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Editorial

This issue of *International Legal Theory* marks the beginning of the publication's third year, and the fourth year of the ASIL Interest Group on the Theory of International Law. The level and quality of participation have been gratifying, and the officers look forward to deepening our Interest Group's activities by adding a panel on Legal Theory to the ASIL's annual meeting in Washington D.C., to be held in April 1998.

At last April's meeting members elected Professor Nicholas Onuf of Florida International University Chair of the interest group. Jianming Shen of St. John's University is the new Vice-Chair. Please send any suggestions that you may have concerning this year's or future ASIL Legal Theory panels to Prof. Nicholas Onuf, Florida International University, International Relations Department, University Park, Miami, Florida 33199. The tentative topic for the Group's first panel will be "Republican Theory and Democratic Entitlement in International Law."

Professor Joel P. Trachtman of the Fletcher School of Law and Diplomacy at Tufts University has provided the lead article for this fall's issue of the Interest Group Publication (number 3.2). His essay on "The Theory of the Firm Applied to International Organization" is enclosed with this mailing. The editors invite you to submit comments on Prof. Trachtman's essay or lead articles for future issues to *International Legal Theory*, c/o Center for International and Comparative Law, University of Baltimore School of Law, 1420 North Charles St., Baltimore, Maryland 21201. We hope to promote the broadest possible discussion and reflection about *International Legal Theory* and would be grateful for comments and contributions from a wide variety of styles and perspectives.

Letter from the Chair: Nicholas Onuf

At the annual ASIL meeting in April, the International Legal Theory Interest Group had its first meeting since the tragic death of its founding Chair, Joaquin Tacsan. As Vice-Chair, I conducted the meeting which, though poorly attended, offered a useful opportunity to reassess the function and future of the Interest Group.

All present agreed that the continued publication of *International Legal Theory* more than vindicated the Group's existence. Thanks to a strong editorial team consisting of Francesco Parisi and Tim Sellers, *ILT* makes a distinctive and important contribution to scholarly exchange on theoretical issues all too neglected in the journal literature. This issue, for example, features an essay by Robert Keohane, a leading political scientist at Duke University, adapted from a lecture that he delivered at Yale Law School.

The Editors do not have a backlog of suitable articles for future issues. If *ILT* is to perform its singular function and the Group to warrant its continued existence, then the Group's members (there are 133 of you) must help by sending the Editors appropriate material or by putting them in contact with scholars who might be willing to contribute. *ILT's* citation-light format especially suits work in the early stages of development.

At the April meeting, I agreed to serve as the Group's Chair for the year, and Jianming Shen, who is Kenneth Wang Research Professor at St. John's University School of Law, agreed to replace me as Vice-Chair. To improve attendance at next year's meeting, Professor Shen suggested that an informal paper presentation or panel discussion might be appropriate and indeed, might provide material for a future issue of *ILT.* The early hour that the meeting is scheduled each year (8:00 a.m.) and the time allotted (one hour) are something of a deterrent. If, however, any member

of the Group wishes to participate in such an activity, please let me know. As an added incentive, we will ask to hotel to provide coffee and pastries again.

More generally, if you have thoughts about what the Group should be doing, please contact me at the Department of International Relations, Florida International University, Miami, FL 33199, USA. My telephone number is 305-348-2593, my email: onufn@servax.fiu.edu

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International Relations and International Law: Two Optics

> "The surprising thing about international law is that nations ever obey its strictures or carry out its mandates" (Franck 1988: 705).
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> "Public international law seems a quite well articulate and complete legal order even though it is difficult to locate the authoritative origin or substantive voice of the system in any particular area. Each doctrine seems to free ride somewhat on this overall systemic image ... Thus the variety of references among these discursive areas always shrewdly locate the moment of authority and the application in practice elsewhere -perhaps behind us in process or before us in the institutions of dispute resolution." (Kennedy 1987b:293).

These quotations from international lawyers encapsulate some of the puzzlement that faces a political scientist trying to understand the political underpinnings of international law. Governments make a very large number of legal agreements, and on the whole, their compliance with these agreements seems quite high (Henkin 1990). Yet what this level of compliance implies about the causal impact of commitments remains mysterious.

If respect for international law by states is surprising or puzzling to eminent professors of the subject, think of how astounding it must be to many political scientists! Traditionally political scientists have styled themselves as "realistic" rather than "idealistic." They are utilitarians of one form or another. In this view, state elites seek to maintain position, wealth and power in an uncertain world by acquiring, retaining, and wielding power-resources that enable them to attain multiple purposes. States use the rules of international law as instruments to attain their interests.

International law can be interpreted through such an "instrumentalist optic." In political science, work on international regimes-the rules guiding cooperative practices in international relations has focused on many issues familiar to international lawyers, by using a more or less nuanced version of this optic. Indeed, one eminent international lawyer-herself conversant with and sympathetic to political scientists' work on regimes has characterized the work on regimes as "reinventing international law in rational-choice language" (Slaughter Burley 1993: 220). Political scientists had "discovered" what to lawyers seem obvious: rules structure politics. However, as Professor Slaughter herself was generous enough to observe, political scientists have attempted more rigorously to explain phenomena with which international lawyers regularly deal. The result has been a greater convergence of research agendas than we observed two decades ago. "Regime theorists" and international lawyers agree, in her words, that "legal rules and decision-making procedures can be used to structure international politics" (Burley 1993: 221), and the functions they ascribe to international regimes are remarkably similar.

So research in both law and political science has recently focused on the effects of rules in international affairs. However, there remain great differences in how observers interpret what they see. The "instrumentalist optic" puts little weight on a major theme of students of international law: the impact that shared norms, and the processes by which those norms are interpreted, have on state policies. Hence the "instrumentalist optic" is challenged by a "normative" one. Contrasting these two optics helps to identify a key issue. How important is persuasion on the basis of norms in contemporary world politics?

I recognize that some authors, notably Friedrich Kratochwil (1989) have viewed this causal way of looking at the problem as questionable. For analytical purposes, such an analysis indeed separates causal explanation from the function of moral judgment to which norms are fundamental (Kratochwil 1989: 100). By doing so, however, it hardly denies the such judgments are made. And the causal issue is surely central to the debate about the role of rules, even though causal inferences, especially in complex situations such as these, are always flawed. Not to confront the causal impact of rules is, it seems to me, to evade the central issue of the role of international regimes, and international law, in world politics. Hence I regard the distinction between my two optics as revolving around the problem of causality.

Both optics, it seems to me, suffer from poorly articulated causal mechanisms or pathways. That is, it is often unclear how predicted results follow from the theory's assumptions. After discussing each optic, I will seek to sketch three concepts that seem intrinsic to the causal pathways on which both optics rely-interests, reputation and international institutions. It seems to me that we will understand the role of norms better if *we* can construct a synthesis of the two optics that is more explicit about the role of these concepts in linking norms to actions. Throughout the lecture, I will try to *see* how *we* can integrate the best elements of the two optics into a more coherent and convincing image of how rules are used by states and how they affect state behavior.

I. The "Instrumentalist" Optic

The "instrumentalist optic" focuses on interests and argues that rules and norms will matter if they affect the calculations of interests by agents. International institutions exist because they perform valuable functions for states. They can make a difference, but only when their rules create specific opportunities, and impose constraints, that affect state interests.

