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Why Ratify? Lessons from Treaty Ratification Campaigns

I. INTRODUCTION

On December 18, 1990, the United Nations ("UN") General Assembly approved the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families ("Migrant

681

Convention").[1] Several years later, international non-governmental organizations ("NGOs") initiated a global campaign to encourage states to ratify the Migrant Convention.[2] Thirteen member organizations continue this campaign today, including Human Rights Watch, International Labour Office, and Amnesty International.[3] The Mexican government and the UN generously funded the campaign for many years, and campaign members worked hard to produce campaign materials, organize awareness raising events, and release press statements.[4] Despite these efforts, the Migrant Convention did not enter into force until thirteen years after its adoption,[5] and to date, only thirty-seven countries have ratified it.[6] The global ratification campaign for the Migrant Convention has failed to achieve its goal of universal ratification.

In contrast, another human rights convention adopted by the UN just one year before the Migrant Convention underwent rapid and widespread ratification. On November 20, 1989, the UN General Assembly unanimously adopted the Convention on the Rights of the Child ("CRC").[7] Just ten months later, the CRC entered into force.[8] To date, all 193 UN member states except Somalia and the United States have ratified the Convention. As a tribute to the CRC's success, in May 2000 the UN General Assembly adopted an Optional Protocol to the CRC on the involvement of children in armed conflict.[9] This

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1.   The Global Campaign for Ratification of the Convention on Rights of Migrants, http://www.migrantsrights.org/about_campaign_engl.htm (last visited Feb. 21, 2007). The Migrant Convention aims to "contribute to the harmonization of the attitudes of States through the acceptance of basic principles concerning the treatment of migrant workers and members of their families" by requiring states to adhere to basic human rights standards in their dealings with migrants. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, G.A. Res. 45/158, Preamble, U.N. Doc. A/RES/45/158 (Dec. 18, 1990), http://www.migrantsrights.org/Int_Conv_Prot_ Rights_MigWorkers_Fam_1999_En.htm.

2.   December18.net, 2003 Accomplishment Report of the Steering Committee, http://www.december18.net/web/docpapers/doc1214.doc (last visited Feb. 21, 2007).

3.   *Id.*

4.   *Id.*

5.   December18.net, UN Migrant Workers' Convention, http://www.december18.net/web/general/page.php?pageID=79&menuID=36&lang=EN (last visited Feb. 21, 2007). Twenty ratifications were required for entry into force.

6.   *Id.*

7.   Convention on the Rights of the Child, http://www.childrightscampaign.org/documents/ChronologyofUniversalChildWelfare_001.pdf (last visited Dec. 26, 2007). The CRC promotes the civil, political, economic, social, and cultural rights of children.

8.   Convention on the Rights of the Child, About the CRC, http://www.childrightscampaign.org/crcabout.htm (last visited Feb. 21, 2007). Twenty ratifications were required for entry into force.

9.   G.A. Res. 54/263, U.N. Doc. A/RES/54/263 (May 25, 2000).

Optional Protocol came into force on February 12, 2002,[10] with the help of the Coalition to Stop the Use of Child Soldiers, a global campaign that lobbies governments to agree to international laws prohibiting the use of children in armed conflict.[11] Several member organizations of the Coalition overlap with members of the Migrant Convention campaign, such as Human Rights Watch and Amnesty International.[12] Yet, unlike the Migrant campaign, the Coalition has succeeded in achieving widespread ratification of the Optional Protocol. As of early 2007, 110 countries had ratified the Protocol.[13]

The Migrant Convention and CRC underwent different ratification patterns. The Migrant Convention was slow to enter into force, and few countries ratified it. The CRC, however, entered into force within a year, and all but two UN member states have ratified it. The Optional Protocol to the CRC, though implemented later, also enjoyed quick and widespread ratification. Why did the international community respond so differently to the two conventions? Both were adopted by the UN within the same year, both are human rights treaties, and both were supported by NGO-driven ratification campaigns. What factors account for the disparity in their ratification rates?

This Note explores this question by examining a series of treaties that quickly entered into force and finds that certain features of treaty ratification campaigns determine their success in achieving broad ratification. Examining these features yields important insights into state behavior. Studying both the shared characteristics of successful ratification campaigns and the aspects of treaties that make them attractive candidates for ratification reveals the reasons that states decide to accept legally binding obligations voluntarily. These insights expose the strengths and weaknesses of the three generally accepted theories of state behavior: rationalism, constructivism, and liberalism. This Note concludes that while the three theories of state behavior can explain the characteristics of successful ratification campaigns alone, a complete picture of state

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10. Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, S. Treaty Doc. No. 106-37 (2000), 39 I.L.M. 1285 (entered into force Feb. 12, 2002), *available at* http://www.unhchr.ch/html/menu2/6/crc/treaties/opac.htm.

11. Coalition to Stop the Use of Child Soldiers, What We Do, http://www.child-soldiers.org/coalition/what-we-do (last visited Feb. 21, 2007).

12. Coalition to Stop the Use of Child Soldiers, The Coalition, http://www.child-soldiers.org/coalition/ (last visited Feb. 21, 2007).

13. Office of the United Nations High Commissioner for Human Rights, Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, Signatories (last updated Oct. 22, 2007), http://www2.ohchr.org/english/bodies/ratification/11_b.htm.

behavior emerges only when applying all three theories together. Thus, an integrated theory is needed to best describe state behavior within the context of treaty ratification.

Part II of this Note briefly summarizes the current international relations theories on state behavior and discusses each theory's explanation for ratification. Part III describes treaty ratification campaigns generally, noting how they may vary. Part III also describes three ratification campaigns that supported treaties that quickly entered into force. Part IV identifies features that the three successful ratification campaigns share: (1) a close relationship with an international organization ("IO"), (2) a clear articulation of the normative argument, and (3) an emphasis on information dissemination through domestic grassroots networks. It then evaluates these shared features in light of the existing international relations theories. Part IV also examines the rates of ratification for the treaties and considers how international relations theory explains the differences in ratification pace. Finally, Part V integrates the existing theories of state behavior and suggests that states readily ratify treaties when an NGO working in close partnership with an IO makes normative arguments that persuade domestic actors.

II. THEORETICAL EXPLANATIONS OF STATE BEHAVIOR

Few international law scholars have investigated states' willingness to bind themselves to treaties.[14] Instead, most literature focuses on state decisions to comply with treaties once committed.[15] Studying the initial decision to ratify a treaty, however, can yield important insights into state behavior. Treaty law is voluntary, and thus states are bound only by those treaties they decide to ratify.[16] This conscious decision to ratify a treaty exposes states to various

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14.   For examples of scholars who have investigated why states bind themselves to treaties, see LOUIS HENKIN, HOW NATIONS BEHAVE 51-53 (1979); Mark A. Chinen, *Game Theory and Customary International Law: A Response to Professors Goldsmith and Posner*, 23 MICH. J. INT'L L. 143, 160 (2001).

