International Legal Compliance: An Annotated Bibliography

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Introduction

Does international law matter, or is it but a "fairy ship upon a fairy sea: a beautiful construct of the legal imagination floating upon a sea of false assumptions[?]"[2] International legal compliance ["ILC"],[3] the newest and most rapidly developing subfield in international law, was born in the early 1990s from the revived debate between legalization theorists, a group committed to the belief that the transformations wrought by the end of the Cold War have rendered international law independently capable of constraining and shaping the behavior of states, and their critics, a camp committed to the contrary notion that international law remains primarily an aspirational enterprise subordinate to politics and epiphenomenal to state practice. In attempting to prevail on the question of the efficacy of international law, legalists and skeptics alike have set about propounding and testing an array of interrelated theories, and in the process the questions of whether, and if so, why and under what circumstances states elect to comply with international law have emerged as the most central and pressing issues within the international legal academy. Building upon the insights of international relations theory and the methodologies of the social sciences, the field of ILC has organized around competing answers to these meta-questions, and the body of ILC scholarship now consists of eight books and nearly one hundred articles.

This Bibliography lists and annotates the major entries within the ILC corpus. For each entry a brief summary, together with one or more numbers corresponding to a list of major ILC

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[2] C.G. WEERAMANTRY, UNIVERSALISING INTERNATIONAL LAW 34 (2004).
[3] The field that has organized around the question of international legal compliance has never been so named; ILC is the original designation of the author of this Article.

themes, is provided. Although it is intended to be complete and comprehensive, the Bibliography does not list every article that could arguably be included within the ILC corpus. Short articles duplicative of the previous work of scholars have been omitted, as have articles that are tangentially connected to ILC or are largely descriptive, rather than analytical. Although the majority of ILC scholars are legal academics, an effort has been made to include the works of authors in related fields such as international relations and economics.

The methodology is as follows. A search of Westlaw, Lexis, and Worldcat was conducted to identify every potential book and article in the field of ILC. Each source was then read to ensure that it fit within the field. Additional articles cited or discussed by the authors of each source were noted for possible inclusion. A preliminary draft of the Bibliography was sent to each author for comments, corrections, and suggestions for additional authors and sources.

To be included in the Bibliography, each source was required to address one or more themes that constitute the field of ILC. These themes, along with the number and letter scheme employed to denote them, are as follows:

1. General theory. Many ILC scholars have advanced competing theories to explain and predict patterns of compliance and noncompliance in international relations. These various theories, described in the annotations accompanying relevant bibliographic entries, can be organized into the following series of theoretical clusters: (a) realism, (b) enforcement theory, (c) rational choice theory, (d) liberal theory, (e) managerial theory, (f) reputational theory, (g) transnational legal process, (h) legitimacy theory, (i) constructivism, (j) organizational-cultural theory, and (k) personality theory.

2. Empirical analysis. ILC scholars are increasingly moving beyond mere descriptive work or thought experimentation and are subjecting ILC theories to empirical analysis. Several have applied the methodological tools of the social and natural sciences, including multivariate

statistics, rigorous comparative analysis, and detailed case studies, to develop testable and falsifiable general propositions regarding relationships between rules and behaviors and to inform proposals for regime modification.

3. Skeptics. A minority of ILC scholars insist that compliance is the exception rather than the rule and that international law is little more than an aspirational venture. Some, without rejecting outright the causal significance of law in regard to state behaviors, contend that legalization inversely correlates with compliance with the normative principles underlying regimes.

4. Critical perspectives. Several scholars treat the question of compliance as the point of entry to challenge international law more generally as illegitimate for failing to include or for subordinating a plethora of subnational organizations, groups, and peoples.

5. Relationship to domestic law and institutions. A number of scholars link compliance with international law to the structure or function of domestic law or institutions, typically by treating incorporation of international law within the domestic legal system as a necessary condition precedent to compliance or by describing domestic courts as the only effective sites for enforcement.

6. High/Low Politics. The assumption central to the discipline of international law that regards international relations as uniformly susceptible to legal regulation may well be false. Some ILC scholars contend very directly that a hierarchy of issue-areas orders the international legal system and that patterns of cooperation have been far easier to generate and sustain in respect to "low politics," generally understood as economic, cultural, and social issues, than in questions of "high politics," defined narrowly as matters of war and peace. Other scholars, without directly asserting a high/low politics distinction, simply confine their analyses of

findings to the particular low politics issue-areas under investigation and refrain from generalizing to other issue-areas.

7. Survey. Many of the authors provide an overview, description, and a critique of some or all of the various ILC theories.

8. Human Agency. A small group of scholars with interdisciplinary backgrounds regards the state as an abstraction without the capacity to exercise a choice between alternatives and thus treats the question of compliance as one of human agency. For human agency theorists within the ILC field, people, rather than states, make compliance decisions, and the objective of their scholarship is producing an account for the microfoundations of personality that are causally linked to compliance.

9. Methodological and Epistemological Issues. Part of the literature within the ILC field is dedicated to the operationalization of the concept of compliance as a testable phenomenon, the design of experiments to test causal relationships between legal regimes and state behaviors, the selection and application of analytical methods to assess compliance data, the systematic and rigorous interpretation of research findings, the validation of data, methods, and conclusions, and the articulation and evaluation of knowledge claims.

10. Effectiveness. A group of empirically-minded scholars have called into question whether "compliance" is an adequate conceptual framework within which to evaluate whether international legal regimes further their normative policy objectives. Because a high level of compliance with a given regime may simply reflect the failure to require states to undertake anything more than modest departures from what they would have done in the absence of an agreement, and because certain agreements that impose significant constraints may meet with relatively low levels of compliance without sabotaging the norms states-parties seek to advance, the concept of "effectiveness", defined as the degree to which a regime is successful in

transforming state behaviors consistent with the norms that underlie the regime, has been introduced as a substitute for compliance.

The following annotations, of course, cannot begin to do justice to the rich body of thought they summarize; at most, they identify several major themes in each source. Readers are encouraged to engage with the complete works themselves.

ANNOTATED BIBLIOGRAPHY

Abbott, Kenneth W., "Trust But Verify": The Production of Information in Arms Control Treaties and Other International Agreements, 26 Cornell Int'l L.J. 1 (1993). (1e, 2).

Develops a modified rational choice theory of compliance that assumes that self-interested states can be motivated to cooperate provided uncertainties as to other states' intentions and actions that impede cooperation can be reduced through a combination of verification and assurance procedures. Employs iterated prisoners' dilemma to the study of several arms control regimes to support the hypothesis that enhanced monitoring and verification are complementary strategies that promote compliance by increasing transparency, equalizing information, and enhancing payoffs for cooperation. Suggests that the appropriate package of measures is specific to each treaty member and that general theories of compliance are perhaps beyond the state of the discipline, at least in the issue-area of arms control.

Aceves, William J., Critical Jurisprudence and International Legal Scholarship: A Study of Equitable Distribution, 39 Colum. J. Transnat'l L. 299 (2001). (3,4,5).

Imports insights from Critical Legal Studies metatheory to reinforce the central premise of legitimacy theory and transnational legal process theory: that compliance is a function of the degree to which substance and process of a legal regime is generally perceived as fair and inclusive of all stakeholders. Suggests that existing international institutional designs are insufficiently legitimate because they fail to incorporate a great many subnational groups. Faults the principle of equitable distribution for broadening the inclusiveness of institutions with regard to states but perpetuating the exclusion of subnational organizations, groups, peoples, and people. Suggests, but does not specify, a deconstructivist program for enhancing the fairness of international law is the proper direction for the marriage of CLS and ILC theories.

Alder, Jacqueline, & Lugten, Gaul, *Frozen Fish Block: How Committed are North Atlantic States to Accountability, Conservation and Management of Fisheries?*, 26 MARINE POL'Y 345 (2002). (2,10).

Surmises that compliance rates are positively correlated with per capita gross national product. Cautions, however, that many states, without regard to wealth, often substitute instrument compliance, defined as the ratification of an international agreement to "satisfy the public face of international law" and appease domestic constituencies without the intent to actually alter national behaviors, for genuine compliance.

Aldrich, George H., Compliance with the Law: Problems and Prospects, in Effecting Compliance (Hazel Fox & Michael Meyer, eds., 2000). (5,6).

Lists major causal factors of noncompliance as ignorance of legal obligations, skepticism as to the efficacy of enforcement measures, and absence of effective monitoring and dispute-resolution mechanisms. Suggests that domestic incorporation of international law is a necessary condition precedent to compliance. Regards the project of effecting compliance with the laws of war as the major challenge of the contemporary international legal order.

Alvarez, Jose E., *Why Nations Behave*, 19 Mich. J. Int'l. L. 303 (1998). (7)

Maps out the immediate post-Cold War origins of ILC and surveys convergence of international law and international relations scholarship in the form of several emerging theories, including managerialism, liberalism, enforcement theory, and constructivism. Suggests that the various divergent ILC theories may ultimately converge around transnational legal process theory, which posits that internalization of cooperative norms in domestic law and legal institutions fosters the progressive evolution of rule-governed cooperation.

American Society of International Law, How are Nations Behaving?, 96 Am. Soc'y Int'l L. Proc. 205 (2002). (7,9).

Hypothesizes that failure to accede to international legal regimes may be the functional equivalent of noncompliance, particularly for hegemonic states. Notes that recent empirical scholarship has called into question the presumption that compliance is the rule rather than the exception, yet notes further that empiricism in the ILC field is impeded by limitations on data, selection biases, difficulties in generalizing from limited data sets and from one issue-area to another, and methodological obstacles to conceptualizing compliance. Describes the state of the discipline as rife with theoretical divergence yet ripe for future discoveries on the basis of a dynamic interdisciplinary research agenda.

Ardia, David S., Does the Emperor Have No Clothes? Enforcement of International Laws Protecting the Marine Environment, 19 Mich. J. Int'l L. 497 (1998). (1e, 2).

Sketches the limitations of the enforcement model of ILC in regard to international marine environmental protection, including a lack of clarity as to jurisdiction, the costliness of sanctions, and the abundance of violations by non-state actors. Proposes that successful enforcement requires more effective detection of noncompliance which in turn requires enhanced monitoring. Posits that NGOs have a role to play as compliance monitors.

