Introduction

Compliance and Cooperation in a Changing World

> International relations and foreign policy . . . depend on a legal order, operate in a legal framework, assume a host of legal principles and concepts that shape the policies of nations and limit national behavior. If one doubts the significance of this law, one need only imagine a world from which it were absent—approximately a situation in which all nations were perpetually in a state of war with each other. There would be no security of nations or stability of governments; territory and airspace would not be respected; vessels could navigate only at their constant peril; property—within or without any given territory—would be subject to arbitrary seizure; persons would have no protection of law or of diplomacy; agreements would not be made or observed; diplomatic relations would end; international trade would cease; international organizations and arrangements would disappear. . . . Attention to the law, in Justice Holmes's phrase, may not be a duty but only a necessity.
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> *Louis Henkin,* How Nations Behave *(1968)*

We stand at a critical juncture in international history. The end of the Cold War, the intensification of globalization, the rise of ethnic tribalism and political separatism within states, the unleashing of fears and threats of terrorism and the spread of weapons of mass destruction, coupled with the perils of global warming and mass migration from poor, authoritarian states to wealthy, metropolitan, liberal democracies, have produced unprecedented international challenges and a sense of universal insecurity. Issues of state security have become inextricably enmeshed with matters of human security.[1] At the same time, the normal remedies to such problems, sought through multilateral action, the resort to international organizations, and the application of international law, are being increasingly questioned. While such remedies have not been entirely sidelined, their effectiveness, and thus, legitimacy, is under challenge. This state of anomie may prove enduring, or only ephemeral. Much will depend on the answers that issue from debate and experience.

In the context of such controversy, this book provides evidence that the

multilateral system, whether international or regional, notwithstanding its lack of strong enforcement mechanisms, has made a vital contribution to the international well-being and security of states and their citizens, in particular through its role in "socializing" and reintegrating its more recalcitrant members. It reaches this conclusion by examining the changing relationship of China with key international organizations over three decades and, for purposes of comparison, analyzing its international behavior before it entered those organizations, in particular the United Nations. As I have argued, China constitutes a least-likely case of compliance by virtue of its history, cultural traditions, and power.[2] It has historically considered itself to be the "Middle Kingdom," unconstrained by international society; it lacks a tradition of the rule of law; and it is powerful enough to ignore its international obligations. Therefore, it is least likely to comply with the norms, principles, and rules of international organizations and their associated treaties. If it is nevertheless reasonably compliant with its international obligations, it helps validate the notion that all states, even nonliberal ones, comply with the norms and rules of the international system.[3]

Formerly castigated as a "rogue" or "renegade," China has changed its international behavior under the impact of international institutions.[4] Its rapid integration into the international system since it replaced Taiwan as formal representative of "China" in the UN in 1971 is indicated in the expansion of its membership from only one intergovernmental organization (IGO) and fifty-eight international nongovernmental organizations (INGOs) in 1966, to forty-six conventional IGOs and 1,568 conventional INGOs in 2003.[5] How China has complied with the norms, principles, and rules of these organizations and associated treaties, how it has cooperated with the international community, and how it has changed from an isolated, verbally aggressive state to an increasingly interdependent and compliant one, constitute an important test case of the effectiveness of international multilateralism.

Such questions are not only important as a test of the existing system. They are also important indicators of the future viability of that system. China's unique position as the world's most populous state, as one of the five permanent members (P-5) of the Security Council, as a nuclear power, as an increasingly influential military and economic entity, as the World Bank's largest borrower, and as a "developing" country, underlines its international significance. As a rising power, it will clearly play a vital role in shaping any new world order. This has occurred and will continue to occur largely through its role in key international organizations, through its participation in the negotiation of international treaties, and through its influence over the increasingly assertive group of developing states in international forums. Like other states, China plays a part

in influencing how the international organization perceives issues and tackles problems, and in adding to, or subtracting from, the general environment of international cooperation. How it shapes those rules and uses that influence is therefore critical. Since it is argued here that international organizations themselves are capable of "learning" and changing, and since international law continues to develop and its jurisprudence to expand, China's input is an important constituent of the organic process of change, evolution, and decay in the international system. Its continuing support for the norms and rules of international treaties will also be vital to ensuring that, in the future, international standards of sustainable development, labor relations and conditions, and finance and trade are maintained and developed, thereby preventing any diminution in international security and any lowering of global human security standards. By virtue of its size, importance, and influence, China's behavior is, in short, a vital indicator of the shape of things to come.

This book evolved from my work on China's compliance with a range of UN human rights bodies and treaties, which presented the most extreme test of its compliance with its treaty and membership obligations.[6] This specialist study stimulated my interest in China's comparative performance in other international regimes, and in the deceptively simple theoretical question underlying it: why do states comply with international rules? I therefore extended my research to the regimes of international security, the international political economy and the environment, as well as human rights, and tested the reasons for its compliance in each against the main compliance theories. These regimes all pertain to global security—whether state security, the principal subject of the international security regime, or human security, the focus of the latter three regimes.

As my research on these empirical and theoretical questions proceeded, however, it became increasingly clear that, for a fuller account of how the multilateral system worked and how states like China related to it, I needed to go beyond compliance to the more political question of cooperation. While a compliance test was an important indicator of a state's integration into the international system, the measure of its cooperation offered a more comprehensive test of its internalization of international norms.[7] I also needed to garner further insights from international law. For instance, I needed to focus not just on the state and on its responses to the international system, but also on the active part played by international institutions themselves as well as the effect of the state's actions on them. My book therefore brings into the research equation the quality of international rules and their "compliance pull"; the nature of each international organization and its mandate; and the impact that the state is having on those same international organizations and rules. It disaggregates the inter-

national system in a way that makes complex outcomes more comprehensible and opens the way for a broader enquiry than compliance studies normally generate.

This approach is new. While scholars of international relations and of China have written cogent studies of China's compliance within international regimes, they have done so largely without reference to international law and to theories of compliance and cooperation.[8] They have also tended to focus more on pressures from within China than on pressures from without. While they have made important contributions to an understanding of domestic political developments, they have largely bypassed the intricate processes of international diplomacy. In failing to focus on the features of international organizations that encourage state compliance, and on the significance of their constituent instruments and associated treaties, they have also failed to adequately explain *why* China complies. Moreover, although excellent singly or jointly authored studies have been made of China's interaction with specific international regimes,[9] there is as yet no single-authored comparative study of China's compliance and cooperation with the international norms, principles, and rules of the wide range of regimes comprising global security. Conversely, as thoughtful international lawyers concede, international law is often silent about the more political aspects of the compliance process,[10] even though it is itself a product of the way rules are formulated through international negotiations. Nor does it inquire into the wider context of the political, economic, and social pressures producing this environment,[11] the political processes inducing international compromise and cooperation, or even, I contend, into the domestic outcomes consequent on the application of compliance mechanisms.

The overall conclusions emerging from my expanded empirical and theoretical investigation have been that:

- In general, China complies with the rules of international organizations and treaties and its compliance has usually improved over time. The initial impetus for its entry into an international organization or its ratification of a treaty has been primarily instrumentalist and has indicated little sympathy for the norms involved. This position has altered with the process of participation, shifting from procedural into a deeper, more meaningful, compliance. However, China's pattern of compliance has not been linear and has been sensitive to the changing international and domestic environment.
- China's compliance, like that of most states, has been determined by a mix of motives, neither wholly instrumental nor wholly based on norms and ideals, and has been impelled by both international and

national pressures. The international pressures have been most effectively communicated and applied through the interactive processes of international organizations. The feedback effect of such processes has led to China's gradual reconception of its domestic interests to align more closely with that of the international institution. Its compliance has been deepest when international pressures and its domestic interests have converged.

- At the same time, China also complies differently across and within regimes. For international relations scholars this uneven pattern of compliance may be thought unusual, whereas international lawyers would anticipate such an outcome. Nevertheless, by comparing its responses in different circumstances, common characteristics and patterns of behavior are revealed.
- International organizations and their principles, norms, and rules are themselves active players in the compliance process, not only because of their role in integrating states into the international community, but also because of the variability in their purpose, functions, and enforcement mechanisms and their incentives and disincentives for compliance. This is one reason that states comply differently across and within regimes.
- One set of theories, which I will describe below as "process-based theories," are most useful for explaining China's compliance, while competing liberal and rationalist theories are less helpful, even if they sometimes provide valuable insights.
- Compliance and cooperation are two separate issues that must be considered in their relation to each other. Even the concept of "deep" compliance does not adequately cover the interactive, communicative nature of international politics and the international system. Thus, while China normally "complies" with international norms and rules, it has often not cooperated with them.
- At the same time as complying with existing international rules, China has had an important impact on the international system and on the development of international law. Its part in the negotiation and renegotiation of rules must be understood as a separate category of activity from "compliance" and non-compliance and from "cooperation" and non-cooperation. It is a reflection of the fluid quality of international law, whose function is not only to set rules for state interaction but to continually adjust those rules in response to changing state practice and altered circumstances.

