The Report Committee for Jessica Ruth Cohagan
Certifies that this is the approved version of the following report:

Uncommon Compliance:
Law Enforcement through the Lens of International Human Rights

APPROVED BY
SUPERVISING COMMITTEE:

Supervisor: _____
David Eaton

_____
Derek Jinks

Uncommon Compliance:
Law Enforcement through the Lens of International Human Rights

by

Jessica Ruth Cohagan, B.A.

Report

Presented to the Faculty of the Graduate School of

The University of Texas at Austin

in Partial Fulfillment

of the Requirements

for the Degree of

Doctor of Jurisprudence

And

Master of Global Policy Studies

The University of Texas at Austin

May 2014

Abstract

Uncommon Compliance:
Law Enforcement through the Lens of International Human Rights

Jessica Ruth Cohagan, J.D. and M.G.P.S.

The University of Texas at Austin, 2014

Supervisor: David Eaton

International treaties consist of horizontal obligations between two or more states and are enforced when one state holds another accountable. But human rights treaties are fundamentally different. Human rights treaties consist of vertical obligations between a state and its citizens. Because of the nature of the obligations states will rarely hold one another accountable. And yet, despite the absence of this traditional enforcement mechanism, human rights treaties can change state behavior. Why do human rights treaties change behavior and what lessons can be drawn to encourage compliance in other areas of law?

This professional report uses qualitative examples and existing quantitative studies and to examine state compliance with three human rights treaties: the Convention against Torture (CAT), the Convention on the Elimination of all forms of Discrimination against Women (CEDAW), and the International Convention on Civil and Political

Rights (ICCPR). The report then examines whether different explanations for state compliance can explain actual compliance records.

The findings suggest that no single factor can explain state compliance with human rights treaties. Concern for reputation, the presence of civil society groups, the existence of a strong judiciary, and citizen interest in enforcing the law are all partial explanations for compliance. These factors interact with one another, improving or undermining enforcement. The findings suggest that domestic factors are an important part of international law compliance and that acceptance of a law by the domestic public is vital to compliance. The findings further suggest that international law enforcement can be carried out at lower levels of governance.

Finally this paper suggests how the lessons from human rights compliance can be applied in other areas, specifically, in domestic law enforcement. Many of the factors which encourage compliance with international law may be used to encourage compliance with domestic laws. The same enforcement delegation that improves compliance with human rights law may improve compliance with domestic law.

Table of Contents

Chapter 1: Introduction

International human rights is a realm in which enforcement of laws is not only rare, but often impossible. And yet, over the past 70 years, human rights treaties have thrived. This raises several questions. Does international law change behavior? If so how? Can lessons from international law be applied in the domestic sphere?

Chapter two identifies risks that accompany unenforceable laws. Chapter three discusses international law in general and the nature of human rights law specifically. Chapter four describes three human rights treaties in state compliance. Chapter five seeks to explain different levels of compliance among the different treaties. Chapter six attempts to translate the explanations into domestic policy recommendations.

The unusual nature of international human rights law shifts focus away from traditional enforcement mechanisms to factors which may otherwise be overlooked. This report emphasizes the role of domestic factors in contributing to international law compliance. This focus on lower-level actors can be applied in other fields. The lessons gleaned from international law compliance may be useful in domestic law making.

Chapter 2: The Costs of Unenforceable Laws

Ensuring compliance with laws is an important element of law making. Although governments can pass laws without the ability to enforce them, passing a law when there are few resources available for enforcement carries significant risks

The first risk of unenforceable laws is that they will hurt citizens' opinion of the government. Citizens may "feel resentment if they cannot form reliable expectations due to frequent divergence between written law and enforcement."[1] If citizens know that the government cannot enforce its own laws then they may ignore and disrespect the government. This can lead to a downward spiral, especially in a democracy. If citizens know that the laws passed by government will have little effect, then citizens will be less likely to participate in law formation.[2] Elections may come to seem meaningless. As citizens quit participating in government, it will indeed become ineffective and disconnected from the citizenry.[3]

Although dictatorships usually need not be overly concerned with domestic opinion, disrespect for government can still be a serious problem for dictatorships. Consider the Arab Spring. In 2011, protestors successfully overthrew repressive regimes in Tunisia, Egypt, and Libya.[4] Following the protests, nearby autocracies made major

---

[1] Colleen Murphy, *Lon Fuller and the Moral Value of the Rule of Law*, 24 Law and Philosphy 239, 242 (2005).

[2] *Strategies for Reconstructing Citizens and Government,* MUNICIPAL RESEARCH AND SERVICES CENTER (June 2011), http://www.mrsc.org/focuspub/strategiesmrscfocus.aspx.

[3] *Id.*

[4] *Tunisia's Ben Ali Flees Amid Unrest: Parliament Speaker Becomes Interim Leader After President of 23 Years, Facing a Mass Uprising Lands in Saudi Arabia*, AL JAZEERA, Jan. 15, 2011, http://www.aljazeera.com/news/africa/2011/01/20111153616298850.html, Scott Peterson, *Egypt's Revolution Redefines What's Possible in the Arab World*, THE CHRISTIAN SCIENCE MONITOR, Feb. 11,

modifications to their governments. For example, the president of Sudan, Omar al-Bashir, vowed not to run for re-election in the 2015 elections.[5] Bashir has in power since 1989. Meanwhile, the Sultan of Oman granted law making powers to an elected council for the first time.[6] These changes were attributed to rulers' efforts to avoid similar public outrage in their own countries.[7]

Another major risk that comes with passing unenforceable laws is corruption. One of the traditional requirements of law is that it be predictable.[8] Citizens need to be able to predict the consequences of their actions in order to "manage their affairs effectively."[9] When a government passes laws that it cannot enforce, citizens and government officials alike may come to expect that laws will not be enforced. Citizens may become accustomed to breaking the law. Officials can then enforce the law arbitrarily, when it is in their interest to do so. "A defining characteristic of the environment in which corruption occurs is a divergence between the formal and informal rules governing

---

2011, http://www.csmonitor.com/World/Middle-East/2011/0211/Egypt-s-revolution-redefines-what-s-possible-in-the-Arab-world, *Qaddafi Dead After Sirte Battle, PM Confirms*, CBS NEWS, Oct. 20, 2011, http://www.cbsnews.com/news/qaddafi-dead-after-sirte-battle-pm-confirms/.

5 *Sudan's Omar al-Bashir 'Will Not Seek Re-election'*, BBC NEWS, Feb.21, 2011, http://www.bbc.co.uk/news/world-africa-12521427.

6 *Oman's Sultan Granting Lawmaking Powers to Councils*, VOICE OF AMERICA, Mar. 12, 2011, http://www.voanews.com/content/omans-sultan-shifts-lawmaking-powers-amid-unrest--117895309/136407.html.

7 *Sudan's Omar al-Bashir 'Will Not Seek Re-election'*, *supra* note 5; *Oman's Sultan Granting Lawmaking Powers to Councils*, *supra* note 6.

8 *See* Stefanie A. Lindquist & Frank C. Cross, Stability, Predictability, and the Rule of Law: *Stare Decisis* as Reciprocity Norm, The University of Texas School of Law, Conference on Measuring the Rule of Law, 1 (Apr. 2001).

9 *Id.*

behavior in the public sector."[10] "Where corruption is systemic, the formal rules remain in place, but they are superseded by informal rules."[11] For example, "it may be a crime to bribe a public official, but in practice the law is not enforced or is applied in a partisan way."[12] Laws that are unenforceable may worsen corruption because they allow political actors and police to act under color of law. For example, in 1994, Beijing passed a law banning certain dog breeds and dogs over a certain size from living in city apartments.[13] However, as the law was never enforced, Beijing residents began keeping the banned dogs.[14] Then, in 2013, the government began unexpectedly enforcing the ban.[15] If officials find a dog in violation they can take it into custody and fine the owner.[16] Such sporadic enforcement encourages corruption. Officials may choose to only enforce the law when it benefits them. This undermines the very purpose of the law.

Although it may not always be possible to enforce all laws with police power, it may be possible to encourage compliance through unconventional means, and thus minimize the risks unenforceable laws. Recent experiences in the field of international law can provide a unique perspective on law compliance that may contain lessons which can be carried into other fields.

---

10 *Helping Countries Combat Corruption: The Role of the World* Bank, *Corruption and Economic Development*, THE WORLD BANK GROUP, http://www1.worldbank.org/publicsector/anticorrupt/corruptn/cor02.htm.

11 *Id.*

12 *Id.*

13 *Beijing's Ban on 'Big and Vicious' Dogs Keep Canines on the Run*, NBC NEWS, July 27, 2013, http://www.nbcnews.com/news/china/beijings-ban-big-vicious-dogs-keeps-canines-run-v19701440.

14 *Id.*

15 *Id.*

16 *Id.*

Chapter 3: International Law

For most of human history "there was no strong tendency to think that any body of law existed that was applicable *uniquely* to international relations as such."[17] But "in the seventeenth and eighteenth centuries, a new spirit entered into doctrinal thought on international law."[18] "For the first time in history, there was a clear conception of a systematic body of law applicable specifically to the relationship between nations." [19] In the nineteenth century, with the rise of positive philosophy, came a focus on "the State as the principal (or even the sole) subject of international law."[20] International law was considered "an outgrowth or feature of the will of the States" and was seen as "a law *between* states and not as a law *above* states."[21]

This state-centered view of international law was challenged by the "carnage of the Great War of 1914 – 18."[22] After the First World War, many persons "held that nothing short of a permanently existing organization dedicated to the maintenance of peace would suffice to prevent future ghastly wars."[23] For example, the League of Nations had "purported to regulate, if not prohibit, war, and the organization it established potentially had weak authority over states."[24] Then, "in the immediate

---

17 Stefanie C. Neff, *A Short History of International* Law, *in* INTERNATIONAL LAW 3, 6 (Malcolm D. Evans ed., 3rd ed., 2010).
18 *Id.*at 8.
19 *Id.* at 8, 9.
20 *Id.* at 15.
21 *Id.* at 14 – 15.
22 *Id.* at 21.
23 *Id.*
24 Nigel White & Ademola Abass, *Countermeasures and Sanctions*, *in* INTERNATIONAL LAW 531, 532 (Malcolm D. Evans ed., 3rd ed. 2010).

aftermath of the Second World War, international law entered upon a period of unprecedented confidence and prestige" and "the idea of an international organization, with some measure of authority over states, took an even firmer grip on the imagination of states."[25] In order to address human rights challenges and prevent future wars, states created multiple international organizations – the League of Nations, the United Nations, the International Court of Justice, and the International Monetary Fund.[26] But even with the rise of these new actors, "the basic positivist outlook continued to have great staying power."[27]

"While there is little doubt that the participants are diversifying, the position of states as sovereigns with primary control over the creation and development of international law sets them apart from all other participants."[28] "The principle of state sovereignty was and remains the fundamental principle upon which modern international law is based." [29] Even with a growing number of international organizations, international law can only be created with the consent of sovereign states because all "obligations are accepted by states . . . they are not imposed by any higher authority."[30] "There is no centralized authoritative body with coercive force to stop states from breaching their

25 Neff, *supra* note 17, at 24; White & Abass, *supra* note 24, at 532.
26 Neff, *supra* note 17 at 22, 24, 25.
27 *Id*. at 25.
28 GIDEON BOAS, PUBLIC INTERNATIONAL LAW: CONTEMPORARY PRINCIPLES AND PERSPECTIVES 158 (2012).
29 *Id.* at 9.
30 Neff, *supra* note 17, at 11.

treaty obligations."[31] Thus, international obligations are only created if states consent to them and only enforced if states enforce them. The nature of consent and enforcement varies among the different types of international law.