Arend, Anthony Clark, Do Legal Rules Matter? International Law and International Politics, 38 Va. J. Int'l L. 107 (1998). (1i, 7).

Surveys and critiques theories of ILC. Argues that constructivism, which regards compliance as a function of the congruence between the socially-constructed normative preferences of key states and individuals on the one hand and formal legal rules on the other, provides the greatest insight into explanation and prediction of patterns of state compliance.

Bailey, Robert A., Why Do States Violate the Law of War? A Comparison of Iraqi Violations in Two Gulf Wars, 27 Syracuse J. Int'l L. & Com. 103 (2000). (2,8).

Examines the 1980-1988 Iran-Iraq War and the 1990-1991 Gulf War and rejects the central premise of enforcement theory—that sanctions, or the threat of reprisal, are sufficient to enforce compliance with legal obligations. Suggests that variance in compliance with the laws of war as between states is attributable primarily to individual-level psychological attributes of decisionmakers responsible for compliance decisions. Concludes that failures to comply with

legal regimes that codify norms of jus cogens may be inexplicable through rational choice theory.

Baxter, Richard, Forces for Compliance with the Law of War, Am. Soc. Int'l L. 82 (1964). (1b, 3, 5, 8).

Treats individuals as the primary subjects of the laws of war. Develops one of the earliest articulations of enforcement theory within the ILC canon. Regards compliance with the international laws of war as a function of whether the domestic laws of the states of nationality create adequate punitive sanctions and whether domestic military institutions effectively investigate and prosecute offenses.

BEYERLIN, ULRICH, & MARAUHN, THILO, LAW-MAKING AND LAW-ENFORCEMENT IN INTERNATIONAL ENVIRONMENTAL LAW AFTER THE 1992 RIO CONFERENCE (1997). (1e, 2, 5)

Argues that the most effective means of achieving compliance with international environmental law is a flexible and ad hoc strategy of law-enforcement based on partnership rather than traditional, repressive means of law-enforcement, such as unilateral sanctions or reprisals. Describes as "compliance control" procedures of reporting, monitoring, fact-finding, and consultation designed to reduce conflict and tension between states and as "compliance assistance" the provision of environmental education and training, personnel, administrative and legislative support, and technology transfers to less-developed states.

Bhattacharyya, Rupa, *Establishing a Rule-of-Law International Criminal Justice System*, 31 Tex. Int'l L.J. 57 (1996). (3,5).

Argues that compliance with international criminal law is a function of the degree to which the substantive rules are widely perceived as legitimate. Predicts that formalization of international criminal law will correlate with increased compliance. Concludes that the success of international criminal legal institutions such as the ICC will hinge upon voluntary compliance, which in turn will require its rules of substantive law, as well as its procedures, to be widely perceived as legitimate.

Bird, Robert C., Procedural Challenges to Environmental Regulation of Space Debris, 40 Am. Bus. L.J. 635 (2003). (1i, 8).

Dismisses sanctions or other mechanisms recommended by enforcement theory as useful to the promotion of cooperation regarding the control of space debris. Counters with a constructivist account that credits epistemic communities of scientists with responsibility for generating norms and securing compliance with legal rules incorporating these norms through the mobilization of shame, or the use of peer pressure. Argues that government officials who must ultimately determine whether to comply with resulting regimes are sensitive to and dependent upon the scientific community and will be discouraged from noncompliance by their scientific advisors, who would suffer shame if they did not dissuade officials from noncompliance.

Bradford, William C., In the Minds of Men: A Theory of Compliance with the Laws of War, 37 ARIZ. ST. L.J. 1 (2005). (1k, 2, 6, 7, 8, 9).

Surveys and critiques existing ILC theories. Develops a personality-based theory to explain and predict compliance with the law of war regime governing anticipatory self-defense. Describes the use of simulation research to test and refine personality theories of ILC.

Bradley, Curtis A., Breard, Our Dualist Constitution, and the Internationalist Conception, 51 Stan. L. Rev. 529 (1999). (1a, 3, 5).

Suggests that the U.S. interest in international legal compliance is structurally subordinated to its commitment to federalism and its dualist legal system. Implies that monist legal systems are, ceterus paribus, more likely to comply with international law than dualist systems, which regard domestic law as occupying the apex in the hierarchy of legal sources.

Brimeyer, Benjamin L., Bananas, Beef, and Compliance in the World Trade Organization: The Inability of the WTO Dispute Settlement Process to Achieve Compliance from Superpower Nations, 10 Minn. J. Glob. Trade 133 (2001). (2,3,6).

Contends that the WTO Dispute Settlement Process has failed to achieve compliance because it has yet to earn the general perception of legitimacy, both substantive and procedural. Queries whether available sanctions may be less onerous than reputational penalties for noncompliance. Implies that international economic law may trigger sovereignty concerns that predispose self-interested states toward noncompliance.

Brunnée, Jutta, A Fine Balance: Facilitation and Enforcement in the Design of a Compliance Regime for the Kyoto Protocol, 13 Tul. Envtl. L.J. 223 (2000). (1b/e, 2, 6).

Examines the negotiations toward the Kyoto Protocol compliance regime. Queries, as a result of the empirical evidence, whether high rates of compliance with legal regimes may be a function of the limited degree of behavioral modification demanded thereby and whether compliance with legal regimes is inversely related to the extent to which substantive commitments require states to depart from the conduct in which they would have engaged absent the regime. Theorizes that the proper compliance strategy for any given regime is situated along a "persuasive continuum" stretching from purely facilitative measures at one extreme to purely punitive measures at the other.

Cassel, Douglass, Does International Human Rights Law Make a Difference?, 2 Chi. J. Int'l L. 121 (2001). (1e/g/i, 2, 5).

Attributes compliance with international human rights law to multiple sources of causation, including the diffusion of behavioral norms and the reconstruction of individual and group identities around its protective principles, the incorporation of international treaties in domestic legal systems, and the increased availability of international and regional judicial fora with jurisdiction over claims of violations by states. Suggests that the effectiveness of international human rights law is further affected by intervening contextual variables, such as the political and cultural nature of domestic governments and the relative threat to the survival of states at a given moment. Concedes that it is difficult to submit this hypothesis to empirical testing.

Charlesworth, Hilary, The Unbearable Lightness of Customary International Law, 92 Am. Soc'y Int'l L. Proc. 44 (1998). (3,5,10).

Examines the consequences of the participation of non-state actors upon the formation of customary international law. Predicts a "compliance paradox" wherein the engagement of non-state actors increases the perception of fairness in the development of custom but erodes consensus, weakens the normative strength of resulting legal rules, and allows state governments greater freedom to be selective in accepting only those legal obligations that correspond with

their interests. Queries whether the participation of non-state actors in the formation of customary international law may ultimately erode the pursuit of justice through law.

Charney, Jonathan L., Compliance with International Soft Law, in Commitment and Compliance: The Role of Non-Binding Norms in the International System (Dinah Shelton, ed. 2000). (7,9).

Surveys ILC theories. Identifies a series of variables relevant to the phenomenon of compliance. Treats linkages between the norms that underlie legal regimes and a host of procedural, moral, and material considerations as the most relevant to explanations and predictions of compliance.

CHAYES, ABRAM, & CHAYES, ANTONIA, THE NEW SOVEREIGNTY (1995). (1e, 7).

Posits that states are naturally imbued with a propensity to compliance with international law. Regards instances of noncompliance as exceptional and attributable not primarily to deliberate violation but rather to either a lack of precision in ambiguous or indeterminate treaties or a lack of technical capacity that prevents states willing to comply from physically doing so. Considers enforcement measures or sanctions an expensive "waste of time" and maintains that consultation, negotiation, and persuasion are sufficient to adjust preferences and steer states back into conformity. Concludes that, because compliance problems are largely managerial, enhancement of the capacities of weaker and poorer states and organization of compliance efforts by powerful states willing to bear management costs are the key to enhancing the effectiveness of international law.

Cuellar, Mariano-Florentino, Reflections on Sovereignty and Collective Security, 40 Stan. J. Int'l L. 211 (2004). (1e/h, 2, 9).

Evaluates the success of the UN system in providing for collective security. Suggests that compliance failures are often the product of a failure of domestic sovereignty in which the central government loses the capacity to prevent violations of law by subnational actors. Argues that while the international legal regime governing collective security is not self-enforcing, state behaviors can be causally transformed by law to the extent that the regime is (1) perceived as legitimate and thus the costs associated with behavior consistent with the regime decrease accordingly, or (2) the regime enhances collective action and thereby decreases the costs of employing enforcement measures.

D'Amato, Anthony, The Concept of Human Rights in International Law, 82 Colum. L. Rev. 1110 (1982). (1a, 3).

Suggests that the limited reach of universal judicial jurisdiction and the paralysis of the UN collective security system due to the exercise of veto powers hobble the effectiveness of sanctions, the primary coercive modality within the enforcement model of compliance. Notes that the only universally effective mechanism for ensuring compliance with international law remains the traditional system of retorsion and reprisal. Concludes that the ineffectiveness of enforcement suggests not that scholars and practitioners should abandon efforts to enhance compliance, but cautions that compliance with international human rights law is ultimately a matter not of law but of politics and morality.

Di Mento, Joseph F.C., Process, Norms, Compliance, and International Environmental Law, 18 J. Envt'l L. & Litig. 251 (2003). (1g/i, 5).

Surveys ILC theories. Describes a theory, labeled the "Transactional Norm Forming Model," that amalgamates elements of constructivism and transnational legal process theories and contends that compliance is a function of the social construction of states and relevant elites consistent with the normative content of legal regimes as well as the degree to which these regimes are incorporated in domestic legal systems. Traces the intellectual roots of the proposed theory.

Downs, George W., Danish, Kyle W., & Barsoom, Peter N., The Transformational Model of International Regime Design: Triumph of Hope or Experience, 38 Colum. J. Transnat'l L. 465 (2000). (1e/g/i, 2, 3, 6, 9).