15.   *See generally* Oona A. Hathaway, *Do Human Rights Treaties Make a Difference?*, 111 YALE L.J. 1935, 1938-39 (2002) (examining nations' compliance with human rights treaties); Harold H. Koh, *Why Do Nations Obey International Law?*, 106 YALE L.J. 2599, 2599-603 (1997) (reviewing two books on the subject and proposing a "more complete approach toward understanding why nations obey" international law); Richard H. McAdams, *The Origin, Development, and Regulation of Norms*, 96 MICH. L. REV. 338, 340 (1997) (discussing norms and the legal regulation of norms).

16.   Oona A. Hathaway, *Between Power and Principle: An Integrated Theory of International Law*, 72 U. CHI. L. REV. 469, 487 (2005).

pressures. Examining how states react to these pressures gives a valuable opportunity to evaluate the theories of state behavior.

There are three generally accepted international relations theories of state behavior: rationalism, constructivism, and liberalism.[17] Variations of each theory exist, but each carries a distinct set of assumptions and rationales about state behavior. Not surprisingly, the theories differ in their predictions of when a state will ratify a treaty. This Part briefly describes the theories of international law and their predictions for ratification, laying the foundation for the following Parts that will test these theories of state behavior by examining the shared factors underlying widespread treaty ratification.

A. Rationalism

Rationalism posits that states seek power and behave in ways that are comprehensible to rational outsiders.[18] The state is the key unit of analysis in rationalist theories. Rationalists assume that states have consistent, ordered preferences that they use to calculate the costs and benefits of their actions. States act in ways that maximize their utility in light of their preferences and perceptions of reality.[19] States are always "strategically competent," or capable of identifying self-interests and pursuing them rationally.[20] Under rationalism, any change in international law and politics reflects changes in the

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17. International relations theory has become an important legal tool over the past twenty-five years and therefore has found its way into mainstream international legal scholarship. *See* Anne-Marie Burley, *Law Among Liberal States: Liberal Internationalism and the Act of State Doctrine*, 92 COLUM. L. REV. 1907, 1909 (1992) (drawing a distinction between "liberal" and "nonliberal" states, and using that distinction to analyze transnational legal relations); Ryan Goodman & Derek Jinks, *Toward an Institutional Theory of Sovereignty*, 55 STAN. L. REV. 1749, 1750 (2003) (analyzing how states are empowered by international constraints and constrained by the rules and identities associated with state sovereignty); Andrew T. Guzman, *The Promise of International Law*, 92 VA. L. REV. 533, 533-35 (2006) (reviewing JACK L. GOLDSMITH & ERIC A. POSNER, THE LIMITS OF INTERNATIONAL LAW (2005)); Laurence R. Helfer, *Understanding Change in International Organizations: Globalization and Innovation in the ILO*, 59 VAND. L. REV. 649, 665-66 (2006) (analyzing international organizations' role in promoting interstate cooperation); John O. McGinnis & Mark K. Movesian, *The World Trade Constitution*, 114 HARV. L. REV. 511, 513-14 (2000) (arguing that the World Trade Organization does not threaten members' sovereignty, and that its regulatory authority should not be expanded); Eric A. Posner, *International Law: A Welfarist Approach*, 73 U. CHI. L. REV. 487, 487 (2006) (applying a "welfarist perspective" to international law).

18. Robert O. Keohane, *Realism, Neorealism, and the Study of World Politics, in* NEOREALISM AND ITS CRITICS 1, 7 (Robert O. Keohane ed., 1986).

19. *Id.* at 11.

20. Jutta Brunnee & Stephen J. Toope, *International Law and Constructivism: Elements of an Interactional Theory or International Law*, 39 COLUM. J. TRANSNAT'L L. 19, 27 (2000) (citation omitted).

distribution of power among states.[21] Indeed, power is the "currency of the international system" and relative power determines state interactions.[22]

According to rationalist theory, economic interests and objective conditions produce state interests.[23] States view international norms as an instrument for increasing state power, and these norms are enforceable only by controlling states.[24] Norms matter to the degree that they affect state actors' strategies by "reducing transaction costs, identifying focal points of coordinated behavior, and by providing frameworks for productive issue-linkage."[25] Power and self-interest motivate states; however, a state will not admit publicly that its foreign policy is driven solely by these factors.[26] Instead, rationalists explain that states use moral rhetoric in international politics to signal cooperation to other nations without actually losing power.[27]

Rationalism is often associated with coercion as a social mechanism of state behavior.[28] Coercion occurs when a state influences the behavior of other states by "escalating the benefits of conformity or the costs of nonconformity through material rewards and punishments."[29] States may be coerced to change their behavior when they believe that it is in their material interest to do so. For example, a state may coerce another state through economic sanctions such as travel bans and embargos.[30] Or, a state may use its military force to coerce another.[31]

Rationalism provides several mechanisms for predicting how states will behave. It predicts that a state will bind itself to a treaty only under certain conditions. A state will ratify a treaty when a more

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21.   Keohane, *supra* note 18, at 15.

22.   Anne-Marie Slaughter, *International Law in a World of Liberal States*, 6 EUR. J. INT'L L. 503, 507 (1995).

23.   Hathaway, *supra* note 16, at 478-79.

24.   Slaughter, *supra* note 22.

25.   Andrew Hurrell, *Norms and Ethics in International Relations*, in HANDBOOK OF INTERNATIONAL RELATIONS 137, 144 (Walter Carlsnaes et al. eds., 2002).

26.   Jack Goldsmith & Eric A. Posner, *Moral and Legal Rhetoric in International Relations: A Rational Choice Perspective*, 31 J. LEGAL STUD. S115, S124 (2002).

27.   *Id.* at S125.

28.   Ryan Goodman & Derek Jinks, *How to Influence States: Socialization and International Human Rights*, 54 DUKE L.J. 621, 634 (2004).

29.   *Id.* at 633.

30.   Laurence Boisson de Chazournes & W. Michael Reisman, *The Costs and Benefits of Economic Sanctions: The Bottom Line*, 89 AM. SOC'Y INT'L L. 337, 339-40, 351, 359 (1995).

31.   G. John Ikenberry & Charles A. Kupchan, *Socialization and Hegemonic Power*, 44 INT'L ORG. 283, 285 (1990) (finding that hegemons use material incentives and physical power to alter the political and economic incentives of other states).

powerful nation coerces it to ratify or when ratification yields beneficial results. In either case, states commit only when presented with a clear, objective reward.[32] Indeed, rationalist scholars argue that every treaty challenges lawmakers with the problem of power differentiation among states; more powerful states require accommodation, and less powerful states desire to participate as "sovereign equals."[33] Ultimately, rationalism predicts that a powerful state will ratify a treaty that promotes its interests, and a weaker state will ratify if pressured by a greater power.

Recently, Professor Oona Hathaway presented an integrated theory of international law combining several theories of state behavior that included a rationalist explanation for ratification.[34] Her theory suggests that treaty enforcement and the "collateral consequences" of ratification influence a state's decision to ratify. She argues that when legal enforcement of a treaty is more likely, fewer states will commit.[35] Professor Hathaway also contends that states are influenced by the "collateral consequences" that arise from the anticipated reactions of individuals, states, and organizations to the state's decision to commit to the treaty. Collateral consequences include the implicit or explicit linking of foreign aid or trade to ratification and the influence of ratification on state reputation.[36] These combined effects influence a state's decision to commit to a treaty.