TREATIES

According to Article 38 of the Statute of the International Court of Justice, one of the primary sources of international law is treaty law.[32] Treaties are explicit agreements between two or more states, and bind only those states that are party to the agreement.[33] State consent is vital to the creation of treaties.

In principle compliance should not be a problem in the case of treaties, as states ought not commit to treaties which they do not intend to obey. In practice, however, some states may violate treaties which they entered into voluntarily. Should a state fail to obey a treaty, other state(s) party to the treaty may have several enforcement options. For example, if one state materially breaches a treaty, then the other state parties may have grounds for terminating or suspending the treaty.[34] At other times, a non-breaching state may have a right to use non-forcible countermeasures against the breaching state.[35] Such countermeasures might include, among other things, non-performance of a treaty obligation, freezing of assets, or prohibition of flights from the breaching states into the

---

31 TAI-HENG CHENG, WHEN INTERNATIONAL LAW WORKS: REALISTIC IDEALISM AFTER 9/11 AND THE GLOBAL RECESSION 10 (2012).

32 Hugh Thirlway, *The Sources of International Law*, *in* INTERNATIONAL LAW 95, 98 (Malcolm D. Evans ed., 3rd ed. 2010).

33 Malgosia Fitzmaurice, *The Practical Working of the Law of Treaties*, *in* INTERNATIONAL LAW 172, 173 (Malcolm D. Evans ed., 3rd ed. 2010).

34 *Id.* at 196.

35 *See* White & Abass, *supra* note 23, at 534 – 535.

non-breaching state.[36] "Countermeasures are not intended to be punishment for illegal acts but as 'an instrument for achieving compliance with the obligations of the responsible state'."[37] "The whole point of making a binding agreement is that each of the parties should be able to rely on performance of the treaty by the other party or parties, even when such performance may have become onerous or unwelcome."[38] This method of 'self-help' enforcement relies on the fact that one or more states will have an interest in enforcing the treaty. Unfortunately, not all international treaties have powerful parties that are interested in enforcement.

HUMAN RIGHTS TREATIES

Human rights treaties differ from traditional treaties in ways which seriously limit enforcement. "International human rights treaties are unlike many other treaties in that they do not provide for a reciprocal exchange of rights and duties between states parties."[39] "Human rights treaties are not contractual in nature and do not create rights and obligations between states on the traditional basis of reciprocity; they establish rights between States and individuals."[40] Thus, although human rights treaties, like all treaties, are made and signed by states, the true beneficiaries of these treaties are individual

---

36 *See id.*

37 *Id.*

38 Thirlway, *supra* note 32, at 99.

39 Christine Chinkin, *Sources*, *in* INTERNATIONAL HUMAN RIGHTS LAW 103, 106 (Daniel Moeckli, Sangeeta Shah & Sandesh Sivakumaran eds., 2010).

40 Fitzmaurice, *supra* note 33, at 193.

citizens. "By accepting the terms of such treaties, states accept legal constraints upon their treatment of individuals within their territory and subject to their jurisdiction."[41]

Although other states may seek to enforce human rights treaties against breaching states, "because human rights obligations are primarily incurred by states vis-à-vis persons within their jurisdiction, the inter-state element in human rights enforcement has tended to recede."[42] For example, "there have been fewer than two dozen inter-state procedures before the European Commission and Court of Human Rights, while no inter-state dispute regarding a violation of a human rights treaty obligation has been referred to a UN treaty body."[43] Despite the right of other signatories to enforce the treaty, they may have little interest in doing so.

Human rights treaties often have unique methods of enforcement and do not rely on other signatories to enforce treaty obligations, as in traditional treaties. Some treaty bodies require states to submit periodic reports on their own practices and treaty compliance.[44] Other treaties permit individuals to bring complaints before international tribunals.[45] Both mechanisms have shortcomings and glaring enforcement problems remain.

Although states may be required to report on their own compliance, many have not submitted reports in years and treaty bodies face backlogs in reviewing even those

---

41 Chinkin, *supra* note 39, at 106.

42 Frederic Megret, *Nature of Obligations*, *in* INTERNATIONAL HUMAN RIGHTS LAW 124, 147 (Daniel Moeckli, Sangeeta Shah & Sandesh Sivakumaran eds., 2010).

43 *Id.* at 148.

44 *Id.* at 149.

45 *Id.* at 149

reports that have been submitted.[46] As for the individual complaint mechanism, few individual complaints are ever brought.[47] A further limit on enforcement is that "treaty bodies generally adopt decisions on complaints - called 'views' or 'opinions' – by consensus."[48] This is problematic because "the elusive quest for consensus is not only extremely time-consuming but also tends to weaken the outcome of decisions."[49] An even greater weakness of the treaty body decisions is that "the final merits decisions are not strictly speaking legally binding and thus cannot be enforced."[50] If a human rights treaty case were to go to an international court, the parties were to accept its jurisdiction, and the court were to find that a state has violated a human rights treaty, it could order the state to stop the violation or perhaps pay damages. However, if the state chooses to ignore the order, then there is nothing that the court can do.

Given the nature of the international system, at some point only other sovereign states can punish a violator and enforce the law. If other states have no interest in enforcement, then the violation will continue. As human rights treaties create obligations to a state's own citizens, other states may have only a limited interest in enforcing the treaty obligations.

This means that there is little effective traditional enforcement for human rights treaties. It is worth examining compliance with these essentially unenforceable treaties to

---

46 ANNE F. BAYEFSKY, THE UN HUMAN RIGHTS TREATY SYSTEM: UNIVERSALITY AT THE CROSSROADS, 7 (2001).
47 *Id.*
48 Markus Schmidt, *United Nations*, *in* INTERNATIONAL HUMAN RIGHTS LAW 391, 412 (Daniel Moeckli, Sangeeta Shah & Sandesh Sivakumaran eds., 2010).
49 *Id.*
50 *Id.* at 413.

determine whether states change behavior as a result of a treaty and, if they do, to understand why.

Chapter 4: Human Rights Treaties and Compliance

Human rights treaty compliance is a broad and complex field. And a complete discussion of the field is beyond the scope of this report. There are many international human rights treaties, as well as many regional human rights treaties.[51] All may create different enforcement mechanisms and have different compliance records.[52] For purposes of clarity, this report focuses on three international human rights treaties: the Convention against Torture; the Convention on the Elimination of all forms of Discrimination against Women; and the International Convention on Civil and Political Rights. These treaties are part of the 'core' UN human rights instruments.[53] "For each of the existing core human rights treaties, an expert body composed of between ten and 23 independent experts – a 'treaty body' – monitors the implementation of the treaty guarantees by states parties."[54] However, "each treaty body has developed different tools to monitor state compliance with treaty norms."[55] Limiting the focus to these three international UN human rights treaties will allow a targeted review of treaty compliance without allowing the discussion to become overwhelmed with details.

---

51 For an extensive, but still not exhaustive list of international human rights treaties see *Universal Human Rights Instruments*, UNITED NATIONS HUMAN RIGHTS, (last visited Apr. 22 2014), http://www.ohchr.org/EN/ProfessionalInterest/Pages/UniversalHumanRightsInstruments.aspx. For a discussion of the various regional human rights treaties see OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS & THE INTERNATIONAL BAR ASSOCIATION, HUMAN RIGHTS IN THE ADMINISTRATION OF JUSTICE: A MANUAL ON HUMAN RIGHTS FOR JUDGES, PROSECUTORS, AND LAWYERS 71 – 111 (2003) http://www.ohchr.org/Documents/Publications/training9chapter3en.pdf.

52 *Id.*

53 Schmidt, *supra* note 48, at 404.

54 *Id.*

55 *Id.* at 406.

THE CONVENTION AGAINST TORTURE

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) was adopted by the UN General Assembly in 1984.[56] As of February 2014, a majority of UN members (154 states) had ratified or acceded to the CAT.[57] The CAT imposes several expectations upon states including, the obligation not to torture, even in a time of war; the obligation not to extradite a person to a state where they are likely to be tortured; and the obligation to make investigations when there is reasonable ground to believe that torture has been committed. [58]

Implementation of the CAT is monitored by the Committee against Torture.[59] The Committee receives periodic reports from states on steps they have taken towards compliance (Article 19).[60] Based on reports or other indications that a state is practicing torture, the Committee can initiate an investigation (Article 20)[61] or examine complaints by one state that another is violating the convention (article 21).[62] Finally, the Committee can examine applications by individuals claiming to be victims of a violation (Article 22).[63]

---

56 Hans Danelius, *Introductory Note*, CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT http://legal.un.org/avl/ha/catcidtp/catcidtp.html.

57 United Nations Treaty Collection, Chapter IV 9., Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Status, https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&lang=en#4.

58 Danelius, *supra* note 56.

59 *Id.*

60 *Id.*

61 *Id.*

62 *Id.*

63 *Id.*

Despite what may appear to be a robust self-enforcement process, various treaty loopholes undermine the effectiveness of these enforcement tools. Amendments allow states to "opt-out" of Article 20 investigations.[64] Amendments also prevent the Committee from investigating Article 21 and 22 complaints unless the state being investigated has specifically recognized this competence.[65] This leaves the international community with little recourse even when there is evidence of torture.