Postulates that the joint transnational legal process/managerialist/constructivist, or "transformationalist," premise, that weak or "soft law" regimes in which horizontal negotiation, cooperation and "carrots" induce states to cooperate are more effective than vertical regimes in which coercive enforcement measures, or "sticks," are used to discipline noncompliers is demonstrably false. Demonstrates systematic empirical support for this critical postulate by analysis of various environmental and arms control agreements. Concedes the power of discourse and negotiation to promote interest transformation in individual and small group settings, but faults transformational theory for failing to develop an account for how convergence of interests and identities at the individual and group level percolates upward to influence the preferences of states. Concludes that regimes designed consistent with the transformational model may actually retard compliance.

Downs, George W., Rocke, David M., & Barsoom, Peter N., Is the Good News About Compliance Good News About Cooperation?, 50 Int'l Org. 379 (1996). (1b, 3, 6, 10).

Critiques the selection bias in managerial theory that leads to overestimation of the extent of compliance with international law. Contends that compliance, particularly in issue-areas of high politics, is highly improbable in the absence of robust enforcement mechanisms that establish a deterrent regime. Employs the concept "depth of cooperation" to examine several legal regimes and concludes that states may, in order to preserve the perception of compliance, be avoiding substantive commitments that would obligate significant behavioral transformations.

Duruigbo, Emeka, International Relations, Economics and Compliance with International Law: Harnessing Common Resources to Protect the Environment and Solve Global Problems, 31 Cal. W. Int'l L.J. 177 (2001). (6,7,10).

Calls for shift from the concept of compliance to "effectiveness," defined as the degree to which legal regimes effect behavioral transformations consistent with the norms underlying those regimes. Suggests that the effectiveness of legal regimes is not as great as legalization theorists maintain. Adopts the managerialist position that enhancement of state capacities should be a primary method of enhancing the effectiveness of environmental pollution prevention regimes, and proposes means whereby to achieve greater effectiveness of international environmental law.

Ehrmann, Markus, Procedures of Compliance Control in International Environmental Treaties, 13 Colo. J. Int'l Envtl. L. & Pol'y 377 (2002). (1e, 2, 9).

Examines the function of non-compliance procedures in several international environmental treaties. Concludes that the majority of noncompliance is non-intentional and the consequence of technical and resource incapacities. Eschews enforcement as costly and counterproductive. Advocates a "partnership method" for managing compliance whereby

enhancing the capacity of noncompliers take precedence over enforcement and consultation and negotiation, rather than sanctions, are employed to resolve compliance disputes.

Falk, Richard A., On Identifying and Solving the Problem of Compliance with International Law, 58 Proc. Am. Soc. Int'l L. 1 (1964). (5, 9).

Describes the primary epistemological problem in measuring compliance as uncertainty as to the specific behavioral obligation required by the legal rule in question. Contends that resolution of uncertainty requires the intervention of a neutral and objective third party that can render an authoritative interpretation of the substantive meaning of the obligation at issue between parties. Suggests that independent international law experts, provided they are not in service to their states of nationality, or, in the alternative, supranational institutions, negotiations, or the quasilegislative process of customary international legal formation can compensate for the deficiencies of international adjudication of compliance disputes.

Florini, Ann, The Evolution of International Norms, 40 Int'l Stud. Q. 363 (1996). (1i, 5, 7).

Defends the causal significance of norms in prompting compliance with international law. Surveys and critiques existing theories of ILC. Adopts the insights of neo-Darwinism to advance the hypothesis that cooperative norms evolve in the manner of natural species and constitute a form of cultural inheritance upon which compliance can be grounded and extended.

FISHER, ROGER, IMPROVING COMPLIANCE WITH INTERNATIONAL LAW (1981). (1g/k, 3, 5, 8).

Attributes responsibility for compliance with international law to the individuals at the apex of the state hierarchy, to whom international legal regimes are ultimately directed and upon whom decisions with regard to compliance ultimately rest. Highlights the causal significance of religious, moral, cultural, and psychological sources of normative prescription and proscription to individual compliance decisions. Regards reputational concerns, threat of enforcement, and reciprocal effects of compliance as theoretically significant, but considers the degree to which normative content reflected in international legal regimes is incorporated in domestic legislation and given effect in domestic courts and institutions as the most important determinants of state compliance.

FRANCK, THOMAS M., FAIRNESS IN INTERNATIONAL LAW AND INSTITUTIONS (1995). (1h).

Posits a direct correlation between a regime's legitimacy—defined as the widespread perception that its institutions arose and operate in accordance with just procedures and that its rules are clear and connected to principles of reason, justice, morality, or other first principles—and compliance. Predicts that as between two legal regimes that are equally legitimate, that regime with that expresses the most moral content will reap the greatest compliance. Explains the evolution of legitimacy as a discursive process in which a variety of actors, including individuals and groups, conceive of and propound norms and exhort others to adhere to them on the ground that they are procedurally and substantively fair and in so doing create a transnational perception that legal regimes incorporating such norms are or would be legitimate.

Frischmann, Brett, A Dynamic Institutional Theory of International Law, 51 Buff. L. Rev. 679 (2003). (1c/e, 2, 6).

Draws from and integrates managerial theory, enforcement theory, and more kinetic rational choice theories to offer a dynamic game-theoretic model hypothesizing that self-

interested and rational states anticipate that incentives to defect from international agreements evolve over time and that as a consequence states plan for legal commitments to evolve in order to preserve positive incentives to comply while limiting the costs of enforcement. Applies game-theoretic models to explain empirical data concerning compliance with international environmental law and trade law and contends that states pursue three types of compliance strategies: type I (focused on adjusting states' incentives to comply by altering payoff structures (the expected costs and benefits of (non)compliance), type II (focused on facilitating cooperation by reducing transaction costs and uncertainty as the legal regime evolves), and type III (focused on maintaining cooperation and improving regime effectiveness by dynamically adjusting commitments over time). Queries, albeit tacitly, whether scholars should abandon the development of a unified theory of ILC in favor of issue-area-specific theories.

Gerhart, Peter M., Reflections: Beyond Compliance Theory—TRIPS as a Substantive Issue, 32 Case W. Res. J. Int'l L. 357 (2000). (4,7,10).

Previews a series of symposium articles that address compliance with the Agreement on Trade Related Aspects of Intellectual Property. Postulates a linkage between compliance the substantive legitimacy of the legal rules in question. Posits that enforcement of international intellectual property law is ultimately too costly standing alone and that a combination of modalities, including public enforcement, private enforcement, and voluntary compliance is the optimal strategy for enhancing effectiveness. Suggests that the conception of international intellectual property law as fundamentally "Western" or capitalist stands as a barrier to the internalization of norms favoring voluntary compliance in underdeveloped states.

Ginsburg, Tom, & Adams, Richard H., Adjudicating in Anarchy: An Expressive Theory of International Dispute Resolution, 45 Wm. & Mary L. Rev. 1229 (2004). (1e, 2, 5, 6).

Rejects the realist presumption that the international system is anarchic and presumes instead that states are inherently prone to coordinate, if not necessarily always to cooperate. Offers a game-theoretic explanation for the phenomenon of compliance with adjudicative decisions of international judicial fora, which lack enforcement power. Contends that states seek the independent, unbiased expertise of international judicial fora in order to resolve factual ambiguities and preserve the prospects for future coordination. Concludes that a general theory of compliance may potentially be constructed that will offer explanations and predictions across a broad range of issue-areas of international relations.

Goldsmith, Jack, Sovereignty, International Relations Theory, and International Law, 52 Stan. L. Rev. 959 (2000). (2, 3, 8, 9).

Reviews Stephen Krasner, Sovereignty: Organized Hypocrisy (1999). Surveys theories of ILC. Expresses realist skepticism about the independent efficacy of international law, particularly in relation to the use of force. Criticizes international legal academics for deliberately failing to employ methodological techniques necessary to develop falsifiable theories. Elaborates a series of methodological obstacles to developing and testing ILC theories in the path of international legal academics.

Goldsmith, Jack L., & Posner, Eric A. A Theory of Customary International Law, 66 U. Chi. L. Rev. 1113 (1999). (1c, 2, 3, 5).

Addresses compliance with customary international law from a rational choice perspective and with empirical methods. Rejects the notion that states feel any compliance pull and rejects the notion that norms are significant sources of behavioral constraint. Posits that

domestic courts are in effect agents whose purpose it is to implement national interests through their interpretation and application of customary international law. Adopts the realist conclusion that law is epiphenomenal and treats compliance as the result of the convergence of state interests with rules.

Goldsmith, Jack L., & Posner, Eric A., International Agreements: A Rational Choice Approach, 44 Va. J. Int'l L. 113 (2003). (1c, 9).

Dismisses the causal significance of norms in explanations of state compliance with international agreements. Regards treaties and other positive or formal sources of law as no more binding than, and consequently no more likely to secure compliance than, informal agreements. Explains formal legalization as a means of signaling seriousness about the commitment to be bound by international agreements but discounts reputational considerations where a reputation for compliance is not inherently valuable in the given issue-are. Argues that the coincidence of the self-interests of rational states is the root cause of cooperative behavior and identifies the convergence of interests as the key to enhancing compliance.

GOLDSMITH, JACK L., & POSNER, ERIC. A, THE LIMITS OF INTERNATIONAL LAW (2005). (1c, 2, 7, 9)

Surveys and critiques ILC theories. Explains compliance with international law as the choice of rational states that maximizes their interests in the accumulation of power or other goods. Tests a comprehensive theory of international law with empirical evidence across a range of issue-areas, including human rights and trade, and offers normative prescriptions on the basis of findings.

Goodman, Ryan, & Jinks, Derek, How to Influence States: Socialization and International Human Rights Law, 54 Duke L.J. 1 (2004). (1f/i/k, 2, 7, 8, 9).

Argues that states are susceptible to socialization designed to encourage them to embrace and comply with normative requirements in the issue-area of human rights. Differentiates a program of normative "acculturation" from earlier constructivist theories. Distinguishes coercion and persuasion, the two most common implementation mechanisms, from acculturation and describes how a program that mobilizes social and cultural pressures can lead states to conform their conduct. Specifies some of the psychological microprocesses through which acculturation reconstructs individual and ultimately state identities and preferences.

