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## Book Review, International Organizations: Politics, Law, Practice (2010)

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## BOOK REVIEW

INTERNATIONAL ORGANIZATIONS: POLITICS, LAW, PRACTICE. BY IAN HURD.  
CAMBRIDGE, NEW YORK: CAMBRIDGE UNIVERSITY PRESS, 2011. PP. IX, 282.  
INDEX. \$90, CLOTH; \$42, PAPER

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The study of international organizations (IOs) as well as the law governing them remains a growth field over sixty-five years after the creation of the United Nations. Spurred by the increasing number of IOs, their varied institutional forms, and their success in legalizing disputes that merely decades ago would have been chiefly political issues, scholars from a variety of disciplines have sought to improve our understanding of when and how IOs facilitate international cooperation. *International Organizations: Politics, Law, Practice* is a volume intended to introduce a nonspecialist, graduate student, or practitioner to this field. The author, Ian Hurd, is an associate professor of political science at Northwestern University, and he approaches his study from an international relations perspective. But Hurd is a political scientist (and one of many) thinking seriously about how law and politics relate in the international arena. The essential thesis of his book is that IOs, and their relationships to the states that create them, must be understood in the first instance as creatures of their constitutive legal documents. By integrating this legal perspective into the broader study of the relationship between states and IOs, Hurd hopes to “transcend[] the distinction between the global government and governance” (p. 12), where the former is the domain of formal international organization scholarship and refers to the “particular rules that define or issue from a specific legal body” and the latter refers to the “broad range of rules and actors that make up the international regime on an issue” (p. 11).

In this endeavor, Hurd succeeds. His book deftly marries the analysis of the rights and obligations created by international agreements with the broader political environment in which those rights and obligations are exercised. Eight of the book’s eleven chapters are devoted to explaining the international agreements creating and controlling the operation of individual IOs. The book situates these legal structures in the political context that determines much of state behavior and suggests lessons as to what legal tools are likely to generate cooperation in particular political circumstances. The chapters are nuanced and contain insights of interest to both the novice and the veteran scholar of IOs. The book is thus valuable as a review of the intersection of two fields--international law and international organization--as well as an introduction to the complicated ways in which law and politics interact in IOs.

Chapter 1 sets forth the framework that Hurd applies to the IOs he studies. His inquiry is organized around three questions: To what obligations do states consent when they join an organization? Do states in practice comply with these obligations?

What powers of enforcement does the organization have? This framework places Hurd's book within the broader "compliance" literature in international law and international relations. This literature is generally characterized first by asking a legal question--what obligations does international law impose on states?--and second by examining whether and under what political, legal, and economic conditions states satisfy their legal obligations. At its most basic, the compliance framework does not require IOs at all, focusing as it does on the relationship between state behavior and legal rules. Hurd's book enriches the basic compliance framework by expressly introducing IOs as entities to which states owe obligations and which, in turn, can play a role independent of substantive rules of conduct in promoting compliance with those rules. Hurd also takes an expansive notion of how relationships between IOs and states promote compliance. He notes, for example, that while it is conventional to think of compliance as a series of conscious choices made at discrete points of crisis, much of the work of IOs in furthering compliance is done in quieter moments and in subtler ways.

Hurd's emphasis on compliance as the appropriate lens through which to understand the relationship between international law and IOs on the one hand and state behavior on the other is standard fare in international law and international relations, and for good reason. Institutions and the various kinds of sanctions that they coordinate or impose can change behavior. And while certain kinds of costs can be imposed in the absence of a legal violation, sanctions can be less costly to apply, and therefore more effective, when they are legally authorized. This increased effectiveness is due both to the perceived legitimacy of legal process and to the fact that having, for example, the WTO or the UN Security Council authorize sanctions may reduce reputational costs or retaliatory sanctions to which the sanctioning state itself might otherwise be subject. Even in the absence of sanctions, procedures for evaluating compliance may generate changes in state behavior through learning or by suggesting ways in which resources can be reallocated to improve compliance efforts. Assessments of compliance are thus a critical component of the legal processes that change the incentives for state behavior. The significance of compliance to law also means that data on compliance are relatively abundant, making it useful as a dependent variable in studies of the effect of international law.