A crude version of instrumentalism discounts the observation that states often conform to rules. In this view, states only accede to rules that they favor, and they comply because such conformity is convenient. When their *interests diverge from the rules the rules will, according to this optic, be modified, reinterpreted, or broken to suit the convenience of powerful states. Loopholes and exceptions may be found. States will attempt to "free-ride." Even if a state benefits from others' compliance with rules, it may benefit more if others continue to comply while it pursues its short-term self-interest. The more compelling the state interest in behaving contrary to the rule, the more modification, reinterpretation, and breach there will be. Compliance will be explained more by interests and power than by legitimacy.

Subtler instrumentalist arguments recognize that rules, as part of the environment faced by a state, exert an impact on state behavior. They do so, in this view, not because the norms they reflect persuade people that they should behave differently, but because they alter incentives, not merely for states conceived of as units but for interest groups, organizations, members of professional associations, and individual policy-makers within governments.

This optic is by no means exclusively the province of political scientists. The revised Restatement of American foreign relations law (Henkin, et. al., 1987: 1007) emphasizes state interests: "international law generally is largely observed because violations directly affect the interests of states, which are alert to deter, prevent, or respond to violations." Another compliance-inducing interest is the desire to maintain a pattern of beneficial cooperation. A state "may decide to forgo the short-term advantages derived from violating rules because it has an overriding interest in maintaining the overall system" (Trimble 1990: 833).

Law professors, however, tend not to end their analysis with interests. From their standpoint, a significant drawback of relying on interests is that the impact of law itself in such an account is small. Abram and Antonia Chayes view the instrumental approach as too passive. "In our view, what is left out of this institutionalist account is the active role of the regime in modifying preferences, generating new options, persuading the parties to move toward increasing compliance with regime norms, and guiding the evolution of the normative structure in the direction of the overall objectives of the regime" (Chayes and Chayes 1995:229).

For many political scientists, interest-based propositions are more congenial. However, even those of us who are attracted to instrumentalism and its functional logic should recognize that it handles poorly the unanticipated consequences of human action-that is, much of what makes politics interesting. Instrumentalism, and especially the game theory that is its most powerful tool, does quite well as long as we can assume that actor scan anticipate the conditions of future strategic choice. However, instrumentalism cannot deal very well with situations in which choices today affect what people will believe tomorrow and they we will interpret their interests.

Instrumentalist arguments are too often taken as obvious, not requiring testing. State "interests "may be inferred from their behavior, which is then "explained" by the very same interests. When states violate rules, they must have had interests in doing so; when they refrain from reneging, their interests determined that as well. Like Viola in the first act of Twelfth Night, such an argument is "fortified against all denial" (I.v: 147). We do not yet have a well-specified or empirically tested instrumentalist theory of compliance with international commitments.

II. International Law and the "Normative Optic"

International lawyers often argue that the legitimacy of norms and rules has causal effect. Philip Trimble declares that international law is a form of "rhetoric," whose persuasiveness is largely a function of its legitimacy. Legitimacy, in

turn, is related to the process by which it is created, its consistency with accepted general norms, and its perceived fairness or specificity (Trimble 1990: 839-40). Legitimacy, says Thomas M. Franck, exerts a "compliance pull," to compete with the pull exerted by interests in reneging. Rules that are determinate and coherent - important components of legitimacy - are associated with greater compliance than those that are not, least because their clarity makes it possible "to dismiss bogus, self-serving interpretations" (Franck 1988: 712, 719, quote on p. 738). Officials may routinely keep many commitments because they have respect for law (Franck 1990, Trimble 1990). "Because of the requirements of law or of some prior agreement, nations modify their conduct in significant respect and in substantial degrees" (Henkin, in Henkin, et al., 1987: 9; see also Henkin 1968: 42).

Several international lawyers emphasize that whether one calls it "legitimacy" or something else, the normative power of treaty rules "derives from a complicated dialogic process of interpretation and application, extending over time" (Chayes and Chayes 1995: 134). In this view, law operates through the activities of "interpretive communities," which operate largely through international institutions. The International Monetary Fund, the Standing Consultative Commission in the SALT agreements, the International Labor Organization, and the International Whaling Commission constitute examples of institutions within which challenges and defenses of state behavior, relative to rules, take place. Interpretive communities, in this view, constrain subjective interpretations, promote habitual compliance, and impose reputational costs on violators of norms, as interpreted by these communities (Johnstone 1991).

According to this "normative optic," norms have causal impact. The impact of interests and power is by no means denied, but such explanations are not sufficient. Norms and rules do not operate mechanically, but are always subject to contestation, interpretation and reinterpretation. But the norms and rules themselves set the terms of the interpretive discourse. They exert a profound impact on how people think about state roles and obligations, and therefore on state behavior.

This "normative optic" views part of the scene clearly. It shows respect for the discourse that takes place when commitments are contested. It is also consistent with the attention that policymakers pay to norms and ideas about what makes norms legitimate. How else can one account for the enormous amount of argument over rule interpretation? The assumption on which this activity relies is that states are obliged to follow rules to which they have consented.

However, when one looks for strong motivations for governments to take the discourse seriously, the arguments become vague. The "central proposition" of The New Sovereignty is that "the interpretation, elaboration, application, and ultimately, enforcement of international rules is accomplished through a process of (mostly verbal) interchange among the interested parties" (Chayes and Chayes 1995: 118). But why should such verbal interchange exert such an impact? Compliance is said to preserve "connection to the real world" and prevent "isolation" (Chayes and Chayes: 27)-but it is not clear that noncompliance leads to isolation. Much of this discourse can be explained as facilitating the solution of problems of coordination or assurance, through generally understood and precise language, by specifying focal points, and by linking issues together through the use of precedent. But the literature promoting the normative optic says little about the boundaries of effectiveness of such discourse. It is not always effective. What conditions facilitate or inhibit its operation?

In the end, the claim that discourse leads to compliance rests largely on a reputational argument. In this view, an important motive of state leaders is to maintain their reputation, which exerts a substantial pull toward compliance. "In an interdependent and interconnected world, a reputation for reliability matters" (Chayes and Chayes, 1995: 230). But as Heymann (1973) and Kratochwil (1989) have perceptively argued, reputation is a tricky concept, and may provide a weak basis for confidence in the impact of rules, unless the conditions under which such confidence is justified are carefully specific. I will discuss reputation, and its implications for the two optics, later.

Empirically, it is hard to validate causal arguments about the impact of norms or discourse. It is often pointed out that norms can exist even if human behavior sometimes contradicts them (Kratochwil 1989). This is a fair point, but as I have noted, it begs the causal questions in which I am most interested. "Legitimacy" is difficult to measure independently of the compliance that it is supposed to explain. For instance, Thomas Franck (1988:712) describes a rule's compliance "pull power" as "its index of legitimacy." Yet legitimacy is said to explain "compliance pull, "making the argument circular. Philip Trimble (1990: 842) admits that his claim that compliance may depend on legitimacy "may be difficult to prove empirically."

In addition, there are some serious methodological issues not fully faced by writers in this tradition. Suppose for the sake of argument that the crude instrumentalists were right: states only comply with rules that are in their material interests to obey or that are enforced by the threats of powerful states. Hence we assume in this hypothetical illustration that norms carry little weight. Now let's make some other assumptions about the particular situation that we observe; 1)

Agents are quite good at assessing their interests and anticipating the actions of others. 2) A few powerful states made most of the rules and seek to enforce them, and 3) Coordination and assurance situations-in which everyone has an interest in following the rules provided that others do so as well-are common.

