THEME PLenary Session:
IMPLEMENTATION, COMPLIANCE AND EFFECTIVENESS

The panel was convened at 10:45 a.m., Thursday, April 10, by the two interlocutors, Joan E. Donoghue, U.S. Department of State, and Benedict Kingsbury, Duke University School of Law. The panelists were introduced: Abram Chayes, Harvard University Law School; George Downs, Princeton University; Edith Brown Weiss, Georgetown University Law Center; Oran Young, Dartmouth College.

REMARKS BY BENEDICT KINGSBURY*

The theme of this Annual Meeting, Implementation, Compliance and Effectiveness, is the subject of a limited but increasing body of work, both in the two disciplines represented in this panel, international law and political science, and in other disciplines. Despite its practical importance, it is an area that has been, on the whole, shamefully neglected by international lawyers. It has often been a puzzle to people outside international law why international lawyers have written so little about whether international law is effective. It seems reasonable that international lawyers ought to be able to answer that question. Likewise, a lot of the research on compliance with domestic law and compliance with other kinds of international norms has not been extended to international law. Consequently, international lawyers have difficulty formulating clearly what a concept of compliance would mean, let alone referring to convincing studies determining the extent to which compliance or effectiveness has been achieved. Issues of implementation will be dealt with less in this panel than in other sessions of the conference. One element of implementation, though, is its impact on both effectiveness and compliance, and we expect to refer to it at least in terms of regime design.

We will be using an experimental format in this session, conducting the session more in the form of a dialogue than in the customary “talking heads” format. There are two interlocutors and four panelists. Each panelist will state an opening position. As you will see, although there are points of significant agreement and overlap among the panelists, there are also areas of significant disagreement, both in method and approach and in substantive views. We aim to join those issues in this dialogue. After the panelists’ opening statements, we want to probe and develop the positions of the panelists by reference to a specific case study of long-range transboundary air pollution, which Joan Donoghue will describe. Later we will move to more theoretical concerns that arise from the approaches that are taken, and finally we hope to wrap up with some discussion of research agendas.

The first speaker, Oran Young, is a distinguished political scientist who has worked on issues of compliance for more than two decades, and who has written extensively on environmental issues. He knows a great deal about law and the subtleties of studying the operation of law in social processes.1

The second speaker, Abram Chayes has served as Legal Adviser in the State Department. His important book on the Cuban missile crisis2 and his coauthored teaching

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materials on the international legal process have been widely acclaimed. Most recently, he has written with Antonia Chayes a book called *The New Sovereignty*, which sketches out an approach to compliance that will be much in discussion today.\(^3\)

The third speaker is Edith Brown Weiss. Her scholarly activities have focused particularly on international environmental law, a field in which she has also had substantial practical experience in the U.S. government. She has recently brought to the brink of publication a major multi-author empirical research project on compliance with environmental treaties.\(^3\)

The fourth speaker, George Downs, is a political scientist who has spent an academic career writing on aspects of international relations, especially arms control. Recently he coauthored an interesting book on the application of game theory to a number of international problems. He has also written with two coauthors a notable article on compliance which expresses a degree of skepticism about claims made for many of the enterprises dear to the hearts of international lawyers.\(^6\)

**REMARKS BY ORAN YOUNG: TWO MODELS OF EFFECTIVENESS**

The recent upsurge of interest among students of international institutions in matters pertaining to implementation, compliance and effectiveness is good news. So also is the fact that this set of concerns provides an opportunity for the growth of a mutually rewarding dialogue between international lawyers and international relations scholars. Yet the phrase "implementation, compliance and effectiveness" is in danger of becoming a mantra, repeated over and over in a ritualistic fashion but seldom subjected to rigorous examination on the part of those who mouth it. In these brief remarks, I wish to raise some questions that challenge the bundling of issues implied in this catchall phrase. Specifically, I seek to (1) break apart the issues of compliance and effectiveness and (2) compare and contrast two models of effectiveness that can help to organize our thinking about the forces that determine the effectiveness of international institutions.

No one doubts that there is an important relationship between compliance and effectiveness. The recent debates about the sources of compliance and the conditions likely to yield high or low levels of compliance are therefore of interest to all students of international institutions. Yet the links between compliance and effectiveness are not nearly as simple or clear-cut as these debates would lead one to believe. Consider the following situations, in which reality is hard to interpret in terms of the usual assumptions about the links between compliance and effectiveness. Although compliance is indeed important in connection with regulatory arrangements, many regimes feature programmatic, procedural or generative tasks that do not raise problems of compliance in the ordinary sense. Even in connection with regulatory tasks, compliance does not arise as a key issue in efforts to solve coordination problems in contrast to collaboration

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