Compliance as a behavioral concept is not without its limitations, however. As Hurd recognizes, if one is ultimately interested in how IOs or international law more generally changes state behavior, one cannot simply look to whether states comply with legal rules. International legal rules are an outcome of the political dynamics among states, and, thus, showing a correlation between acceptance of legal rules and compliance with those rules does not eliminate the possibility that states simply agreed to rules with which they would have complied in the absence of a legal obligation. More complicated measures of the effect of IOs and legal rules ask about the degree of change in states' behavior as a result of the legal rule, regardless of whether the states' behavior ultimately satisfies a legal standard. Measuring this type of "effectiveness" of legal rules can be very difficult, however, as it requires a counterfactual assessment of what a particular state would have done in the

absence of a legal obligation.

Compliance is thus a convenient, but imperfect, metric for thinking about the effect of law on behavior. It sits uncomfortably at the intersection of international law and international relations. On the one hand, the concept of compliance is critical for the functioning of legal processes that create incentives for states to change behavior. On the other hand, the concept is fraught with peril when used to make causal claims about the behavioral effects of legal rules because the concept tells us nothing about how states would have behaved in the absence of a legal rule.

The concept of compliance suffers from another potential shortcoming in that it can sometimes suggest that the legality of a course of conduct can be determined in a binary fashion, by which I mean a particular action can be classified as clearly lawful or clearly unlawful. To be sure, a binary notion of compliance is useful, and indeed necessary, in a variety of legal contexts. Tribunals are often required to apportion blame and, in doing so, to reduce a complicated set of facts and relationships to a binary question of legal responsibility. But one should not lose sight that the legal determinacy suggested by binary resolutions of disputes is often a fiction. Even international tribunals and dispute resolution processes often seek to clarify the law for the purposes of facilitating an ultimate resolution through interstate negotiations. For example, in the *Gabčíkovo-Nagymaros Project* case, the International Court of Justice directed the parties to negotiate a final resolution to their dispute over the water flow from the Danube in light of the Court's decision, rather than directing a particular resolution.<sup>1</sup> Opinions such as that in *Gabčíkovo-Nagymaros*, as well as efforts to satisfy the Court's directive to negotiate a resolution, belie the notion that compliance can be understood purely by measuring behavior against a legal rule. Law is often indeterminate, and thus states and IOs are constantly involved in a process of negotiating the law's meaning. The task of assessing and enforcing compliance--Hurd's latter two concerns--is thus complicated by the fact that states frequently assess compliance and renegotiate the terms of cooperation simultaneously.

Hurd is, of course, very aware of this limitation of the concept of compliance and, as noted above, expressly averts to broader notions of legal process that lawyers often associate with compliance. In describing constructivism, Hurd notes that the process of interpreting and internalizing legal rules has the effect of remaking the rules' meaning. Moreover, his case studies are rife with disputes in which defining the legal obligation was as important as measuring compliance. But given Hurd's focus on the legal powers of IOs, one might have expected a fuller discussion of the other legal processes that international agreements and IOs establish for contesting and renegotiating legal rules. The resolution of indeterminacy through the enforcement processes that Hurd discusses is but one method of a constant process of renegotiation that occurs in the shadows of politics and the procedural rules of IOs that allocate bargaining power among states. The treaties that create IOs

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<sup>1</sup> *Gabčíkovo-Nagymaros Project* (Hung./Slovk.), 1997 ICJ REP. 7, paras. 141-42 (Sept. 25).

frequently include mechanisms, such as sunset provisions or withdrawal clauses, that facilitate renegotiation. Because international law remains principally a system of self-governance in which states are both the authors and subjects of the law, renegotiation remains critical as a tool for states in resolving cooperation problems. Instances of renegotiation crop up in Hurd's case studies--for example, when he discusses amendments to the International Monetary Fund's Articles of Agreement to permit floating exchange rates--but they are not comprehensively integrated into this account of state-IO relations.