A common critique of rationalism is that it fails to account for the ratification of human rights treaties. Members of human rights treaties do not receive economic benefits, such as trade privileges, and they incur the cost of diminished sovereignty.[37] Professors Jack Goldsmith and Eric Posner responded to this critique by examining the ratification pattern of the International Covenant on Civil and Political Rights ("ICCPR"),[38] which contains first-generation civil and

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32. *See* Chinen, *supra* note 14, at 161 (arguing that either the conditions that make cooperation possible under repeated prisoner's dilemmas must be present to explain treaties, or treaties result from communication or other factors that do not fit appropriately in a standard prisoner's dilemma or coordination game).

33. OSCAR SCHACTER, INTERNATIONAL LAW IN THEORY AND PRACTICE 80 (1991).

34. Hathaway, *supra* note 16, at 498.

35. *Id.* at 514. Actors in both the domestic and transnational realms may push states away from committing to a treaty if those actors increase the costs of treaty membership by increasing the likelihood of compliance.

36. *Id.* at 508-09.

37. Oona A. Hathaway, *The Cost of Commitment*, 55 STAN. L. REV. 1821, 1827 (2003) ("[H]uman rights treaties impose a cost . . . because they require ratifying nations to surrender power to inspect the relationship between the state and its citizens.").

38. Chinen, *supra* note 14, at 157.

political rights and is one of the first binding international human rights treaties.[39] They found that while the costs of ratifying the ICCPR are low because there is little enforcement,[40] the benefits may be significant. States that ratify treaties have the benefit of "cheap talk."[41] In other words, the processes and conventions associated with treaties provide information that enhances cooperation or provides assurance.[42] A treaty, therefore, identifies "focal points that align expectations about which behaviors count as cooperation"[43] and lowers the communication and transaction costs of cooperation.[44]

Ultimately, Goldsmith and Posner concluded that widespread ratification of human rights treaties occurs when the costs of ratification are very small.[45] All ratifying states receive the benefit of immunity from international criticism, and smaller states may be more likely to receive aid if they ratify.[46] Treaties offer different advantages to more powerful states because they represent clear and well-defined obligations and provide for explicit dispute resolution.[47] Rationalism, therefore, explains the ratification of human rights treaties in terms of material costs and benefits to the ratifying state.

In sum, rationalism assumes that states calculate the costs and benefits of their behavior before acting. These costs and benefits are determined by the state's self-interest and relative power. Therefore, rationalism predicts that states will ratify treaties when it is in their self-interest to do so, and weaker states may be coerced to ratify treaties when powerful states offer material rewards and punishments. A state will ratify when a treaty offers material benefits or when a more powerful state coerces ratification.

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39. First generation rights are fundamentally civil and political. They include, for example, freedom of religion, right to a fair trial, and right to vote.

40. Chinen, *supra* note 14, at 154-55.

41. GOLDSMITH & POSNER, *supra* note 17, at 89.

42. *Id.* (observing that the final version of treaties "often requires many of the parties to do nothing different from what they have done in the past"). Goldsmith and Posner present a theory of state rationalism that is grounded in game theory and emphasizes the states' strategies through interactions.

43. *Id.* at 86.

44. *Id.*

45. *Id.* at 132.

46. *Id.* at 128.

47. Andrew T. Gutzman, *A Compliance-Based Theory of International Law*, 90 CAL. L. REV. 1823, 1873 (2002).

B. Constructivism

Despite the strong rationalist history of political science scholarship, international legal scholarship generally has remained rooted in constructivist, "normative" models.[48] Constructivism seeks to understand the normative influence on state behavior, asking how norms evolve and what constitutes a state's identity.[49] In general, constructivist models have four primary characteristics.[50] First, the theories emphasize the role of ideas in constructing social change and state behavior.[51] Ideas are individual beliefs about right and wrong that may develop into norms,[52] whereas norms "prescribe patterns of behavior which give[ ] rise to normative expectations as to what *ought* to be done."[53] Therefore, once ideas have become norms, they may influence the behavior of states. Scholars have devoted a great deal of study to the process of "socialization" by which ideas become norms.[54]

Second, constructivist theories posit that agents may be subjective decisionmakers.[55] Actors, therefore, are capable of being persuaded by normative arguments.[56] Contrary to a rationalist cost-benefit analysis, persuasion is the active inculcation of norms; persuaded actors "internalize" new norms and redefine their interests and identities accordingly.[57] States only internalize a norm when "consciously convinced of the truth, validity, or appropriateness of a norm."[58] Under constructivism state actors may be persuaded to change their interests and behavior.

Third, constructivism focuses on the holistic nature of the social environment.[59] Social structures give meaning to the interests of

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48. Oona A. Hathaway & Ariel N. Lavinbuk, *Rationalism and Revisionism in International Law*, 119 HARV. L. REV. 1404, 1405 (2006).

49. *Id.* at 1411.

50. James Fearon & Alexander Wendt, *Rationalism v. Constructivism: A Skeptical View, in* HANDBOOK OF INTERNATIONAL RELATIONS, *supra* note 25, at 52, 57.

51. *Id.*

52. Thomas Risse & Kathryn Sikkink, *The Socialization of International Human Rights Norms into Domestic Practices: Introduction, in* THE POWER OF HUMAN RIGHTS 1, 7 (Thomas Risse et al. eds., 1999).

53. Andrew Hurrell, *supra* note 25, at 143 (emphasis added).

54. *See generally* Harold H. Koh, *Internalization Through Socialization*, 54 DUKE L.J. 975, 975-82 (2005) (discussing Professors Ryan Goodman and Derek Jinks' work in the area of socialization and international law).

55. Fearon & Wendt, *supra* note 50.

56. Brunnee & Toope, *supra* note 20.

57. Goodman & Jinks, *supra* note 28, at 635.

58. *Id.* Persuasion occurs when states actively "change their minds." *Id.*

59. Fearon & Wendt, *supra* note 50, at 57-58.

states through norms, identity, knowledge, and culture.[60] State interests are formed through interactions with other states because social structures both constrain actors and enable them to develop their interests.[61] Importantly, these "shared understandings" shape the social environment itself.[62] Transnational networks, therefore, are important influences on state behavior because a state's interest changes as the interests of its neighboring states change.[63] In this vein, Martha Finnemore and Kathryn Sikkink argue that a "norm cascade" results when a critical mass of states' behavior reaches a tipping point.[64] Once enough states have adopted a norm, other states will be motivated by a desire to enhance their legitimacy, reputation, and esteem to also adopt the norm.[65] External normative pressures become more powerful once a critical mass of states behaves in a certain way.[66] State interactions, therefore, inform and change state interests.