Goodman, Ryan, & Jinks, Derek, Measuring the Effects of Human Rights Treaties, 13 Eur. J. Int'l L. 171 (2002). (2, 7, 9).

Critiques the hypothesis that increased legalization may correlate with decreased compliance. Surveys existing ILC theories. Defines the central empirical project within ILC as the identification of the necessary conditions for the domestic incorporation of international norms into state practice. Cautions against the use of traditional quantitative methods of theory generation and testing, such as multivariate statistics, given the state of the discipline and the paucity of data.

Goodman, Ryan, & Jinks, Derek, Toward an Institutional Theory of Sovereignty, 55 Stan. L. Rev. 1749 (2003). (1i/j, 2, 6)

Interrogates the hypothesis that a distinction must be drawn between high politics and low politics in respect to state propensities to comply with international legal regulation, with effects most pronounced in the issue-area of national security. Examines the organizational-

cultural approach to explaining the transnational tendencies of national military bureaucracies to eschew particular methods and means of warfare even where such methods and means are not unlawful. Concludes that states are socially constructed by the preferences of national military bureaucracies, that these preferences are organized at the international level, and that even in the issue-area of national security states can be socialized to comply with legal rules that tap these common normative preferences.

Greenwood, Christopher, Ensuring Compliance with International Law, in Control Over Compliance with International Law (W.E. Butler, ed. 1991). (1b/k, 3, 6).

Identifies failures of compliance with the laws of war as emanating from three causes: 1) the lack of discipline or pathology of individual soldiers, 2) deliberate state policies intended to gain strategic advantage over enemy states, and 3) lack of clarity as to the substantive content of the legal rules. Regards the threat of reprisal as the most potent force for ensuring compliance with the laws of war, with reputational concerns and normative commitments as far less significant sources of restraint. Treats armed conflict as qualitatively different in terms of regulability from other issue-areas of law.

Guzman, Andrew T., A Compliance-Based Theory of International Law, 90 Cal. L. Rev. 1823 (2002). (1f, 2, 6, 7).

Surveys existing theories of compliance. Rejects the theoretical significance of substate levels of analysis and presumes that states are self-interested unitary actors. Contends that states comply with international law in order to develop and preserve the benefits of a reputation for compliance and that the potential compliance is thus, to some degree, bounded by the importance of reputation within particular issue-areas of international relations. Concedes that reputation is less important in issue-areas of "high politics," such as armed conflict, arms control, and territory, than in issue-areas of "low politics," such as economics and environmental protection. States that future ILC research should concentrate within issue-areas in which reputation matters.

Haas, Peter M., Choosing to Comply: Theorizing from International Relations and Comparative Politics, in Commitment and Compliance: The Role of Non-Binding Norms in the International System (Dinah Shelton, ed. 2000). (2, 5, 7, 9).

Surveys ILC theories and describes the state of knowledge regarding international legal compliance as underdeveloped and undertheorized. Enumerates epistemological and methodological problems in evaluating compliance, including problems in conceptualizing compliance, false reporting, unintentional noncompliance. Describes methodological tools whereby the study of compliance can be systematized, including process tracing, aggregate analysis of treaties, multivariate analysis, and counterfactual studies. Suggests that the primary impediment to compliance is the unwillingness of states to pay the political costs to discipline self-interested elements of domestic polities for whom compliance runs counter to their interests.

Haas, Peter M., Why Comply, or Some Hypotheses in Search of an Analyst, in International Compliance with Nonbinding Accords (Edith Brown Weiss, ed. 1997). (1d, 5, 7, 9).

Describes methodological issues in measuring compliance and demands that ILC theories be supported by empirical evidence. Surveys ILC theories to map the contours of the ILC field and sketch a research agenda. Postulates an institutionalist theory that suggests that wealthy liberal democratic states may be simultaneously more capable of complying and more domestically responsive to the preferences of individuals and groups who desire compliance;

thus, wealthy liberal democratic states are systematically more likely to comply than poorer, illiberal states.

Handl, Günther, Compliance Control Mechanisms and International Environmental Obligations, 5 Tul. J. Int'l & Comp. L. 29 (1997). (6, 10).

Hypothesizes that state interests in ensuring compliance are directly proportional to the complexity of an international legal regime and the costs of complying. Emphasizes that in multilateral treaties state practice of parties can have the effect of modifying international legal obligation, making it still more difficult to evaluate compliance. Advocates semi-formal peer review procedures whereby parties to multilateral conventions can convene to specify obligations, establish more transparent procedures for determining compliance, and "fine-tune" enforcement measures.

Hathaway, Oona, Between Power and Principle: A Political Theory of International Law, 71 U. Chi.

L. Rev. _ (2005). (1c/f, 2, 5, 7, 9).

Classifies ILC literature into rational actor and normative models and surveys their primary hypotheses. Analyzes empirical evidence of state practice under human rights and environmental treaties. Synthesizes key elements of rational choice and reputational theories and concludes that state compliance decisions are shaped by the legal incentives engendered by domestic and transnational enforcement of international law as well as by the nonlegal incentives created by the reactions of external political actors in response to state compliance decisions. Offers suggestions for future research in the ILC subfield.

Hathaway, Oona, Do Human Rights Treaties Make a Difference?, 111 Yale L.J. 1935 (2002). (1c/f,

2, 6, 7, 9).

Surveys existing ILC theories. Notes the methodological unsophistication of international legal scholarship and advocates introduction of empirical methods to harden the discipline. Conducts quantitative investigation of compliance human rights treaties and concludes that, although external normative pressures are successful in inducing state accessions, state behavior is largely unaffected by legalization because a lack of effective monitoring and enforcement erodes any incentives for self-interested states to modify conduct to meet treaty obligations.

HENKIN, LOUIS, HOW NATIONS BEHAVE (1967). (5, 7, 8).

Initiates the first major investigation of the phenomenon of compliance with international law. Begins the development of a multivariate explanation for compliance that incorporates variables from several levels of analysis, notably national values and cultural traditions regarding attitudes toward law and authority and attributes of the political personalities of individual decisionmakers who wield state power. Concludes that compliance with international law is the rule rather than the exception and that the most fruitful method of enhancing compliance is likely to be the fostering of domestic cultures of compliance.

Ho, Daniel E., Compliance and International Soft Law: Why Do Countries Implement the Basle Accord?, 5 J. Int'l Econ. L. 647 (2002). (1f, 2, 5, 9).

Highlights the lack of empirical research in the ILC subfield and notes that selection bias erodes the significance of available studies. Challenges the liberalist premise that democracies

are inherently more compliant with international law and counters that democratic regimes are more corrupt and more fragmented domestically and consequently less likely to comply than nondemocratic states. Argues instead that reputational concerns are central to the establishment of compliance with "soft law" regimes and that a reputation for compliance confers benefits in the form of a "stamp of approval" that other states recognize as an indicator of business worthiness.

Huang, Peter H., International Law and Emotional Rational Choice, 31 J. Leg. Stud. 237 (2002). (1c/f, 2, 6, 8).

Complements rational choice theory by considering that actors are motivated by a desire to preserve their reputations. Suggests that preferences in favor of legal compliance can be induced by law in the sense that law modifies decisional strategies. Posits that compliance behavior in the issue-area of international environmental law can be molded and create self-enforcing expectations that reduce the need for enforcement. Models a reputational theory of international environmental law.

IWASAWA, YUJI, EVIDENCE OF COMPLIANCE IN INTERNATIIONAL LAW, HUMAN RIGHTS, AND JAPANESE LAW (1998). (2, 3, 5).

Explains slow pace of Japanese domestic incorporation of human rights norms in terms of a traditional and homogenous culture resistant to wholesale important of external concepts. Suggests that engagement of human rights NGOs has been important to political transformation but has not has similar influence on courts due to the dualist nature of the Japanese legal system. Indirectly calls into question whether transnational legal processes are universally effective in enhancing compliance.

Jacobson, Harold K., Conceptual, Methodological and Substantive Issues Entwined in Studying Compliance, 19 Mich. J. Int'l L. 569 (1998). (7, 9).

Surveys major ILC theories while noting and offering an account for the underdevelopment of the field of ILC. Distinguishes high politics from low politics and suggests that knowledge is likely to remain more limited in issue-areas where obligations are less clear, such as in the case of customary international law, or in the case of newer sources of law. Calls on legal and international relations scholars to jointly commit more resources to empirical study and to the empirical description of compliance patterns as a necessary precondition to more bold theorization.

Janis, Mark W., The Efficacy of Strasbourg Law, 15 Conn. J. Int'l L. 39 (2000). (5, 8, 9).

Conflates compliance and effectiveness. Outlines the methdological and epistemological difficulties in evaluating compliance with the European Convention for the Protection of Human Rights and Fundamental Freedoms, most crucially the lack of access to complete data and the difficulty in evaluating partial compliance. Proposes that the increased efficacy of "Strasbourg" law can be inferred from the growth in the membership of states parties to the European Convention and from the fact that disputes are submitted for judicial review. Concedes that the ultimate determinant of compliance may be the perception of legitimacy of a given legal regime, and recognizes that legitimacy is a subjective assessment not susceptible to determination through legal, as opposed to psychological, analysis.

Joyner, Christopher C., Compliance and Enforcement in New International Fisheries Law, 12 Temp. Int'l & Comp. L.J. 271 (1998). (5, 10).

Distinguishes compliance from effectiveness and suggests that a high rate of compliance may be an indication that the legal regime in question obligates little change in state behavior or is so open to interpretation that any conduct can be described as compliant. Examines multilateral treaties regulating commercial fishing and contends that for legal regimes to be effective they must require conduct that is congruent with the self-interest of member-states. Further argues that enforcement of international law is dependent not upon threats of sanctions but upon the deployment of positive incentives sufficient to motivate states to comply and to prosecute noncompliant nationals.

Joyner, Christopher C., Recommended Measures Under the Antarctic Treaty: Hardening Compliance with Soft International Law 19 Mich. J. Int'l L. 401 (1998). (2, 9).