Several of these overall conclusions require elaboration. In particular, there is a need to explore theories of compliance and cooperation and the role, both past and present, played by international law and international organizations in influencing compliance and cooperation within the international system. This will enable a deeper understanding of why China complies, why its compliance record is uneven within and across regimes and why, despite its compliance, it does not necessarily cooperate. The rest of the chapter will consider these issues and will conclude with an analysis of the methodology adopted in this book and a discussion of its organization and trajectory.

Compliance Theories

For decades, scholars have debated the claim of Louis Henkin that "almost all nations observe almost all principles of international law and almost all of their obligations almost all of the time."[12] For the international relations scholar, the question of compliance is at the root of the main question for neoliberal institutionalists as to whether international regimes matter. For the international lawyer, it is critical to the central problem of whether international law makes a difference. In a globalized yet highly differentiated world, the fragility yet critical importance of non-coercive mechanisms renders the question of states' compliance with international rules at once more compelling and more puzzling.

Until recently, there has been almost universal endorsement of Henkin's thesis, and an extensive literature has been produced on the question of why states comply by both international lawyers and international relations specialists.[13] To some extent, as Robert Keohane has observed, both the focus and the approach are dependent on the discipline involved.[14] Obviously, public international lawyers tend to emphasize the nature and legitimacy of rules and of institutional process in facilitating compliance, whereas liberal international relations theorists focus on the interests of the state and its interplay with state and non-state actors as well as with international institutions.

Theories of compliance may be classified in a number of different ways. Harold Koh, for instance, divides them into four strands of thinking that had evolved as early as the end of the nineteenth century: an Austinian, positivistic realist strand, which indicated that states did not "obey" international law, since it was "not really law"; a Hobbesian, utilitarian rationalist strand, which argued that states only followed international law when it was in their interest to do so; a liberal, Kantian strand, which posited that a sense of moral and ethical obligation was the chief source of compliance; and a process-based strand, which attributed compliance to complex patterns of interaction and legal discourse between states. These translate, in contemporary discourse, into a realist strand,

a rationalist strand, a Kantian liberal strand, and a process-based strand.[15] Kal Raustiala, on the other hand, distinguishes between rationalist, norm-driven, and liberal theories, while Oona Hathaway, distinguishing beween the rational actor and normative models, situates the "managerial model" within the normative pole, and realism, institutionalism, and liberalism within the rational actor pole.[16] The inherent flexibility of such categories, which may be divided into general and specific theories, demonstrates not only that they are not mutually exclusive but also that they share essential characteristics. Thus, the relationship between norms, institutions, rules, legitimacy, process, and sanctions is a concern of most compliance theorists: they differ, however, on the priority accorded to the various elements and on their interpretation of the nature of the interaction. The majority of theorists argue the case for a particular interpretation. A few, like Louis Henkin and Oran Young, are more eclectic.[17]

For heuristic purposes, the categorization adopted here draws on the Koh taxonomies but concentrates on three main strands: liberalism, process-based theories, and rationalism. Realism is not a useful basis for comparison because it provides no alternative explanation apart from self-interest, a motive already included in most of the other theories, particularly rationalism. This taxonomy facilitates a distinction between international law and international relations theories of compliance that plot a spectrum moving from an almost exclusive emphasis on the nature of norms and rules to an overriding focus on states' interests. However, within the broad spectrum of theories there is considerable overlap and even convergence, particularly between neoliberal institutionalists within the international relations field and some international legal theorists, who concur in underlining the significance of institutional process and the compliance pull of rules and norms. Likewise, the rule-legitimacy strand of liberalism, neoliberal institutionalism, and process-based theories tend to be non-coercive, inclusive theories that attempt to understand why the world, as it currently operates, works. By contrast, for different reasons, international relations realists, some rational choice theorists, and liberal internationalist/identity theorists, discount the significance of both international norms and international institutions. In their different ways, they are more exclusivist, more programmatic, more coercive and potentially interventionist.

Process-based Theories

Process-based theories bring together international law and international relations and have in common a belief in the socializing process of normative discourse and repeated interactions between transnational actors, particularly within an institutional setting. Their proponents are also skeptical, to a lesser or

greater extent, of the role played by coercion in achieving compliance. The theories fall into three main categories: the managerial theory of international lawyers Abram and Antonia Chayes, the transnational legal process theory of international lawyer Harold Koh, and the international relations school of constructivism. Together, they provide the main theoretical underpinning for the empirical case studies in this book.

In their book, *The New Sovereignty*, Abram and Antonia Chayes contend that encouraging compliance is a matter of "management," based on procedural fairness and equal and nondiscriminatory application, and harnessing the mutual social pressures operating between states within multilateral institutions. In their view, "not even the so-called hermit state of North Korea has been completely able to resist this kind of escalating pressure."[18] Their theories largely accord with empirical observations of China's diplomatic responses. They argue: (1) that states' compliance with international treaties is quite good and does not owe as much as rational choice advocates believe to enforcement; (2) that a general propensity to comply with treaty rules is engendered by national interest, the need for efficiency, and regime norms; (3) that state compliance tends to be the result of an ongoing interaction between states and the norms, rules, membership, and organizations of international regimes, producing, through reporting procedures, "interacting processes of justification, discourse and persuasion"; (4) that sanctions, while useful in some contexts, are not appropriate for routine enforcement; and (5) that "non-compliance is not necessarily, perhaps not even usually, the result of deliberate defiance of the legal standard,"[19] but, rather, derives from (a) the ambiguity and indeterminacy of treaty language; (b) the limitations on the capacity of states parties; and (c) the temporal aspect of the social, economic, and political changes contemplated by regulatory treaties.[20]

This managerial approach also leads the Chayes to distinguish between the effectiveness of different types of organizations in inducing compliance. However, in some cases their model is not appropriate for China. For instance, they fail to take account of those many cases where self-interest is not endogenous to the treaty but exogenous to it. Their insistence that non-compliance is not usually the result of deliberate defiance of a treaty standard flies in the face of empirical evidence that it is often the state that has the least intention of complying with a treaty, that is, the "least-likely" state, that is most ready to ratify it.[21] They have also been criticized for failing to distinguish between different types of treaties, for setting up a polarity between management and enforcement, for failing to explain how their insights might apply outside the realm of positive, treaty-based law to the growing realm of customary and declaratory international law, and for failing to address the issue of norm and rule internalization.[22]

Many of these theoretical omissions have been remedied in Harold Koh's transnational legal process theory. The internalization of international norms, which has not until recently received much attention from international lawyers, is now a matter of increasing interest.[23] Koh addresses the issue via his theory of the "transmission belt," whereby "the norms created by international society infiltrate into *domestic* society."[24] He focuses on the complex vertical and horizontal process, impelled by global and domestic social pressures, of the translation of international norms into the domestic arena.