Fourth, constructivism adopts a constitutive rather than causal approach to understanding state behavior. Simply stated, what a state wants depends on who the state is.[67] For example, a constitutive theory of statehood argues that a state's identity depends on its network of social relations rather than its *de facto* characteristics.[68] Therefore, a constructivist perception of social structure focuses on the identity of an actor itself as generating state interests, rather than state identity as an exogenous variable.[69] States are influenced by their neighbors and by how their neighbors are behaving.

Critics of constructivism claim that it permits too much variation on substantive issues.[70] For example, constructivism does not explain why some norms are persuasive and others are not. In addition, constructivist theories rarely predict state behavior, tending

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60. Brunnee & Toope, *supra* note 20, at 29.

61. *Id.* at 31.

62. *Id.*

63. MARGARET KECK & KATHRYN SIKKINK, ACTIVISTS BEYOND BORDERS 211-17 (1998).

64. Martha Finnemore & Kathryn Sikkink, *International Norm Dynamics and Political Change*, 52 INT'L ORG. 887, 895 (1998).

65. *Id.*

66. *Id.*

67. Risse & Sikkink, *supra* note 52, at 9.

68. JAMES CRAWFORD, THE CREATION OF STATES IN INTERNATIONAL LAW 15-19 (2005) (presenting a constitutive theory of statehood that defines a state as a state when it is recognized as a sovereign by other states).

69. *See* Brunnee & Toope, *supra* note 20, at 30 (explaining that the idea that identity formation is relational is a central constructivist concept).

70. *See* Fearon & Wendt, *supra* note 50, at 56 (arguing that constructivism is not a theory of international law because of substantive variations in models).

to be more descriptive.[71] Constructivism, nevertheless, adds an important idea to the behavioral theories of international law: state power is not the only, nor even the central, influence on states; rather, normative arguments can persuade states to act. Thus, changes in international norms can lead to changes in state behavior.[72]

Norms also may be diffused through transnational networks that socialize states using normative arguments. NGO transnational issue networks are essential to this diffusion process because NGOs use communicative structures to pressure target actors to ratify treaties in both the domestic and international political spheres.[73] These networks depend on the power of information, ideas, and strategies to persuade states to ratify.[74] Risse and Sikkink argue that the issues best suited for these networks embody powerful norms, such as preventing bodily harm to vulnerable individuals and securing legal equality of opportunity.[75] Once a state has internalized these diffused norms, it is more likely to ratify a treaty that promotes them.

Additionally, state behavior can be transformed through "linkage," which occurs when an advocacy network links a principled idea to material goals, such as military aid, economic aid, or trade benefits.[76] International organizations are often effective linkage vehicles because they can promote cooperation through ongoing contact among members.[77] For example, the World Trade Organization has connected trade benefits with a variety of treaties, such as the Agreement on Trade-Related Intellectual Property Rights ("TRIPS").[78] Linkage goes beyond rationalism to explain state behavior because it provides a mechanism for exposing states to norms and encouraging their acceptance.

In summary, constructivism offers several important insights into the process of ratification. A state ratifies a treaty in part because of its commitment to the norms or ideas that it embodies,[79] so states must first be persuaded by these norms. Therefore, actors desiring ratification, both on the state and transnational level, may appeal to a

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71.   Hathaway, *supra* note 16, at 485.

72.   Risse & Sikkink, *supra* note 52, at 2.

73.   *Id.* (arguing that members of transnational advocacy networks are bound by common principles and a normative agenda for enacting transnational social change).

74.   *Id.* at 22.

75.   *Id.* at 27.

76.   Kathryn Sikkink, *Human Rights, Principled Issue-Networks, and Sovereignty in Latin America*, 47 INT'L ORG. 411, 437 (1993).

77.   *Id.*

78.   José E. Alvarez, *The WTO as Linkage Machine*, 96 AM. J. INT'L L. 146, 147 (2002).

79.   Hathaway, *supra* note 16, at 477.

state's normative ideals by strategically using information, symbols, and stories.[80] Once a treaty's values are engaged or developed within a state, the state will be motivated to ratify. International organization efforts to link normative ideas to material goals also may encourage states to ratify.

C. Liberalism

Liberalism focuses on the impact that domestic politics has on state behavior. Liberal theories assume that individuals and private groups are the key actors in state behavior. States themselves are not insignificant, but state preferences are determined by domestic politics rather than material factors like relative state power.[81] Unlike rationalism and constructivism, therefore, liberalism asserts that the relevant actors are "individuals and groups acting in domestic and transnational" society.[82] Liberalism focuses on the domestic realm, state-society relations, and the interest-group dynamics within each state.[83] Consequently, under liberalism, state behavior results from political, legal, economic, social, and cultural domestic factors rather than the relative distribution of international power.[84] Therefore, to understand the behavior of states, researchers must examine domestic politics and structures because the state interacts with political players at the domestic level, and this interaction determines state preferences.[85] Ultimately, the aggregation of domestic and transnational individual interests becomes the interests of the state.[86]

Structural links between international institutions and domestic actors are also important to liberal theory.[87] Dean Anne-Marie Slaughter argues that "government networks" are "key feature[s] of world order in the twenty-first century."[88] Slaughter uses the term "government network" to describe how individual state

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80. KECK & SIKKINK, *supra* note 63, at 16.
81. David Schleicher, *Liberal International Law Theory and the United Nations Mission in Kosovo: Ideas and Practice*, 14 TUL. J. INT'L & COMP. L. 179, 194 (2005) ("[I]ndividual policy actors—and not rational, unitary states—are given the lead position in negotiating norms in transnational space.").
82. Anne-Marie Slaughter, *International Law in a World of Liberal States*, 6 EUR. J. INT'L L. 503, 508 (1995).
83. *Id.*
84. *Id.*
85. *Id.* at 510-11.
86. *Id.*
87. Kal Raustiala & Anne-Marie Slaughter, *International Law, International Relations and Compliance, in* HANDBOOK OF INTERNATIONAL RELATIONS, *supra* note 25, at 538, 547.
88. ANNE-MARIE SLAUGHTER, A NEW WORLD ORDER 1 (Princeton Univ. Press 2004).

domestic institutions interact with their international counterparts.[89] These networks create patterns of relations among government units—in both the domestic and international spheres—that influence state behavior.[90]

In addition, liberal theory contends that states behave according to their internal constitutions.[91] Distinguishing between "liberal" and "non-liberal" regimes, the theory defines liberal regimes as those with democratically elected government and market economies.[92] This distinction aids empirical evaluation of state behavior because scholars classify states as liberal or non-liberal and compare their conduct. But, liberal theory applies to all states, including totalitarian, authoritarian, and theocratic regimes, because it emphasizes the importance of domestic politics in all types of governments.[93] The emphasis on domestic politics is liberalism's important contribution to state behavior theories.

A common critique of liberal theory is that the complexity of interest-group politics precludes liberalism from predicting how nations will behave.[94] Liberal theory is useful, however, because it opens the "black box" of domestic politics that otherwise might not be considered as influencing state behavior.[95] Liberalism considers how domestic groups influence and shape state behavior.