Having introduced the basic framework he intends to apply to his studies of individual IOs, Hurd uses chapter 2 to review and reconceptualize academic approaches to the study of IOs, identifying three roles for IOs and three methodologies for their study. As he says, the "fundamental tension in international law, which is central to the field of international organization as well, is between state sovereignty and the commitment involved in international treaties" (p. 33). The roles (IOs as actors, fora, and resources) and, in particular, the methodologies (contractualism, regimes, and constructivism) that Hurd identifies vary in how they approach this tension. Contractualism, for example, focuses on IOs as products of delegations of state authority, while regime theory, as Hurd describes it, starts by asking what the rules are and then asks how those rules affect state behavior. Constructivism, again as Hurd uses that term, refers to an approach that focuses on the processes of interaction between states and IOs.

Hurd's discussion of methodologies is a breath of fresh air. As he notes, "[T]hese three [methodologies] have somewhat different meanings than they generally do in the field of International Relations theory" (p. 24). In moving beyond the traditional categories used in international relations, Hurd helpfully clarifies different ways to think about the place that IOs occupy in a causal account of state behavior, unencumbered by the baggage associated with labels such *realist* or *neoliberal institutionalist*. No one approach captures all the pathways through which IOs can influence state behavior. Rather, each methodology can be useful, depending on the question under study. He explains that these methodologies "are not mutually exclusive, and indeed despite their differences the three approaches may not be in competition with each other" (p. 32).

In subsequent chapters, Hurd turns to applying his framework to specific institutions: the World Trade Organization (WTO), International Monetary Fund, World Bank, United Nations, International Labour Organization (ILO), International Court of Justice, International Criminal Court (ICC), and regional organizations such as the European Union, African Union, and the Association of Southeast Asian Nations. The organizations that Hurd chooses cover a breadth of different subject matters useful to a student of IOs. Moreover, these organizations have a variety of different purposes and powers, thus giving the reader a survey of the different ways that states structure IOs and, in turn, how IOs manage their relationships with states. Hurd complements his analysis of obligation, compliance, and enforcement of each IO studied with a case study, which elucidates the workings of the organization.

For example, in his chapter on the WTO, Hurd explains the global trading system's three central obligations: the schedule of bound tariffs agreed to by each WTO member, the most-favored nation obligation, and the national treatment obligation. After discussing the intricacies of these three obligations, Hurd then examines compliance with the WTO, emphasizing reasons that states might cheat on their WTO obligations, including the familiar concern that the responsiveness of politicians to particular domestic constituencies can lead to violations that appear unjustified in purely economic concerns. Hurd continues by briefly reviewing the literature on the WTO dispute resolution process and discussing the ultimately decentralized and political nature of enforcement in the WTO. Hurd concludes with a discussion of the *Shrimp/Turtle* case<sup>2</sup> to illustrate how legal and political considerations interact within the WTO's Dispute Settlement Body.

Hurd's book is thus a valuable starting point for the international lawyer or graduate student thinking comparatively about IOs. International lawyers are, of course, quite comfortable thinking about IOs in an ad hoc way. But specialization can deprive the lawyer of the comparative insights that come from studying organizations that address different issue areas. A great virtue of Hurd's book is that it focuses on organizations rather than subject matter and therefore provides an illuminating overview of the field.

At the same time, as Hurd himself suggests, the reader must be cautious not to take large multilateral IOs as the starting point for international law, rather than as institutions embedded in the larger legal system. The study of IOs and international law can suffer from selection effects. Scholars study important multilateral institutions and treaties, often to the exclusion of the dense web of bilateral, regional, and plurilateral legal relationships that support and, in some ways, compete with multilateralism. Indeed, in areas from human rights to free trade, the regional and bilateral institutions are advancing cooperation in ways seemingly unattainable in truly multilateral fora.<sup>3</sup> Hurd is, of course, aware of this fact and highlights it by devoting a chapter to regional organizations. To stress the importance of organizations other than large multilateral IOs is therefore not to criticize Hurd's book but rather to caution readers to be aware of the scope of Hurd's project.