> When a nation deviates from [a] pattern of presumptive compliance, frictions are created. To avoid such frictions in a nation's continuing interactions, national leaders may shift over time from a policy of violation to one of compliance. It is through this transnational legal process, this repeated cycle of interaction, interpretation, and internalization, that international law acquires its "stickiness," that nation-states acquire their identity, and that nations come to "obey" international law out of perceived self-interest.[25]

By introducing the notion of "presumptive compliance," Koh addresses the issue of the inherent inertia favoring treaty compliance, explained by other theorists as the phenomenon of "routinization."[26] He also espouses a related notion about states' commitment to "keep the game going." Most importantly, in this particular exposition of his theory, he is agnostic on the question of domestic political structure. Since he sees national identities as socially constructed products of learning, knowledge, cultural practices, and ideology, he claims that states are neither permanently liberal or illiberal, but "make transitions back and forth, from dictatorship to democracy, prodded by norms and regimes of international law."[27] In this respect he specifically cites the experiences of South Africa, Poland, Argentina, Chile, and the Czech Republic.[28] He also argues that management and enforcement are complementary, rather than alternative, facilitators of compliance. As he has observed, "the managerial model sometimes succeeds not solely because of the power of discourse but also because of the shadow of sanctions, however rare and remote that possibility might be."[29] This theory is similar to the enforcement pyramid conceived at the domestic level by Ian Ayres and John Braithwaite.[30]

However, in his 1998 Frankel Lecture, "Bringing International Law Home," Koh elucidates his theory in terms that appear to limit its application to a liberal state. He identifies six key agents in the transnational legal process: (1) transnational norm entrepreneurs; (2) governmental norm sponsors; (3) transnational issue networks; (4) interpretive communities and law-declaring forums; (5) bureaucratic compliance procedures; and (6) issue linkages. He illustrates the way these six processes converge to require the United States and other liberal states to internalize aspects of international law. Of these, the pressures exerted by transnational

norm entrepreneurs, transnational issue networks, and domestic NGOs appear the most constant and significant in his case studies, and provide the basis for his prescriptions for future action. However, of these six agents, only (2) and (5) currently apply to a least-likely state such as China, with a minimal opportunity for (4). While Koh affirms that his theory can also serve as a model for "rogue states" such as Iran, North Korea, and China, he fails to identify the precise agents of change in states that lack effective domestic NGOs and are unresponsive to the direct pressures of transnational NGOs. At most, he posits that "strong executives may internalize international rules for an illiberal country, even without judicial or legislative involvement. Yet, once these rules are accepted as domestic law, they begin to trickle into the system and force domestic change, even within illiberal systems."[31] However, even accepting the questionable validity of the "trickle-down" effect, Koh still fails to identify the initial incentives that would motivate the executives and/or citizens of nonliberal states to internalize international norms. Moreover, this version of his theory also fails to explain the reasons behind sudden reversals in the compliance record of liberal states, particularly of the United States, his ostensible model.

Nevertheless, of all the theories analyzed, Koh's is the most comprehensive and the most appropriate for China. It is inclusive theoretically because it incorporates the importance of process in managerial theory, the insights of constructivism, and even a modified acceptance of the role of self-interest and need for the "threat" of enforcement. It is also inclusive in a structural sense, because it comprehends all levels of state and non-state interaction, influence, and compliance—the international and the domestic, the vertical, and the horizontal. Thus, Koh's theory has contributed to the methodology adopted in this book.

Moving to the realm of international relations, constructivists base their ideas on notions of identity formation and international society. Rules and norms are not creations born of states' interests but are themselves constitutive of a state's international identity and interactions. Constructivists argue that the experience of complying with a rule in time may lead a state to redefine its interests, and even reconstruct aspects of its domestic identity, in conformity with that rule. Understanding law as socially constructed, they conceive the main transformative influence as the interaction between the interstate legal structures and the recurrent types of international social interactions to which the laws apply. Thus, according to Andrew Hurrell, "a good deal of the compliance pull of international rules derives from the relationship between individual rules and the broader pattern of international relations: states follow specific rules, even when inconvenient, because they have a longer-term interest in the maintenance of law-impregnated international community."[32] Such a theory has close correlations with China's experience. By contrast, the version of constructivism pro-

moted by Thomas Risse, Stephen Ropp, and Kathryn Sikkink is less appropriate to China. It constructs a spiral theory of five phases in a state's relationship with the transnational human rights network, in which the state is gradually drawn into compliance with human rights norms and rules.[33] But, this theory depends for its realization on domestic political reform, and is thus not applicable to a least-likely, authoritarian state that has not to date responded positively to NGO pressures.

More relevant is a recently developed international relations theory that attempts to bridge the divide between constructivists and rationalists by focusing on persuasion. Its supporters propose a "synthetic approach to compliance that encompasses both rational instrumental choices and social learning, an approach which will help both rationalists and constructivists to refine the scope of their compliance claims."[34] There are strong synergies between this work and that of the Chayes.[35] However, the latter do not scrutinize persuasion in the detail required by the former. Thus, Iain Johnston focuses on the microprocesses of socialization in an attempt to distinguish the internalization of norms from their instrumental adoption.[36] He proposes the testing of socialization by using international institutions as the social environment and individuals and small groups involved in state policy processes as the individual agents of interest. Another contribution made by persuasion theory is its suggestion that there may be different phases in the international socialization of states and that international organizations may have different effects depending on the political constitution of the state involved and the point at which it commenced participation. Such is the burden of two of Jeffrey Checkel's hypotheses borrowed from social psychology. The first is that "argumentative persuasion is more likely to be effective when the persuadee is in a novel and uncertain environment—generated by the newness of the issue, a crisis or serious policy failure—and thus cognitively motivated to analyze new information." The second is that "novice agents with few cognitive priors [prior beliefs] will be relatively open to persuasion."[37] Checkel argues not that uncertainty and inexperience are sufficient for social learning to occur, but that they make it more likely that an agent will be convinced and then learn through processes of persuasion and communication.

These theories correspond, to a greater or lesser extent, to the experience of a revolutionary state. To date, however, few contemporary scholars have sought to explicitly address why nonliberal states comply. Thus, David Armstrong, Charles Ziegler, and Stephen Chan analyze the foreign policy goals, values, and motivations of "revolutionary" states, and their reasons for non-compliance with international norms: but they do not address the reasons why such states comply, when they do.[38] For such theories one has to go back to the earlier ideas of Richard Falk and Inis Claude in the Cold War era.[39] In his 1966 article, Claude

espoused an eclectic theory that contains aspects of process-based theory, liberalism, and rationalism. He identified the motivation behind the foreign policy choices of "revolutionary states" as the "collective legitimizing function" of international organizations. According to Claude, collective legitimization is a political, not a legal, process that is "less a matter of purporting either to apply or revise the law than of affixing the stamp of political approval or disapproval."[40] It is an aspect of the verbal rather than the executive functioning of international organizations, in particular, of the United Nations. Thus, admission to the UN has taken on the political meaning, if not the legal implication, of collective recognition.[41] In addition, General Assembly and Security Council resolutions proclaim the legitimacy or illegitimacy of positions or actions taken by states. Even in the case of revolutionary and developing states, "the vigorous effort that states customarily make to prevent the passage of formal denunciations of their positions or policies indicates that they have respect for the significance, if not for the validity, of adverse judgments by international organs."[42] The result is that a state may hesitate to risk Assembly disapproval, not because it accepts the priority of the will of the Assembly over its national interests, but because an adverse judgment by that body makes the pursuit of that policy contrary to the national interest. This legitimizing function applies not only to state actions but also to important, abstract issues that affect the global balance of power.

Revolutionary states identify their national interests with the will of the Assembly because of the benefits they draw from UN participation. By invoking the authority of the UN, Claude claims, revolutionary states have also been able to claim the right to development and control of their own resources. Through the international organizational norm of the sovereign equality of states, such states have enjoyed a voice that on any other criterion of power would be denied them. However, precisely because such a collective legitimizing function empowers as well as constrains revolutionary and developing states, it also has the potential to destabilize international order. The danger, Claude warns, is that "collective legitimization may stimulate legal changes that will make international law more worthy of respect and more likely to be respected, but it may also encourage behavior based upon calculation of what the political situation will permit rather than consideration of what the principles of order require."[43]

This paradox is critical to an analysis of the international behavior of a least-likely state. The same quality of collective legitimization that cements the global order may also be manipulated by such a state to destabilize it. This brings us closer to the nub of the problem and confirms the approach of this study. Not only does a detailed disaggregation of the behavior of a least-likely state test the validity of different theories of compliance, it also helps clarify which aspects

are indicative of its compliance and/or cooperation with international norms, principles, and rules, and which are calculated merely to test the bounds of what the political situation will permit.