Although liberalism offers important insights into state behavior, little scholarship on treaty ratification has been written from a liberal perspective. Because liberal theory argues that domestic interests shape states' actions internationally,[96] a liberal theory of ratification would predict that states ratify treaties when powerful domestic actors lobby for ratification. It follows that ratification is achieved more quickly in states where domestic actors can express preferences to their governments.[97] Ratification occurs more readily in democratic states because such states are more responsive to the preferences of domestic interest groups.[98] Indeed, Risse and Sikkink

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89. *Id.* at 14.

90. *Id.*

91. José E. Alvarez, *Do Liberal States Behave Better? A Critique of Slaughter's Liberal Theory*, 12 EUR. J. INT'L L. 183, 184 (2001).

92. *Id.*

93. Slaughter, *supra* note 22, at 509.

94. Gutzman, *supra* note 47, at 1839.

95. Hathaway, *supra* note 16, at 484.

96. Andrew Moravcsik, *Taking Preferences Seriously: A Liberal Theory of International Politics*, 51 INT'L ORG. 513, 513-14 (1997).

97. *Id.* at 514.

98. *See* Slaughter, *supra* note 22, at 510 (discussing significant characteristics of relations between states, domestic actors, and transnational society).

observe that ratification campaigns are most successful in countries "that have internalized the discourse of liberalism to a greater degree."[99] Therefore, ratification is achieved more quickly in states where domestic actors are able to express their preferences to their governments.

Liberalism differs from rationalism and constructivism because it argues that domestic politics—and not international factors like state power or transnational networks—determine state preferences. Interest groups within a state are powerful actors and advocates that should target these groups if they seek to encourage certain state behavior, such as ratification. A liberal approach is useful, therefore, because it considers the influence of domestic activities on state behavior.

Rationalism, constructivism, and liberalism suggest different causes for state behavior and offer different predictions as to when states will ratify a treaty. Rationalism predicts that states ratify treaties when ratification offers material benefits or when coerced by a more powerful state. Constructivism posits that states ratify treaties when they share the values embodied in the treaty. If a state does not share these values initially, it may be persuaded by normative arguments. Liberal theories expect that states ratify treaties when domestic actors support and lobby for ratification and predict that if powerful domestic actors oppose ratification, then ratification is unlikely. The next Part of this Note assesses the comparative predictive power of these theories of state behavior by examining the common factors underlying ratification of treaties supported by NGO ratification campaigns.

III. CHARACTERISTICS OF SUCCESSFUL TREATY RATIFICATION CAMPAIGNS

The last Part discussed three general theories of state behavior and their respective explanations for why states choose to ratify treaties. This Part examines the shared characteristics of three successful ratification campaigns. Scrutinizing these characteristics will shed light on the accuracy of the three theories described above. This Part begins by discussing treaty ratification campaigns generally and how they may vary. It then focuses on three treaty ratification campaigns: the Coalition for the International Criminal Court, the Global Ban on Landmines campaign, and the campaign to ratify the Framework Convention on Tobacco Control.

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99.   Risse & Sikkink, *supra* note 52, at 38.

A. Variation in Function, Leadership, and Goal

A treaty ratification campaign coordinates global efforts to achieve widespread ratification of a particular treaty. Diverse sources fund these campaigns, which typically involve several types of international and domestic actors.[100] As of December 2006, almost twenty global treaty ratification campaigns existed.[101] These treaty campaigns vary substantively and include human rights, trade, health, labor, military, and environmental law treaties. All treaty ratification campaigns, however, rally around a particular treaty and prioritize ratification as the main goal.

Both IOs, such as the International Labor Organization (ILO) and non-state actors, such as NGOs, have spearheaded campaigns. For example, in 1980 the UN created a Working Group on the Encouragement of Universal Acceptance of Human Rights Instruments to advance ratification of the major human rights treaties.[102] The UN directed the Working Group to ask non-ratifying states why they opposed ratification. The Group used the answers it received to facilitate expedited ratification based on mutually agreeable solutions.[103] NGO ratification networks, which emerged in the 1960s in response to the UN's failure to respond to systematic, global human rights violations, function similarly and have taken the forefront in global ratification efforts.[104]

The goals of ratification campaigns also differ because a campaign may devote resources either to convincing the most powerful nations to ratify or to achieving the greatest number of ratifications possible. The aim of a ratification campaign often shifts as more states become members. For example, at an early stage of ratification, the goal may be for the treaty to enter into force;[105] later in the process, the goal may be universal ratification.[106] Campaigns also may push to

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100. For example, the Coalition for the International Criminal Court is funded by the UN and also solicits private donations. Coalition for the International Criminal Court, Make a Donation, http://www.iccnow.org/?mod=donate (last visited Feb. 23, 2008).

101. *See* Table 1, *infra* p. 117 (listing global ratification campaigns).

102. David Weissbrodt, *A New United Nations Mechanism for Encouraging the Ratification of Treaties*, 4 HUM. RTS. Q. 333, 333 (1982).

103. *Id.* at 336.

104. Hans P. Schmitz & Kathryn Sikkink, *International Human Rights*, in HANDBOOK OF INTERNATIONAL RELATIONS, *supra* note 25, at 517, 531.

105. International Food Security Treaty Campaign, End Hunger by Law, http://www.treaty.org/MainFrame.html (last visited Feb. 23, 2007).

106. *See* International Rehabilitation Council for Torture Victims, Convention Against Torture, http://www.irct.org/Default.aspx?ID=27 (last visited Feb. 23, 2007) (stating that

reduce the number of states making reservations, declarations, or understandings, which can effectively "gut" a treaty.[107] Although ratification campaigns differ in many respects, most seek widespread ratification of a particular treaty and develop a strategy to do so.

Table 1: GLOBAL RATIFICATION CAMPAIGNS	
Treaty	**Ratification campaign**
Arms Trade Treaty	Control Arms Campaign
Convention on the Rights of All Migrant Workers and Members of Their Families	The Global Campaign for Ratification of the Convention on Rights of Migrants
Convention on the Rights of the Child	Campaign for the Convention on the Rights of the Child; Coalition to Stop the Use of Child Soldiers
Convention to Ban Landmines	International Campaign to Ban Landmines
Cybercrime Treaty	Coalition of the Cybercrime Treaty
Framework Convention for Tobacco Control	Network for Accountability of Tobacco; Transnationals, Framework Convention Alliance
Global Wellness Fund Treaty	Alliance for the Global Wellness Fund Treaty
International Food Security Treaty	The International Food Security Treaty Campaign
Kyoto Protocol	Campaign against Climate Change
Protocol to the African Charter and the Rights of Women in Africa	Human Rights Watch: Take Action
Rome Statute	Coalition for the International Criminal Court
Stockholm Convention, Rotterdam Convention and the Montreal Protocol (Persistent organic pollutants effort)	Pesticide Action Network North America
The Agreement on the Conservation of Albatrosses and Petrels	Save the Albatross
UN Convention Against Torture	Campaign for the Ratification of the UN Convention Against Torture

universal ratification is the goal of the Campaign for the Ratification of the UN Convention against Torture).