Counters the perception of "soft law" as insufficient to generate state compliance. Surveys the history of state practice under the Antarctic Treaty and concludes that soft law enables states to reach more precise agreements than might be possible in "hard law" format, that state compliance with soft law agreements is better than expected, and that soft law agreements form the customary law nucleus for future binding obligations.

Joyner, Christopher C., Sanctions, Compliance and International Law: Reflections on the United Nations' Experience Against Iraq, 32 Va. J. Int'l L. 1 (1991). (2).

Links the effectiveness of the enforcement model to the transparency of the underlying norms for the violation of which sanctions are imposed, the speed with which enforcement is undertaken, the comprehensiveness of the sanctions regime, and the willingness of powerful states to make material contributions to the success of enforcement. Considers the UN system to be an important site for maximizing the perception of legitimacy of resulting enforcement measures.

KECK, MARGARET F., & SIKKINK, KATHRYN, ACTIVISTS BEYOND BORDERS (1998). (1i, 5, 8).

Criticizes liberalism as undertheorized in regard to the process whereby individuals and groups acquire their preferences regarding international legal compliance. Rejects the centrality of the state to explanations of contemporary international relations. Theorizes that transnational epistemic communities consisting of uniquely situated individuals and groups highly committed to normative programs organize within issue-areas and diffuse their influence across national boundaries through a combination of persuasion, socialization, and electoral pressure. Attributes state compliance preferences and behavior to the influence of these epistemic communities and ascribes the evolution of norms, and compliance with these norms, to the effects of the process whereby states and their preferences are socially constructed.

Kelly, Claire R., Enmeshment as a Theory of Compliance, 36 N.Y.U.J. Int'l L. & Pol. _ (2004). (1e/g, 2 6).

Builds upon transnational legal process and managerial theories and attributes compliance to the phenomenon described as "enmeshment," which occurs when a state finds that its interests and the substantive rules of an international legal regime are closely related. Differentiates between issue-areas and suggests that the greatest likelihood that a state will become enmeshed in a particular international legal regime exists in issue-areas of low politics. Concludes that harnessing the capacity of enmeshment to enhance regime effectiveness requires a high degree of formalization—i.e, the treaty language must be as precise as parties will tolerate.

Kelly, Claire R., The Value Vacuum: Self-Enforcing Regimes and the Dilution of the Normative Feedback Loop, 22 Mich. J. Int'l L. 673 (2001). (1d/i, 2, 5, 7).

Theorizes that self-enforcing regimes—treaties that create organs with powers to impose direct sanctions on non-compliers—may, by bypassing domestic sites of normative interpretation and national identity and interest assertion, create negative consequences for compliance. Suggests that enhancing compliance may require that this "normative feedback loop" be reintegrated into the functioning of self-enforcing regimes by creating exemptions from the operation of legal rules or allowing non-state actors that would normally participate in the domestic interpretive process greater opportunities to introduce national constituency preferences into international value and identity formation. Proposes a modified constructivist theory that explains compliance with self-enforcing regimes as a function of the degree to which the normative feedback loop is reintegrated and national constituencies are allowed to construct shared expectations and understandings of the rules that constitute international law.

Kelly, Claire R., Realist Theory and Real Constraints, 44 Va. J. Int'l L. 545 (2004). (1c, 2, 7).

Modifies the realist premise that legal rules are epiphenomenal to state practice by positing that as states become "enmeshed" in legal regimes they come to rely upon the benefits of regime membership, which cumulatively outweigh the costs of compliance even in individual "hard cases." Suggests that legal regimes themselves develop causal significance in explaining and predicting compliance even within the realist account of international relations and international law. Supports this modified realist argument with empirical examples from a series of regimes, including the EU, WTO, Law of the Sea Convention, IMF, and International Criminal Court.

Keohane, Robert O., Compliance With International Commitments: Politics Within a Framework of Law, 86 Am. Soc'y Int'l L. Proc. 176 (1992). (2, 7, 9).

Suggests that empirical studies of compliance might treat compliance decisions as the dependent variable and the relative power of state, the nature of international institutions, the clarity of legal obligations, the strength of underlying norms, and linkages to domestic considerations as independent variables. Surveys ILC theories. Notes that building and testing theories requires the synthesis of the methods of international law and international relations—the determination of whether compliance has occurred requires legal judgment, while the analysis of causal relationships between rules and behaviors requires the resort to social scientific methods.

Keohane, Robert O. International Relations and International Law: Two Optics, 38 Harv. J. Int'l L. 487 (1997). (5, 7, 9).

Bifurcates ILC into "instrumentalist" and "normative optics, with the former consisting of a cluster of realist, rational choice, and enforcement theories skeptical about the significance of norms in fostering rule-governed cooperation, and the latter a cluster of liberal, legal process, managerial, reputational, and constructivist theories that regard norms as having a causal effect upon state behaviors and as capable of exerting a "pull" toward compliance. Critiques both optics. Regards policy elites as crucial players in establishing and maintaining compliance. Elaborates an agenda for future interdisciplinary research.

Kingsbury, Benedict, The Concept of Compliance as a Function of Competing Conceptions of International Law, 19 Mich. J. Int'l L. 345 (1998). (7, 9, 10).

Challenges the notion of compliance as the mere correspondence of behavior with legal rules and argues for the concept of "effectiveness" as the benchmark of legal regimes. Surveys existing theories of ILC, including realism, liberalism, constructivism, managerialism, and transnational legal process. Cautions against empirical research that fails to account for causes and effects of legal rules, and warns against purely positivist theories that ignore considerations of justice and morality.

Knop, Karen, Here and There: International Law in Domestic Courts, 32 N.Y.U. J. Int'l L. & Pol. 501 (2000). (1g, 2, 5, 10).

Calls for a more nuanced understanding of the role of domestic courts as agents in the enforcement of international law. Suggests that domestic courts, because they regard international law as persuasive, and not binding, authority, ultimately transform and heterogenize international law. Implies that the enforcement model of international legal compliance that relies on domestic courts, or "transjudicialism," must either make room for variations in the degree and direction of compliance across states or else give way to international judicial fora.

Knox, John H., A New Approach to Compliance with International Environmental Law: The Submissions Procedure of the NAFTA Environmental Commission, 28 Ecology L.Q. 1 (2001). (2, 7).

Contends that the role of international adjudication in promoting compliance with international environmental law is limited, in significant part because states are unwilling to jeopardize relations with other states by bringing claims against them. Examines the function of various international regimes that permit non-governmental organizations and/or individuals to trigger judicial review. Concludes that permitting non-state actors and other private parties to bring claims before international judicial tribunals or less formal dispute resolution mechanisms will enhance the effectiveness of the managerial model of compliance by creating a more factually complete and less confrontational environment.

Koh, Harold, Transnational Legal Process, 75 Neb. L. Rev. 181 (1996). (1g, 5, 10).

Surveys ILC theories. Maintains that the key actors in compliance are not just states, as realism postulates, but also nongovernmental organizations, institutions, and individuals. Hypothesizes that repetitive interactions within transnational epistemic communities consisting largely of foreign policy elites give rise to norms favoring cooperation and that the internalization of these norms in domestic law and legal institutions fosters the progressive evolution of rule-governed cooperation. Suggests that states can be induced not merely toward compliance but into obedience, defined as voluntary compliance in the absence of sanctions.

Koh, Harold, Why Do Nations Obey International Law?, 106 Yale L.J. 2599 (1997). (1g, 2, 5, 7).

Divides ILC field into two camps, the first comprised of managerialist and transnational legal process theories and dedicated to the defense of the premises that international law is really law and that states generally comply, and the second populated by realists and rational choice theorists skeptical of the causal significance of international law. Surveys the origins and development of international law and elaborates the Chayes' managerial theory and Franck's legitimacy theory. Presents and heuristically tests transnational legal process theory, which postulates that repetitive interactions within transnational epistemic communities consisting largely of foreign policy elites give rise to norms favoring cooperation and that the internalization of these norms in domestic law and legal institutions fosters the progressive

evolution of rule-governed cooperation. Concludes that states can be socialized toward obedience, and not merely to enhanced compliance.

Koskenniemi, Martii, The Pull of the Mainstream, 88 Mich. L. Rev. 1947 (1990). (1g, 5).

Contends that non-legal sources of behavioral prescription and proscription exert greater influence upon states than do legal sources. Stresses the importance of norm inculcation within domestic legal regimes to the promotion of compliance.

KRATOCHWIL, FRIEDRICH V., RULES, NORMS, AND DECISIONS (1989). (2, 3, 5, 7, 9).

Describes international law circa 1989 as a primitive legal system and attributes primary importance to domestic legal systems in regard to the enforcement of international legal norms. Conceptualizes noncompliance with international legal norms as not an act of lawlessness but rather as a gambit to transform, or bargain for the transformation of, norms and rules. Cautions that attempts to enforce compliance through coercive measures are bound to fail and urges scholars to fashion alternative methods.

Ku, Julian G., The State of New York Does Exist: How the States Control Compliance with International Law, 82 N.C. L. Rev. 457 (2004). (5).

Critiques the "nationalist" conception of international relations, which assumes the exclusion of States, and advances a revisionist model in which States, as general sovereigns, play an important role in the interpretation of customary international law, in the implementation of non-self-executing treaties, and in the administration of private international law more generally. Situates the primary locus of compliance with international law in the constituent States of the United States, and in particular in State courts and legislatures. Suggest that domestic legislation may be more effective in promoting compliance. Concludes that affording a broader to the States in the implementation of international law may better comport with traditional notions of federalism while simultaneously enhancing the legitimacy of international law.

Leary, Virginia A., Nonbinding Accords in the Field of Labor, in International Compliance with Nonbinding Accord (Edith Brown Weiss, ed. 1997). (9, 10).

Argues that "compliance" is too narrow an approach to the study of the relationship of nonbinding norms to state behavior and that the concept of "influence" is more appropriate to the analysis of "soft law." Admits the difficulty in measuring the influence of soft law due to the limited dissemination of its normative pronouncements, particularly in the field of international labor law. Suggests that the translation of soft law into customary international law may promote their effectiveness, but notes that this hypothesis is not yet supported by empirical research.