Alternative Theories

Other theories are less applicable to the situation of China. Liberal theories argue that state decisions cannot be simply explained by the processes of organizational participation and calculations of interests. Explanations must focus on the role of ideas and values. For that reason alone, they are less relevant to the experience of a nonliberal state such as China. As might be anticipated, this category of theory is primarily the domain of international lawyers, and subdivides into the rule-legitimacy theory of Thomas Franck and the liberal internationalist (or rule-identity) theory of Anne-Marie Slaughter.[44] Of the two, Franck's ideas are the more applicable to China, in that he emphasizes the nature and legitimacy of international rules and their capacity to induce compliance. He sets out to establish a "definitive hierarchical ordering of international rules according to how effective they are in evoking a sense of obligation and securing voluntary state compliance."[45] His ideas thus bear a close relation to the more specific compliance theories of those international lawyers who are opposed to the abstract nature of compliance theory and who argue the more practical possibilities of "treaty-induced" compliance within a specific regime.[46]

Franck argues that, in the manifest absence of enforcement powers, the community of states has identified "legitimacy" as "the standard by which the community measures rules' capacity to obligate." One indicator of an international rule's perceived legitimacy is its "compliance pull," itself dependent on four principal indicators: determinacy, symbolic validation, coherence, and adherence. At the same time, he cautions that "compliance pull" is not the same as compliance: "A state may violate a rule because the perception of national advantage to be gained by rule disobedience in a particular instance is so powerful as to overwhelm the most powerful compliance pull."[47] He thus recognizes that self-interest may sometimes act as an exogenous force working against compliance.

Because of his primary attention to the nature of international rules, Franck's broader view has sometimes been obscured by critics. In fact, he argues that legitimacy is determined not only by the text of a rule, but also by the process of text formation and by the nature of the rule-giving institution. In addition, he sees the international community as a "rule community," in that "the usual form of affiliation among states is by rules of conduct and rules that govern the making, interpretation and application of obligating rules." As the reciprocal of the international community's validation of the nation's statehood through partic-

ipation in international organizations and their treaties, states feel obliged to obey its rules; the highest commitment of states in international forums is "to keep the game from ending."[48]

The strength of Franck's theory is that it disaggregates rules and distinguishes a hierarchy in their effectiveness and legitimating properties. However, in focusing on a rule's "compliance pull," he obscures the fact that rules also differ from each other in terms of the ease, or difficulty, with which they may be implemented. Moreover, he fails to identify the comparative "compliance pull" effected by rules, by rule-giving institutions, and by participation in the international community as a whole. Franck also neglects discussion of different forms of institutional interaction or the means by which norms are internalized into domestic legal systems.[49] His inquiry appears to end abruptly at national borders. More broadly, he does not give sufficient attention to the role of politics within international institutions. Finally, the strength of his argument is vitiated, as Keohane points out, by the fact that it is circular: a rule's compliance pull is an index of its legitimacy, while its legitimacy is said to explain "compliance pull."[50] Aside from such theoretical critiques, the dependence of his rule-legitimacy argument on the shared understandings of a community of liberal states raises questions about its applicability to a least-likely state.

At the more extreme end of the liberal spectrum, the liberal internationalist/identity theory of Anne-Marie Slaughter relies far too heavily on the shared understandings of liberal states.[51] The initial basis of this theory was the idea that state behavior is primarily determined by an aggregation of individual and group preferences.[52] However, as Anne-Marie Slaughter has developed it, the theory "mandates a distinction among different types of states based on their domestic political structure and ideology."[53] Compliance, according to this view, is largely dependent on whether or not the state is a liberal democracy, enjoying representative government, civil and political rights, juridical equality, and a functioning judicial system dedicated to the rule of law.[54] The applicability of this theory to the world's most powerful democracy has already been brilliantly challenged by José Alvarez.[55] However, it is even less applicable to least-likely states. This is because, as in the case of the Ropp, Risse, and Sikkink argument, the "centre" of democratic governance and the "periphery" of illiberal states can only be reconciled, and universal compliance achieved, once the center has succeeded in luring the periphery into its democratic embrace. In principle, therefore, the theory has no applicability until the political structure of the nonliberal state itself has been transformed, at which point the newly liberal-democratic state is self-evidently no longer a least-likely state. Moreover, although like the work of other scholars it addresses the relationship between the international and the domestic,[56] liberal identity theory emphasizes the internationalization of domestic

norms rather than the domestication of international norms. As such, it would not appear to have resonances with the situation of a least-likely state.[57]

Rationalism, a third significant theoretical approach, incorporates a range of political positions, but, unlike liberal theory, is primarily the preserve of international relations scholars. It treats states as choice-making entities that accept their interdependence but make rational calculations on the basis of interests rather than norms. Rationalist theories range from the neoliberal institutionalism of Robert Keohane, to the more extreme rational choice model of George Downs et al. Because Keohane's theory is closer to that of the Chayes, it has more relevance to China than does the Downs version. Like the Chayes and the constructivists, he stresses the power of institutions to bring states to redefine their interests in ways that accord with the principles and rules of their particular regime. Applying an instrumental and a normative optic to the question of the impact of norms on states' compliance with international rules, he focuses on three concepts essential to an account of how rules relate to state action: interests, reputation, and institutions. He argues that both interests and concern about reputation are changeable, responsive to alterations in descriptive information and causal and principled beliefs. They can only be reconciled within the context of highly valued international institutions, which are important for the way in which they can alter states' interests and affect how others behave. Thus, "institutions that states strongly value can promote cooperation by linking normatively prescribed behavior, such as fulfilling commitments, to the continued receipt of material or normative benefits from the institutions." Although allocating significance to both interests and norms, he thus, like the Chayes, places international institutions at the top of the hierarchy of causation. Like the Chayes, Keohane also downplays the importance of coercion and underlines the lack of sophistication in the views of crude instrumentalists.[58] His theory, although placing too much emphasis on the need for material incentives, would therefore appear to have some explanatory value for least-likely states, particularly as regards the importance of a state's "reputation."

By contrast, George Downs, David Rocke, and Peter Barsoom have mounted a comprehensive challenge both to the Chayes' managerial position and, by extension, to neoliberal institutionalists such as Keohane. Of all the compliance theories (apart from realism), the rational choice model is the most highly instrumental and, paradoxically perhaps, the least appropriate for China. Whereas Keohane downplays the role of coercion as a "negative incentive," Downs et al. stress its importance. The Downs et al. variant of rationalism starts from the premise that the high level of treaty compliance and the marginality of enforcement result from "the fact that most treaties require states to make only modest departures from what they would have done in the absence of an agreement."

This is because of "state selection," which ensures that states have already selected out those treaties they cannot comply with, since they are "unwilling or unable to pay the costs of enforcement."[59] This position contrasts with the Henkin argument, and the Hathaway findings, that states sometimes ratify treaties with which they have no intention of complying.[60]

To demonstrate their claim, Downs et al. set up an index of "deep compliance" against which they compare a number of empirical cases where enforcement has been present or lacking. The "depth of cooperation" demanded by a treaty is to be determined by "the extent to which it requires states to depart from what they would have done in its absence." The depth is measured by the treaty level and "could be based on the status quo at the time an agreement was signed or on a prediction derived from the year-to-year change rate prior to that time."[61] In contrast to the Chayes, they see significant self-interest as largely exogenous to the treaty-making and treaty-ratifying process (although playing an initial part in treaty selection), and therefore as imposing a constraint on treaty compliance. For this reason, they argue that, to obtain deep compliance with a treaty, not only is enforcement through sanctions necessary, but "the deeper the agreement is, the greater the punishments required to support it."[62] The applicability of such a theory to a powerful, least-likely state, jealous of its sovereignty and of its international status and reputation, is shown in these case studies to be highly questionable.

Compliance and Cooperation

Compliance with international rules, however, is not the whole story. To gain a more complete understanding of the dynamics of state integration into the international system, we must move beyond compliance. The term, "beyond compliance," has been used in the literature in a number of different ways. It has been used to argue that the real questions of international law go "beyond compliance" to questions of the ideology of international law.[63] It can indicate a programmatic goal of continuous improvement "beyond compliance," whereby states are urged to take the lead to promote concepts globally.[64] Conversely, it can mean that, because the international situation is seen as no longer amenable to the application of universal rules, it has moved "beyond compliance." In view of the "shrinking regulatory resources" at the disposal of regulators, scholars devise ways to extract the "biggest bang" from the rapidly diminishing "regulatory buck."[65] In this book, by contrast, "beyond compliance" is used as an analytical concept, designating the need to move beyond sole consideration of formal compliance (and non-compliance) in evaluating the integration of a state into the international system, to the broader political questions of cooperation (and non-cooperation).

