

ABRAM AND ANTONIA HANDLER CHAYES: On Compliance

General propositions:

- The general level of compliance with international agreements cannot be empirically verified
- violations of treaty rules are not based on decisions or calculations
- A regime of rules need not and should not be held to a strict standard of compliance, but to a level of overall compliance acceptable according to interests the regime has been designed to safeguard.

The general propensity to comply as a background assumption is illuminating for studies of compliance.

The statement that states comply when it is in their interest cannot hold true because states are not bound by rules in the first place except with their own consent. Moreover, treaties do not offer a binary choice of signing or not signing, but in fact define, redefine and shape parties' interests. The whole process of treaty making if perfectly reflects states' interests will help induce compliance with the treaty.

If the agreement is well-designed, -- sensible, comprehensible, and prediction of the probable patterns of conduct – compliance and enforcement issues must be manageable.

Although the possibility of willful deviation from legal obligations is not precluded from the background assumption, the real experience of foreign affairs reveals that it rarely happens that an act of violation is carried out through a calculation process.

Main situations that lie at the root of violation causes:

- indeterminacy of the language of the treaty
- limitations on the capacities of the parties to carry out their obligations
- the temporal dimension of social and economic changes contemplated by regulatory treaties.

Precision often excludes the likelihood of broad interpretation which in turn may cause deviation from treaties, yet it may produce further complications that make it more difficult to comply.

The acceptable level of compliance is yet subjective, varying with the significance and costs of reliance that parties place on the others' performance. The acceptable level of compliance will reflect the perspectives and interests of participants in the "ongoing political process" and not determine by some scientific standard. Managerial mechanisms such as strong and efficient secretariat in a regime that can exert pressure for compliance and negotiations could improve the level of compliance.

Political pressure to enhance compliance may intervene if:

- States feel that the survival of the regime depends on a higher level of compliance
- States committed to a higher level of compliance than the generally accepted level by others feel need to ratchet up the level of compliance with the regime.
- NGOs use their political lobbying abilities and political resources to intervene in order to enhance the level of compliance with a regime.