Mechanism

15 November

- Karen J Alter, *The New Terrain of International Law: Courts, Politics, Rights*, Princeton University Press (2014), pp. 52-58 and pp. 344-350
- Karen J Alter, *Establishing the Supremacy of European Law: the Making of an International Rule of Law in Europe*, Oxford University Press (2003), Chapter 2

- Xinyuan Dai, “Why Comply? The Domestic Constituency Mechanism”, *International Organization*, Vol. 59, No 2 (2005), pp. 363-398
- Beth A Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics*, Cambridge University Press (2009), pp. 125-148

9. Self-Reporting and Peer-Review: The Case of Human Rights

22 November

- Cosette Creamer & Beth A. Simmons, *The Proof Is in the Process: Self-Reporting Under International Human Rights Treaties*. *American Journal of International Law*, 114(1) (2020), 1-50
- Valentina Carraro, *Promoting Compliance with Human Rights: The Performance of the United Nations’ Universal Periodic Review and Treaty Bodies*, *International Studies Quarterly*, Vol. 63, no. 4 (2019), pp.1079-1093
- Walter Kälin, “Examination of State Reports”, in Helen Keller and Geir Ulfstein (eds), *UN Human Rights Treaty Bodies: Law and Legitimacy*, Cambridge University Press (2012), pp. 16-72

10. Presentations

29 November

11. Presentations

6 December

12. Presentations

13 December

13. Presentations

20 December