Compliance is essentially a legal concept. Formal or "rule" compliance may be defined as a state's implementation and enforcement of the specific norms, principles, and rules required by the international treaty to which it is a party or of the constitutive rules of the international organization of which it is a member.[66] More specifically, as Joseph Grieco has defined it, compliance constitutes "the initiation, modification or cessation of some form of behavior by signatories so that they are in accord with injunctions articulated in code rules."[67] Since the degree of compliance with norms, binding principles, and rules may vary between regimes and even within regimes, compliance is here assessed on the basis of a single regime or part thereof, by taking into account the state's adherence to the major associated treaties to which it is a party. Formal compliance may be instrumental or cognitive/normative.

Cooperation, on the other hand, is a broader political concept defined in more general terms as "collaboration, coordination, joint action and mutual support."[68] Whereas compliance involves the implementation of an existing rule, cooperation is the original motivating force, or act, behind the formation of that rule. In the words of John Braithwaite and Peter Drahos, "cooperation involves one actor helping another actor to satisfy an interest or goal which one or both actors possess [and which] can be reciprocally or non-reciprocally based."[69] However, this broad definition contains within it the option of states collaborating for purposes of self-interest and in possible breach of their obligations under international law.[70] For the purposes of this study, therefore, cooperation is defined more narrowly in relation to international regimes as either individual action by a state that promotes the object and purpose of a treaty or regime, and, in particular, their non-binding norms, or collective action to the same end. Conversely, non-cooperation is reflected in attempts to block, stymie, or impede the object and purpose of an organization or treaty.

The concepts of compliance and cooperation both suggest a "capacity to yield," thereby imputing certain characteristics to the state actor. Both also issue from a complex interplay of constraining variables. The wellsprings of formal compliance include the rules themselves, the institutional process of participation in the organization or treaty regime, the application of incentives or coercive mechanisms, the pressures from within the epistemic community, whether international or domestic, habit, and, finally, the state actors themselves and their perceived international and domestic interests. Cooperation in the positive sense, on the other hand, implies an individual or collective willingness to collaborate, which normally excludes the need for coercive enforcement and which is evaluated less on the basis of obligations entrenched in legal instruments and more on the basis of associated and reinforcing principles that are not strictly legal requirements. Cooperation, like compliance, is a function of a

state's strategic choice but it is generally more reflective of normative internalization than of mere instrumental responses. However, whether or not states choose cooperation over conflict, or cooperation over instrumental compliance, also depends on their calculations of the "payoffs," and the behavior and cooperation of other nations, since "self-interest can be assessed individualistically, relatively or conjointly."[71]

Cooperation may not always lead to compliance with rules, and compliance can occur without cooperation, for instance, as a consequence of the imposition of coercive sanctions. However, at the individual level, if a state's compliance with an international norm or rule is associated with long-term cooperation, it is more likely to be a function of "deep" compliance whereas, without cooperation, compliance may be merely instrumental. Thus, for instance, a state that has entered major reservations on its acceptance of a treaty may still be in formal compliance with the remaining provisions, but not be considered "cooperative" with the object and purpose of the treaty. Cooperation in this sense addresses the spirit, rather than just the letter, of international law.

As a collective phenomenon, cooperation and, in particular, a pattern of cooperation, also creates an international environment that can assist, and help explain, compliance.[72] In this sense, cooperation is part of the "circumstantial penumbra" that forms the international context in which compliance is encouraged. A joint decision to cooperate is, after all, at the basis of the formulation of international rules and of the establishment of international organizations and regimes. The continuing effectiveness of such rules, organizations, and regimes is in itself a confirmation and legitimation of the original cooperative decision and creates a presumption that states will normally comply with the rules. Conversely, the defection of significant states from such arrangements is likely to destabilize the assumption of the legitimacy of their rules, organizations, and regimes and to alter existing habits of compliance, triggering more unstable international behavior generally.

The Role of International Law, International Organizations, and International Regimes

As Louis Henkin has pointed out, international law performs a variety of functions. It provides legal concepts of nationality, national territory, property, torts, contracts, and the rights and duties of states; and it establishes mechanisms, forms, and procedures whereby states maintain their relations, engage in trade, and resolve differences. The most important such mechanism is the international agreement, with its underlying principle of *pacta sunt servanda* ("treaties are to be obeyed").[73] For the purposes of this study, the most significant of these agreements are those promoting cooperation for some global aim—international

treaties in a wide variety of regimes, and the constituent instruments governing the establishment, administration, and jurisdiction of international organizations such as the United Nations and its specialized agencies.

International organizations or, more precisely, intergovernmental organizations (IGOs),[74] have a shorter history than international law, although they are intertwined with, and governed by, as well as developing, it.[75] They are normally created between states, by treaty or the legal act of an already existing organization, for some purpose, and possess a will distinct from that of their member states.[76]

Although the late nineteenth and early twentieth centuries saw the establishment of functional bodies such as the International Trade Organization (ITO) and the Hague Conferences that regulated the conduct of war, the main spur to international organizational development came from the United States in the course of the two world wars. The Paris Peace Conference of 1919, presided over by President Wilson, undertook the dual responsibility of making a peace settlement and fashioning an international system that would ensure that the devastating conflict of 1914–18 could never be repeated. To promote international cooperation, peace, and security, it had to address not only collective security matters and the relations between states, but pressing economic and social questions that had been highlighted by the growth of the trade union and socialist movements in the previous half century. The Covenant of the League of Nations, based on Wilson's vision, underwrote the establishment of the League of Nations, the Permanent Court of International Justice, itself originally inspired by the Hague Conferences, and the International Labour Organization. These institutions represented the nursery slopes of the fully functioning international system that was fathered by Franklin D. Roosevelt in the 1940s. Apart from its goals of collective security and of liberalizing international trade in an equitable manner, its foundations were strengthened by its amalgamation of U.S. domestic norms of social justice, derived from the New Deal, with those of European welfare states. As manifested in the robust international institutions to which it gave rise, namely the United Nations and the Bretton Woods institutions of international development, finance, and trade—the World Bank, the International Monetary Fund, and the concept of an International Trade Organization—it provided a holistic system of international norms incorporating individual and collective values of democracy, civil rights, and social justice.

This vision was incorporated into the provisions of the UN Charter, which established in workable equilibrium the requirements of sovereignty, peace and security, and individual human rights. It was also formalized in the 1948 Universal Declaration of Human Rights, which integrated civil, political, social,

economic, and cultural rights, in both individual and collective forms, and was implemented as binding international legal instruments in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights. With the onset of the Cold War, the social justice component of Roosevelt's initial conception was whittled away, and the norms of civil and political rights assumed ascendancy. As a result, the proposed International Trade Organization, an institution designed by John Maynard Keynes to achieve fair trade, was sidelined, and one part of it, the General Agreement on Tariffs and Trade (GATT), which was initially simply a temporary multilateral agreement to facilitate the reduction of trade barriers, became the principal forum of international trade regulation.[77]

Since those early days, international organizations have evolved along more pragmatic and less idealistic paths. Their principal role is now seen "not as the *deus ex machina* of yesteryear, entering the scene in order to save the day or to save the world, but rather as a type of bounded political community which facilitates discussion and debate; no longer as regulatory agencies *par excellence*, but simply (and most importantly) as places where international politics is conducted."[78] At a more abstract level, however, they are also understood as the institutional representations of internationalization and interdependence. They represent an "organizing process of conflict management at the supranational level" and a "collective organizing response to a multiplicity of 'traffic' control problems in a world of contradictory trends."[79] In reducing the autonomy of the state and reshaping the international system, they are today seen as both constitutive of, and responsive to, the processes of globalization.

At the same time, international organizations have a less commonly observed role: in an era of globalization, they also empower states. As Dinah Shelton observes, "If globalization is a process mostly structured by private actors, then states must cooperate to exercise public power. It is largely through intergovernmental organizations that this cooperation takes place."[80] This empowering function is reflected in the main reasons states seek to enter the United Nations. The first reason, as we have already pointed out, is international legitimization. This includes the specific legal goal of recognition, insofar as membership of the UN, according to Martin Dixon, "entail[s] a presumption of statehood which it would be very difficult to dislodge,"[81] and the principle of the sovereign equality of states, which empowers developing and unequal states as well as protecting their sovereignty. The second reason is the need for community. Even revolutionary actors depend upon mutual contact and communication, not only with developing, but also with developed, states. Related benefits of this community are that it helps "stabilize identities, codify interests,

enshrine moral principles and resolve cooperation problems."[82] As Richard Falk has pointed out:

> The dependence of *every* international actor upon mutual contact and communication is the most basic form of interdependence. Such interdependence presupposes a minimally reliable system of international order, despite the fact that revolutionary and nonrevolutionary actors are engaged in a struggle for supremacy and containment, and adhere to contradictory values and proceed toward incompatible goals.[83]

The third reason is the requirement of a rule-based system. A minimally reliable system of international order requires a rule-impregnated international society.[84] As palpable entities with formal hierarchies of decision making and sets of established rules, norms, and governing procedures, international organizations fulfill this need. For their part, once they have entered the organization, new member states become aware, if they have not already done so, that the international institution exists not just as a forum to promote their goals, but also as a source of duties and obligations. To realize their goals on a continuing basis, states must exhibit a degree of reciprocity by complying reasonably with the norms, principles, and rules of the international organization and its associated treaties. In other words, a pressure to comply is already built into the existing system. Thus, in joining international organizations and becoming a party to international treaties, member states freely consent to the obligations entrenched in the norms and rules of the specific organization and accept the need for reciprocity.