107. Jeffery Huffines, *The Role Of N.G.O.s in U.S. Ratification of Human Rights Treaties*, 3 ILSA J. INT'L & COMP. L. 641, 644 (1997).

UN Terrorism Conventions	UN Terrorism Working Group
Water Treaty	Right to Water Campaign
Worst Forms of Child Labor Convention	Red Card to Child Labor Campaign (International Labor Organization)

B. Treaties with Ratification Campaigns

The campaigns analyzed in this Part were selected because each is NGO-driven, began in the 1990s, seeks universal ratification of a multilateral treaty, and supports a treaty that rapidly entered into force. Importantly, the treaties these campaigns supported vary substantively so that the subsequent analysis is not limited to one type of treaty (*i.e.*, human rights). One campaign establishes an international criminal court, the second bans the use of a military weapon, and the third promotes global health. The campaigns arose in different political contexts and in response to different global problems. Therefore, the features they share are not a function of similar subject matter or an overlap in ratification efforts.

1. Coalition for the International Criminal Court

The Rome Statute established the International Criminal Court ("ICC") to hold individuals criminally responsible for "the most serious crimes of concern to the international community as a whole."[108] These crimes include genocide, crimes against humanity, and war crimes.[109] The Rome Statute obligates state parties to cooperate fully in the investigation and prosecution of crimes before the court. In addition, the ICC may exercise personal jurisdiction over state parties' citizens, a feature that distinguishes the ICC from other permanent international tribunals, such as the International Court of Justice. The ICC contains a principle of "complementarity," which vests primary jurisdiction in state parties unless the ICC determines that the state is "genuinely unwilling or unable" to prosecute.[110] The principle of complementarity is controversial, however, because it empowers the ICC to seize jurisdiction over a case according to its own, unreviewable determination of state unwillingness or inability to prosecute. Therefore, a state desiring jurisdiction over a case may be forced to transfer it to the ICC.

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108. Rome Statute of the International Criminal Court, art. 5, U.N. Doc. A/CONF.183.9 (1998), *available at* http://untreaty.un.org/cod/icc/statute/romefra.htm [hereinafter Rome Statute].

109. *Id.* arts. 5-8.

110. *Id.* art. 17.

The ICC and the UN share a complex partnership. Although the ICC is not a UN court, it shares a very close philosophical, legal, and political relationship with the UN. The Rome Statute was negotiated under the UN's auspices; indeed, the conferences to draft the ICC were held in the offices of the UN.[111] Article 2 of the Rome Statute states that the "United Nations and the Court agree that . . . they shall cooperate closely."[112] Importantly, the ICC may exercise jurisdiction over a case referred to it by the UN Security Council.[113] The UN also holds an important check on the Court: the UN Security Council has the authority to delay a prosecution for a year.[114] As such, the UN can postpone controversial trials. Thus, UN officials had a significant role in shaping the ICC and continue to play a role in its function.

Entry into force. The Rome Statute opened for signature in July 1999 and entered into force on July 1, 2002. Ratification occurred quickly in the first years that the treaty was open for signature. By the end of 2002, eighty-seven states had ratified. In the next three years, however, the rate of ratification declined substantially.[115] In 2003 and again in 2004, only five states became parties to the statute, and just three additional states ratified in 2005.[116] To date, 104 states have ratified the Rome Statute,[117] with the notable exceptions of the United States and China. Further, the U.S. has consistently shown an "attitude of active opposition" to the ICC.[118] On May 6, 2002, the Bush Administration announced that the United States did not intend to become a party to the Rome Statute,[119] and Defense Secretary Donald Rumsfeld explained in a press statement that the Administration had "a number of serious objections" to the ICC and would not become a

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111. Interview with Brigitte Suhr, Reg'l Coordinator, Coal. for the Int'l Criminal Court, in Nashville, Tenn. (Jan. 18, 2007).

112. Negotiated Relationship Agreement between the International Criminal Court and the United Nations, art. 3, http://www.icc-cpi.int/library/asp/ICC-ASP-3-Res1_English.pdf (last visited Feb. 23, 2008).

113. Rome Statute, *supra* note 108, art. 13.

114. *Id.* art. 16.

115. Int'l Criminal Court, *Report of the Bureau on ratification and implementation of the Rome Statute and on participation in the Assembly of State Parties*, ICC-ASP/5/26 (Nov. 17, 2006) http://www.icc-cpi.int/library/asp/ICC-ASP-5-26_English.pdf.

116. COAL. FOR THE INT'L CRIMINAL COURT, STATE PARTIES TO THE ROME STATUTE OF THE ICC 1-2 (2006), http://iccnow.org/documents/RATIFICATIONSbyUNGroups.pdf.

117. *Id.*

118. Gerhard Hafner, *An Attempt to Explain the Position of the USA Towards the ICC*, 3 J. INT'L CRIM. JUST. 323, 324 (2005) (internal quotation marks omitted).

119. Curtis A. Bradley, *U.S. Announces Intent Not to Ratify International Criminal Court Treaty*, ASIL INSIGHTS, May 2002, http://www.asil.org/insights/insigh87.htm.

party.[120] Although ratification of the Rome Statute has slowed, its rapid ratification signaled the campaign's success.

Campaign characteristics. A group of NGOs created the Coalition for the International Criminal Court ("CICC") in 1995, even before the language of the Rome Statute was finalized.[121] The CICC initially sought to "support the establishment of a fair, effective and independent International Criminal Court" and help the Rome Statute enter into force.[122] Once the Rome Statute was open for ratification, the CICC shifted its focus to achieving universal ratification.[123] Today, it states its purpose as "support[ing] the *universal* establishment of a fair, effective and independent International Criminal Court" (emphasis added).[124] This statement appeals to norms of autonomy, fair process, and justice. An independent international court that sits to fairly try individuals accused of heinous crimes is also an attractive cause.

The CICC recognizes the importance of information dissemination in persuading states to ratify the Rome Statute. It publishes various reports that inform and educate states about the ICC.[125] One of these publications is a Manual on the Ratification and Implementation of the Rome Statute,[126] which describes the ICC's purpose, legal provisions, and ratification procedures for any interested state government. When targeting a specific country, the CICC writes papers specifically targeted to that country. Disseminating this information "energizes" national groups and facilitates ratification.[127] The CICC developed dozens of fact sheets, core documents, and books with titles such as "The Case for Ratification," "Ensuring Justice for Children," and "Ensuring Justice

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120. News Release, Secretary Rumsfeld Statement on the ICC Treaty (May 6, 2002), http://www.defenselink.mil/releases/release.aspx?releaseid=3337.

121. Coalition for the International Criminal Court, Welcome, http://iccnow.org/ (last visited Feb. 23, 2008).

122. Message from the Coalition of the International Criminal Court, William R. Pace, Convener of the Coalition for the International Criminal Court (Feb. 10, 2005) http://www.iccnow.org/index.php?mod=browserdoc&type=5&b=2.

123. *Id.* at 2.

124. *Id.* at 1.

