

**MARKUS BURGSTALLER, *THEORIES OF COMPLIANCE*
WITH INTERNATIONAL LAW (LEIDEN : BRILL
ACADEMIC PUBLISHERS, 2005)**

*By Sébastien Jodoin**

Since the early 1990s, the subject of compliance with international norms has attracted considerable attention among scholars working in both international law and international relations. As a result of the growing awareness of the relevance of the international legal order in what Franck has termed the “post-ontological era”¹ of international law, the chief topic of debate among international lawyers and political scientists has shifted from the existence of international law to the conditions of its existence, such as its fairness, legitimacy and effectiveness. As such, the question of why States comply with international legal norms has become a central area of enquiry for scholarship bearing on international law.

Markus Burgstaller’s book, *Theories of Compliance with International Law*,² is an important contribution to the literature relating to the compliance question. This work is both the fruit of academic reflection, which took place during Burgstaller’s studies at NYU law school and Vienna University law school, where an early version of it was submitted as a dissertation, and assistant professorship at the latter’s Institute of International Law and Relations, as well as practical experience in the field, owing to the author’s work as an adviser on European and International Affairs to the Chancellor of Austria.

On the whole, this book constitutes a thorough overview of the problem of compliance in international law as well as a useful starting point for students and scholars interested in this question. As its title indicates, this book’s approach is theoretical in its nature, as opposed to empirical, and therefore seeks to lay out the conceptual groundwork of the compliance question.

The author begins by providing the reader with an appraisal of the changing framework of the international system in light of the process of globalization and the emergence of a multi-layered system of global governance.³ Focusing in particular on transnational and supranational forms of authority, though Burgstaller acknowledges the existence of subnational, he argues that “states still form and important part of the international system, which makes it worthwhile to examine their behaviour.”⁴ The author concludes this introductory chapter with a brief discussion on normality in

* Sébastien Jodoin, B.C.L., LL.B. (McGill), LL.M. Cand. (L.S.E.) is currently an associate fellow at the *Centre for International Sustainable Development Law*.

¹ Thomas M. Franck, *Fairness in International Law and Institutions* (New York: Oxford University Press, 1995) at 6.

² (Leiden: Brill Academic Publishers, 2005).

³ *Ibid.* at 9-21.

⁴ *Ibid.* at 21.

international law – an issue which he decides to bracket for the purposes of this book.⁵

In the second chapter, the author examines the philosophical foundations on which theories of compliance are built. As such, he analyzes a host of theories concerning political philosophy – utilitarianism, liberalism, communitarianism, Marxism, neo-conservatism and post-modernism – and their links to various models of compliance. Notably, Burgstaller develops his own concept of the international system, one which merges liberalism and communitarianism into cosmopolitan communitarianism.⁶ This chapter is a central component of the book since “the central claim of this monograph is that these philosophical concepts of [international] society more than anything else determine the answer to the compliance question.”⁷ This chapter furthermore constitutes the work’s most original contribution to the compliance debate as it clears up the conceptual framework of the compliance question. Burgstaller provides the reader with a new way of understanding and comparing models of compliance. As a result, this book may serve to make the debate and further work in this field more coherent and conceptually grounded and ultimately more academically rigorous.

In the third chapter, Burgstaller provides further background to the compliance issue by briefly outlining some of the key debates in legal theory regarding the nature of legal norms as well as the notion of compliance with these norms. This chapter serves mostly as a review of the literature, with a few of the author’s critical comments interspersed along the way. Without taking a clear position, Burgstaller does seem to adopt an open and plural approach to these issues.

In chapter four, on the basis of the conceptual framework elaborated in chapter two, the author develops a typology of the various models of compliance with international law with the following categories: realist, institutionalist and normative theories. While Burgstaller’s typology is not a complete departure from those prior accounts, it does include certain innovative elements, including reworked understandings of the realist, institutionalist and normative labels in the field of compliance.

The fifth chapter includes a recapitulation and critique of the thesis on the six key theories of compliance: Neuhold’s foreign policy cost-benefit analysis approach,⁸ Franck’s legitimacy theory in the context of normative compliance pull,⁹ institutions and processes,¹⁰ the managerial approach of Chayes and Chayes,¹¹ Koh’s theory of

⁵ *Ibid.* at 27.

⁶ *Ibid.* at 76-80.

⁷ *Ibid.* at 29.

⁸ See Hanspeter Neuhold, “The Foreign Policy Cost-Benefit Analysis Revisited” (1999) 42 *German Yearbook of International Law* 84.

⁹ See Thomas Franck, *The Power of Legitimacy Among Nations* (New York: Oxford University Press, 1990).

¹⁰ *Supra* note 2.

¹¹ See e.g. Abram Chayes and Antonia Chayes, *The New Sovereignty: Compliance with International Regulatory Agreements* (Cambridge, Mass.: Harvard University Press, 1995).

transnational legal process,¹² and finally the liberal theory as expounded by Slaughter¹³ and Moravcsik.¹⁴ In this chapter, Burgstaller, ably wielding both the international legal theory and international relations theory, adequately summarizes as well as provides insightful counterarguments to the claims made by these authors.

Burgstaller concludes his book by noting that the theories of compliance have limited scopes of application due to the fact that they each have different conceptions of the international system as well as distinctive areas of focus.¹⁵ He sees a way out of this quagmire in a return to the notion of cosmopolitan communitarianism developed in the second chapter. Having adopted a conception of international society which is multi-faceted, Burgstaller sees the benefit in using a host of different model of compliance to further the edification of the international legal order.¹⁶

In sum, this book provides the reader with a rather complete review of the basic issues and arguments in relation to the question of why States comply with international law. Its greatest strength lies in the fact that it bridges divides both methodological and substantive between international relations and international law, between political philosophy and international legal theory, and between the theories of compliance themselves. It also serves as a useful reminder of the importance of the compliance problem for the future of international law. For if the relevancy of international law once depended on our ability to demonstrate that it altered State behaviour, its further development will depend on our capacity to explain why this is the case.

¹² See e.g. Harold Koh, "Why Do Nations Obey International Law?" (1997) 106 Yale L. J. 2599.

¹³ See e.g. Anne-Marie Slaughter, "International Law in a World of Liberal States" (1995) 6 E.J.I.L. 503.

¹⁴ See e.g. Andrew Moravcsik, "Taking Preferences Seriously: A Liberal Theory of International Politics" (1997) 51 International Organization 513.

¹⁵ *Supra* note 2 at 191-196.

¹⁶ *Supra* note 2 at 196-198.

