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Abstracts

Articles

Supplying Compliance: Why and When the
United States Complies with WTO Rulings

Rachel Brewster & 201
Adam Chilton

In studies of compliance with international law, the focus is usually on the “demand side”—that is, how to increase the pressure on the state to comply. Less attention has been paid, however, to the consequences of the “supply side”—who within the state is responsible for the compliance. This Article is one of the first studies to systematically address the issue of how different actors within the U.S. government alter national policy in response to the violations of international law. The Article does so by examining cases initiated under the World Trade Organization (WTO) Dispute Settlement Understanding (DSU). This Article presents empirical evidence that who within the government must supply compliance is the most important factor in explaining both whether and when the U.S. government complies with WTO rulings, even after controlling for important characteristics of the state filing the request and the political importance of the affected industry. These results demonstrate that understanding the domestic supply of compliance is a critical, if neglected, aspect of international law theory. The results also highlight how the dominant “unitary actor” model (adopted by international law scholars to explain compliance) obscures important causal pathways in the compliance process. This Article opens up a new and rich field of study into what makes international law effective or ineffective.

Toward a Legal Theory on the Responsibility to
Protect

Monica Hakimi 247

The idea of the “responsibility to protect” has received enormous attention in recent years—so much attention that it now goes simply by R2P. R2P posits that, when a state fails to protect its population from mass atrocities, the broader international community should step in to help. The vision here is of outside states banding together and doing everything possible to protect the at-risk population. But for all the attention this vision receives, its effect on international law or on the ultimate goal of protecting people from atrocities is unclear. This Article critiques that vision and offers an alternative. The Article argues that R2P is unlikely to become legally operative so long as it presents a single, daunting duty that falls either on all outside states simultaneously or on states’

collective organizations, such as the United Nations. Instead, R2P should present a bundle of more discrete duties, and responsibility for each should attach to specific outside states at a time, on the basis of their own conduct or relationships. This alternative vision is preferable to the now dominant one because this vision builds on existing international law and follows the law's current trajectory. It thus has the potential to gain legal traction going forward.

*In the immediate aftermath of the Supreme Court's landmark 2008 ruling in *Medellin v. Texas*, critics attacked the Court's holding as deeply inconsistent with the original understanding of treaty interpretation. This Article carefully reexamines the interrelationship between the late-eighteenth century law of nations, the framing and ratification of the federal Constitution, and the practices of the early Supreme Court. In uniting these threads, it reveals a link—patent and remarkable—between the late eighteenth-century law of nations, the Constitution's decision to vest treaty interpretation in the judiciary, and the methods of treaty interpretation employed by the Supreme Court in the early republic.*

Textual treaty interpretation—textualism in all but name—was thought to be a requirement of the law of nations at the time of the Constitution's adoption. The Constitution's Framers—who knew the law of nations' interpretive rules—invested treaty interpretation in the judiciary for precisely this reason, designing the federal judiciary to allow independent and expert judges to interpret treaties textually even if that meant that such interpretations went against the interests of the United States. The Supreme Court, through the end of the Marshall era, did precisely as the Framers intended, holding to a muscular textualism, citing often to interpretive rules embedded in the law of nations as it did so.

Ultimately, this historical reexamination uncovers a fascinating story about the interplay between interpretive expectations and constitutional and institutional design. The law of nations' requirement that treaties be interpreted textually allowed the young United States the opportunity to bind its own hands and thereby obtain the credibility necessary to deal with European powers on equal footing. Vesting treaty interpretation in the judiciary meant the United States' treaty commitments would be honored as a matter of positive law. But this strategy depended in no small measure on an ability to signal to other nations precisely how those treaties would be interpreted. The law of nations' requirement that treaty interpretation be rule-bound and textual made the United States' decision to invest treaty interpretation in the judiciary more than an illusory promise. It assured other nations their commitments would be honored according to international maxims of interpretation well-settled and widely-known.

Note

The Commander-in-Chief and the United Nations:
Why the President Can Use the United Nations
Security Council as the Constitutional Basis for
Military Operations Short of War

Samuel Kleiner 359

This Note argues that the U.S. President can utilize military force for operations "short of war" based on a U.N. Security Council Resolution without congressional authorization. In the post-WWII era, Presidents have relied on U.N. Security Council resolutions to argue that they have the constitutional power to use military force without Congress. In the Korean War and the Gulf War, the President argued that the Executive had the power to launch a full-scale war based on a U.N. Resolution without going to Congress. In interventions in Somalia, Haiti, Bosnia, and Libya, the President has argued that the Executive has the power to use military force short of war to uphold the U.S. national interest in enforcing a U.N. Security Council Resolution. However, no scholar has examined this issue in over fifteen years. This Note argues that the President has the constitutional power to conduct military operations "short of war" without congressional authorization if the military action is based on a U.N. Security Council Resolution.

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