Under these conditions, we would expect to see many international legal agreements, and a high level of compliance, even if norms played no role whatsoever. We would only be observing a selection effect. That is, agreements that were neither self-enforcing nor enforceable by the powerful states' threats, would normally not be made in the first place.

Observing that states follow international law most of the time does not, therefore, yield a valid causal inference. Certainly legal rules provide "focal points" for coordinating state behavior (Garrett and Weingast 1993). Do they also exert a significant causal impact on the behavior of states? Or more properly, under what conditions do they exert such an impact? The normative optic presents us with intriguing observations that seem anomalous for the mainstream political science view, but when we seek to establish causality, we are left with an incomplete argument and empirical ambiguity.

III. Evaluation

Both of these optics seem necessary; neither insufficient. It is as if each observer only has one eye, and is wearing blinders. What each one sees, emerges with great clarity, but it's not the whole picture, and neither viewer has any depth perception. It can hardly be disputed that some states, some of the time, follow the instrumentalist optic. The policies of all states, most of the time, are affected by their material interests, as perceived by their elites; and the relative power capabilities of states are relevant to the degree to which they can achieve their purposes. The literature on international institutions has demonstrated, over the last twenty years, that states do modify their behavior in light of rules, although the extent to which they do so is contested.

What is at issue, however, is not the relevance of the instrumentalist optic but its sufficiency. Is persuasion on the basis of norms also important in world politics? Are interests redefined in light of principled beliefs, rather than only instrumentally in terms of power, wealth and position?

At this point, my rhetorical dichotomy between the instrumentalist and normative optics begins to break down. Instrumental arguments play a key role in the claims of analysts who attribute persuasive weight to rules. In particular, as we have seen, concern for reputation-a classically instrumentalist concept-plays a major role in arguments about why states obey rules. We will now have to move from outlining the differences between the two optics, to analyzing how the normative optic depends on, but goes beyond, the instrumental one. The fundamental question can be stated simply. Do discourse and persuasion matter, or are calculations of interest and power all the really count?

To answer this question, we need somehow to trace out the causal pathways on which these two optics rely and to generate testable propositions from them. Eventually researchers should test these hypotheses against evidence chosen to minimize bias, rather than merely to illustrate arguments. My approach here is to focus on three concepts that seem essential to any coherent account of how rules relate to state action: interests, reputation, and institutions. They are nodes on causal pathways. By this phrase I mean that it is hard to see how one could make a coherent argument about the impact of rules without passing through these nodes. Both optics recognize the role of interests and reputation. The normative optic, and the most persuasive versions of instrumentalism, also acknowledge the role of institutions-discounted only by crude self-styled "realists," to their peril.

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I am indebted to Professor Beth Simmons of Duke University for perceptive comments on an earlier draft of this paper, which was first presented as the Sherrill Lecture at Yale University on February 22, 1996. A more detailed and revised version will appear in the Harvard International Law Journal, Spring 1997.

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Harvard University

Illuminating Convergence

We are all globalists now. Our international law and international relations classes are over subscribed. Trade publishers welcome our manuscripts, and the university presses turn down fewer than they used to. Far from being marginalized in scorned ivory towers, academics have become jet-setting advisers to governments, directors on the boards of international financial institutions and human rights-oriented non-governmental organizations, participants in all-expense paid boot-camps and weekends for practitioners, mediators and arbitrators, and, of course, we teach.

Do we need any more justification for being? In his address to Yale Law School students, (partially reprinted here), Professor Keohane suggests that we do. Where, a few years ago, he might have started by asking whether there is indeed such a thing as "international law," he begins by acknowledging a high degree of compliance by states with a coherent body of rules to which they have consented. For most lawyers, including many of us whose primary employer is an academic institution, that will be the end of the inquiry; and I dare say that for many students, it is. Not so, however, for Professor Keohane.

The puzzle, he says, is why states obey rules that they have freely negotiated even when it would be in their interest to ignore or break such rules? With this puzzle, Professor Keohane reveals that he is not a lawyer; at least not one who is free of vestigial doubts about whether international law is indeed law. A political scientist, his realism tells him that states do whatever they can get away with. Law's Empire, he knows, is cobbled on the use of effective coercion. Yet, the international lawyers whose writings he discusses eschew sanctions as an explanation for coercion. How then can Prof. Keohane reconcile not questioning whether international law is indeed law with his persistent doubt that voluntary behavior comes anywhere close to explaining interstate relations? The answer, he tells the law school audience, lies in the "optics" through which such behavior is examined.

International lawyers and international relations scholars have viewed the "regulation" of interstate relations through different prisms. While lawyers focused on the normative bend, international relations specialists concentrated on the instrumental. Both perspectives are essential and neither is sufficient to a proper understanding of why nations behave the way that they do. Fortunately, both the instrumentalist and normative approaches have identified common factors that influence and shape that behavior: "interests, reputation and international institutions."

Ordinarily, an academic audience should hail as a fitting intellectual feast Professor Keohane's project of investigating the "causal impact of rules" on state behavior. But I am highly skeptical whether this is the reception his project is likely to attract among American international lawyers at the end of the 20th century. After the first-year tort class, most lawyers-I think it is fair to say-develop an allergy to issues of causation. The difficulty is not so much that its

metaphysics overtaxes the intellect (which it does), but rather that defending in rational terms the reason for pursuing it is even more intellectually challenging. We know that behavior-whether corporate or individual-is shaped by numerous factors. It is also evident that by applying incentives or disincentives to one or more of these factors, behavior can be altered. The outstanding issue is whether it is theoretically possible to predict with a high degree of certainty that a specific incentive applied at a specific time and place would yield a specified reaction. That, I think, is the causation issue. But there are at least two conceptual difficulties and a practical one with the quest; difficulties that, in my view, are insurmountable and that therefore render of limited significance the artifice by which the pathways of interest, reputation and institution are made to wind up in causation's courtyard.

First, the conceptual difficulties. Any problem of causality must be viewed from at least two dimensions: the perspective of the object being acted upon, and the perception of the observer or interpreter-the actor or a third person. In a world of free-willing actors, causality surely involves a dynamic process. The perception of the object and the interpretation others give the perception vary with time and place. Is it then conceptually possible to frame consistent meaningful post hoc explanations for the relationship of a rule to behavior?

Economists have been the most adventurous social scientists in this undertaking; but the most that they have been able to achieve is to hypothesize the relevance of such concepts as scarcity, efficiency and maximization for individual and social welfare. Confronted with scarcity, some societies maximize short term returns, others save for the long-run even at the expense of the immediate self.

Is the investigation of interests, reputation and international institutions likely to yield any more predictable results in connecting rules and behavior than economists have uncovered? I would be surprised if it did. Professor Keohane's study is space- and time-bound as "Economic Science." The convergence of "international relations instrumentalists" and "international law normativists" that he presents is as much the product of the late 1980s epistemic communities of these specialties in North America as Keynesianism was of 1945-75 political economy, and monetarism of the ascendancy neoconservative politics in the 1980s. Even as he writes, that convergence may already be at an end. Prof. Keohane is much better qualified than I to speak to the interest-based instrumentalism of the international relations specialists, but judging by the literature that he cites, the normative international lawyers were engaged in the task of defending or critiquing an enterprise whose role in the academic community was, to use their term "marginal." The late 1980s was a period of crisis in international legal scholarship. Many of the internationalist ideals propagated between 1945-65 had been questioned in the subsequent decade of the Vietnam, Dollar and Energy crises. International cooperation through law seemed no more capable of regulating terrorism than it had been in preventing the use of Soviet tanks in Czechoslovakia and Afghanistan. To cap it all, conservative governments in the United States and Britain were beginning to demonstrate conclusively that effective results in interstate relations can be obtained through the unilateral use of force. This was the milieu in which the justification of international law as a tool of useful rhetoric achieved significant adherence in the American academy.