Levit, Janet Koven, The Constitutionalization of Human Rights in Argentina: Problem or Promise?, 37 Colum. J. Transnat'l L. 281 (1999). (1g, 2, 5).

Surveys ILC theories. Adopts the transnational legal process premise that the internalization of international rules and norms within the domestic legal systems of states is the most propitious avenue toward compliance. Examines the constitutionalization strategy employed by the Argentine legal system and attributes compliance failures to knowledge deficits rather than deliberate inaction. Concludes, consistent with constructivist theory, that epistemic communities of human rights activists are essential to the support of internalization strategies and ultimately to compliance.

Levit, Janet Koven, the Dynamics of International Trade Finance Regulation: The Arrangement on Officially Supported Export Credits, 45 Harv. Int'l L.J. 65 (2004). (2, 7, 9).

Examines empirical data concerning the the Arrangement on Guidelines for Officially Supported Export Credits—a soft-law framework for cooperation in the international trade and finance issue-area—and explains a systematic pattern of compliance as a function of the flexibility, pragmatism, and consensus-based participatory decision-making procedures of the Arrangement. Suggests that narrow rational choice accounts of state compliance are belied by evidence suggesting that states continue to cooperate even in the absence of short-term benefits not merely because they desire the longer-term benefits of cooperation but because participation in the regime restructures their preferences and their identities, through a dynamic and interactive process, to create inherent interests in compliance and in membership in a social community committed to incrementally strengthening regime norms. Concludes that explanations of the Arrangement and of the importance of legal rules to the establishment and effectiveness of other soft-law agreements require integration of reputational and managerial theories.

Louka, Elli. Cutting the Gordian Knot: Why International Environmental Law is Not Only About the Protection of the Environment, 10 Temp. Int'l & Comp. L.J. 79 (1996). (1e, 5).

Attributes failure of enforcement mechanisms to create compliance with international environmental law to the inadequacy of resources. Suggests that the key to promoting compliance lies in the nurturing of transnational norm-generating communities that inculcate norms more deeply into state decisionmaking and the institution of domestic incentives that reward cooperative behavior. Concludes that the deepest cooperation requires iterative, state-to-state negotiation and the reconstruction and convergence of national identities.

March, James G., & Olsen, Johan P., The Institutional Dynamics of International Political Orders, 52 Int'l Org. 943 (1998). (1d/i/k, 7, 8, 9).

Articulates a theory of "new institutionalism" that hypothesizes that the development of transnational networks of domestic bureaucracies, courts, and administrative agencies, along with the officials who staff them, are becoming the primary agents for the promulgation of new normative and legal regulations. Rejects the "logic of consequences," which regards compliance behaviors as the result of the rational calculation and pursuit of interests, whether by individuals, organizations, or states, in favor of a "logic of appropriateness," which suggests that compliance behavior, along with the identities, rules, and institutions that are theoretically significant in the explanation of international relations more generally, is shaped by social and moral norms that causally influence individual preferences. Describes points of intersection between the two logics and concludes that the complexity of international relations is such that theoretical islands, rather than a meta-theory, should be the focus of ILC scholars.

Mearsheimer, John J., The False Promise of International Institutions, 19 Int'l Sec. Rev. 5 (1995). (1a, 3).

Rejects the causal significance of law in relation to state behaviors. Contends that states make decisions regarding compliance with international law solely in terms of whether compliance will tilt the balance of power in their favor. Argues that empirical evidence lends little or no support to the proposition that cooperation can be built and sustained upon a normative foundation.

Mitchell, Ronald, Compliance Theory: An Overview, in Improving Compliance with International Law (James Cameron Jacob Werksman & Peter Roderick, eds. 1996). (7, 9, 10).

Surveys ILC theories. Links sources of compliance failures to issues of faulty regime design. Resists the tendency to equate state behavior consistent with legal rules with compliance and argues that claims regarding the effectiveness of legal regimes must be subjected to empirical analysis.

Moore, David H., A Signaling Theory of Human Rights Compliance, 97 Nw. U. L. Rev. 879 (2003). (1c/f, 2).

Challenges the legalist assertion that compliance is the rule rather than the exception. Surveys and briefly critiques existing theories. Supplements rational choice theories by propounding a signaling theory" that explains compliance with human rights treaties even in the absence of pressure as a strategy intended to maintain and enhance status within a highly interrelated community of states.

Moore, John Norton, Enhancing Compliance with International Law: A Neglected Remedy, 39 Va. J. Int'l L. 881 (1999). (3, 6).

Cautions that too much scholarly attention is focused on the continuing refinement and promulgation of international legal regimes and too little upon compliance, the "greatest challenge for the future of international law[.]" Queries whether high politics issue-areas may be less regulable through law than issue-areas of low politics. Contends that informal political measures, such as reprisal or reciprocal conduct, may be more effective in promoting long-term compliance than formal institutional mechanisms.

Morrow, James D., The Laws of War, Common Conjectures, and Legal Systems in International Politics, 31 J. Leg. Stud. 41 (2002). (1b, 2, 3, 6).

Undertakes empirical analysis of compliance with the laws of war and concludes that compliance can be secured only through voluntarism or through effective enforcement measures. Treats states as the relevant level of analysis. Operationalizes the laws of war as a series of prescription and proscriptions with regard to particular "battle strategies" and offers a rational choice explanation of compliance and noncompliance as self-interested calculations of the benefits and costs of electing particular battle strategies. Predicts noncompliance when the benefits are greater than the associated costs imposed in reprisal. Suggests that the capacity of law to regulate state behavior in the issue-area of armed conflict may be more limited than in other issue-areas.

Nakagawa, Junji, Securing Compliance in Traditional and Contemporary International Law: A Theoretical Analysis, in Trilateral Perspectives on International Legal Issues: From Theory into Practice (Thomas J. Schoenbaum, Junjia Nakagawa, & Linda C. Reif, eds. 1998). (2, 4, 9).

Examines trends in ILC and notes a theoretically significant shift toward nontraditional methods of enhancing compliance, including soft law and third-party dispute resolution mechanisms. Notes further that the proliferation of non-state actors and non-European states as subjects and authors of international law may imposes duties to comply upon actors that lack the capacity to comply with legal regimes. Suggests that non-binding regimes that subject disputes over compliance to neutral institutions and seek to induce compliance through positive incentives, rather than through coercion, may be the path to enhancing the efficiency of international law.

O'Brien, William V., Teaching Humanitarian Law in Universities and Law Schools, 31 Am. U. L. Rev. 1011 (1982). (3, 6).

Recognizes the fragility of the legal regime governing the laws of war in relation to state sovereignty and the imperatives of security. Challenges the orthodox view that reprisal is the sole method for ensuring compliance with the laws of war. Concludes that the norms underlying the laws of war are so fundamental to the maintenance of international order and justice that states must be willing to refrain from reprisal and submit violations to judicial determination if these normative principles are to be protected and promoted.

O'Connell , Mary Ellen, Enforcement and the Success of International Environmental Law, 3 Ind. J. Global Legal Stud. 47 (1995). (1g, 5).

Argues that compliance with international environmental law is the rule rather than the exception and that most compliance is voluntary in nature. Rejects enforcement, whether through formal international legal institutions or informal reprisals, as a means of enhancing compliance due to a host of limiting factors, including an absence of jurisdiction or the inability to impose effective sanctions for violations. Posits that domestic courts may prove the most effective means of securing compliance with international environmental law if doctrinal and political obstacles to adjudication of claims, such as standing, forum non conveniens, and sovereign immunity, can be reduced.

Okuwaki, Naoya, The Changing Nature of International Obligations: Can Voluntary Compliance Overcome the Difficulties in the Present Nation-State System?, in Trilateral Perspectives on International Legal Issues: From Theory into Practice (Thomas J. Schoenbaum, Junjia Nakagawa, & Linda C. Reif, eds. 1998). (2, 4, 9, 10).

Stresses that proper empirical measurement of the effectiveness of a legal regime requires distinguishing lex ferenda from crystallized international legal obligations. Distinguishes effectiveness, measured as changes in state behaviors caused by the rules of legal regimes, from compliance, measured as the mere correspondence of behaviors and rules. Suggests that the most difficult obstacle facing legal architects is the re-negotiation of the normative content of existing legal regimes, and of customary international law, to take into consideration the divergent normative preferences of non-Western states that did not participate equally in the formation of these regimes.

Posner, Eric, A Theory of the Laws of War, 70 U. Chi. L. Rev. 297 (2003). (1c, 2, 3).

Develops a rational choice theory of compliance that explains the laws of war as a pre-war agreement to abstain from enumerated "battle strategies" and predicts that states will comply with rules that limit the resort to particular methods or means only if the benefits gained through the resort to these methods or means are less than the sanction costs imposed by other states in reprisal. Expresses skepticism that states will generally comply with the laws of war. Calls for more empiricism and greater parsimony in ILC.

Posner, Richard A., Some Economics of International Law: Comment on Conference Papers, 31 J. Leg. Stud. 321 (2002). (1c, 3, 7).

Surveys some initial applications of rational choice theory to ILC. Assumes that state behavior is essentially identical to that of individuals, who are further presumed to be rational actors in that they are self-interested and make conscious welfare-maximizing choices. Rejects the theoretical relevance of substate levels of analysis. Challenges the premise of reputational theory that reputation is unitary and that states have a single reputation across issue-areas. Discounts the significance of norms as a basis for building and maintaining compliance with international law.

Purvis, Nigel, Critical Legal Studies in Public International Law, 32 Harv. Int'l L.J. 81 (1991). (3, 4).

Presents a critical legal studies theory of international law that rejects the primacy of states in the international system, disputes the liberal notion that an objective moral consensus regarding justice is possible, and challenges the determinacy of international legal obligations. Suggests that compliance may not in fact be possible given the utter indeterminacy and incoherence of international law.

Ratner, Steven R., Does International Law Matter in Preventing Ethnic Conflict?, 32 N.Y.U. J. Int'l L. & Pol. 591 (2000). (1g/k, 2, 5, 6, 7, 8).