Several scholars have studied state compliance with the CAT. In a 2010 study, Hill conducted a quantitative analysis of state compliance with human rights treaties based on data from the Cingranelli-Richards physical integrity rights scale to estimate the amount of torture occurring in a state: a value of 0 indicates frequent torture, a value of 1 indicates occasional torture, and a value of 2 indicates no torture.[66] Hill controlled for other variables which might affect torture rates, such as level of democratic rule, level of economic development, and degree of judicial independence.[67] According to Hill's analysis ". . . ratification of the CAT is found to be associated with worse torture practices."[68] Ratification decreases the likelihood that a state will fall into the best category (no torture) and "significantly raises the probability of falling into the worst

64 *Id.*
65 *Id.*
66 Daniel W. Hill, *Estimating the Effects of Human Rights Treaties on State Behavior*, 72 J. POLS. 1161, 1166 (2010).
67 *Id.* at 1166 - 1167
68 *Id.* at 1171

category (torture occurs frequently)."[69] This suggests that ratification of CAT leads to worse torture practices in some states.

Hathaway controls for the democracy variable and examines how it interacts with ratification of and compliance with the CAT. Hathaway found that countries with worse torture ratings were "*slightly more likely* to ratify the Convention against Torture than those with better ratings."[70] However, her study also found that "countries with better torture ratings have accepted the Article 21 and 22 enforcement provisions at four times the rate of those that have worse torture ratings."[71]

When comparing behavior of democratic and non-democratic states in ratifying, Hathaway reported that "democratic nations are more likely, on the whole, to join the Convention Against torture."[72] As democracies' torture ratings worsen they become less likely to ratify the convention.[73] However, "*non*-democratic nations that reportedly use torture frequently are *more* likely to join the Convention than non-democratic nations that reportedly use torture infrequently."[74] When Hathaway examined post-ratification compliance, Hathaway found that states "that ratify the Convention against Torture are reported to engage in *more* torture than [economically and politically comparable states] that have not ratified" the convention.[75]

---

69 *Id.*
70 Oona A. Hathaway, *The Promise and Limits of the International Law of Torture*, *in* TORTURE: A COLLECTION 199, 201 (Sanford Levinson, ed., 2004) (italics in original) [hereinafter Hathaway 2004].
71 *Id.*
72 *Id.* at 202.
73 *Id.* at 203.
74 *Id.* at 202.
75 *Id.* at 204.

These studies suggest that neither ratification nor compliance with the CAT is straightforward. Whether a state is a democracy may influence whether or not it ratifies the CAT, but once a state has ratified, some states comply (improving their torture record) while others do not comply and their record worsens.

CONVENTION ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted by the General Assembly of the United Nations in 1979 and entered into force in 1981.[76] As of March 2014, 187 states were party to the CEDAW.[77] The aim of CEDAW is the de jure and de facto equality of men and women and elimination of discrimination "resulting from activities or omissions on the part of States parties, their agents, or committed by any persons or organizations in all fields of life."[78] By acceding to CEDAW, sates are required to "take all appropriate measures to eliminate discrimination against women by any person, organization, or enterprise," with special attention to the "political, social, economic and cultural fields."[79] For example, states are required to "embody the principle of equality of men and women in their national constitutions or other appropriate legislation,"[80] "abolish existing laws,

---

76 Dubravka Šimonović, *Introductory Note*, CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN, http://legal.un.org/avl/ha/cedaw/cedaw.html.

77 United Nations Treaty Collection, Convention on the Elimination of All Forms of Discrimination against Women, Chapter IV 8, Status, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en.

78 *Id.*

79 Convention on the Elimination of All Forms of Discrimination against Women art. 2(e), 3 Dec. 18, 1989, 1241 U.N.T.S 20378, *available at* https://treaties.un.org/doc/Treaties/1981/09/19810903%2005-18%20AM/Ch_IV_8p.pdf [hereinafter CEDAW].

80 *Id.* at art. 2(a).

regulations, customs, and practices which constitute discrimination against women,"[81] and ensure that women have the right "to vote in all elections . . .and to be eligible for election to all publically elected bodies."[82] CEDAW requires that states "take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure . . . the right to the same employment opportunities . . .[and] the right to equal remuneration."[83] Finally, CEDAW requires that states take measures necessary to "eliminate discrimination against women in all matters relating to marriage and family relations."[84] This means that states must ensure that men and women have "the same right to enter into marriage," "the same rights and responsibilities during marriage and at its dissolution," and "the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment, and disposition of property."[85]

To enforce CEDAW, the Convention establishes a Committee on the Elimination of Discrimination against Women and requires every signatory to submit reports on their compliance with CEDAW every four years.[86] The Committee examines these reports and can adopt concluding observations which identify "issues on which the state party has made progress" as well as "remaining problems and concerns."[87] "Each concern is

---

81 *Id.* at art. 2(f).
82 *Id.* at art. 7 (a).
83 *Id.* at art. 11(1).
84 *Id.* at art 16(1).
85 *Id.* at art 16(1).
86 *Id.* at art 17; Šimonović, *supra* note 76.
87 Schmidt, *supra* note 48, at 407.

matched by a specific recommendation or practical advice."[88] States later report back on what steps they have taken to comply with this advice.[89] Committee recommendations and suggestions "are not legally binding."[90] Thus, this enforcement mechanism will only work if states actually submit a report and voluntarily follow the advice of the committee.[91] The Committee may "initiate inquiry procedures upon receipt of reliable, well-founded indications of serious, grave, or systemic violations" of the convention.[92] However, "inquiries may only be conducted in relation to states that have recognized the competence" of the Committee to do so.[93] Furthermore, "the cooperation of the state party is required throughout the proceedings."[94]

In 2000, an Optional Protocol to the Convention entered into force which "provides the committee with competence to consider complaints from individuals or groups of individuals" and "allows the committee to inquire into reliable allegations of grave or systematic violations of the convention."[95] One "weakness of the treaty body complaints procedures is that the final merits decisions are not strictly speaking legally

---

88 *Id.*

89 *Id.*

90 OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, FACT SHEET NO. 22, DISCRIMINATION AGAINST WOMEN: THE CONVENTION AND THE COMMITTEE 20, *available at* http://www.ohchr.org/Documents/Publications/FactSheet22en.pdf.

91 *See* Schmidt, *supra* note 48, at 408 (discussing the reporting backlog among state parties to UN treaties).

92 *Id.* at 409.

93 *Id*.

94 *Id.*

95 Šimonović, *supra* note 76.

binding and thus cannot be enforced."[96] Although 184 states were party to CEDAW as of March 2014, only 104 were party to the Optional Protocol.[97]

Hill examined national compliance with the various areas of CEDAW in 2010 using CIRI data to estimate observance of women's rights, with a score of 0 indicating that women did not have the rights under consideration; scores of 1 and 2 indicating that women had the right in law but not in practice, and a score of 3 indicating that women had the right in both law and in practice.[98] Hill used "three ordinal scales from the CIRI data, one measuring women's social rights, one measuring women's economic rights and another measuring women's political rights."[99] Hill found that CEDAW had no effect on women's economic or social rights, but that CEDAW had a "positive, statistically significant impact" on observance of women's political rights.[100] Ratification of CEDAW increases the likelihood that a state will be in the best category of women's rights observance and decreases the likelihood that it will be in the worst category.[101] This suggests that states are successfully complying with CEDAW in some areas of women's rights but not in others.

---

96 Schmidt, *supra* note 48, at 413.

97 United Nations Treaty Collection, Chapter IV 8.b., Optional Protocol on the Elimination of All Forms of Discrimination against Women, Status, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8-b&chapter=4&lang=en.

98 Hill, *supra* note 66 at 1166.

99 *Id.*

100 *Id.* at 1171.

101 *Id.* at 1171 – 1172.

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

The International Covenant on Civil and Political Rights (ICCPR) was adopted by the General Assembly of the United Nations in 1966 and by March 2014, 167 states were party to the ICCPR.[102]

Since the United Nations' creation, a primary focuses has been the protection of human rights.[103] In 1948 the General Assembly adopted the Universal Declaration of Human Rights, a statement that "did not 'purport to be a statement of law or of legal obligations.'"[104] In the 1950s, the Commission on Human Rights began work on the ICCPR (along with its sister document the International Covenant on Economic, Social, and Cultural Rights) as a means of translating the substance of the Universal Declaration of Human Rights "into the hard legal form of an international treaty."[105]

The ICCPR establishes a wide array of human rights, including the right of self-determination, a right to life, freedom of thought, freedom of expression and freedom of assembly.[106] The ICCPR also bans discrimination, torture, and slavery.[107] Enforcement of the ICCPR is carried out by a Human Rights Committee, but its means are limited.[108] States are required to submit reports on their ICCPR compliance at regular intervals and

---

102 Christian Tomuschat. *Introductory Note*, INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, http://legal.un.org/avl/ha/iccpr/iccpr.html; United Nations Treaty Collection, Chapter IV 4, International Covenant on Civil and Political Rights, Status, https://treaties.un.org/Pages/ViewDetails.aspx?src=UNTSONLINE&tabid=2&mtdsg_no=IV-4&chapter=4&lang=en#Participants.

103 Schmidt, *supra* note 48, at 391.

104 Ed Bates, *History*, *in* INTERNATIONAL HUMAN RIGHTS LAW 17, 17 (Daniel Moeckli, Sangeeta Shah & Sandesh Sivakumaran eds., 2010).

105 Tomuschat, *supra* note 102.

106 *Id.*

107 *Id.*

108 *Id.*

the Committee may note its concerns.[109] However, such concerns are not legally binding and create no obligations for the state.[110]

The First Optional Protocol to the ICCPR allows individuals to bring complaints against states.[111] However, in order to apply, a state must become a party to the Optional Protocol.[112] In addition, "the final views which the Committee delivers after having examined an individual communication . . . lack any binding legal force."[113]

Several quantitative studies have been conducted to evaluate state behavior under the ICCPR. Hill examined compliance and reported that ICCRP had a "slightly negative effect" on the human rights practices of party states.[114] Hill's results suggested that "states are not complying with their obligations under ICCPR, however they do not indicate that states are egregiously violating the terms of the treaty."[115] Hafner-Burton and Tatsui found that "the number of years since ratification of the ICCPR . . . is associated with a worse human rights record," although the effect loses statistical significance if a variable accounts for the global trend in human rights over time.[116] Keith found no statistically significant effect of the ICCPR on an individual state's likelihood

---

109 *Id.*

110 *Id.*

111 Optional Protocol to the International Covenant on Civil and Political Rights art. 1, Dec. 16, 1966, 999 U.N.T.S. 14668, *available at* http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCCPR1.aspx.