But the environment has changed, and much of the defensiveness is gone. Whether or not we now have a world order, these are undoubtedly new times. We may debate the efficacy of electoral politics, but there is only one superpower. The relevance of power and of coercion in securing compliance with "international law" is demonstrated daily in the head lines of our newspapers: from the unilateral imposition of economic sanctions to the barely veiled uses of the U.N. Security Council and ad hoc military arrangements to maintain an order whose justification is "legal" by virtue of being beyond judicial review. These facts are reflected in current legal scholarship, and in the way legal scholars are now building their intellectual and consulting empires.

This leads to the practical difficulty with Professor Keohane's project. The international relations and international law disciplines that he presents have as their core concerns understanding, interpreting and prognosticating about state relations. Yet, if it has any unifying theme, contemporary globalism is a challenge to a state-centered conception of international relations. Increasingly, we are told that we live in a "transnational world" in which sovereignty is not merely at bay, but irrelevant. International relations specialists speak of "governance with out governments," and international lawyers including those cited by Professor Keohane speak of the artificiality of the dichotomy between domestic and international law. History, we know, is dead, and the "democratic entitlement" is now the claim of humankind. My students are uninterested in the concept of sovereignty; they would like me to teach them about privatization. And woe to those who view privatization or "human rights" in terms other than as the inalienable heritage of mankind.

These difficulties do not mean that Professor Keohane's pathways of interest, reputation and institutions cannot be put in the service of explaining the shift in focus from state to private actors in international relations, nor indeed a return to state-centeredness, the beginnings of which are already detectable in popular action if not in academic writings. The

concepts are sufficiently elastic that they can be made to explain the behavior of private actors as readily as those of public ones, and of individuals as easily as corporate ones. What I believe cannot be done is to extrapolate from these concepts some fixed formula of causation. My belief may well be a product of professional myopia, but if so, it explains why the effort to find a convergence between the conceptual apparatuses of the political scientist and the lawyer-even if only for pedagogic purposes- is likely to fail.

The American international lawyer is first and foremost a lawyer. She seeks Evidence only for the purpose of resolving a specific problem. She necessarily frames all problems in normative terms, and the basic purpose of law is to legitimate her preferred outcome. Legitimation thus functions beyond the descriptive realm. My understanding is that the archetypal political scientist takes the world as she finds it. A descriptive rather than a problem-solving mindset dictates how evidence is sought, sorted and deployed. Assuming that the international lawyer and the political scientist both invoke interests, reputations and institutional arrangements to articulate their perspectives on state behavior, it is doubtful that these terms mean the same thing to both. For example, take "reputation" which is the least ambiguous (i.e. whose scope can be most readily cabined) of the terms. For a political scientist, it may well be a synonym for such formerly heralded civic virtues as honor, loyalty, or obedience to duty. For an international lawyer, it may mean no more than consistency or predictability. Put another way, the core of the international relations specialist's concern is with the substantive content of "reputation," while that of the international lawyer is with the process we arrive at it. It is thus not overly simplistic to say that the object of the lawyer is to create the reputation, that of the political scientist to describe it. If these professional engagements are to be discharged effectively, both tasks demand some conceptualization of the relationship of inputs and end-products, but it is doubtful that both require the same level of precision in under standing and formulating relevant interactions; that is, in their definition of "causality" or "causation."

And then, there is the ultimate question: does understanding causality matter? Causation is a fascinating intellectual puzzle, and if I believed that it could be systematically approached, the frustrations on rout e to its circumscription, if not solution, would be worth the effort. But it is doubtful whether the level of specificity of detail seemingly envisaged in Professor Keohane's framing of the problem is helpful to the project of understanding why societies comply voluntarily or otherwise with rules that constrain their behavior. This is an important issue not only with regard to conventions and agreements that are binding because they are "consented to," but to “customary" international law as well. As a lawyer, I am heartened to learn that international relations specialists are willing to concede that states do indeed "comply" with rules and norms. It is the quixotic lawyer, however, who fails to concede in return that state behavior frequently is not regulated by rules or norms, and that their obedience to applicable rules and norms often depends on their status in the hierarchy of international community. For virtually all practical purposes, acknowledging the relevance of factors such as interests, reputation and institutions will offer a more than adequate starting-point for solving the specific problem faced by the lawyer or international relations specialist seeking to understand this behavior. Within these boundaries, our capacity to tolerate the unpredictable is not only part of our job, but may be the only genuinely defensible justification for any social utility that we claim to have.

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International Relations and International Law

The most obvious difference between students of international relations and students of international law arises from the subjects of their inquiry. International relations scholars consider the relations between states. International law considers the norms that govern these relationships (and many other important transactions). Robert Keohane has characterized this as the difference between "realism" and "idealism": what actually is done as opposed to what ought to be done by states.

When international relations specialists encounter international law, their response has been to ask (as Professor Keohane does in his Sherrill lecture) "how important is persuasion on the basis of norms in contemporary world politics?" Such scholars seldom inquire about the norms themselves, but assume (with Keohane) that all international law rests on "legal agreements" between governments or "treaty rules" made by states. This conception of international law reflects the international relations community's special interest in *state* action, and corresponds to the political theory of Thomas Hobbes, who derived all legal obligations from contracts between individuals or states. This reduces international law to a single principle, *"pacta sunt servanda."*

Treaties

Few states always respect their treaties. Nor should they, under international law. Just as written contracts bind individuals in some situations, but not others, so states have obligations that override treaties. The statute of the International Court of justice mentions "international custom," "general principles of law recognized by civilized nations," "judicial decisions" and "the teachings of the most highly qualified publicists of the various nations," as the basis for judicial decisions in accordance with international law, in addition to "international conventions" and "rules expressly recognized the contesting states." Treaties are *evidence* of the law of nations, inasmuch as they reflect a consensus about international norms, but they are not the sole *source* of law, which rests instead on fundamental truths about basic questions of right and wrong.

Political scientists often study elites, who seek to acquire and maintain power by invoking and manipulating international law to support their interests. This "instrumentalist" approach reflects a familiar facet of human nature. People often take the law as they find it, to serve their private agendas. Structure the rules correctly, and such private interests will serve the public good, or at least inhibit excessive private depredations. This was the doctrine of Madison in the *Federalist,* following Adams, Montesquieu and Cicero before him. International relations theory suggests how to manipulate rules and 11regimes" to control the operation of "politics" among states. Multilateral treaties provide a tempting vehicle through which social scientists may impose their theories on reality.

International lawyers and political scientists converge in this desire to influence the real world. They also share a "scientific" interest in clarity and quantification, through which their disciplines build credibility in the academy. Treaties serve the dual role of providing concrete objects of study, and solid vehicles for influencing future doctrine. International relations studies offer lawyers most when legal scholars engage in ersatz legislation. Lawyers need theories of human behavior to legislate effectively, which they borrow from political scientists' ideas about human nature in international relations.