International organizations are not only important in themselves: they constitute a vital means of shaping and accessing the international regimes operating in different issue areas and their associated community of states. As Abram and Antonia Chayes have argued, international organizations constitute some of the chief sources of pressure for obtaining states' compliance with regime norms.[85] They and their treaty regimes not only encourage transparency, cut transaction costs, build capacity, and enhance settlement, but also, through a process of "jawboning," *persuade* parties to "explore, redefine and sometimes discover" their own, and mutual, interests.[86] They subject states to a process of strategic interaction and mutual pressure for consensus that helps regulate their conduct. They not only help define, but also legitimize, the activity regulated by a regime.[87]

Regimes, on the other hand, are customarily defined as "sets of implicit or explicit principles, norms, rules and decision-making procedures around which actors' expectations converge in a given area of international relations."[88] Norms, to adopt the terminology used by John Braithwaite and Peter Drahos, constitute a "generic category which includes rules, principles, standards and

guidelines." Principles are "settled agreements on conduct, recognized by a group," which are abstract and can conflict. Rules, on the other hand, prescribe relatively specific acts.[89] Principles may be constitutive of international rules, whether as general principles of law or as legal requirements within a treaty. Where, on the other hand, principles are not legal requirements in a particular treaty or regime, they may give rise to rules, may provide the context in which rules may be interpreted, or may have the function of programmatic goals.[90] The difference between these two types of principles is not always self-evident, and to distinguish between those that require compliance and those that could be described as nonbinding requires careful analysis.

Because regimes incorporate a matrix of values, rules, and institutions, they are commonly seen as transcending a strictly organizational framework. However, international organizations provide a wide range of pressures that may appeal as much to a state's short-term interests as to its ideals. They are sources of power, status, information, finance, technical assistance, and technology transfer; they submit the state to the approval or disapproval of its peers; and they provide the crucial source of constraints and incentives that regulate the conduct of wavering states within international regimes. They and their associated treaty bodies also provide the mechanisms for monitoring state compliance with a treaty's norms, principles, and rules, and for arriving at authoritative judgments. In the opinion of international lawyer Don Greig,

> the existence of an organizational structure will usually provide an added dimension to limitations upon State sovereignty. Whereas any treaty regime impinges upon that sovereignty to the extent agreed upon in the terms of the treaty, if the treaty establishes an organization, it will often bestow powers directly or indirectly upon that organization which will enable it to create obligations for States, in some circumstances against their will.[91]

The study of international organizations may thus be said to be both narrower and broader than the study of regimes.

According to international lawyer David Kennedy, the norms and institutional structures of international organizations reflect the particular context of international jurisprudence from which they emerged.[92] Thus, the ILO, with its tripartite structure and strong egalitarian and socioeconomic focus, was a product of the movement for economic democracy in the West and of the post–World War I Wilsonian idealism that also gave rise to the League of Nations. The UN, World Bank, and IMF embody the formal institutional machinery, generalized norms, and vertical enforcement mechanisms forged by statesmen and international lawyers during the 1940s. Although the GATT was formed in the same period, it was, as we have observed, originally only part of a projected International Trade Organization that was intended to combine free trade with

international socioeconomic fair dealing.[93] Today, the GATT and WTO offer a total contrast to that vision. They represent the second wave in two centuries of free trade, seeking neomercantilist freedom from the yoke of the state, and eschewing vertical authority. Likewise, the UN human rights bodies have evolved to combine formal institutional machinery and generalized norms with a more horizontal emphasis on participation by NGOs and on the right of individual petition. The environmental regime initially mirrored the human rights regime in setting up vertical institutions and conferences, beginning with the Stockholm Conference in 1972. At the same time, it instituted a more horizontal "process" rather than "rights" orientation, favoring the use of principles and standards rather than formal rules, expanding participation from states to NGOs, forgoing "vertical" in favor of "horizontal" institutions, and adopting a wider variety of pressures for compliance than were available in the earlier regimes.[94]

Certain consequences flow from this historical and structural, as well as thematic, differentiation. First is the degree to which an international organization is coextensive with its overall international regime. For instance, despite efforts to integrate labor standards into the WTO, the ILO, the earliest international human rights organization, remains the principal body setting and promoting such standards. On the other hand, the World Bank, the IMF, and the WTO form only part of the international political economy regime, that is, the overall investment, finance, and trade institutions. Other international organizations influential in this area include the OECD, the Basle Committee on Banking Supervision, the Bank for International Settlements (BIS), the Financial Action Task Force, the EC, and the G-7/8.[95] The overall human rights regime comprises UN bodies, UN specialized agencies like the ILO, regional bodies, NGOs, and some bilateral mechanisms. In arms control, the Conference on Disarmament is the main multilateral negotiating forum, but the overall regime includes the International Atomic Energy Agency (IAEA), the UN First Committee, the UN Disarmament Commission, special sessions of UNGA, specific conferences such as the NPT extension conferences, regional multilateral organizations like the ASEAN Regional Forum (ARF), and bilateral negotiations. In the environmental regime, UNEP is one of a number of international organizations presiding over a horizontal sweep of treaty secretariats. Others influential in environmental matters include the OECD, EU, G-7, IMO, CSD, UNDP, UNIDO, and the World Bank.[96] Such organizational complexity has been increased by the expansion of the specific mandates and normative structures of international organizations in response to the globalization of ideas, with the result that these institutions now include a host of activities not originally anticipated in their constituent instruments.

Second, international organizations differ in their recognition of a key international legal principle, the sovereign equality of states. While the UN proper reflects this principle in most bodies apart from the Security Council, the ILO through its tripartite structure distributes power between states, businesses, and workers. Power in the IMF and World Bank, on the other hand, is hierarchical and broadly reflects the economic power of the state. Power in the GATT and WTO is bilateralized and horizontal, while in UNEP, it is diffused into developmental, regional, or interest groups.[97]

Third, the regimes associated with international organizations differ in their degree of "hardness" and "softness." In international relations, as distinct from international law, human rights and the environment are often represented as "soft" regimes, on the basis of the argument that they do not directly and immediately affect the security of the state, or the interests of other states.[98] However, such understandings are incomplete. In both cases, sovereignty and security issues become important over time when transboundary "externalities" affect neighbors. In the case of the environment, for instance, it is precisely the increase in their transboundary impact that distinguishes current environmental issues from those in the past.[99] Moreover, both human rights and the environment are vital issues bearing on human security, whether between or within states. This situation has given rise to a notion of "collective goods," which is used by environmentalists to persuade states that doing good for oneself can also mean doing good for others.[100] Despite the persuasiveness of this concept, there still appears to be no initial international presumption in favor of environmental protection.[101] The conflict between economic development, sovereignty, and the environment places constraints on the power of international law to extend its protection, so that political intervention is required.[102] However, because of the need for state consent, the likelihood of progress on issues such as climate change, which presents states with such challenges and conflicts of interest, is highly questionable.[103]

In the case of human rights, refugee flows are an obvious example of the "externalities" that impact on other states and undermine state and human security. Unlike the environment regime, the international human rights regime benefits from an initial presumption in its favor. Nevertheless, partly for this reason, and partly because it addresses itself to the well-being of the citizenry, bypassing the authority and interests of the state, it is seen by many states to threaten their sovereignty and even national security. In fact, most breaches of human rights are caused by states acting against their own citizens or against those in their jurisdiction. Therefore, as Robert McCorquodale and Martin Dixon observe, much of international human rights law operates outside the national legal system to provide both an international standard by which state practice can be judged and redress for the infringement of human rights.[104]

Nevertheless, it is true that the "externalities" of the international environmental and human rights regimes are not as immediate or as obvious as are those of the international security and political economy regimes. The latter are more open to management through the use of reciprocal mechanisms and even through enforcement. The norms, principles, and rules of the international political economy regime are particularly "sticky," in that they both inhere in, and regulate, the processes of globalization.[105] By contrast, the international human rights and environmental regimes normally lack the bargaining counter of reciprocity, at least as that concept is understood in the international security and political economy regimes, and differ in the degree to which they are vulnerable to external sanctions. The human rights regime offers enhanced moral status in exchange for compliance, and long-term, non-specific gain in exchange for short-term, specific pain. However, even this minimal incentive may be ineffective, in the light of the notion that moral status can accrue to states simply as the result of ratifying a human rights treaty, whereas the additional status flowing from the treaty's implementation is not sufficient to offset the huge costs involved.[106] The environment can offer more financial and marketing rewards, but also suffers from strong, if short-term, material disincentives.