112 *Id.*

113 Tomuschat, *supra* note 102.

114 Hill, *supra* note 66, at 1170.

115 *Id.* at 1170-1171

116 Eric Neumayer. *Do International Human Rights Treaties Improve Respect for Human Rights?*, 49 J. CONFLICT STUDIES 925, 933 - 934 (2006) *available at* http://www.lse.ac.uk/geographyAndEnvironment/whosWho/profiles/neumayer/pdf/Article%20in%20Journal%20of%20Conflict%20Resolution%20(Human%20Rights).pdf.

of violating human rights but also found that "state parties often have a better human rights record" than non-party states.[117] This suggests that states with better human rights records are more likely to join the ICCPR than states with poor human rights records. Hathaway reported that, despite poor compliance after ratification, those states that ratify the ICCPR tend to have better human rights records than those states that do not.[118] She found that while the number of states that have ratified the Optional Protocol which creates an additional enforcement mechanism is low, compliance among Optional Protocol ratifiers was much higher than compliance among non-ratifiers.[119] Each of these studies suggests that some states are states are not complying with their ICCPR and in some cases their violations are increasing.

117 *Id.*at 932.

118 Oona A. Hathaway. *Do Human Rights Treaties Make a Difference?*, 111 YALE L. J. 1935, 1978 (2002).

119 *Id.*

Chapter 5: Reasons for Compliance

There are many theories as to why states comply with international human rights treaties. They include: a government's concern for its reputation, the presence of a strong civil society within a state, the presence of a strong judiciary within a state, and the domestic public's willingness to enforce the law.

REPUTATION

Hathaway has suggested concern for reputation as a possible explanation for why states join and comply with treaties.[120] Concern for reputation is a complex motivator and it may play out differently in different states. In fact, reputation should not be treated as a single, monolithic variable. Instead, a state's reputation can be broken down into constituent parts – its reputation on the international stage and its reputation among its own citizens. Both of these reputational concerns could affect state behavior in different ways.

A state's concern for its international reputation can be a factor in international law compliance but there are limits to its effectiveness. Under the current human rights framework, international reputation encourages states to join treaties but not to obey them.

A desire to improve its reputation can lead a state to join popular human rights treaties. For example, Hathaway's 2002 study showed that dictatorships with a history of torture were more likely to join the CAT than dictatorships without a history of torture.[121]

---

120 Hathaway 2004, *supra* note 70, at 204.
121 *Id.* at 201.

This is likely because a dictatorship with a history of torture could improve its international standing by joining a well-respected global treaty on torture and committing itself to improving its behavior. A dictatorship with no such history of torture would not get much of a boost to its reputation if it merely committed itself to continuing not to torture.

While a state's desire to improve its reputation may lead it to sign a human rights treaty, it will not necessarily lead the state to obey the treaty. As Hathaway reports, although a desire to improve their international reputations prompted dictatorships to join the CAT, it did not lead them to comply with it.[122] It seems that many states joined the CAT with no intention of obeying it. Hathaway suggests that these states acceded to the CAT to improve their international reputation.[123] The fact that many states ratified the CAT but did not ratify the Articles 21 and 22 enforcement provisions reinforces the belief that states seek to benefit from ratifying the treaty but hope to avoid enforcement.

The disconnect between joining and obeying a treaty may reflect the fact that knowledge of compliance is poor. If a state's failure to comply were well known then its reputation could be harmed.[124] However, in the case of many international human rights commitments, violations may be difficult to detect.[125] When it comes to reputation, the benefits to ratifying may outweigh the costs of non-compliance. As Hathaway suggests in the case of the CAT, "monitoring the activity of treaty members could substantially

122 *Id.* at 208.
123 *Id.* at 207 - 208.
124 *Id.* at 208.
125 *Id.*

improve the situation."[126] Reputational concerns could have a stronger impact on compliance "if states' violations of the treaty were likely to be made public, states that do not intend to abide by the treaty would be substantially less likely to join."[127]

A state can join CAT, enjoy the reputational benefits that this brings, and then do nothing to change its behavior. A state which failed to meet its obligations under the treaty would have little to fear from the international community beyond concerns for reputation. States which breach the treaty are unlikely to be held accountable because few other states will have a vested interest in bringing breaching states to justice. As long as its own citizens are not being tortured, a state is unlikely to worry about other states' compliance with CAT. Hathaway suggests that those states which ratify a treaty in which compliance is difficult to determine might be even less likely to comply. These states have received the reputational benefits of joining the treaty without undertaking the costly steps necessary to carry out its requirements.[128]

This could be the end of the story - because states are concerned about their international reputations they join treaties but do not comply with them. However, one set of countries breaks the mold – democracies. Hathaway reports that democracies with a history of torture were less likely to join the CAT than democracies with no such history.[129] If international reputation rewards states for joining treaties but does not require that they obey the treaties, then what can account for the behavior of

126 *Id.* at 210.
127 *Id.*
128 *Id.* at 208 – 209.
129 *Id.* at 203.

democracies? Why aren't democracies as motivated by concerns for international reputation in the same way as dictatorships? The key seems to lie in an important difference between democracies and dictatorships: the people.

If a state with a history of torture joined the CAT its reputation might improve among its citizens. However, while a dictatorship might join a treaty and then breach it with few consequences, a democracy faces a different situation. Unlike dictatorships, democracies must concern themselves with domestic opinion. This is not to suggest that a dictatorship can complete ignore domestic opinion; however, it does not play the same role in dictatorships as in democracies. If a democracy joins and then fails to comply with a treaty, even if the international community turns a blind-eye, the state can be held to account by its own citizens. Although the state may avoid enforcement in the traditional international law sense, it may still face domestic opposition. It is therefore more risky for a democracy to join a treaty with which it has no intention of complying. If a democracy joins a treaty and fails to obey its mandates, the domestic backlash over long term failure to comply may outweigh the short term reputational benefits of joining.

One hypothesis is that the nature of a state can influence the effectiveness of international law. If citizens of a state can hold their government responsible, then the government may be less likely to make promises it cannot keep. The difference between democracies and dictatorships shows that, although human rights laws are rarely enforced by other states, citizens can help fill the enforcement gap.

Hathaway's study reports that democracies with a history of torture were less likely to join the CAT, but some still did so.[130] Although concern for domestic reputation may influence whether a state joins and complies with a treaty, it is not a complete explanation. It is simplistic to suggest that democracies must but be concerned with their domestic reputations and therefore must obey the treaties they join. However, Hathaway's results do seem to suggest that factors internal to a state could play a role in international law compliance.

JUDICIARIES

A factor that may contribute to the enforcement of international treaty obligations is the presence of a strong judiciary within a state. Although most international human rights treaties provide enforcement mechanisms, domestic "courts may also offer a forum for those seeking to obtain enforcement of treaty commitments."[131]

The ability to use domestic courts to enforce international obligations could be an especially important tool in human rights treaties where the benefits are vertical (accruing to the state's population) rather than horizontal (accruing to the other state parties).[132] By using domestic institutions, the true beneficiaries of the treaties are able to enforce the treaties' obligations.

This is a different kind of enforcement than is usually expected in international law. Because international agreements are among states, states are expected to enforce

130 Hathaway 2004, *supra* note 70, at 203.

131 Hathaway, *supra* note 118, at 2019.

132 David Sloss, *Treaty Enforcement in Domestic Courts*, *in* THE ROLE OF DOMESTIC COURTS IN TREATY ENFORCEMENT: A COMPARATIVE STUDY 1, 1 (David Sloss ed., 2009).

them against one another. In some instances individuals have the right to bring a case against their state before an international body, as it the case of the Optional Protocol to CEDAW.[133] In some instances a citizen can seek to enforce an international treaty against their own government or against other citizens within their state, using the state's own mechanisms. This is not uncommon in international law; many international laws require citizens to exhaust local remedies before bringing a complaint before an international tribunal.[134] In such situations, the state is in effect enforcing the treaty against itself. Although traditional international law enforcement is not occurring, policing may still take place.

However, states with strong judiciaries may limit the role the courts can play in enforcing international law. For example, in the United States the ICCPR applies to all government entities and agents and must be applied the same as all domestic laws.[135] However, a Reservation, Understanding, and Declaration attached to the treaty by the US Senate makes the treaty "not self-executing" which limits "the ability of litigants to sue in court for the direct enforcement of the treaty."[136]

Thus, despite the potential important role of domestic courts, few domestic courts rely on international law to reach decisions. Consider, the case of Guantanamo Bay. Article 9 of the ICCPR states that "anyone who is deprived of his liberty by arrest or

---

133 Šimonović, *supra* note 76.

134 For example individual complaints can be brought under the CAT, CEDAW, or ICCPR but only after local remedies have been exhausted. *Human Rights Treaty Bodies,* UNITED NATIONS HUMAN RIGHTS, (last visited Apr. 22,2014), http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/IndividualCommunications.aspx#OPICCPR.

135 *FAQ: The Covenant on Civil and Political Rights*, AMERICAN CIVIL LIBERTIES UNION, https://www.aclu.org/human-rights/faq-covenant-civil-political-rights-iccpr.

136 *Id.*

detention shall be entitled to take proceedings before a court" and that anyone arrested on a criminal charge "shall be entitled to trial within a reasonable time."[137] US law has similar protections.[138] Yet the US government held prisoners at Guantanamo for years without charging them.[139] Although civil society encouraged the government to change its stance, an even more concrete change was brought about through the US justice system. In the cases of Rasul v. Bush and Boumediene v. Bush, the US Supreme Court held that the US court system has jurisdiction to decide the legality of detention of foreign nationals held at Guantanamo and that the right of habeas corpus applies to such prisoners.[140] It was thus the domestic court system and not international legal bodies which held the United States responsible and forced it to change its practices. In addition, despite the relevance of the ICCPR, the Court relied on US law, rather than international law. This is not surprising. In practice, "when courts protect rights that are guaranteed by both domestic law and by international law, U.S. courts rarely mention international law, international obligations, or international standards."[141]

Domestic judiciaries can be used to encourage enforcement of international obligations. But the use of judiciaries is limited, as many states and their judiciaries do

---

137 International Covenant on Civil and Political Rights art. 9, Dec. 16, 1966, 999 U.N.T.S. 171, *available at* http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx.