125. These include *ICC Monitor, Insight on the ICC, ICC Update, Agenda CPI, European Newsletter, Al Mahkamah,* and *ICC-Africa.*

126. RIGHTS AND DEMOCRACY & INT'L CTR. FOR CRIMINAL LAW REFORM AND CRIMINAL JUSTICE POLICY, INTERNATIONAL CRIMINAL COURT: MANUAL FOR THE RATIFICATION AND IMPLEMENTATION OF THE ROME STATUTE (2000), http://www.iccnow.org/documents/RightsDem&ICCLR_Manual_Eng.pdf.

127. Interview, *supra* note 111.

for Victims."[128] As the titles suggest, these documents present normative arguments for ratification. The CICC, therefore, targets domestic groups and persuades them to act by appealing to strong norms.

The CICC also relies on the efforts of its member organizations. Over 2,000 organizations in more than fifty nations participate in the CICC. These organizations aid the campaign as central players in the CICC's advocacy missions.[129] Advocacy missions focus campaign efforts for a period in a particular state to motivate ratification. During these missions, the CICC regional coordinator depends on four or five national NGOs to work with the press and influence civil society through political momentum and public support. If the missions make ratification a national priority, then ratification is likely.[130]

2. International Campaign to Ban Landmines

The Convention to Ban Landmines ("Ottawa Convention") is an international agreement that bans antipersonnel landmines. Several actors advocated for the ban including NGOs, the International Committee of the Red Cross ("ICRC"), and the UN. The ICRC helped steer the Ottawa Process during treaty negotiations by initiating expert conferences and publishing reports on the tragic effects of landmines.[131] The ICRC announced that only a complete ban could solve the humanitarian disaster caused by landmines.[132] Similarly, interested UN agencies, such as the Department of Humanitarian Affairs ("UNDHA") and the Children's Fund ("UNICEF"), called for a complete ban in 1994,[133] and the High Commission for Refugees ("UNHCR") joined the two UN agencies several months later in publicly supporting a ban.[134] The broad coalition to abolish the use of landmines thus carried the official support of the UN humanitarian agencies.

Entry into force. The International Campaign to Ban Landmines ("ICBL") launched an extremely successful campaign,

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128. Coalition for the International Criminal Court, Fact Sheets and Core Texts, http://www.iccnow.org/?mod=fsdoc (last visited Feb. 23, 2008).

129. Interview, *supra* note 111.

130. *Id.*

131. Don Hubert, *The Landmine Ban: A Case Study in Humanitarian Advocacy*, WATSON INST. FOR INT'L STUD., 2000, at 9-10, http://www.watsoninstitute.org/pub/op42.pdf.

132. *Id.*

133. *Id.* at 11.

134. *Id.*

directing the Ottawa Convention from its opening for signature on December 3, 1997, to its entry into force on March 1, 1999.[135] The Ottawa Convention entered into force more quickly than any other human rights treaty in history.[136] Fifty-seven countries ratified the Ottawa Convention within one year, and as of November 2007, 155 countries had ratified.[137] Notably, eleven countries have failed to ratify the Ottawa Convention,[138] including several powerful nations such as the United States, China, and Russia. While the United States has not ratified the Ottawa Convention, it has publicly supported the "spirit" of the treaty.[139] In a report entitled "To Walk the Earth in Safety" released by the State Department in 2004, the United States publicized its "commitment to help rid the world of landmines that threaten civilians around the world."[140]

Campaign characteristics. The ICBL was founded in 1991 with the goal of eradicating antipersonnel landmines globally.[141] Professor Richard Price noted that the campaign's key strategy focused on creating an international norm prohibiting antipersonnel landmines.[142] The ICBL framed the landmine issue as a humanitarian disaster and educated both policymakers and the public through politicized debates.[143] Once several states had ratified the treaty, reaching a "critical mass," then global social pressures fostered more

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135. *Id.* at 14. The official title of the Convention is the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction.

136. International Campaign to Ban Landmines, What is the Mine Ban Treaty?, http://www.icbl.org/tools/faq/treaty/what (last visited Feb. 23, 2008).

137. International Campaign to Ban Landmines, State Parties, http://www.icbl.org/treaty/members (last visited Feb. 23, 2008).

138. *Id.* These countries are Burma, China, Cuba, India, Iran, Nepal, North Korea, Russia, South Korea, Pakistan, Singapore, United States, and Vietnam.

139. Sarah Elizabeth Kreps & Anthony Clark Arend, *Why States Follow the Rules: Toward a Positional Theory of Adherence to International Legal Regimes*, 16 DUKE J. COMP. & INT'L L. 331, 374 (2006).

140. *Id.* (citing OFFICE OF WEAPONS REMOVAL & ABATEMENT, U.S. DEP'T OF STATE, THE UNITED STATES COMMITMENT TO HUMANITARIAN MINE ACTION: TO WALK THE EARTH IN SAFETY 10 (5th ed. Aug. 2004), *available at* http://www.state.gov/t/pm/rls/rpt/walkearth/2004/). The report noted:

> This effort supports the U.S. Strategic Objectives to advance sustainable development and global interests by providing a humanitarian response to the harmful social and economic effects generated by landmines and unexploded ordinance and to advance peace and security by promoting regional stability through the use of mine action as a confidence-building measure.

Id.

141. International Campaign to Ban Landmines, Campaign History, http://www.icbl.org/campaign/history (last visited Feb. 23, 2008).

142. Richard Price, *Reversing the Gun Sights: Transnational Civil Society Targets Land Mines*, 32 INT'L ORG. 613 (1998).

143. *Id.* at 640.

state support.[144] Professor Price emphasized that the relative simplicity of the norm contributed to its rapid acceptance;[145] would-be violators had "little room to finesse questions of violation and compliance through interpretive ambiguities of the norm."[146] Visual media, including traveling photography exhibits, videos highlighting the impact of landmines, and televised documentaries, effectively appealed to the norm of protecting human health.[147]

The ICBL identifies itself as a flexible network of national groups that works "from the bottom up" and engages domestic organizations.[148] Indeed, the "strength and cohesiveness of a diverse set of NGOs was a crucial factor in the success of the campaign."[149] Close links between domestic campaigns and the ICBL were the campaign's greatest strength and ensured consistent and coordinated lobbying.[150]

3. Campaign to Ratify the Framework Convention on Tobacco Control

The Framework Convention on Tobacco Control ("FCTC") is a global public health treaty created and negotiated by the World Health Organization ("WHO").[151] The FCTC aims to reduce tobacco-related deaths and diseases around the world.[152] The treaty requires state parties to impose restrictions on tobacco advertising, sponsorship and promotion, and to establish new packaging and labeling for tobacco products.[153] In 1996, the World Health Assembly ("WHA") requested that the WHO Director-General develop a treaty to control the spread of tobacco addiction.[154] Director-General Gro Harlem

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144. *Id.* ("Once states perceive that an incipient norm has reached a certain level of support among states, a second social systemic process—emulation—is likely to play a stronger role as key decision makers embrace the new norm in order to avoid outlier status.").

145. *Id.* at 641.