Queries whether international law can expect to secure compliance in cases of ethnic conflict and human rights issues and concludes in the affirmative. Surveys and organizes ILC field into normative and positive theoretical clusters. Analyzes the functions of the High Commissioner on National Minorities for the Organization on Security and Cooperation in Europe and suggests that because they fail to operationalize "soft law" norms existing theories are unable to explain significant forces that induce compliance with emerging, if uncodified, sources of behavioral regulation. Articulates a "mediation theory" which postulates that individuals are relevant actors in international relations and that certain high-status normative "intermediaries" can play theoretically significant roles in promoting compliance.

Ratner, Steven R., Overcoming Temptations to Violate Human Dignity in Times of Crisis: On the Possibilities for Meaningful Self-Restraint, 5 Theoretical Inq. L. 81 (2004). (1i, 6).

Differentiates the prospects for nurturing compliance in regard to issue-areas of high politics and low politics. Describes the dilemma for states facing grave crises in which the only alternatives appear to be noncompliance with legal regimes, particularly human rights or humanitarian law, or willing acceptance of national catastrophe. Suggests that compliance may be possible even during crises and national emergencies provided states can be induced, before the crises or emergencies arise and fundamentally transform attitudes regarding compliance, to "tie their own hands" through precommitments to restraint.

Ratner, Steven R., Precommitment Theory and International Law: Starting a Conversation, 81 Tex. L. Rev. 2055 (2003). (1f/g, 5).

Extends domestic constitutional law "precommitment theory" into the realm of international human rights and humanitarian law. Notes that some states enter into international treaties either without the intent to comply or solely to secure reciprocity or the benefits of association, and not on the basis of agreement with underlying norms. Builds upon reputational and signaling theories and suggests that the seemingly related questions of why states "bind their hands" in advance of future temptations to engage in specific conduct by entering into international legal obligations and why states comply may be entirely separate lines of inquiry.

Raustiala, Kal, The Architecture of International Cooperation: Transgovernmental Networks and the Future of International Law, 43 Va. J. Int'l L. 1 (2002). (1i, 2, 6, 7).

Surveys ILC theories to assess the influence of informal transnational linkages between state officials upon compliance. Draws empirical support from state practice for the proposition that realism, managerialism, and transnational legal process theory each imply a positive role for these transgovernmental networks in enhancing compliance with treaties and with less formal transnational agreements. Concludes that, particularly in issue-areas of great complexity and in

regard to low politics, transgovernmental networks will increasingly come to substitute for treaties as the modality whereby to coordinate cooperation and that scholars must retool existing ILC theories to adapt to this transformation.

Raustiala, Kal, Compliance and Effectiveness in International Regulatory Cooperation, 32 Case W. Res. J. Int'l L. 387 (2000). (2, 7, 9, 10)

Reorients focus from compliance to effectiveness as the better gauge of the function of legal regimes to modify state behavior toward norm-governed cooperation. Surveys existing ILC theories in three baskets: rationalism, normativism, and liberalism. Evaluates studies to heuristically test the effectiveness of international environmental treaties. Concludes that an empirical and multidisciplinary approach that draws upon the insights of international relations theories is required if international legal regimes are ultimately to be rendered more effective.

Saunders, Phillip M., Development Cooperation and Compliance with International Environmental Law: Past Experience and Future Prospects, in Trilateral Perspectives on International Legal Issues: From Theory into Practice (Thomas J. Schoenbaum, Junjia Nakagawa, & Linda C. Reif, eds. 1998). (1e, 3).

Identifies the proliferation of soft law agreements, in which states seek to express normative commitments without accepting legal limitations on their sovereignty, as a principle impediment to compliance. Notes that the complexity of many recent international legal regimes, coupled with the implementation costs such regimes impose upon members, further weaken the prospects for compliance. Expresses skepticism about the prospects for compliance but stresses that financial and technical assistance to underdeveloped states is an imperative if compliance, particularly with international environmental law, is to advance.

Setear, John K., An Iterative Perspective on Treaties: A Synthesis of International Relations Theory and International Law, 37 Harv. Int'l L.J. 139 (1996). (1c/e, 2).

Examines several arms control agreements to support a theory that draws from managerialism and rational choice theory and posits that treaty parties are in an iterative relationship in which they learn over time deepen the natural and rational propensity to cooperate. Suggests that by developing rules and procedures to make the rational preference for cooperation more effective, states produce long-term public gains. Concludes that obligations will gradually increase over time as the depth of cooperation evolves and that compliance is a rational outcome.

Scott, Shirley V., The Impact on International Law of U.S. Noncompliance, in United States Hegemony and the Foundations of International Law (Michael Byers & Georg Nolte, eds. 2003). (2, 9).

Suggests that the indeterminacy of international law is such that the concept of compliance is inadequate to the development and testing of theories, and notes that many states—not just the U.S.—have mixed records of compliance. Concludes that the absence of a clear distinction between legal and illegal behavior in many issue-areas of law introduces methodological difficulties into the field of ILC. Suggests that mitigation of methodological difficulties may require the selection of cases about which a consensus can be reached regarding the facts of compliance or noncompliance.

Shelton, Dinah, Compliance with International Human Rights Soft Law, in International Compliance with Nonbinding Accords (Edith Brown Weiss, ed. 1997). (9,10).

Distinguishes the study of compliance of "soft law," or nonbinding declarations of norms, from treaty-based international legal obligations. Disputes the managerialist assertion that compliance cannot be measured empirically. Recognizes the heightened difficulty in operationalizing soft law compliance and in acquiring, evaluating, and scoring compliance data. Concedes that establishing causality between soft law rules and behaviors is particularly difficult and potentially beyond the methodological capacity of the discipline.

Shen, Jianming, The Basis of International Law: Why Nations Observe, 17 Dick. J. Int'l L. 287 (1999). (1h, 7).

Develops an ILC taxonomy that divides the field in naturalist and positivist theories and their variants. Enumerates several theoretically significant variables to the explanation and prediction of state compliance, including national-cultural attitudes toward law and legal authority, the salience of reputation in the personal calculus of head decisionmakers, and the likelihood of sanctions or reprisals in the event of noncompliance. Concludes that compliance is the inherent preference of states because the very existence of law creates a normative force that impels them toward compliance.

Shihata, Ibrahim F. I., Implementation, Enforcement, and Compliance with International Environmental Agreements—Practical Suggestions in Light of the World Bank's Experience, 9 Geo. Int'l Envtl. L. Rev. 37 (1996). (2).

Embraces the managerialist hypothesis that attributes compliance failures to a lack of technical capacity. Generalizes from the World Bank experience to suggest that enforcement measures are ill-suited to enhancing compliance with international environmental law. Recommends packages of technical support and transnational dispute resolution mechanisms to enable states to harmonize interests and expectations and thereby enhance compliance.

Simmons, Beth A. Capacity, Commitment, and Compliance: International Institutions and Territorial Disputes, 46 Confl. Resolution 829 (2002). (1c/f, 2, 6, 9).

Contends that rational, self-interested states enter into international legal agreements to achieve outcomes and reap gains not available through independent action or informal negotiation alone. Argues further that the mere existence of legally binding rules are causally significant in transforming state preferences and decisions, even in regard to issue-areas of high politics such as territory, because rules impose costs upon decisions not to comply. Predicts that as operant norms diffuse and solidify, reputational costs associated with noncompliance rise along with the prospects for compliance.

Simmons, Beth A., International Law and International Relations: Scholarship at the Intersection of Principles and Politics, 95 Am. Soc'y Int'l L. Proc. 271 (2001). (2, 3, 6, 9).

Laments the shallowness of interdisciplinary collaboration between international law and international relations in the investigation of the phenomenon of compliance. Describes the skepticism of international legal scholars at the proposition that legal rules can be operationalized as variables and integrated into theoretical models that in turn can be tested with the assistance of social science methodologies. Suggests that if interdisciplinary collaborations continue to find that law exerts no or little independent causal influence upon state compliance behaviors the likelihood of future collaboration within the ILC field will diminish.

Simmons, Beth A, Money and the Law: Why Comply with the Public International Law of Money?, 25 Yale J. Int'l L. 323 (2000). (1c/f, 2, 7, 9).

Conceptualizes international financial law as a signaling device used by states-parties to relevant treaties designed to demonstrate "good citizenship" to markets and other states and in turn to reap the associated benefits of trade and investment. Surveys and faults much of the literature in ILC for methodological and epistemological shortcomings, including lack of sufficient rigor and an absence of empiricism. Explains and predicts compliance as the strategy to preserve these reputational benefits, and concludes that those states most sensitive to reputational effects will be most likely to comply.

Slaughter, Anne-Marie, International Law in a World of Liberal States, 6 Eur. J. Int'l L. 503 (1995). (1d, 5, 7).

Posits that the key actors in regard to compliance are not states but rather individuals, institutions, organizations, and other components of civil society. Contends that it is the nature of the domestic politics that predominate within state borders that determines the composition of representative governments and in turn the willingness of states to subordinate sovereignty to normative, and thus legal, regulation. Theorizes that liberal democracies are inherently more committed to the "rule of law," more prone to absorb international legal obligations into their domestic legal orders and to diffuse these obligations through foreign policy bureaucracies, and more willing to permit interest groups to mobilize mass electoral support for international legal norms than non-democratic states. Explains and predicts compliance as a function of the degree to which the aggregation of the preferences of key domestic individuals and groups directs the representative state toward norm-following and legal regulation.

SLAUGHTER, ANNE-MARIE, A NEW WORLD ORDER (2004). (5, 7).

Describes transnational government networks—informal linkages between counterpart state officials that transcend national boundaries—as important resources for enhancing capacity for compliance and building upon the natural propensity of states toward voluntary compliance. Suggests further that by disseminating administrative resources and information, government networks reinforce cooperative norms and strengthen the international rule of law.

Slaughter, Anne-Marie, & Raustiala, Kal, in Handbook of International Relations (W. Carlsnaes, T. Risse, & B.A. Simmons, eds. 2002). (7, 9, 10).

Conceptualizes the field of ILC and surveys existing theories. Traces the intellectual history of ILC. Sketches a research agenda.

Smith, Edwin M., Understanding Dynamic Obligations: Arms Control Agreements, 64 S. Cal. L. Rev. 1549 (1991). (1c, 2).