138 *See*, *e.g.*, U.S. CONST. amend. VI.

139 Alyssa Fetini. *A Brief History of Gitmo*, TIME, Nov. 12, 2008, *available at* http://content.time.com/time/nation/article/0,8599,1858364,00.html.

140 Rasul v. Bush, 542 U.S. 446 (2004), Boumediene v. Bush, 553 U.S. 723 (2008).

141 Louis Henkin, *International Human Rights Standards in National Law: The Jurisprudence of the United States*, *in* ENFORCING INTERNATIONAL HUMAN RIGHTS IN DOMESTIC COURTS 189, 199 (Benedetto Conforti and Francesco Francioni eds., 1997).

not recognize the right to use international law as the basis for decisions. A strong judiciary alone cannot ensure compliance with treaty obligations.

CIVIL SOCIETY

The nature of a state's domestic institutions and its civil society can encourage or prevent mobilization of the public may play a role in international treaty compliance. As Hathaway suggests, the "the strongest democracies may be more likely to adhere to their treaty obligations because the existence of internal monitors makes it more difficult for such countries to conceal a dissonance between their expressive and actual behavior."[142]

Slaughter and Helfer have suggested that "government institutions committed to both rule of law and separation of powers . . . in systems where the individuals themselves are ultimately sovereign are primed to be the most receptive" to international law.[143] "International human rights regimes can be effective if domestic groups, be they non-governmental organizations, protest movements, political parties or any other group can use the regime to pressure their domestic government."[144]

In addition to governmental institutions, non-governmental institutions may play an important role in state treaty compliance. The theory of transnational human rights advocacy networks focuses on how "international human rights NGOs . . . together with domestic NGOs and other civil society groups, parties, or the media" can pressure the government to change its behavior.[145] The theory suggests that non-governmental groups

142 Hathaway, *supra* note 118, at 2020.
143 *Id.* at 1953
144 Neumayer, *supra* note 116, at 930.
145 *Id.* at 931

can pressure the government to comply with international treaty norms "via disseminating information, shaming the offending regime and mobilizing international public opinion against it."[146]

In a 2005 study, Eric Neumayer found that ratification of human rights treaties "in autocracies with no civil society is associated with a worsening of civil rights" but that "ratification has a more and more beneficial effect on human rights the more democratic the country is and the stronger is the civil society."[147] He found that while democracies improve human rights whether or not a treaty was ratified, "civil society strength only lowers human rights violations in countries that have ratified."[148] This suggests that in democracies where individuals or groups can hold their governments to account, they do.

On occasion, civil society may even be effective in changing government policy in autocracies. For example, Saudi Arabia ratified CEDAW in 2000 but not until 2011 did the King of Saudi Arabia grant women the rights to vote and to run in local elections.[149] The change came when Saudi women "stepped up their public campaigns . . . pushing for universal suffrage."[150] It seems that increased pressure from civil society lead the government to comply with its obligations.

---

146 *Id.*

147 *Id*. at 941.

148 *Id.*

149 United Nations Treaty Collection, Convention on the Elimination of All Forms of Discrimination against Women, Chapter IV 8, Status, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en, Catrina Stewart. *Saudi Women Gain Vote for the First Time,* THE INDEPENDENT, Sept. 26, 2011, *available at* http://www.independent.co.uk/news/world/middle-east/saudi-women-gain-vote-for-the-first-time-2360883.html.

150 Stewart, *supra* note 149.

However, the presence of a strong civil society does not always lead to state compliance with treaty norms. Many states with strong civil societies have joined the ICCPR but continue to violate their obligations. For example, the United States has a strong civil society but a poor record when it comes to complying with the ICCPR. For instance, the US has been criticized for its deportations to Haiti, its stop and frisk practices, and its use of the death penalty on minors, all of which violate ICCPR obligations.[151] Another example is Guantanamo Bay Prison where, since 2002, the US has held prisoners from the war on terror.[152] The US government determined that the usual protections of US law did not apply and the prisoners could thus be held without charge for extended periods of time.[153] The UN High Commissioner called the US's detention of prisoners at Guantanamo "the most flagrant breach of individual rights, contravening the International Covenant on Civil and Political Rights."[154] The situation at Guantanamo received extensive media attention, and the result was widespread disapproval from the American public.[155] The result of pressure from domestic and

---

151 For a discussion of these failings see: UNIVERSITY OF MIAMI SCHOOL OF LAW HUMAN RIGHTS CLINIC AND IMMIGRATION CLINIC ET AL., UNITED STATES' COMPLIANCE WITH THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS WRITTEN STATEMENT ON DEPORTATIONS TO HAITI (2013) http://ccrjustice.org/files/CCR_HRC_Haiti_ShadowReport2013.pdf , CENTER FOR CONSTITUTIONAL RIGHTS, STOPPED, SEIZED, AND UNDER SIEGE: U.S. GOVERNMENT VIOLATIONS OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS THROUGH ABUSIVE STOP AND FRISK PRACTICES (2013) http://ccrjustice.org/learn-more/reports/stopped-seized-and-under-siege, Richard C. Dieter, The Death Penalty and Human Rights: U.S. Death Penalty and International Law, Death Penalty Information Center Oxford Round Table, *available at* http://www.deathpenaltyinfo.org/Oxfordpaper.pdf.

152 Fetini. *supra* note 139.

153 *Id.*

154 CENTER FOR CONSTITUTIONAL RIGHTS, ARBITRARY DETENTION AT GUANTANAMO 4 -5 (2013) http://www.ccrjustice.org/files/Guantanamo_CCR_9-11-13%20%28A4%29.pdf.

155 From 2005 to 2007 American disapproval of the treatment of prisoners at Guantanamo increased from 37% disapprove to 50% disapprove. THE GALLUP POLL: PUBLIC OPINION 2005, 226 (Alec Gallup & Frank

international civil society was a gradual change in US policy. For example, in the beginning of his presidency President Obama promised to close the prison.[156] However, despite distaste for the treatment of prisoners, public opinion also undermined the federal government's efforts to close the prison. Even though citizens might have disapproved of treatment of Guantanamo prisoners, they also disapproved of bringing the prisoners into the territorial United States.[157] Despite the efforts of the federal government and of civil society, the public still undermined any efforts at complying with international law.[158]Clearly, when civil society is mobilized it can change public opinion and government practice. However, there seems to be a limit to the effectiveness of civil society. Civil society is only useful in enforcing international law to the extent that individuals can be made interested in enforcing the law.

PUBLIC WILL

While the importance of public will may be obvious, it is a factor that can easily be overlooked by scholars. It is a factor upon which most of the other factors rely and makes clear just how vital citizens are to filling the international law enforcement gap. While the government may commit to treaty obligations, public will is vital for enforcement. The government's efforts and public will can interact in several ways.

Newport eds., 2007), *Poll: World View of United States Role Goes From Bad to Worse*, BBC PRESS OFFICE, Jan. 1, 2007, http://www.bbc.co.uk/pressoffice/pressreleases/stories/2007/01_january/23/us.shtml.

156 Jeffrey M. Jones. *Americans Oppose Closing Gitmo and Moving Prisoners to U.S.,* GALLUP, June 3, 2009, http://www.gallup.com/poll/119393/americans-oppose-closing-gitmo-moving-prisoners.aspx.

157 *Id.*

158 For a critique of the federal government's failure to deal with Guantanamo see Thomas P. Sullivan & Jeffrey D. Colman, *America's Disgraceful Treatment of Gitmo Detainees*, CHICAGO TRIBUNE, Apr. 21, 2013, *http://articles.chicagotribune.com/2013-04-21/opinion/ct-perspec-0421-gitmo-20130421_1_prison-guantanamo-bay-human-rights.*

First, public will can lead a state to abide by its international treaty obligations. US compliance with the ICCPR provides a good example. The US ratified the ICCPR in 1992 but had a reservation to article 6 which prohibits the death penalty for juveniles.[159] Many states criticized the United States for this reservation and some even argued that such a reservation was contrary to the object and purpose of the treaty and should be considered invalid. [160] However, for years the US did not waiver on its commitment to the reservation.[161] This is likely due in part to the government's lack of interest in changing the reservation. However, even more important may be the lack of interest in pursuing such a change on the part if US citizens. It was not until public opinion began to shift that the death penalty was outlawed for minors in the US. In its decision in Roper v. Simmons, the Supreme Court stated that in order to determine if a punishment is cruel and unusual, it is necessary to refer to "the evolving standards of decency."[162] The court then examined both national and international capital punishment trends to determine the current "standard."[163] However, the Court's reference to international trends is unconvincing, given that the international community had long criticized the United States' stance to no avail. The Court noted that the "the reservation to Article 6(5) of the ICCPR provides minimal evidence that there is not now a national consensus against

159 Dieter, *supra* note 151, at 11.
160 *Id.* at 17.
161 *See* Curtis A. Bradley, *The Juvenile Death Penalty*, 52 DUKE L. J.485, 492 (2002) (discussing the US's persistent refusal to recognize treaty provisions prohibiting the juvenile death penalty).
162 Roper v Simmons, 543 U.S. 551, 6 (2005).
163 *Id.* at 10 – 13, 21 – 24.

juvenile executions."[164] Thus, the reservation could be essentially ignored if domestic consensus was strong enough. It was this national consensus, not international pressure or the treaty itself, which triggered a change in the court's position.

In other circumstances a government may wish to implement the law while its citizens lack the will, as illustrated by CEDAW and its protection of rights for women. These rights can be broken into three categories – political, social, and economic. CEDAW political rights include, *inter alia*: a right to vote, a right to hold office, and a right to represent the state at the international level.[165] Hill found that compliance with these political elements was relatively good, and that the convention itself had a "positive, statistically significant impact on observance" of the political rights found in the convention.[166] This is not surprising given the nature of these rights. In order, for a state to improve its compliance it would need to move along a sliding scale from providing no right, to providing the right in name only, to providing the right in name and in practice. Many governments can grant political rights such as these without the need for approval by the citizens. For example, in 2011 the King of Saudi Arabia granted women the right to vote and run as candidates in nationwide elections.[167] Further, once these political rights are granted, they can be enforced; once women have the right to vote they must merely show up and vote. Once women have the right to be elected, they must put their names on the ballot; little to no action is required by others, whether they

---

164 *Id.* at 13.