Human Nature

International law grows out of human nature, and above all the overwhelming human need for approval. People value their reputations, not just to facilitate future transactions, but also (and more importantly) as an independent good. People like to be well thought of -This explains why governments in China and the former Soviet Union (for example) care so deeply about Western criticism when there is no prospect of intervention or any substantial material consequences. Criticism is harm enough in itself. Yet to suffer criticism one must hear it. The single greatest constraint on international relations, beyond the bare balance of military power, is the profile of its public critics-the people whose voices are heard in discussing the actions of others.

The founders of international law as a modern discipline considered their subject to consist in explicating the law of nature, as applied to states. Grotius, Pufendorf and Vattel described what would be just, and generals applied their strictures. Monarchs hired famous scholars, ostensibly for advice, but also to influence the course of future scholarship. Scholars provided the most detailed and articulate description of international law, which politicians read and followed. The teachings of the most highly qualified publicists formed the relevant community of opinion, and government deferred to their holdings.

Criticism is not all that governments fear. They also worry what other governments will take offense at. Obvious rules of right, wrong and fairness determine this to some extent, but well-known writings and conventions also play a role. Rules governing prisoners, envoys and prizes all developed largely through the writings of European publicists. Any government seeking to manipulate law to its own advantage must consider not only the obvious strictures of fairness, but also what has been written on a given issue, and which writings had the greatest effect. International law as such often has less influence on state action than states' perceptions of what opinion leaders will criticize as violations of international law.

Realism

How states and others experience the constraints imposed by international law will vary depending on the sources and nature of the rules involved. The "realist" test of such rules is not whether law "persuades" states (as Robert Keohane would have it) but rather which norms actually influence behavior. The more widely accepted the rule, and the more clearly stated, the more likely that powerful states and their officers will defer to public opinion.

"Realist" scholars who deprecate the importance of rules, and stress the centrality of "interests" in all state actions, make their arguments more true, simply by stating them, because stating such views alters the climate in which

government officers make their decisions. Similarly, "idealist" scholars who discuss the content of international law and assume its relevance, improve the likelihood that states will obey the law, simply by disapproving of those that do not. The more established the scholar or public figure who pontificates about international law or international relations, the greater the likely influence on state practice.

People want to be good, to think well of themselves, and for others to approve. This means that "instrumentalists," seeking to manipulate international relations, will have to take into account what people believe to be right and wrong-the ultimate sources of international law. Such beliefs are manipulable, within limits, but determinate. People or states with shared interests can create their own interpretive communities, to reinforce self-interested misconceptions, but their discourse will be normative, even when it is insincere.

Effectiveness

Normative discourse is most effective when it clarifies rules that actually apply, or creates a climate of acceptance for rules that may (or may not) apply in fact. This is not the same as legitimacy. "Legitimate" rules actually apply. "Effective" rules may not actually apply, but are widely accepted anyway. Effectiveness is evidence of legitimacy, but not conclusive. Situations often arise in which all nations will benefit from a given rule. This makes the rule legitimate and usually effective too. But groups of nations may sometimes impose rules for their own benefit, which are the illegitimate product of "effective" normative discourse.

Principled beliefs have as much impact on international relations as mere interests because they provide the framework through which interests express themselves. What elites want out of life reflects what they believe a good life to be. How elites act in their dealings with others reflects what they believe that others will think of what they do. Effective normative discourse depends on these background realities. To manipulate international law one must understand its sources. Instrumentalists will not be effective until they understand the power of norms.

To suppose that instrumentalism and normative thinking are two optics, each incomplete without the other, mistakes their true relation, which is hierarchical. "Realists" and "idealists" operate at two different levels of consciousness. Idealism contains realism within it. Talking in instrumentalist terins, while often true, cheapens the conversation. Disputes about international law (which are equally true), improve the participants. The purpose of international institutions should be to support the open, free and independent discourse that produces legitimate effective legal norms,

Conclusion

The fields of international relations and international law diverged because some doubted the efficacy of norms in the international arena. After decolonization, the Second World War, and two centuries of European revolutions such doubts betray a very shallow sense of history. Once the power of ideology is admitted, its sources must be examined. Truth, and the semblance of truth about justice have tremendous influence over human behavior, but public consensus is decisive. People care what people say, which explains the power of international law.

There can be no cooperation without norms, no laws without a sense of justice. International law coordinates international behavior by providing the framework through which private interests express themselves. Much more than the positive law of states, international law evades definitive interpretation. This gives scholars a considerable voice in its development, and corresponding influence over international affairs. Their discourse helps to shape the perceptions of governments, to create new constraints on those pursuing international goals. What a shame it would be if scholars squandered this influence in a discussion of tactics and state interests without considering the rules that make sense of public lives, and bring order to international affairs.

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International Law and International Relations: Beyond Instrumentalism and Normativism

In his paper on "Two Optics" in International Relations and International Law, Robert C. Keohane discusses two approaches to the role that international law plays in international politics or decision-making: the instrumentalist optic and the normative optic. The instrumentalists maintain that the interests of States determine whether they obey international law or not. According to instrumentalism, "states only accede to rules that they favor, and they comply because such conformity is convenient." Under this optic, states, especially powerful ones, will modify, reinterpret or

breach international law rules if such rules operate against their national interests. Observance is demanded by power and interests rather than by other determinants. The normativists, on the other hand, emphasize legitimacy of positive rules and the causal effect such rules have on State behavior.

Keohane believes that both optics "seem necessary; neither is sufficient." Instead of concentrating on differentiating between instrumentalism and normativism, Keohane focuses on "analyzing how the normative optic depends on, but goes beyond, the instrumental one." What really matters in that analysis is a chain of three nodes on causal pathways "that seem essential to any coherent account of how rules relate to state action: interests, reputation, and institutions." I agree that neither instrumentalism nor normativism is in itself sufficient to illustrate the complexity of what causes a State to behave in one way or another. However, it remains questionable whether the mere construction of a synthesis of these two approaches is enough. I sense something is missing, as in many other treatments. After all, we need a fuller answer to the question why, how and to what extent State behaviors are affected by international norms.

I. Compromised Wills of States as the Intrinsic Factor

Keohane, like many other contemporary international lawyers and political scientists, continues to neglect the decisive role of compromised State wills in the relationship between State behavior and international law (by State "will" I mean the combination of both national intent and national capability.) It is less a question that international law is law and has binding force upon its subjects-mainly States. Then, what gives international law its legal or normative character and how does it acquire its binding force? If we carefully observe the reality, it would not be difficult to find that it is the same sovereign States whose conduct international law is intended to regulate that formulate international law and give it a legal character with binding force. In other words, the wills of different States, after a compromising process, meet to create international law in the form of common standards of State conduct for the common good. Such wills determine that international law is created to be observed and enforced and thus necessarily has a causal impact upon State behavior.

Law is a set of standards of conduct representing and originating from the will of the State, having legally binding force, and enforceable under the guarantee by a certain mechanism. No law is separable from the will of the State. This concept of law would cover both domestic law and international law. Needless to say, international law is made and enforced in a way different from that in which domestic law is made and enforced, and the legal validity of the two systems of law must necessarily be demonstrated in different modes. At the international level, the State is not only the subject of rights and obligations in international law, but also the participant in formulating, accepting, and enforcing the rules, principles, regulations and institutions of international. law as well as in arbitrating international disputes. The most fundamental reason why States participate in the formation, acceptance, observance and enforcement of international law is because their own national wills so require and direct. When reflected in international law, the wills of States are not the original individual will of one single State or another, but the aggregate of the harmonized wills of different States after they have compromised.