Builds upon dynamic theories of cooperation and iterated game theory to develop a rational choice account that explains arms control agreements as the result of self-interested states learning to cooperate and jointly share the relative gains available through compliance with gradually evolving legal regimes. Suggests that treaties are but a part of a broader pattern of nonlegal relationships between parties and that formal institutions are unnecessary to support compliance, as parties value and desire to maintain and improve this relational pattern and converged expectations and the informal mechanism of reciprocity are adequate to the task. Indicates that the extrapolation of the findings of the study to complex issue-areas such as trade, environmental management, and technology are possible.

Stone, Christopher D., Common But Differentiated Responsibilities in International Law, 98 Am. J. Int'l L.276 (2004). (1c/e, 2, 6).

Criticizes procedural rational choice approaches. Expands the concept of "common but differentiated responsibilities," which postulates that states are impressed with equal obligations but vary in their capacities for compliance, and suggests that enforcement costs will be reduced if more capable states make allowances for the less capable. Elaborates a model for negotiating differential responsibilities that amalgamates managerial and rational choice theories. Applies the model to the Kyoto Protocol.

Strauss, Andrew L., Overcoming the Dysfunction of the Bifurcated Global System: The Promise of a People's Assembly, 9 Transnat'l L. & Contemp. Probs. 489 (1999). (1i/k, 4, 8).

Attributes responsibility for state compliance and non-compliance with international law to the elites at the apex of state power. Contends that in practice the principle of the formal equality of states gives way to a hierarchy in which powerful states are able to prevent the effectiveness of international treaties by mobilizing opposition, as in the case of the U.S. and the Kyoto Protocol. Advocates an international legislative body, termed Global Peoples Assembly, with the power to create and enforce laws directly against states and individuals. Calls for "compliance from the inside out" whereby states, stripped of their status as the sole authors and primary enforcers of international law, would lose the power to determine whether their nationals complied in favor of this representative assembly, through which the will of their nationals would be given direct effect.

Sullivan, Scott M., Changing the Premise of International Legal Remedies: The Unfounded Adoption of Assurances and Guarantees of Non-Repetition, 7 UCLA J. Int'l & Foreign Aff. 265 (2002/2003). (5, 7)

Examines the introduction by the International Court of Justice of the mechanism of Assurances and Guarantees of Non-Repetition [AGNR] as a novel remedy for breach of customary international legal obligations. Surveys legitimacy theory and transnational legal process theory and concludes that the use of AGNRs is neither sufficiently legitimated nor adequately internalized as an operative norm within the international community to support the broader process of legalization.

Swaine, Edward T., Rational Custom, 52 Duke L. J. 559 (2002). (1c/f, 2, 3, 9).

Contends, on the basis of empirical evidence, that the dispute between legitimacy theory and rational choice theory over the causal significance of norms to state behaviors can be reconciled through adoption of a thick theory of rationality. Argues that under some circumstances even rational self-interested states may determine that complying with customary law may maximize their welfare because they regard affording respect to international legal processes or to particular normative principles as inherently valuable or, even more probably, because reputation matters. Suggests that maximization of international cooperation must take into account the possibility that even self-interested states may actively seek to adhere to customary legal obligations.

Tallberg, Jonas, Paths to Compliance: Enforcement, Management, and the European Union, 56 Int'l Org. 609 (2002). (1b/e, 2, 5, 7, 10).

Assesses the competing claims of enforcement theory, which hypothesizes that the threat of sanctions induces compliance, and managerial theory, which contends that the inherent propensity of states to comply can be maximized through positive inducements, the provision of technical assistance, and the establishment of fora to aid negotiation and harmonization of policies and interests. Examines the practice of the European Union, a regime that incorporates

elements of both enforcement and management in a "management enforcement ladder," and concludes that the inclusion of both mechanisms creates the most effective regime. Compares the EU to other international legal regimes, including the World Trade Organization, the European Court of Justice, and the European Court of Human Rights to conclude that the EU experience, though historically distinct, is replicable and that regimes in issue-areas such as trade, environmental protection, and human rights will achieve greatest effectiveness through a holistic approach to compliance.

Tay, Simon S.C., Southeast Asian Fires: The Challenge for International Environmental Law and Sustainable Development, 11 Geo. Int'l Envtl. L. Rev. 241 (1999). (1e, 2).

Advances the managerialist premise that the primary obstacle to compliance with environmental law is technical incapacity. Notes that failures in compliance with environmental regimes have serious transborder consequences. Enumerates myriad sources of and explanations for inadequate compliance support offered by existing international and regional organizational mechanisms. Suggests that enhanced compliance with international environmental law will likely requre developed states and even private actors to offer positive inducements—"carrots"—to states with low technical capacities.

Thompson, Alexander, Applying Rational Choice Theory to International Law: The Promise and Pitfalls, 31 J. Leg. Stud. 285 (2002). (2, 8, 9).

Accepts the rational choice assumption that legal decisions are market-like choices, but faults rational choice theory for failing to offer a clear and testable definition of rationality. Concludes that the influences of reputation are less salient with regard to states than in regard to individuals. Challenges scholars in the ILC field to properly model their theories by specifying testable and falsifiable hypotheses.

Trachtman, Joel P., Bananas, Direct Effect and Compliance, 9 Eur. J. Int'l L. (1999). (2, 3).

Explains the proliferation of "soft law" agreements and the indeterminacy of international legal regimes as essential to attract and preserve powerful states as members by allowing them to avoid circumstances in which they perceive no alternative other than patent noncompliance. Rejects the transnational legal process prediction that obedience is the ultimate objective of international law and suggests instead that the possibilities for compliance will always be tempered by the realities of state self-interests.

Trimble, Philip, International Law, World Order, and Critical Legal Studies, 42 Stan. L. Rev. 811 (1990). (4, 5).

Advocates the centrality of international law to the construction of the post-Cold War international order. Surveys the critical legal studies critique of realism. Develops the liberalist premise that the first step in the diffusion of and compliance with international legal obligations is the incorporation of international law in the domestic legal systems of states. Advances the core premise common to legitimacy theory and constructivism which holds that the perception by domestic elites in the judicial and executive branches of government that international legal obligations are legitimate is necessary to induce voluntary compliance.

Tyler, Tom R., Compliance with International Property Laws: A Psychological Perspective, 29 N.Y.U.J. INT'L L. & POL. 219 (1997). (1h/k, 2, 5, 8, 10).

Surveys empirical studies that support the assertion that legal rules fail to marshal sufficient deterrent threats to enforce compliance. Contends that effective legal regimes require

voluntary compliance, which in turn requires the promotion of a "culture of compliance" rooted in normative perceptions of law, and the institutions that administer law, as moral and legitimate. Identifies lack of trust in institutions and officials as a principal obstacle to the enhancement of legal legitimacy and proposes "moral development strategies" to re-establish trust.

Weiss, Edith Brown, Understanding Compliance with International Environmental Agreements: The Baker's Dozen Myths, 32 U. Rich. L. Rev. 1555 (1999). (2, 5, 10).

Describes the concept of compliance in scalar, rather than dichotomous, terms, and contends that whether states adhere to their international agreements is a matter of degree. Distinguishes effectiveness from compliance and urges scholars to focus on the former. Argues that the most effective agreements may be those that are tolerant of some defection. Disputes the liberalist premise that democracies and free market polities are inherently more compliant than undemocratic states, and challenges the conclusion of enforcement theory that coercion is necessary to support cooperation. Concludes that regime architects must be prepared to consider a range of strategies for inducing compliance and tailor each agreement to its membership.

Wendt, Alexander, Constructing International Politics, 20 Int'l Sec. 71 (1995). (1i, 8).

Hypothesizes that the fundamental structures of international relations are social rather than material and that these structures shape the identities and preferences of actors. Contends that the subjective preferences of individuals, groups, and states can be constructed by transnational, interactive, and transformative social processes cumulatively known as globalization to favor cooperation and compliance with the normative content of legal regimes. Enunciates an important role for human agency in the social processes of construction of preferences favoring compliance with law.

Williamson, Richard L., Hard Law, Soft Law, and Non-Law in Multilateral Arms Control Some Compliance Hypotheses, 4 Chi. J. Int'l L. 59 (2003). (1b, 2, 6, 7).

Distinguishes 'effectiveness" from "compliance" in the context of arms control treaties. Identifies a number of factors that enhance compliance, including inclusion of all relevant states in treaty membership and maximization of the clarity of legal obligations. Highlights methdological difficulties in assessing compliance, including sui generis nature of cases, absence of available data, and differential capacities of states. Briefly surveys ILC theories and propounds a series of testable hypotheses generally favoring "hard law" over "soft law" as more likely to foster compliance.

Yoshida, O., Soft Enforcement of Treaties: The Montreal Protocol's Noncompliance Procedure and the Functions of Internal International Institutions, 10 Colo. J. Int'l Envtl. L. & Pol'y 95 (1999). (1e, 2, 6, 10).

Differentiates "hard" enforcement—international adjudication and sanctions—from "soft" enforcement—reporting, monitoring, and verification backed by financial incentives to compliance—in international environmental law. Examines the application of soft enforcement mechanisms in the context of the ozone regimes. Suggests that the selection of a flexible definition of "noncompliance," coupled with soft enforcement mechanisms employed by treaty-created institutions governed democratically and multilaterally by states-parties and free to employ not only principles of law but of equity in evaluating compliance, may well be the ideal approach to fostering cooperation more generally in the issue-area of environmental protection.

YOUNG, ORAN R., COMPLIANCE AND PUBLIC AUTHORITY (1979). (1k, 3, 5, 8).

Discounts the causal significance of legal regulation in regard to the behavior of actors in social relations generally. Treats individuals, the ultimate subjects of all law and the actors responsible for compliance decisions, as the relevant focus of ILC theories. Hypothesizes that a host of individual psychological variables that tap a series of beliefs, motives, and images, such as the desire to generate reciprocity, altruism, reputational concerns, fear of sanctions, social pressures, or moral obligations, better explain and predict the phenomenon of compliance decisionmaking than variables drawn from other levels of analysis.