165 CEDAW, *supra* note 79, at arts. 7, 8.

166 Hill, *supra* note 66, at 1171.

167 Michael S. Schmidt & Yasir Ghazi, *Iraqi Women Feel Shunted Despite Election Quota*, N.Y. TIMES, Mar. 12, 2011, http://www.nytimes.com/2011/03/13/world/middleeast/13baghdad.html?_r=0.

support or oppose the rights for women. The move along the scale from right in name only, to right in name and practice is a feasible step.

Of course, if opposition to rights, including political rights, is strong enough, then citizens can take steps to prevent implementation of the rights. For example, although Afghanistan ratified CEDAW in 2003, in their 2009 presidential elections, women were "disproportionately affected by violence and intimidation" resulting in a "notably low turnout of women voters."[168] Meanwhile, Iraq acceded to CEDAW in 1986.[169] When it created a new constitution in 2003, the American administrator not only permitted women to run for office but put a requirement in the constitution that one quarter of all seats in parliament be set aside for women.[170] Although the seats set aside for women were indeed given to women, opposition continued to prevent the rule from having its desired effect.[171] Only 5 female won enough votes to win a parliamentary seat and the rest of the 86 quota seats were simply assigned to women by the parties which won them.[172] By some accounts, these female members of parliament held little power within parliament, with only one woman heading a ministry in 2011.[173] Many women also

---

168 United Nations Treaty Collection, Convention on the Elimination of All Forms of Discrimination against Women, Chapter IV 8, Status, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en; Carlotta Gall, *Intimidation and Fraud Observed in Afghan Election*, N. Y. TIMES, Aug. 22, 2009, http://www.nytimes.com/2009/08/23/world/asia/23afghan.html.

169 United Nations Treaty Collection, Convention on the Elimination of All Forms of Discrimination against Women, Chapter IV 8, Status, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en.

170 Schmidt & Ghazi, *supra* note 167.

171 *Id.*

172 *Id.*

173 *Id.*

claimed that men kept them out of closed door meetings.[174] Of perhaps greatest concern, after the 2010 election, none of the 86 female parliament members participated in negotiations to create a compromise government.[175] Despite the apparent purpose of the rules, women had little impact on domestic government.

Even in these examples, where women's rights face opposition, there may be a de jure improvement in women's rights after CEDAW because a once non-existent right is now granted in name. As women continue to show up to vote and continue to run for office, citizens will become accustomed to the right and opposition may fade away.[176] This suggests that, although citizens play an important role in the enforcement of law, public opinion can change gradually to accept and even enforce laws which it previously opposed.

Even with the obvious shortcomings, compliance with CEDAW's political rights requirements has been relatively successful. However, the problems found in carrying out political rights compliance are exacerbated in the case of civil and economic rights. Compliance with CEDAW's social and economic rights is inconsistent. Hill found that CEDAW did not improve women's social and economic rights.[177] These rights include a right to equal remuneration, a right to equal employment opportunities, the same right as men to enter into marriage, the same rights as men during marriage.[178] Movement along

---

174 *Id.*
175 *Id.*
176 William G. Mayer, *Political Generations and Shifts in Public Opinion,* THE PUBLIC PERSPECTIVE 11, 13 (1992) http://www.ropercenter.uconn.edu/public-perspective/ppscan/35/35011.pdf.
177 Hill, *supra* note 66, at 1171.
178 CEDAW, *supra* note 79, at arts. 11, 16.

the scale from no rights, to rights in name only, to rights in name and practice is far more difficult with rights such as these. These rights are almost impossible to implement from the top down and require extensive acceptance from citizens. For example, in order for women to have the same rights to enter into or end a marriage, not only must a woman claim the right for herself, but her family and her spouse must also agree to the rights. Even if a government unilaterally grants the right – for example, passing a law granting women equal rights within the family – it will be difficult to move from the right's existence in name to its existence in practice. These laws can only be carried out when there is social acceptance, but a lack of acceptance may be the very reason the law was passed.

A government might take more proactive steps to encourage acceptance of these rights. Even though, studies have shown that public education campaigns can change public opinion.[179] However, it may be rare for a government to take such steps. For example, in the case of CEDAW, if a government's constituents are opposed to these rights for women, then the government will gain little political capital by a campaign to encourage them. On the international stage, once a state has joined CEDAW and passed laws supporting it, it has already gained a reputational boost and need not fear international enforcement. Unless more pressure is applied by the international

---

179 For example, public opinion in favor of legalizing marijuana grew steadily in the United States between 1969 and 1978 but in the 1980s a "major public education campaign against drug usage was launched" and "support for legalizing marijuana fell by 14 percentage points, to the point where public opinion on this issue in the late 1980s began increasingly to look like it had back in 1969." Mayer, *supra* note 176, at 13.

community, is thus hard to see why a state would work to create domestic acceptance of an unpopular law.

The state is not the only actor that can work to increase popular acceptance of a right. As discussed above, the theory of transnational human rights advocacy networks focuses on how "international human rights NGOs . . . together with domestic NGOs and other civil society groups, parties, or the media" can pressure the government to change its behavior "via disseminating information, shaming the offending regime and mobilizing international public opinion against it."[180] This theory assumes that the violator is the government. In the case of CEDAW women's rights, the violator is more likely to be domestic citizens. If the government can create a campaign to improve acceptance of a right, domestic and international NGOs could also create such a campaign. Whether it is the government or a third party, some party may need to take steps to change domestic opinion.

Hathaway suggests that "the pervasive culture of human rights and processes of norm internalization tend to affect states regardless of whether they have ratified particular treaties."[181] Once the process of accepting a norm is underway, even those who originally disagreed with the right may come to accept it.

Public acceptance of, or even enthusiasm for, a law may help enforcement. Public will interacts with reputation, judiciaries, and civil society, changing and being changed by each. Public will can reinforce or undermine the effectiveness of other factors,

---

180 Neumayer, *supra* note 116, at 10.
181 Hathaway, *supra* note 118, at 2003.

encouraging a state to abide by its treaty obligations or undermining its attempts to do so. Perhaps surprisingly, low-level domestic actors have a major role to play in the enforcement of international human rights.

SUMMARY

Although international human rights treaties are rarely enforced, they often change state behavior. Reasons why these behavioral changes occur include concern for reputation, domestic judiciaries, civil society, and public will. It seems that no single factor can explain why states comply with their human rights treaty obligations. However, all of these factors interact and can, together, increase the likelihood of compliance.

One strong inference from the treaty compliance studies is that a state's internal governance and domestic structures seem to be important to improving compliance. States with weak domestic governance and accountability structures are far less likely to comply with human rights obligations. For example, if it a state is a dictatorship and can ignore the will of its citizens, then there are fewer ways to increase compliance. This helps to explain the poor human rights compliance records among dictatorships. International shame might be the best way to encourage a dictatorship to comply with its obligations. In the case of democracies, however, the domestic community plays a more important role. Compliance can be improved in a democracy through civil society, domestic judiciaries, and public support of a treaty obligation. If the public supports an obligation then it will hold its government accountable. If the public opposes an

obligation it will not hold its government accountable and might actively undermine the government's efforts at compliance.

It seems that human rights compliance hinges not upon high level enforcement imposed by the international community but upon domestic constituents holding their governments accountable through various mechanisms. The importance of this lower level accountability is a lesson that can be carried over to many areas. Of most interest for this paper are the ways in which these lessons can be carried into the domestic sphere and translated into recommendations for domestic lawmakers.

Chapter 6: Translating Explanations into Domestic Recommendations

International human rights treaty compliance occurs in a unique arena where traditional mechanisms are non-existent or ineffective. Yet despite the absence of traditional enforcement, human rights treaties do change behavior. The explanations for how human rights treaties change behavior can provide insights into how a state can pass effective laws even when it lacks the ability to enforce them

In discussions about law enforcement at the international level, the focus is on laws imposed by the international system upon the state. Although no law can be imposed without a state's consent, in many instances states agree to laws they have no intention of upholding. On the other hand, in discussions about law enforcement at the domestic level, the focus is on laws imposed by a national government upon local governments and citizens. In most states, no law can be imposed without some form of citizen consent. However, the form of this consent varies widely and few citizens give explicit consent to all laws.

International law compliance deals with three actors: the international community, a state's federal government, and a state's domestic constituents. The international community imposes laws upon the federal government. Traditionally the international community also enforces the law but in human rights treaties this is rarely done. Meanwhile, a state's federal government is responsible for complying with and enforcing the laws. Finally, a state's domestic constituents are obliged to obey and may assist in the enforcement of laws.

Domestic law compliance deals with three different actors: the central or federal government, the local government, and local citizens. The central government imposes laws upon local governments and citizens. Some laws, such as corruption laws, target the local government while others, such as drug laws, target local citizens. A central government expects local government either to comply with or enforce the law, depending on its type. Finally, local citizens are obliged to obey the law and may assist in their enforcement.

REPUTATION

A state's reputation can help to explain its willingness to join and comply with a treaty. Joining may create a reputational boost in the short term. Failure to comply may cause reputational harm in the long run. States must weigh the costs and benefits to determine whether joining a treaty is worth the risk of failing to carry it out.

The exact same calculation can be made at the domestic level by a federal government. The federal government must weigh the costs and benefits of passing an unenforceable law. If the law is popular then the government may receive a short term reputational benefit but failure to enforce the law may cause long term costs. Perhaps even more importantly, local government and local citizens may also undertake a cost benefit analysis.

Local governments cannot choose whether to pass federal laws. However, they may choose whether or not to assist in enforcing the law. Just as a national government may harm its reputation in the international community by failing to enforce an international treaty obligation, a local government may hurt its reputation with the federal

government for failing to assist in upholding a domestic law. However, it is likely that, just as at the international level, this reputational threat may not change behavior unless coupled with more, such as spending cuts or lack of reelection support. At the international level, reputation among domestic constituents was a far more influential factor than reputation among other international actors. Just as the federal government can harm its reputation among its citizens by failing to enforce a popular international law, a local government may hurt its reputation among its constituents by failing to comply with or enforce a popular domestic law. On the other hand, if a law is unpopular, the local government may hurt its reputation among its constituents by enforcing the law.