It follows that international regimes and their organizations differ markedly in the type of compliance and accountability mechanisms entrenched in their treaties and constituent instruments. For instance, in the international security regime, the IAEA can report back on cases of non-compliance to the Security Council, which has a range of sanctions at its disposal. Under their Articles of Agreement, the IMF and the World Bank can threaten withdrawal of financial or developmental benefits in the event of non-compliance, while the WTO offers the incentive of mutual benefits in exchange for compliance, as well as the disincentive of trade sanctions approved by WTO panels. By contrast, human rights are normally only open to bilateral and multilateral enforcement in the form of trade sanctions in crisis situations. Otherwise, universal enforcement is achieved mainly through mechanisms of varying effectiveness. These include public naming and shaming, and accountability mechanisms such as reporting and on-site inspections, which rely heavily on the state's voluntary acceptance of scrutiny. Environmental cooperation similarly relies on international consensus rather than enforcement: reciprocal trade-offs exist, but, apart from exclusion from those rewards, and resort to shaming, reciprocal sanctions are lacking. The difference between compliance mechanisms means that there is also a difference in the way compliance, deep compliance, and cooperation are most effectively measured in each regime.

At the same time, as has been noted, these international organizations and regimes are not strictly separate and discrete: increasingly they are character-

ized by issue linkages and functional overlap. Just as it is recognized that each issue area has an impact on other issue areas, so international institutions have expanded to reflect the new consciousness. Thus, the World Bank is no longer just a development institution, but includes in its mandate responsibility for administering environmental funds and for ensuring that its projects meet criteria of good governance and anticorruption. Again, while not all regimes impose the same pressures and incentives to achieve compliance, there may be an overall trade-off on issues between the international organizations constituting them. There is often such a trade-off between states within different regimes, particularly the human rights, environment, and trade regimes. For instance, states have traded off an agreement not to pursue a resolution against China in the UN Human Rights Commission in exchange for an agreement to commence bilateral "human rights dialogue." States may also buy and sell emissions credits in the climate change regime.

Measuring and Explaining Compliance and Cooperation

Richard Falk has argued that, to assess a state's compliance, it is only necessary to judge its behavior.[107] To the extent that we are dealing at the international level with policy as formally articulated by a state's agents and as implemented internationally and domestically by state and non-state agents, behavioral measures are more reliable as indicators of compliance than policy statements alone. Behavioral analysis, however, involves three main analytical problems. How, on the one hand, may compliance with international rules be identified? And how, on the other, does one distinguish between the sufficient conditions leading to compliance, and the necessary ones? Furthermore, as José Alvarez has put it, at what point is compliance proven? At the point of signature of a treaty; at the point of reservations entered into the treaty; at the point of ratification of the treaty; or at the post-acceptance stage?[108]

In order to surmount the difficulties of evaluation and to avoid judgments that are too narrow or subjective, this book assesses a state's behavior by four main criteria. These are its formal (or "rule") compliance with organizational rules and the international and national treaty obligations arising therefrom; the "depth" of its domestic compliance; the "depth" of its international compliance; and the degree of its cooperation in promoting the interests of the regime.

The evaluation of formal compliance is facilitated by a distinction drawn between five inter-related manifestations of compliant behavior at the international and domestic levels. These are: (1) accession to a treaty or agreement; (2) procedural compliance with reporting and other requirements; (3) substantive compliance with the rules and principles promulgated by the multilateral body, exhibited in international or domestic behavior; (4) de jure formal legal

compliance, or the implementation of international norms in domestic legislative provisions, in judicial incorporation, or in institutional development; and (5) practical compliance, or compliance at the level of domestic implementation and enforcement.[109]

To further refine the fifth level, it is helpful to distinguish, in the manner of Harold Koh, between political implementation, or what he calls, "political internalization," which indicates government policy responding to an international norm, and social implementation (or what he calls "social internalization"), which indicates widespread civil obedience to a norm.[110] Whereas political implementation (5a) may be indicative of either instrumental adaptation or genuine norm internalization, social implementation (5b) is a more reliable indicator of "deep compliance" or norm internalization at the domestic level. These five levels form a spectrum rather than a continuum. For instance, a state may comply at levels 1, 3, or 5, and not necessarily at 2 and 4. The levels are also of different significance, depending on whether one is measuring international or domestic compliance.

The depth of a state's *international* compliance, on the other hand, is indicated, according to the Chayes, other process-based theorists, and Keohane, by the extent to which participation in international organizations leads that state to redefine its interests in terms that correspond with treaty norms.[111] Here, the critical point to discover is whether organizational and treaty norms initially constituted part of a state's perceived interests, and, if not, whether participation in international organizations gradually altered its perception of its interests, disposing it to accept and internalize those norms. A second indicator of deep compliance, also an outcome of the process of institutional participation, is a state's increasing preparedness to renegotiate its sovereignty and move to a more restrictive interpretation of the principle in practice. The third process-based indicator is the extent to which the state has gradually accepted the "costs" of participation in the regime. Needless to say, these indicators often overlap, and each may apply more usefully in different regimes.

Finally, an important indicator of a state's cooperation, as distinct from its compliance, is its readiness to promote the object and purpose of the constitutive rules of an organization and its associated treaties, by, for instance, ratifying treaties without introducing excessive reservations, assuming non-mandatory obligations, and encouraging other states to follow suit. Conversely, non-cooperation is evaluated not only on the basis of domestic responses, but on the basis of a state's failure to respect the object and purpose of the organization/treaty, its introduction of excessive reservations on ratification of a treaty, or even its attempt to undermine international norms and principles. However, such non-cooperation and spoiling activity must not be confused with the legitimate, democratic

exchanges of differing opinion and policy that form the basis of the ongoing development of international law and diplomacy.

As has been suggested, there is no set or immutable standard of compliance, whether with respect to the substantive issues or to the record of other states. Any assessment about the extent to which states such as China comply with their treaty obligations and with the norms and procedures of international organizations depends, in the first place, on the standards against which compliance is measured.[112] This book assesses compliance with reference to the way in which norms are currently operationalized in the monitoring procedures of each regime. It deals not with prescriptions, but with empirical reality. China is adjudged to change as it adapts to, and internalizes, prevailing rules, norms, and procedures of international organizations and their treaties.

Secondly, as the Chayes have pointed out, the provisions of international treaties and the constituent instruments of international organizations provide abstract and ideal standards, but in practice perfect compliance with them is never attained. Instead, there is a level of "overall compliance" that is judged "acceptable" in the light of the provisions of each treaty or international organization.[113] Or, as John Jackson has observed in relation to the law of the GATT, it is a matter of whether a state has achieved a "reasonable degree of compliance with the obligation."[114] This "acceptable" or "reasonable" level is also subject to variation across different parts of the regime, and according to different periods and situations.[115]

The relative and environment-dependent nature of compliance and cooperation is exemplified by the contrast between the present international policies of the United States and those of the 1940s, or, more recently, between the more multilateralist outlook of the Clinton administration and the unilateralism of President George W. Bush.[116] Many critics, including former President Jimmy Carter and Senator Robert Byrd, have remarked on the contradiction between the long-held liberal foreign policy norms of a powerful liberal democracy and its actual realist behavior, while others decry the inexplicable shift now occurring from multilateralism to unilateralism.[117] Realists may seek to justify this situation by arguing that, even though a hegemonic state may have been one of the principal architects of the liberal international system, realism will trump liberalism in its foreign policy.[118] However, they would have more difficulty in explaining the double paradox that, in recent years, both the Chinese and U.S. governments have reversed their previous approaches to multilateralism.[119] Six years ago, China was seen as a country that had not yet integrated smoothly into the international system, and that questioned many of its rules and practices, whereas the United States was seen as a benevolent, if sole, superpower that was largely respectful of international law and institutions. Today,

the United States is increasingly invoking raison d'état for its foreign policy decisions and China is appealing to many of the international norms it had previously rejected. International organizations have provided the forum for such appeals, and a means by which the relations between unequal states have been formally equalized. Particularly in the arms control regime and in debates in the UN Security Council, China has called on the United States, explicitly or implicitly, to respect the obligations under international law that it is seen to be breaching.[120] In other words, compliance (and cooperation) are measured not only by absolute standards, but also in relation to the behavior of other states and/or the same state over time.

