

Book Review of *GETTING IT DONE: POST-AGREEMENT NEGOTIATION AND INTERNATIONAL REGIMES*, Bertram I. Spector and I. William Zartman, eds.

by

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Abstract:

The multiplication and increasing complexity of international regimes pose a challenge to many disciplines, including, notably, international law and international relations. Within the latter discipline, a body of literature has emerged which attempts to make sense of the processes through which international regimes are created and the factors that affect their implementation. This may be referred to as “regime theory”. The editors of the book under review, Bertram I. Spector and I. William Zartman, are well-known in what has been called “negotiation theory”. Exploring the intersection of “regime theory” and “negotiation theory” is the purpose of this book. – *GETTING IT DONE: POST-AGREEMENT NEGOTIATION AND INTERNATIONAL REGIMES*, Bertram I. Spector and I. William Zartman, eds. (United States Institute of Peace Press, 2003).

Keywords:

International Regimes, International law, International Relations, Regime Theory, Negotiation Theory, Contract Theory, International Treaties, Multilateral Agreements, OSCE, WTO, Regime Dynamics, Legal Theory, Public International Law, IR

***Getting It Done: Post-Agreement Negotiation and International Regimes*, Washington, DC: United States Institute of Peace Press, 2003. xviii, 314pp, US\$39.95 cloth (ISBN 1-929223-43-9), US\$17.50 paper (ISBN 1-929223-42-0)**

The multiplication and increasing complexity of international regimes poses a challenge to many disciplines, including, notably, international law and international relations. Within the latter discipline, a body of literature has emerged which attempts to make sense of the processes through which international regimes are created and the factors that affect their implementation. This may be referred to as “regime theory”. The editors of the book under review, Bertram I. Spector and I. William Zartman, are well-known in what has been called “negotiation theory”. Exploring the intersection of “regime theory” and “negotiation theory” is the purpose of this book.

In an attempt to go beyond the issues of regime formation and regime implementation traditionally explored in the literature, the editors introduce post-agreement negotiation as a working concept to explain the continuous process through which international regimes evolve, adapt and sustain themselves. Part I of the book lays down the analytical framework. It includes a text by each of the editors as well as a contribution on norms and principles by Gunnar Sjöstedt. Part II is made up of four case studies: *the Mediterranean Action Plan* by Lynn Wagner, *the OSCE* by Janie Leatherman, *the Ozone Depletion Regime* by Pamela S. Chasek and *the Regimes against Torture* by Anna R. Korula. Part III is a concluding analysis by the editors. The book is generally well-written and accurate, and a good reference on the development of those regimes that are covered.

The analytical framework which Spector and Zartman lay down at the outset posits that the explanatory power of existing regime theory literature is seriously limited by an unwarranted assumption of finality with respect to agreements. The existing literature focusses on regime formation and presents the “founding” agreement as static normative material against which implementation is to be tested. The editors emphasize instead that reaching an agreement is merely a stage in negotiation, not the end of a process, and that implementation requires a creative negotiation effort of its own. This emphasis is presented as the main contribution of this volume to the understanding of regimes.

At the most abstract level, there are two related strands in the argument. The first has to do with the time dimension that is purportedly required to represent and explain international regimes. The second is related to the use of formal rules to achieve results and the limitations of formalism in any normative endeavour.

The first strand of the argument highlights the limitations of any static representation of regimes and the importance of dynamics in explaining them. This is an important insight which should help improve the understanding of regimes in this body of literature.¹ The problem of static representation has long been a puzzle for legal systems theorists, who found out that a legal system cannot be represented accurately by means of a collection of static rules more than movement can be represented, as in Zeno’s paradox, by a series of

points.ⁱⁱ Regime theory is now looking at the very same puzzles.ⁱⁱⁱ It is clear that the time, or change, dimension is essential to a satisfactory representation of regimes. A further insight suggested here is that this essential time dimension is merely a part of the broader context in which the formal aspects of the regime (the rules) are embedded.

This broader context includes, most importantly, a set of normative elements the apprehension and understanding of which is also essential to a proper understanding of the regime they underlie. The contribution of Gunnar Sjöstedt brings a welcome perspective on such context, offering a useful categorization of the various normative elements at play in and around an international regime. This is the second strand of the argument and the issue is again similar to one which legal systems theorists have been struggling with for a long time: what is the actual and proper role of the broader normative and epistemic context of formal rules in decision-making by actors? This question forces the analyst not only to decipher the unwritten understanding and implicit norms that inform behaviour in relation to a particular regime but also to reflect upon the reasons why we have regimes in general (why we use formal rules to get things done) and a specific regime in particular (what it is we want to get done). These are evaluative questions which, according to the editors, have not yet been asked.^{iv} This should be the next stage of the inquiry. For if there are reasons behind the creation of international regimes, there can be no worthwhile explanation of the latter that ignores the former. Meanwhile, this is an interesting read.

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ⁱ As acknowledged in the book, one author had already written on the dynamics of regime: Oran Young, "Regime Dynamics", in Stephen Krasner, ed., *International Regimes*, Ithaca, N.Y., Cornell University Press, 1983.

ⁱⁱ See E. Voegelin, *The Nature of Law*, London, Louisiana State University Press, 1991 (from 1957 copyrighted mimeograph).

ⁱⁱⁱ Contract theory also offers insights which might be helpful in this context. See for example Simon Deakin and Jonathan Michie, eds., *Contracts, Co-operation, and Competition: Studies in Economics, Management and Law*, Oxford, Oxford University Press, 1996.

^{iv} At 287-88.