Accordingly, the compromised wills of States offer the most fundamental explanation why States, large or small, strong or weak, generally comply with rather than renege from international law. The compromised and coordinated wills of States require that these States behave in certain ways, and/or not in certain other ways, in accordance with those norms of conduct of international law which they have participated in formulating, amending and developing. If the compromised will of a State demands that it participate in the making and coming into force of an international legal regime, it would be unnatural for it to depart from the requirements of this regime. States are unlikely to participate in the creation of a set of rules which they are not ready or not willing to observe. In this sense, the compromised wills of States determine two phases of a legal regime: (1) formulation and creation and (2) compliance and enforcement.

Where the will of a State requires it to compromise so as to be part of the international law-making process with respect to a specific regime, this same national "will" would also require the same degree of compromise so that the actions of that State do not conflict with its international obligations under the regime the creation or validity of which it has agreed upon. While politics or precompromise national wills affect or even dominate the creation of international norms, such norms, once established, would in return affect or even dominate politics, because they reflect the compromised wills of States which can hardly be altered unilaterally. I am not saying that compromised national wills are the only factors that matter. What I am suggesting is that such wills constitute the intrinsic factor that offers the decisive and ultimate jurisprudential explanation as to why State behavior is generally modified to conform with international law rules.

II. Extrinsic Factors

Besides "compromised national wills," and from the point of view of philosophy, sociology, behavioral science and phenomenology, there are other factors that play certain roles in the process of promoting States' observation of international law. Examples of such other factors include (1) interests and balance of gain and loss; (2) reputation, world public opinion and social approval; (3) legal belief and legal habit; (4) consent and the principle of *pacta sunt servanda; (5)* the necessity for law, peaceful coexistence, international order and international cooperation and the principle of reciprocity; and (6) the fear of reprisal and sanction and other disadvantageous and detrimental consequences following non-observation of international law. These factors more or less, and to a certain degree, may all be said to constitute extrinsic elements which States take into consideration in their general observation of international law.

A. Interests

"Interests" of course matter. I believe that the interests of a State can be of substantial importance in so far as they affect State behavior. Yet, my proposition is fundamentally different from the instrumentalists who neglect the role of norms by maintaining that States obey international law only when it is in their interests to do so. Since international law does not yet regulate all aspects of international life, there are certainly areas in which States have relative freedom to decide how to conduct their affairs. When a State makes such a decision, its national interests may play the most important role. That is, where there is an international legal vacuum, it is up to each individual State to decide upon its behavior in accordance with its best national interests. In this sense, interests may affect and even dominate State actions. On the other hand, however, the role of interests is of less importance where there are already international legal norms which place restrictions on a certain conduct. In this event, interests still matter, but, generally speaking, they matter only to the extent to which norms are not violated.

When facing a situation in which the matter is regulated by international law, a State, unless it chooses to ignore international law altogether, is likely to adopt one of two approaches. Under one approach, the State would first identify the rules of international law that regulate the matter and then formulate its policy or decide upon its action to deal with the matter in accordance with its best national interests not conflicting with the relevant international rules. Under the other approach, the State would first determine what action or policy its national interests require it to adopt, and then modify that determination in accordance with existing applicable international rules. In either situation, the "self-interests" of a State would have been taken into consideration together with the requirements of legal norms. The requirements of applicable rules of international law may in most cases coincide with the national interests of most States which have consented to such rules. If compliance with such rules is objectively to the overall advantage of the development of a State, then there would be no logic for it to behave in a way contrary to such rules. After all, if it is in the interest of States at large to agree upon a certain system of rules, principles, regulations and institutions of international law, it would be also in their interest to amplify and observe the same system.

When on exceptional occasions compliance with international law norms is not in line with a nation's interests, the magnitude of such interests may affect the role of norms. This is particularly true, unfortunately, with respect to mighty and powerful nations. Nevertheless, the decision-making of a State in such an event would necessarily involve a "gain and loss" balance and comparison between the pros and cons of observance or violation of international law. On one hand, not all rules of international law reflect in absolute terms the interests of a given State. On the other hand, a given rule of international law is not necessarily always in absolute accord with the interests of all States. A given State may well find that none of the existing rules of international law is completely in line with its national interests, but each such rule contains elements to its advantage. Thus, it is necessary for the State to weigh the overall advantages and disadvantages of the system of international law as a whole. It must be admitted that there may always be conflicts between the regulating force of international law and national interests. Violations of international law most often occur in situations where a balance can not be maintained between observance of rules of international law and loss of vital national interests. In this sense, interests and power, instead of norms, sometimes dominate State behavior. Such violations based on vital national interests are not legally justifiable. They should therefore be discouraged, condemned and/or sanctioned for.

Nevertheless, interests-driven departure from the law is not the rule but a condemnable exception. In fact, the State, during its course of taking part in the creation and formation of rules of international law, has already taken into consideration the overall advantages and disadvantages of such rules. Its agreement to be bound by international law as a whole system or by concrete rules of international law is preceded by or connected to its balancing of the pro**s** and cons and possible gains and losses. Ordinarily, it is not in the interest of a State to violate a given rule of international law since the violation may in turn provoke similar breaching actions to its greater disadvantage by other States. As Akehurst stated, a State is normally unwilling to create situations that may be used against it in the future (Michael Akehurst, *A Modern Introduction to International Law,* 5th ed., p. 9.) Generally speaking, the State gains much more than it loses by complying with international law in its behavior. In other words, the benefits of observing international law far outweigh

the cost of non-observance; or, by the same token, the losses and other disadvantageous consequences far exceed the often transient gains and interests following the State's nonobservance. Since international law is the result of compromises of States and is basically to the common benefit of all nations, States themselves have an interest in observing what they have laid down. Where conflicts exist between international law and national interests, a State, by observing international law, receives a significant gain at the cost of an insignificant loss. Interests matter, especially long-term interests. Yet, contrary to what some of the instrumentalists maintain, such interests are not the exclusive factor having a causal impact on State behavior.

B. Reputation

The term "reputation" is not an isolated concept. It is one aspect of the same problem of self-interests. Reputation counts if the State concerned cares about its image. To this extent, there is an extrinsic link between a State's reputation and its general observance of international law. At stake are reputation-related world public opinion (elsewhere, this has been termed "interpretative communities"), social approval and, most importantly, credibility.

By "world public opinion" I mean the attitudes, comments interpretations and opinions of the majority of nations *vis-a-vis* the policy or behavior of a particular State. Such world public opinion may imperceptibly influence the attitude, decision-making and behavioral practice of States. It may sometimes function as a soft weapon in the prevention and deterrence of departure from international law, although the impact and function of such “soft weapons" are very limited. "Social approval" not only facilitates the formation of customary rules of international law, but also contributes to their observance and enforcement. If a State's practice has, implicitly or explicitly, gained universal approval of the international society, such practice will be more likely to continue. To the contrary, if a certain conduct or practice of a State fails to gain such approval, the conduct or practice in question is more likely to be reviewed, modified, discontinued or abandoned. Similarly, when a rule of international law is firmly established, State behavior not in conformity with such a rule will be considered not approved by the international society. In this regard, social approval matters in the same way as world public opinion.

"Credibility" denotes the fame, reputation and reliability of a State. States generally wish to maintain a good reputation rather than to undermine or destroy it in exchange for transient gains and interests by violating international law. If a State, no matter how affluent or powerful it is, acquires the reputation of "a frequent violator of international law", it is always an inglorious and annoying character for the State itself. The great attention a State pays to its credibility, to a certain extent, has the objective effect of promoting the observance and enforcement of international law, and thus constitutes one of the extrinsic elements affecting the State's behavior as well.