A further complication is that most regimes allow for a "time lag between undertaking and performance."[121] The time factor, as Risse, Ropp, and Sikkink have also pointed out, is therefore significant in this respect too.[122] Finally, there is rarely a perfect fit between international and national/municipal law. This is because, although according to the concept of *pacta sunt servanda* treaties are acknowledged to be legally binding on the states that ratify them, they do not automatically become a part of the law of the land unless they are self-executing. This is so, whether in common law or civil law jurisdictions, or in the case of liberal-democratic or nonliberal states.[123] In countries with a dualist system, international obligations will not usually trump municipal rules, while even in those that adopt a monist system (where, in theory, obligations assumed under international treaties automatically become part of the law of the land), the situation is rarely so simple in practice.[124] Where international law does not automatically become part of the law of the land, implementing legislation must be passed by national legislatures to harmonize domestic law with international legal obligations. As Dixon and McCorquodale observe:

> The resolution of this struggle [between international law and national/municipal law] is usually determined by the constitution of each State—the constitution having been created by political acts—and by the interpretation of the constitution and national laws by the national courts of each State. As a consequence, the application of international law within a national system will vary from State to State. Further, the lack of significant enforcement measures in international law has meant that it is often through national courts that international law is enforced, and therefore national law can often determine the effectiveness of international legal decisions and the lawfulness of international actions.[125]

An important aspect of this book's methodology is that, in conjunction with the above four-level analysis, it uses diplomatic history to reveal the process of change. Because standards of compliance are relative and dependent on a judgment of "reasonable expectations," the assessment of a state's compliance is more effective if it is based on such comparative qualitative/historical, rather than quantitative, criteria. While compliance may be approached quantitatively by

means of a comparative analysis of the behavior of a number of states across a variety of treaties in an issue area, such analyses of the behavior of a single state are less helpful, because they gloss over vital historical, cultural, and international contexts.[126] This historical micro-macro approach is undertaken through a combination of documentary analysis and interviews with the principal actors in different international organizations or, as Marc Levy and others have put it, "'natural or quasi-experiments' involving comparisons across different issue areas over time."[127] This is achieved in a number of ways, for instance, by comparing China's initial attitude to the norms of each international organization with its later attitude, and its policy on international organizations and international law before and after it entered the United Nations. Such an approach explains how China interacts over time with different international organizations; how its views and interests in those international organizations change over the decades; how it achieves its organizational ends; how its organizational behavior compares with that of other states; what effects the international organization has on the state's domestic institutions; which are the endogenous and exogenous pressures promoting China's compliance and those constraints limiting it; and what has been China's impact in shaping the norms and rules of the international organization over time.

Structure and Sources

The choice of international organizations in this study is dependent on the significance of their role in the different issue areas relating both to state security and human security, and on a history of Chinese participation that is sufficiently long—two decades at least—to provide substantial evidence for the inquiry. China and the international security regime will be examined through the Conference on Disarmament (CD), and, to a lesser extent, the IAEA; China and the international political economy regime through the World Bank (IBRD/WB) and the International Monetary Fund (IMF); China and the international environmental regime through the United Nations Environment Programme (UNEP) as well as the World Bank; and China and the international human rights regime through the International Labour Organization (ILO) and the UN Committee against Torture (CAT). Since there is as yet no adequate history of China's participation in the WTO, which began on 11 December 2001, discussion of its lengthy negotiations to join that organization, of the benefits and costs its entry entails, and of its compliance since entry, are not the main subject of a specific chapter but, like its relations with the World Health Organization (WHO), are included in mini case studies testing the overall findings in the Conclusion.

Research on international organizations is inevitably affected by issues of acces-

sibility and transparency. Here there is also enormous variation. In general, UN bodies proper are more transparent than specialized agencies like the IMF. This is because their documentation of plenary sessions is comprehensive and identifies the name and country of speakers. UN bodies proper are also normally open to the involvement of NGOs, even though their right to participate is often contested by nonliberal states members. However, there are notable exceptions to this general observation. Of the particular international organizations examined here, the ILO stands out as a specialized agency that is extremely transparent. Its annual conference and committee and other activities are well documented, as are the activities of its member states. As an institution, it is also physically accessible. Although it does not allow for NGO participation, its tripartite organization, comprising government, business, and workers, is broadly representative of the civil society of the industrial sector. On the other hand, UNEP, which is a UN body, is less transparent. Its documentation of state activity is generally disguised under the regional, rather than individual, identity of the state (for instance, "the Group of 77 and China"), making it difficult to identify the particular contribution of a specific state. The main transparency is provided by the summarized accounts of UNEP's meetings by a Canadian NGO, the International Institute for Sustainable Development. One reason for the opacity of the international environmental regime is the extreme sensitivity of environmental issues, and the concern of the secretariats of international environmental bodies not to deter states' participation by singling them out for attention, unless they are found to be abnormally non-compliant. In this case, an implementation committee may publicize breaches of obligations.

By contrast, the Conference on Disarmament provides extensive documentation identifying the position taken by states at its open sessions. However, a great deal of its activity is conducted in closed sessions. In this context, the unremitting activity of Rebecca Johnson, Executive Director of the international security NGO called the Acronym Institute, has done much to offset areas of organizational opacity. For their part, the World Bank and the IMF conduct most of their business in confidential Executive Board meetings. Only their official historians gain access to their records.[128] Nevertheless, their published reports on country performance in a variety of issue areas provide essential transparency, disgorging a wealth of information on the progress and problems of a member state's economic, financial, health, and environmental development, as well as on the success of World Bank and IMF country programs. Finally, as a UN treaty body, the Committee against Torture is highly accessible despite its sensitive subject matter. It publishes detailed reports and, through its close relations with NGOs, communicates freely with international civil society.

In analyzing and comparing the historical record of China's compliance with

the norms and rules of these different international organizations, this book highlights the usefulness of process-based compliance theories as an explanatory tool. Chapter 1 situates China in its historical, political, and legal culture and describes the early history of its interaction with international law and international organizations from the nineteenth century until the establishment of the People's Republic in 1949. It also compares the early history of the PRC's attempt to replace Taiwan as the official representative of China in the United Nations with the history of its participation in the UN and its specialized agencies immediately after November 1971. The succeeding Chapters 2 to 5 track the complex interaction, from the point of entry, between the PRC and principal international organizations within the significant regimes that are being scrutinized, illuminating the extent to which it has implemented the norms, principles, and rules of each organization and associated treaty/treaties. In the process, they analyze each institution and its rules; the history of China's participation; and its internalization of institutional norms and rules through the interacting processes of domestic legislation, institution building, leadership policy, and social implementation. Finally, the Conclusion relates the findings of the chapters and the brief record of China's compliance with the WTO and WHO to the questions and compliance theories under analysis. The patterns and sequences of China's compliance and cooperation are identified. Conversely, the implications of China's imprint on the negotiation of specific international treaties and on the development of international law are explored.

As a "least-likely" case study and as a formerly designated "rogue state," China offers an important test of the effectiveness of international organizations and their treaties in achieving compliance with their norms, principles, and rules. It thereby highlights the explanatory power of process-based theories. In its potential to destabilize the underlying consensus that gives legitimacy to these formal and informal constraints, China is also a "most-likely" case study. This book will therefore provide a guide not only to the sources of compliance for a state that has the power to make or break regimes, but also to the way in which that state has sought to influence their shape and development. More broadly, the inquiry will go beyond compliance to consider the nature, extent, and sources of China's international cooperation, without which there can be no ultimate guarantee of international order and little assurance of global security.