Meanwhile, local citizens to whom the law applies undertake cost benefit analyses of their own. Just as the federal government places less importance of its reputation in the international community, individual citizens are unlikely to place much importance on the opinion of their local or federal governments. When the government cannot enforce its laws citizens will be unconcerned with the government. However, individuals may be influenced by the opinions of fellow citizens. Individuals may hurt their reputations within the community if they fail to obey the law. This, of course, does not mean that the law will be followed. The benefits that come from breaking the law may outweigh the reputational harm caused by doing so.

In international law, even when concern for reputation was not enough to guarantee compliance, reputation among domestic constituents could change behavior. This is likely because international opinion rarely has a negative impact but negative domestic opinion can have immediate and damaging consequences. A similar situation

may exist at the domestic level. The opinions of domestic constituents and fellow community members may have serious consequences and so may influence behavior. However, just as in the international arena, although reputational costs may contribute, alone they may not guarantee compliance.

CIVIL SOCIETY

Civil society can affect a state's willingness to comply with its international legal obligations. Pressure from international and domestic groups, as well as the media, can encourage compliance by spreading information, by mobilizing public opinion, and by naming and shaming non-compliers.[182] The same methods may encourage compliance with domestic law.

Civil society can pressure local politicians and bureaucrats to comply with laws targeting local government. For example, a law on government corruption might not require much in the way of policing if government officials willingly follow the law. Civil society can use the tools at its disposal to encourage officials to follow the law. This can be done by making sure the public is aware of the law and naming and shaming those officials who violate it. Such tactics may make reelection more difficult. This may change officials' assessments as to whether the costs associated with corruption are greater than the benefits they accrue from corruption.

In similar ways, civil society can pressure local government to enforce laws that apply to citizens. Civil society can enhance public awareness of the law and can

182 Neumayer, *supra* note 116, at 930 – 31.

encourage support for the law. If a law gains enough support, it may be in the interest of local officials to dedicate resources to enforcing it.

Finally, civil society can use the same tools to encourage citizens to comply with laws. Civil society can spread information about the law, boost public support for the law, and encourage the perception that a breach is shameful.[183] Those who still do not support the law face a new dilemma – if their breach is found out they may be shamed (or worse) by the community which may outweigh the benefits of breaching.

JUDICIARIES

Judiciaries may play a comparable role in international and domestic law: they give individuals the ability to enforce the law themselves. In international human rights cases, states and individuals can sometimes bring complaints before international tribunals. Even when international tribunals are not available, citizens can attempt to enforce international obligations via domestic courts. Judiciaries serve the same role in domestic governance – allowing citizens to participate in law enforcement. Individuals may bring complaints of a breach before central or local courts. The court will reach a verdict and, if appropriate, mete out punishment. This access to courts allows citizens to enforce the law even when the state does not.

Of course, this requires that there be accessible and reliable judiciaries. In some states, especially those states with the most limited resources, this may not be the case. However, consider the case of the Gacaca courts in Rwanda. After the genocide, in order to "bring about justice and reconciliation at the grassroots level, the Rwandan

183 *See* Mayer, *supra* note 176, at 13.

government . . . re-established the traditional community court system."[184] "Communities at the local level elected judges" and the "12,000 community-based courts tried more than 1.2 million cases throughout the country."[185] The courts allowed "victims to learn the truth" and gave "perpetrators the opportunity to confess their crimes, show remorse, and ask for forgiveness in front of their community."[186]

The case of Rwanda suggests that vast resources are not always necessary for local enforcement. If the local community is empowered to carry out laws then they may be relied upon to do so. Of course, this enforcement tool will only be effective if individuals take action and bring complaints. This suggests that only those laws that are popular and important within the local community are likely to be enforced, even when there are judiciaries to enforce them.

PUBLIC WILL

If public will is vital for compliance with international human rights law, it is just as vital for encouraging compliance with domestic laws. And, just as at the international level, at the domestic level, public will interacts with the other relevant enforcement factors.

First, public will interacts with reputational concerns. For example, if a law is popular then compliance may have reputational benefits. If a law has public support, the local government may be more willing to enforce the law. The government will gain

---

184 *Background Information on the Justice and Reconciliation Process in Rwanda*, OUTREACH PROGRAMME ON THE RWANDA GENOCIDE AND THE UNITED NATIONS, (last visited Apr. 24, 2014) http://www.un.org/en/preventgenocide/rwanda/about/bgjustice.shtml.

185 *Id.*

186 *Id.*

support from locals for its role in enforcing a popular law. If a law has no public support, the local government will not gain any reputational benefits by enforcing the law. No government will want to spend its resources and receive no political capital in exchange. In fact, if a law is very unpopular there may be reputational benefits from failing to comply. In the US South in the 1960s, politicians' careers rose and fell with their willingness to oppose the racial integration supported by the federal government.[187]

Public will also interacts with judiciaries. Judiciaries can help enforce international and domestic laws. However, in order to work citizens must take advantage of this tool. If the public is unaware of or uninterested in a law, they are unlikely to take advantage of judiciaries to enforce the law.

Finally, public will interacts with civil society. When the public supports a law it can use civil society to spread awareness and encourage compliance. On the flip side of the coin, civil society can be used to increase public will when it is lacking. Civil society can work to expand public support for the law in a mutually reinforcing cycle.

Public will can be a vital tool for encouraging compliance with laws. However, as in the case of international human rights, public will can also do a great deal to undermine compliance with laws. Just as public will could harm compliance in international law, it can harm compliance in domestic law.

Just as in international law, some of the most effective domestic laws will be those that require the least public support. As in the case of CEDAW and votes for

---

[187] *See Alabama Governors: George C. Wallace*, ALABAMA DEPARTMENT OF ARCHIVES AND HISTORY, (last visited Apr. 24, 2014) http://www.archives.state.al.us/govs_list/g_wallac.html (describing Wallace's defeat and subsequent change of ideology to appeal to the Alabama's voters).

women, some laws can be carried out by those who support them. As in international law, in the domestic sphere governments that cannot enforce their laws may be wise to focus on those laws that supporters can carry out on their own.

SUMMARY

International Law may hold many lessons for domestic law. In the case of human rights treaties, many obligations are unenforceable. The most important lesson may be the vital role played by citizens in compliance. When states have civil societies and judiciaries, citizens may improve compliance. On the other hand, when citizen oppose law they may undermine compliance. The degree to which laws are enforced may reflect whether a domestic government embraces lower levels of governance and empowers its citizens.

It is unwise to pass laws with no public support. When a faction of the community supports a law they will be great allies in its enforcement, shaming those who violate the law and pressuring their neighbors and local officials to follow it. However, will be ignored at best and actively undermined at worst.

This does not mean that governments should only pass laws with universal community support. Were this case progress on social issues might never be made. However, there must be some supporters of the law. If there is civil society and local judiciaries for these supporters to access, then the chances of the law being supported are greater. A government that cannot enforce a law might partner with the locals who support it or with media and NGOs to promote the law.

Perhaps the best unenforceable laws to pass are those which require little community support. For example, it is easier to grant women the right to vote than to grant them equal rights in marriage. However, even these laws can be undermined if opposition is strong enough.

Unenforceable laws may have negative consequences for the government and for its citizens. There may be situations – human rights for instance – when it is worth the risk of passing a law that the government knows it cannot fully enforce but most laws. However, with the negative consequences and the limited chance for success, most laws are not worth risk.

Laws seem most likely to be enforced when citizens support them and local society can be leveraged to encourage enforcement. Perhaps the final lesson is that, if a national government cannot enforce its own laws, it should delegate power to its regional governments. These governments are more likely to be attuned to the public will and more able to pass laws which are both relevant and enforceable.

Chapter 7: Conclusion

Human rights treaties are an area of international law in which traditional enforcement mechanisms are non-existent or ineffective. Yet, despite the lack of enforcement mechanisms, human rights treaties still often change state behavior. This suggests that states are motivated by more than the traditional threat of enforcement by other states. An examination of international human rights treaty compliance encourages a shift in focus from traditional enforcement mechanisms to factors which may be overlooked in traditional international law compliance. Lower level, domestic factors may be as important as international factors for ensuring the effectiveness of a law. This is a lesson which could be applied across many fields. In particular, the lessons of international human rights may be applied to domestic law making and law enforcement. Approaching enforcement from the lens of international human rights may provide a new perspective on law enforcement and compliance which can be applied beyond the narrow field of human rights.

References

Alabama Governors: George C. Wallace, ALABAMA DEPARTMENT OF ARCHIVES AND HISTORY, (last visited Apr. 24, 2014) http://www.archives.state.al.us/govs_list/g_wallac.html

Alyssa Fetini. *A Brief History of Gitmo*, TIME, Nov. 12, 2008, *available at* http://content.time.com/time/nation/article/0,8599,1858364,00.html.

ANNE F. BAYEFSKY, THE UN HUMAN RIGHTS TREATY SYSTEM: UNIVERSALITY AT THE CROSSROADS (2001).

Background Information on the Justice and Reconciliation Process in Rwanda, OUTREACH PROGRAMME ON THE RWANDA GENOCIDE AND THE UNITED NATIONS, (last visited Apr. 24, 2014) http://www.un.org/en/preventgenocide/rwanda/about/bgjustice.shtml.

Beijing's Ban on 'Big and Vicious' Dogs Keep Canines on the Run, NBC NEWS, July 27, 2013, http://www.nbcnews.com/news/china/beijings-ban-big-vicious-dogs-keeps-canines-run-v19701440.

Boumediene v. Bush, 553 U.S. 723 (2008).

Carlotta Gall, *Intimidation and Fraud Observed in Afghan Election*, N. Y. TIMES, Aug. 22, 2009, http://www.nytimes.com/2009/08/23/world/asia/23afghan.html.

Catrina Stewart. *Saudi Women Gain Vote for the First Time,* THE INDEPENDENT, Sept. 26, 2011, *available at* http://www.independent.co.uk/news/world/middle-east/saudi-women-gain-vote-for-the-first-time-2360883.html.

CENTER FOR CONSTITUTIONAL RIGHTS, ARBITRARY DETENTION AT GUANTANAMO (2013) http://www.ccrjustice.org/files/Guantanamo_CCR_9-11-13%20%28A4%29.pdf.

CENTER FOR CONSTITUTIONAL RIGHTS, STOPPED, SEIZED, AND UNDER SIEGE: U.S. GOVERNMENT VIOLATIONS OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS THROUGH ABUSIVE STOP AND FRISK PRACTICES (2013) http://ccrjustice.org/learn-more/reports/stopped-seized-and-under-siege

Christian Tomuschat. *Introductory Note*, INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, http://legal.un.org/avl/ha/iccpr/iccpr.html.