C. Legal Belief and Habit

"Legal belief" denotes the legal consciousness, reason, sense of justice, legal thought and *opinio juris sive necessitatis* that States formed in their long mutual interactions and their own respective State practices. What I refer to as "legal belief" here is different from the naturalist concepts of "legal conscience," "justice," and "reason." The naturalists emphasize the inherence, intrinsicness and naturalness of the so-called human conscience and reason, while my concept of "legal belief" (including legal conscience, reason and sense of justice) of nations emphasizes the objectivity, practicality, historicity and reality of such belief.

The conscience of human beings or nations, their sense of justice and reason, or their legal conviction, all have stemmed from their prolonged social (interpersonal) or international practice. None of these is inherent in or naturally given to human beings or nations. Different nations or States do not share, and it is impossible for them to have, completely uniform and common legal belief. Yet, it is perfectly possible that there may arise or exist certain common or similar beliefs and practices between different States on such fundamental issues as good and evil, just and unjust, moral and immoral, and above all legal and illegal. Close or similar legal beliefs may also be established between States through their mutual compromise and influence. A nation with strong legal consciousness, especially one with a strong sense of international law, is more likely to follow than to disobey what it deems to be legal rules and norms regulating inter-State relations and governing States' external behavior. Thus, legal beliefs of States may be said to be one of the extrinsic reasons why nations behave in accordance with what they believe to be or should be the governing rules of international law.

A State's "legal habit" is inseparable from its legal conscience especially its conscience of international law. A State with strong legal conscience normally has a relatively good legal habit. A State accustomed to observing international law, due to such habit itself, is normally reluctant to violate and destroy international law.

D. State Consent and the Principle *Pacta Sunt Servanda*

"Consent of States" stems from the compromised wills of States. The will of a State, upon compromise if necessary, determines whether the State should consent to a given set of proposed or existing rules of international law. International law is largely a law of compromise, coordination and cooperation. The creation and continuing validity of the international legal system is conditioned upon the continuing consent, acquiescence and acceptance of States that ultimately are to be determined by their compromised national wills. Without such consent, acquiescence, acceptance or at least non-objection of States, it would be impossible for States to formulate and develop a system of law among themselves with legally binding force. If isolated from the collective compromised wills of States, the consent of States itself constitutes an important extrinsic causal impact on the behavior of States. To put it simply, such consent requires the consenting State to behave in accordance with what it has consented to as international law.

The maxim *"pacta sunt servanda"* (agreements must be observed) is a universally recognized *jus cogens* principle of international law established through long international practice. In the realistic international life, there is virtually no State that does not recognize this peremptory principle. Therefore, States have no justification not to behave in accordance with those rules of international law which they have agreed to be binding through the conclusion of international treaties. Similarly, they have no justification not to perform specific contractual obligations which they have agreed to undertake under contractual international agreements. In this sense, the principle of *pacta sunt servanda* constitutes another partial explanation with regard to the causal impact of norms of international law upon the behavior of States.

E. International Relations

International relations lead to the creation and development of international law, while international law in return regulates international relations. In other words, the indispensable relations among nations give rise to the needs for international law, international order, peaceful coexistence, international cooperation, and reciprocity. These needs in return determine that States would conduct their external affairs in a manner as lawful, orderly and peaceful as possible. As is pointed out, States generally comply with international law because of, among other things, "a sense of conscience, duty, reciprocity and the need to live together in peace" (Williams & Mestral, *An Introduction to International Law: Chiefly as Interpreted and Applied in Canada,* 2nd ed., 1987, p. 12).

"Necessity of law" represents the objective demand of States and the international society for legal rules. It partly explains why States generally comply with international law in their external relations. States are "social" beings because they are not isolated entities in a vacuum. The social attribute of States determines that they are bound to enter into relations with one another, while international law is right the product of international relations. Along with the increase of mutual interactions among Sates and their deepening interdependence, international law "emerged" as history required in the sense that it was considered necessary and thus created by States for the purpose of regulating their international relations. The necessity of law in the international society, therefore, may also be said to be an extrinsic factor on the reciprocal causal link between rules of international law and the external behavior of States.

"Peaceful co-existence" and "international order" represent two other aspects of the same issue as "necessity of law." It is a general longing among the majority of peace-loving nations to establish and maintain a certain international order under which they can peacefully manage interstate relations. This longing has the objective effect of promoting cooperation among States for the establishment, observance and maintenance of a certain international legal order. On one hand, the majority of nations, especially weak and small nations, would naturally favor an orderly and peaceful international society. In a world with unbalanced forces, if there were no commonly observed law and order at all, such a world would be one in which States would scramble with one another for domination and supremacy, one in which the strong would conquer the weak and one in which there would not be peaceful co-existence between States. A lawless and chaotic world is undoubtedly the most detrimental to small and weak nations.

On the other hand, powerful nations nowadays also have an interest in maintaining an orderly and peaceful international system. Faced with today's reality, especially in front of the collective force of developing countries (the third world), developed nations have sensed the need to stress the importance of world order and peace. In fact, all nations, whether strong or weak, big or small, have come to realize that *order rather than chaos is* what the international society needs. A chaotic world is not beneficial to big and powerful nations, and is even more harmful to small and weak nations. Therefore, it has become a general desire and demand of the majority members of the international society to establish, maintain and improve a relatively peaceful, just and rational international legal order. This general desire and demand for world order and peace would necessarily call for the general observation of international law by States. Needless to say, international order and world peace are not and should not be supranational and supra-governmental

order and peace. Still less should there be an "order" and "peace" in which a few strong and powerful nations dictate and dominate the rest of the world. Rather, what is needed is an international order and peace that equal and sovereign States among themselves jointly establish, jointly improve and jointly maintain through their joint and compromised efforts.

"International cooperation" is another necessity that the social attribute of States demands. Such cooperation has more significance and is under more favorable condition with the present day's high development of science and technology. Cooperation between States is necessary for their quest of certain common interests. The pursuit of common interests and the need for international cooperation may well constitute one of the extrinsic factors that influence the decision-making and behavior of States. The truth is not only that international cooperation facilitates the formation of rules of international law, but also that further development of international cooperation relies on the guidance and coordination of international legal rules.

The law of "reciprocity" as an extrinsic element also plays an important part in the obedience of international law by states Reciprocity means mutual benefits and reciprocal advantages. The importance of reciprocity in international affairs has been well observed:

> Even in a world society engulfed in a system of power politics, States find it to their benefit, on a basis of reciprocity, to limit the crude play of power and force. Especially in spheres which are irrelevant or peripheral from the point of view of power politics, the law of reciprocity can be seen at work. In matters such as diplomatic immunity, extradition, commerce, communications and transport, rules of international law freely and beneficially develop on a footing of reciprocity. On the levels of partly or fully organized international society, international law is primarily a law of reciprocity. Yet, even in the thick of power politics, that is, in time of war, some scope exists for the law of reciprocity. The laws of war and neutrality owe their existence to typical considerations of this kind which tend to impose restraints on belligerent and neutral States alike.

(G. Schwarzenberger & E.D. Brown, A *Manual of International Law,* 6th ed., 1978, p. 10.) Matters of international concern should always be reciprocal. No State is willing to participate in the formation of and willing to be bound by a rule of intemational law that only restricts itself but not other States or that is only beneficial to other States but not to it-self. In the absence of the principle of reciprocity, it would have been impossible for international law to emerge with universal binding validity.

