

Chayes and Chayes – “On Compliance”

Chayes and Chayes take issue with the realist assumption that noncompliance with international agreements is deliberate and usually motivated by self-interest. They instead argue that it is more accurate to assume that states intend to comply with international agreements. They make three arguments in justification of this assumption:

1. *Efficiency* - The bureaucracies of states are inclined to follow the rule of law. Procedures and rules mandated by international agreements become “short hands” for bureaucracies.
2. *Interest* - States only enter into agreements that are in their interests. Treaties are not fixed, rather they are the objects of bargains and negotiation between states. Those negotiating on behalf of states are likely to be also responsible for enforcement and therefore will be mindful of the potential long-term implications for the state. There is also a learning process in during negotiations through which states develop common norms. Often there are codified mechanisms for treaty amendment, allowing agreements to evolve with states’ changing preferences.
3. *Norms* – legal obligations and social norms constrain states. This is evidenced by the care with which states negotiate international agreements. There would not be such great effort if states did not believe that agreements would be enforced.

Chayes and Chayes present alternative explanations to noncompliance that can be thought of as “defenses” in a legal sense. These defenses are based on the assumption that states were acting in good faith and did not intend to abrogate the treaty.

There are three explanations for noncompliance:

1. *Ambiguity* – treaty language can be vague, reflecting the lack of political consensus for more specific obligations. Overall complex treaties can also create ambiguity. Where treaty norms are vague states may be trying to test the acceptable limits of the treaty.
2. *Capability* – many international agreements require the establishment of domestic regulatory oversight or passage of implementation legislation. States may be out of compliance with an agreement because they lack the resources to establish such implementation mechanisms. This is especially true in agreements governing highly technical issue areas like the environment.
3. *The temporal dimension* – many agreements are designed to govern state behavior of long periods of time. Often there will be time lags in the implementation of agreements. What may appear to be noncompliance is actually the initial action in what will be a series of agreements to achieve specific goals. Again, environmental agreements are illustrative.

Chayes and Chayes draw the conclusion that there does not have to be full compliance with an agreement for it to be effective. Agreements will not collapse in the face of violations by some states. As long as states continue to derive benefits from the agreement (or alternately before violations reach a critical mass) states will continue to abide by agreements. International organizations can help determine acceptable levels of compliance.