Christine Chinkin, *Sources*, *in* INTERNATIONAL HUMAN RIGHTS LAW 103 (Daniel Moeckli, Sangeeta Shah & Sandesh Sivakumaran eds., 2010).

Colleen Murphy, *Lon Fuller and the Moral Value of the Rule of Law*, 24 Law and Philosphy 239 (2005).

Convention on the Elimination of All Forms of Discrimination against Women, Dec. 18, 1989, 1241 U.N.T.S 20378, *available at* https://treaties.un.org/doc/Treaties/1981/09/19810903%2005-18%20AM/Ch_IV_8p.pdf.

Curtis A. Bradley, *The Juvenile Death Penalty*, 52 DUKE L. J.485 (2002).

Daniel W. Hill, *Estimating the Effects of Human Rights Treaties on State Behavior*, 72 J. POLS. 1161 (2010).

David Sloss, *Treaty Enforcement in Domestic Courts*, *in* THE ROLE OF DOMESTIC COURTS IN TREATY ENFORCEMENT: A COMPARATIVE STUDY (David Sloss ed., 2009).

Dubravka Šimonović, *Introductory Note*, CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN, http://legal.un.org/avl/ha/cedaw/cedaw.html.

Ed Bates, *History*, *in* INTERNATIONAL HUMAN RIGHTS LAW 17 (Daniel Moeckli, Sangeeta Shah & Sandesh Sivakumaran eds., 2010).

Eric Neumayer. *Do International Human Rights Treaties Improve Respect for Human Rights?*, 49 J. CONFLICT STUDIES 925 (2006) *available at* http://www.lse.ac.uk/geographyAndEnvironment/whosWho/profiles/neumayer/pdf/Article%20in%20Journal%20of%20Conflict%20Resolution%20(Human%20Rights).pdf

FAQ: The Covenant on Civil and Political Rights, AMERICAN CIVIL LIBERTIES UNION, https://www.aclu.org/human-rights/faq-covenant-civil-political-rights-iccpr.

Frederic Megret, *Nature of Obligations*, *in* INTERNATIONAL HUMAN RIGHTS LAW 124 (Daniel Moeckli, Sangeeta Shah & Sandesh Sivakumaran eds., 2010).

GIDEON BOAS, PUBLIC INTERNATIONAL LAW: CONTEMPORARY PRINCIPLES AND PERSPECTIVES (2012).

Hans Danelius, *Introductory Note*, CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT http://legal.un.org/avl/ha/catcidtp/catcidtp.html.

Helping Countries Combat Corruption: The Role of the World Bank, *Corruption and Economic Development*, THE WORLD BANK GROUP, http://www1.worldbank.org/publicsector/anticorrupt/corruptn/cor02.htm.

H.L. A. HART, THE CONCEPT OF LAW (2nd ed., 1961).

Hugh Thirlway, *The Sources of International Law*, *in* INTERNATIONAL LAW 95 (Malcolm D. Evans ed., 3rd ed. 2010).

Human Rights Treaty Bodies, UNITED NATIONS HUMAN RIGHTS, (last visited Apr. 22,2014), http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/IndividualCommunications.aspx#OPICCPR

International Covenant on Civil and Political Rights art. 9, Dec. 16, 1966, 999 U.N.T.S. 171, *available at* http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx

Jeffrey M. Jones. *Americans Oppose Closing Gitmo and Moving Prisoners to U.S.,* GALLUP, June 3, 2009, http://www.gallup.com/poll/119393/americans-oppose-closing-gitmo-moving-prisoners.aspx.

Louis Henkin, *International Human Rights Standards in National Law: The Jurisprudence of the United States*, *in* ENFORCING INTERNATIONAL HUMAN RIGHTS IN DOMESTIC COURTS 189 (Benedetto Conforti and Francesco Francioni eds., 1997).

Malgosia Fitzmaurice, *The Practical Working of the Law of Treaties*, *in* INTERNATIONAL LAW 172 (Malcolm D. Evans ed., 3rd ed. 2010).

Markus Schmidt, *United Nations*, *in* INTERNATIONAL HUMAN RIGHTS LAW 391 (Daniel Moeckli, Sangeeta Shah & Sandesh Sivakumaran eds., 2010).

Michael S. Schmidt & Yasir Ghazi, *Iraqi Women Feel Shunted Despite Election Quota*, N.Y. TIMES, Mar. 12, 2011, http://www.nytimes.com/2011/03/13/world/middleeast/13baghdad.html?_r=0.

Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U. S.), 1986 I.C.J. 14 (June 27).

Nigel White & Ademola Abass, *Countermeasures and Sanctions*, *in* INTERNATIONAL LAW 531 (Malcolm D. Evans ed., 3rd ed. 2010).

OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, FACT SHEET NO. 22, DISCRIMINATION AGAINST WOMEN: THE CONVENTION AND THE COMMITTEE, *available at* http://www.ohchr.org/Documents/Publications/FactSheet22en.pdf.

OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS & THE INTERNATIONAL BAR ASSOCIATION, HUMAN RIGHTS IN THE ADMINISTRATION OF JUSTICE: A MANUAL ON HUMAN RIGHTS FOR JUDGES, PROSECUTORS, AND LAWYERS 71 – 111 (2003) http://www.ohchr.org/Documents/Publications/training9chapter3en.pdf.

Oman's Sultan Granting Lawmaking Powers to Councils, VOICE OF AMERICA, Mar. 12, 2011, http://www.voanews.com/content/omans-sultan-shifts-lawmaking-powers-amid-unrest--117895309/136407.html.

Oona A. Hathaway. *Do Human Rights Treaties Make a Difference?*, 111 YALE L. J. 1935 (2002).

Oona A. Hathaway, *The Promise and Limits of the International Law of Torture*, *in* TORTURE: A COLLECTION 199 (Sanford Levinson, ed., 2004).

Optional Protocol to the International Covenant on Civil and Political Rights art. 1, Dec. 16, 1966, 999 U.N.T.S. 14668, *available at* http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCCPR1.aspx

P. Sullivan & Jeffrey D. Colman, *America's Disgraceful Treatment of Gitmo Detainees*, CHICAGO TRIBUNE, Apr. 21, 2013, *http://articles.chicagotribune.com/2013-04-21/opinion/ct-perspec-0421-gitmo-20130421_1_prison-guantanamo-bay-human-rights.*

Poll: World View of United States Role Goes From Bad to Worse, BBC PRESS OFFICE, Jan. 1, 2007, http://www.bbc.co.uk/pressoffice/pressreleases/stories/2007/01_january/23/us.shtml.

Qaddafi Dead After Sirte Battle, PM Confirms, CBS NEWS, Oct. 20, 2011, http://www.cbsnews.com/news/qaddafi-dead-after-sirte-battle-pm-confirms/.

Rasul v. Bush, 542 U.S. 446 (2004)

Richard C. Dieter, The Death Penalty and Human Rights: U.S. Death Penalty and International Law, Death Penalty Information Center Oxford Round Table, *available at* http://www.deathpenaltyinfo.org/Oxfordpaper.pdf.

Roper v Simmons, 543 U.S. 551, 6 (2005).

Scott Peterson, *Egypt's Revolution Redefines What's Possible in the Arab World*, THE CHRISTIAN SCIENCE MONITOR, Feb. 11, 2011, http://www.csmonitor.com/World/Middle-East/2011/0211/Egypt-s-revolution-redefines-what-s-possible-in-the-Arab-world.

Stefanie A. Lindquist & Frank C. Cross, Stability, Predictability, and the Rule of Law: *Stare Decisis* as Reciprocity Norm, The University of Texas School of Law, Conference on Measuring the Rule of Law, 1 (Apr. 2001).

Stefanie C. Neff, *A Short History of International* Law, *in* INTERNATIONAL LAW 3 (Malcolm D. Evans ed., 3rd ed., 2010).

Strategies for Reconstructing Citizens and Government, MUNICIPAL RESEARCH AND SERVICES CENTER (June 2011), http://www.mrsc.org/focuspub/strategiesmrscfocus.aspx.

Sudan's Omar al-Bashir 'Will Not Seek Re-election', BBC NEWS, Feb.21, 2011, http://www.bbc.co.uk/news/world-africa-12521427.

TAI-HENG CHENG, WHEN INTERNATIONAL LAW WORKS: REALISTIC IDEALISM AFTER 9/11 AND THE GLOBAL RECESSION (2012).

THE GALLUP POLL: PUBLIC OPINION 2005, 226 (Alec Gallup & Frank Newport eds., 2007).

Tunisia's Ben Ali Flees Amid Unrest: Parliament Speaker Becomes Interim Leader After President of 23 Years, Facing a Mass Uprising Lands in Saudi Arabia, AL JAZEERA, Jan. 15, 2011, http://www.aljazeera.com/news/africa/2011/01/20111153616298850.html

United Nations Treaty Collection, Chapter IV 4, International Covenant on Civil and Political Rights, Status, https://treaties.un.org/Pages/ViewDetails.aspx?src=UNTSONLINE&tabid=2&mtdsg_no=IV-4&chapter=4&lang=en#Participants.

United Nations Treaty Collection, Chapter IV 8.b., Optional Protocol on the Elimination of All Forms of Discrimination against Women, Status, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8-b&chapter=4&lang=en.

United Nations Treaty Collection, Chapter IV 9., Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Status,

https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&lang=en#4

United Nations Treaty Collection, Convention on the Elimination of All Forms of Discrimination against Women, Chapter IV 8, Status https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en

Universal Human Rights Instruments, UNITED NATIONS HUMAN RIGHTS, (last visited Apr. 22 2014), http://www.ohchr.org/EN/ProfessionalInterest/Pages/UniversalHumanRightsInstruments.aspx.

UNIVERSITY OF MIAMI SCHOOL OF LAW HUMAN RIGHTS CLINIC AND IMMIGRATION CLINIC ET AL., UNITED STATES' COMPLIANCE WITH THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS WRITTEN STATEMENT ON DEPORTATIONS TO HAITI (2013) http://ccrjustice.org/files/CCR_HRC_Haiti_ShadowReport2013.pdf.

U.S. CONST. amend. VI.

William G. Mayer, *Political Generations and Shifts in Public Opinion,* THE PUBLIC PERSPECTIVE 11 (1992) http://www.ropercenter.uconn.edu/public-perspective/ppscan/35/35011.pdf.