F. Fear for Reprisals and Sanctions

"Fear for reprisals" denotes the psychological concern of a State over possible retaliation or other remedial acts of States that might be offended by its conduct violating international law. This fear constitutes another extrinsic factor which States sometimes take into consideration in not violating international law. Under international law, when a State sustains injury as a result of the international delict of another State, the former is entitled to take appropriate and reasonable remedial or reciprocating measures against the latter. These measures include requests for restoring *status quo ante,* requests for official apology, claims for damages, counter attacks in self-defense, and other measures corresponding to the international delict of the offending State. The consequences of such remedial or retaliating measures often place the offending State in a much more unfavorable position. This has to be taken into account by potential offending States, especially less powerful States, before they decide to violate international law. The "fear of sanctions" can similarly cause some States to refrain from breaching international legal order and peace. As in the case of fear for reprisals, some States may have the intention to breach international law, but at the end often do not take any violative step, partly out of the need to avoid or fear for possible collective or international sanctions and their consequences. It is true that sanctions are not characteristics of international law, but in limited circumstances, sanctions, especially collective sanctions, do constitute a mechanism for promoting the observance and enforcement of international law.

III. Conclusion

Neither instrumentalism, nor normativism, nor any other single doctrine can fully explain the connections between international law and international relations. We do not need to rely on any asymmetrical theory of politics and law. We only need to look at the realities. The causal link between international law and State behavior is a two-way street. On one hand, the formation and development of international law are influenced and dominated by the attitude, policy, behavior and practice of States. On the other hand, established rules and principles of international law regulate and influence the attitudes, policies, behaviors and practices of States. While there remain areas of legal vacuum where

politics are not yet, or not fully, constrained by legal norms, we cannot deny the regulating force and impact of existing norms upon State actions. Even in cases where no applicable norm has become established, concerted State behavior and international politics may eventually create applicable binding norms, which would then guide and regulate future State behavior and international politics.

There are a variety of extrinsic factors that more or less affect a State's decision on whether and to what extent to formulate and modify its policies and behavior in accordance with existing norms of international law. These include, but are not limited to, interests, reputation, *opinio juris,* consent, necessity for law, and fear for reprisals and sanctions. Among these factors, certain elements, such as interests, *opinio juris,* the necessity for law, consent and the principle *pacta sunt servanda,* are of more importance, while others, such as the fear for reprisals or sanctions, are of secondary significance. However, the degree of such significant also depends on specific States and specific situations. For some States, reputation may be more important than expedient interests while for some others, it may be the opposite.

In any event, the need for law, order and peace in international relations carries great weight upon State actions. It is because of the regulating force of international law that order and stability of the international community are able to be basically maintained. International law affords common standards of behavior for States, and the observance of such standards is generally to the common benefits of States.

Most importantly, we must not ignore the decisive role played by compromised wills of States. Since international law is the body of law that sovereign States, according to their compromised national wills, have jointly formulated or accepted in the form of treaties, custom or general principles of law to govern their external conduct and reciprocal relations, the observation and enforcement of this law must also be realized by and through these same soveriegn States. The States at the same time function as the law-makers, interpreters, arbiters, self and nonself-enforcers and subjects (followers) of compromise and coordination between the sovereign wills of states necessarily require the States concerned to behave in accordance with what such wills have laid down or accepted as the binding norms. After all, international law is a coordinative legal system which is formulated and established by sovereign States on the basis of their compromised national wills. This system is observed and enforced on the basis these same compromised wills mainly byways of States' self-restraint and mutual constraint.

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Some remarks on the Causal Pathways: Enforcement, Compliance and Estoppel

In a municipal system the assertion that law is binding by definition can remain unchallenged. In the presence of effective enforcement mechanisms, concepts such as legitimacy and binding character may be considered as synonymous, and a research question on the causal impact of rules might have only theoretical interest. More essential would be issues of legitimacy and validity. At the international level, in the absence of a central authority, the scenario is completely different. At my first class on international law, in Florence, in order to set the stage for the discussion of the sources, the Professor would illustrate the weaknesses of international institutions and Superpowers: the whole point was to prepare for difficulties of reconstructing "objective" international rules. Meanwhile, my colleagues in Los Angeles would start out their course by discussing the Treaty Making Power of the President of the United States, which, I think, makes exactly the same point.

The observers of international practice consider that the capacity of rules to affect States' behavior depends largely on the States' willingness to conform. The instrumentalist observer would look at States' interests and the lawyer would focus on States' persuasion. Professor Keohane invites both to examine how rules are used by States and how they affect State behavior. A better understanding of causal pathways has relevant pragmatic implications as it can improve international cooperation. This is illustrated in the field of international environmental law, where political scientists, lawyers and economists, are studying economic and legal instruments in terms of efficiency. The will to carry out policy objectives perceived as urgent, such as climate change, pushes States to experimentation: negotiators would discuss the conclusion of international treaties as well as transnational agreements, and the adoption of international standards together with the use of economic instruments, such as taxes and market permits. Still, international practice shows the objective character of international rules in a way which, I think, is relevant in dealing with Professor Keohane's research question.

The role of consent has always been emphasized by legal scholars. Traditionally, States' consent would determine the legitimacy of international rules, both conventional and customary. On the other hand, many issues remained unresolved, first regarding the existence of valid rules. How can acts of will be binding? Possible implications of this question have been spelled out in the drafting of the Vienna Convention on the Law Treaties. Moreover: How can customary rules limit governments, given the fact that, at the international level, governments are conceived as the ultimate legislators? This recurrent problem is illustrated by the discussion on the *Alvarez-Machain* case, where the United States Supreme court, in not addressing the existence of a customary rule which forbids *forcible abductions,* seems to consider it legitimate for national governments not to conform to international practice.

Even harder questions arise concerning enforcement. What is the value and even relevance of rules which are not sanctioned? International lawyers have observed that most of the time rules do not even need to be enforced, since States spontaneously conform to them. The stress again is on the State's will, relating not to the formation of rules but to their obedience. But what happens when States do not obey? A normative way to address the issue of causal impact of rules might be to look at the processes and mechanisms under which States are held bound. First we have enforcement mechanisms, in the presence of which conformity may be considered obedience. Even if these are the typical instrumental pathways in all legal systems, they are almost missing at the international level. Second, there is spontaneous compliance, which can be explained, as suggested by Professor Keohane, by interests, institutions (or interpretative communities) and persuasion. Even though compliance has an acknowledged central role, it does not cover all the cases in which rules and commitments operate with legal effects in the absence of enforcement institutions. An important factor to explain those residual cases is estoppel. Under this principle acts and declarations may become binding even when they do not conform to the internal rules on competence and, therefore, do not correspond to the State's will. Recognition in international relations of the need to protect States' reliance affirms the objective character of the commitments, as is shown in the famous case of the Ihlen declaration and the Nuclear Tests case. Other cases of international practice show that States avoid creating precedents leading to non-desired customary rules, which eventually might constrain them. One could argue that estoppel operates most effectively when applied by international tribunals, that is, in a procedural context. Also, States might be considered "persuaded" rather than "aware" of the binding character of customs. However, the fact that the effectiveness of rules may depend upon the presence of circumstances allowing an international tribunal, an international organization, or other States to operate the legal effects of such norms and commitments does not exclude their binding character. In order to understand how international law affects the behavior of States one must consider ontological questions, and explore law's objective foundations.

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