Hurd's selection of IOs warrants a similar cautionary note about the usual level of institutionalization and delegation to IOs. The set of IOs he chooses is useful for his purposes because he touches upon many of the most important organizations currently in operation. The majority, but by no means all, of the IOs that Hurd studies are highly institutionalized, have broad mandates, and have at least some

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<sup>2</sup> United States--Import Prohibition of Certain Shrimp and Shrimp Products, WTODoc.WT/DS58/AB/R (adopted Nov. 6, 1998).

<sup>3</sup> See, e.g., Chris Brummer, *The Ties that Bind? Regionalism, Commercial Treaties, and the Future of Global Economic Integration*, 60 VAND. L. REV. 1349 (2007); Gabriella Blum, *Bilateralism, Multilateralism, and the Architecture of International Law*, 49 HARV. J. INT'L L. 323 (2008).

form of independent lawmaking power. Hurd contrasts these relatively powerful IOs with the ILO. As Hurd discusses, the ILO promulgates draft conventions that are then subject to states' ordinary ratification processes. Hurd describes this process as a "unique and interesting means of reconciling IO authority with state sovereignty" (p. 163). Rather than being unique, though, this arrangement might be more aptly described as representative of IOs whose independent lawmaking powers are very weak, a substantial number of IOs indeed. The UN General Assembly, for example, makes law in the same fashion as the ILO, delegating the drafting of conventions to subsidiary organizations such as the International Law Commission or the UN Commission on International Trade Law, and then adopting the draft conventions at diplomatic conferences for states' signature and ratification. In both cases, the ultimate decision whether to accept a new legal obligation remains with states.

Nor is this structure, in which IOs act as negotiating fora and agenda setters, rare. As Hurd briefly acknowledges in discussing IOs as fora, many major modern multilateral treaties create mini IOs, including the conference of the parties (COP), a secretariat, and subsidiary bodies charged with implementation, monitoring, and enforcement. Although not frequently studied as IOs, thinly institutionalized organizations such as COPs are critically important to international cooperation. The rules by which they operate frequently shape the ongoing negotiations over how to understand, implement, and amend international agreements. Like the ILO and the UN General Assembly, COPs (and indeed diplomatic conferences, such as the UN Conference on the Law of the Sea) are frequently empowered to adopt amendments or protocols that have legally binding effect only after state signature and ratification. The relationship between modern international lawmaking and IOs is thus properly understood as a continuum, from the pure treaty that establishes no parallel organizational structure, through treaties that establish a secretariat or a COP with procedural rules governing its decisions, to full-blown constitutive treaties such as those that create most of the organizations about which Hurd writes. While obviously outside the scope of Hurd's project, a comprehensive study of the variation in procedural rules adopted by COPs and other fora-like IOs, and the effect of those procedural rules on the shape of international cooperation, would greatly expand our understanding of how states use IOs. To name but one example of the influence of rules governing COPs, the rules of the Assembly of States Parties to the Rome Statute of the ICC required a two-thirds vote of the full membership, or 74 out of 111 states, to adopt amendments codifying the crime of aggression at the 2010 Kampala Review Conference. Thus, in theory, states favoring expansive aggression amendments could have relied on numbers to overcome the resistance of the permanent members of the Security Council and their allies. But with fewer than 72 states initially presenting credentials entitling them to vote during the conference, and only slightly more than the necessary 74 eventually eligible to vote, consensus--and therefore compromise with the five permanent members (China, France, Russia,

the United Kingdom, and the United States)--became the rule of the day.<sup>4</sup>

These minor cautionary notes about the scope of the IOs featured in the book notwithstanding, *International Organizations* is a very valuable contribution in the still developing field of international law and international relations. It is recommended reading for those seeking an introduction to or review of the way in which politics and law interact and define the relationship between IOs and states. Hurd offers a useful review of approaches to the study of international organizations and provides a valuable comparative approach to thinking about how states use law to empower IOs and how, in turn, those IOs seek to constrain and shape state behavior.

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<sup>4</sup> Beth Van Schaack, *Negotiating at the Interface of Power and Law: The Crime of Aggression*, 49 COLUM. J. TRANSNAT'L L. 505, 518 (2011).