146. *Id.*

147. *See* Hubert, *supra* note 131, at 31-32 ("Effective use was also made of the visual media including traveling photograph exhibits, videos highlighting the impact of landmines, and televised documentaries.").

148. Price, *supra* note 142, at 641.

149. Hubert, *supra* note 131, at 32.

150. *Id.* at 33.

151. The World Health Organization, The WHO FCTC: A Global Health Treaty, http://www.who.int/tobacco/framework/background/en (last visited Feb. 23, 2008). A framework treaty includes provisions for negotiating separate subsidiary agreements periodically. SCHACTER, *supra* note 33, at 77.

152. *An International Treaty for Tobacco Control*, WORLD HEALTH ORG., Aug. 12, 2003, http://www.who.int/features/2003/08/en/.

153. *Id.*

154. Sean D. Murphy, *Adoption of the Framework Convention on Tobacco Control*, 97 AM. J. INT'L L. 689, 689 (2003) ("On May 25, 1996, the World Health Assembly (WHA) of the World

Brundtland put the global tobacco treaty on a "fast track." In October 1999 and March 2000, the WHO and its member states convened working groups to draft elements of the global tobacco treaty.[155] In May 2003, the WHA adopted the text of the FCTC proposed by the WHO, and the treaty opened for signature on June 16, 2003.

Entry into force. The FCTC opened for signature on June 16, 2003.[156] On February 27, 2005, less than two years later, the fortieth required state ratified the treaty, bringing it into force.[157] Unlike other treaties, it has maintained its momentum and achieved impressive ratification numbers every year since it opened for signature.[158] As of November 2007, 151 states were party to the FCTC.[159] Although the United States has not yet ratified the treaty, it was among the first wave of nations to sign in May 2004.[160]

Campaign characteristics. Over 200 NGOs have promoted the FCTC, but two have official relations with the WHO:[161] the Framework Convention Alliance (FCA) and the Network for Accountability of Tobacco Transnationals ("NATT"). These organizations serve different purposes in promoting the FCTC. The FCA serves a "watchdog function," whereas NATT's mission is to encourage ratification.[162] NATT was formed in 1999 with a "grassroots" focus;[163] significantly, it produces and distributes a handbook on FCTC ratification campaigns that illustrates how an individual citizen may launch a campaign, mobilize popular support, and implement strategies.[164]

Health Organization (WHO) requested the WHO director-general to initiate the development of a framework convention on tobacco control.").

155. Corporate Accountability International, *Global Tobacco Treaty*, http://www.stopcorporateabuse.org/cms/page1143.cfm (last visited Feb. 23, 2008).

156. The World Health Organization, *supra* note 151.

157. World Health Organization, Updated status of the WHO Framework Convention on Tobacco Control, http://www.who.int/tobacco/framework/countrylist/en/index.html (last visited Feb. 23, 2008).

158. In 2004, forty-four states ratified. In 2005, sixty-six states ratified. In 2006, twenty-six states ratified.

159. *An International Treaty for Tobacco Control, supra* note 152.

160. *Id.*

161. Corporate Accountability International, *supra* note 155.

162. Alliance for Tobacco Control, Vision and Mission, http://www.fctc.org/index.php?item=aboutus&code=vm (stating that the mission of the FCTC is to "carry out effectively the watchdog function for the Framework Convention on Tobacco Control") (last visited Feb. 23, 2008).

163. NETWORK FOR ACCOUNTABILITY OF TOBACCO TRANSNATIONALS, HANDBOOK FOR FCTC RATIFICATION CAMPAIGNS (2003), http://www.stopcorporateabuse.org/files/pdfs/Ratification%20Handbook_English2005.pdf.

164. *Id.*

NATT produces other publications that both describe the historical and moral importance of the FCTC and emphasize the human health norm the treaty embodies. NATT succinctly states the FCTC's normative mission: "The FCTC, the first global public health and corporate accountability treaty, will save millions of lives."[165] This statement precedes the following narrative in the NATT *Handbook*:

> The story of the FCTC inspires hope. The developing world, led by a block of all 46 African nations and supported by dozens of civil society organizations, united around protecting the health of their people from the deadly expansion of Big Tobacco. Despite staunch US opposition through the process and aggressive attempts by . . . [corporate giants] to derail the treaty, the FCTC will go a long way toward curbing the global spread of tobacco addiction when implemented.[166]

The simple statement of purpose and accompanying history of the treaty engage norms of human health, social equality, and corporate responsibility.

NATT also advertises and distributes statistics and warnings on tobacco-related deaths in its publications and on its website.[167] For example, it informs states that "half of children are exposed to tobacco smoke at home," and "a cigarette is the only legally available consumer product that kills through normal use."[168] These statistics and warnings, coupled with graphic media, appeal to human health and justice norms to make powerful normative arguments. By widely disseminating these arguments, NATT increases its audience of national and international actors.

IV. AN INTEGRATED INTERNATIONAL LAW THEORY

A. Shared Features of Successful Campaigns

The last Part introduced and described three ratification campaigns. This Part analyzes those campaigns and identifies particular features they have in common, analyzing these shared features in light of the existing theories of state behavior described in Part II. The successful ratification campaigns examined in Part III share three features: (1) a close relationship with an IO, (2) clear articulation of a normative argument, and (3) an emphasis on information dissemination through local grassroots networks. These features contain elements of rationalist, constructivist, and liberal

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165. *Id.* at 9.

166. *Id.* at 3.

167. *An International Treaty for Tobacco Control, supra* note 152.

168. *Id.*

theories, but importantly, no one theory adequately explains the existence of every feature. Each common feature supports an aspect of a different theory of state action, which suggests that a new integrated theory of international law would better describe how and why states ratify treaties.

1. IO Partnership

Influential IOs supported each of the three ratification campaigns discussed in this Note. The UN closely supported and influenced the creation of the Rome Statute, the UN and ICRC[169] supported the ICBL, and the WHO helped both in the creation and widespread ratification of the FCTC. The link between IOs and successful campaigns supports a rationalist theory of state behavior because rationalism predicts that states ratify treaties when the treaties enhance cooperation between nations in ways that serve state interests or link material benefits to ratification. Rationalists consider IOs effective only to the extent that they serve the predetermined interests of rational states.[170] Two unique characteristics of IOs may serve state interests. First, IOs can provide a concrete organizational structure and an administrative apparatus for managing collective activities. Second, IOs can provide the authority to act with a degree of autonomy in defined spheres.[171] Thus, IOs create a stable forum for state cooperation, and states are more likely to ratify when an IO supports a treaty.

International organizations also encourage ratification by linking a treaty with material goals, such as economic aid.[172] Although the UN and WHO do not explicitly link treaty ratification to material benefits, they have power to affect state livelihood through sanctions as authoritative IOs. Rationalist theory explains that IO power to facilitate cooperation on global issues and withhold material benefits from states can encourage ratification.

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169. The ICRC is considered sui generis, but for the purposes of this Note it serves the function of an IO because it is a widely respected international institution that facilitates state cooperation.

170. José E. Alvarez, *International Organizations: Then and Now*, 100 AM. J. INT'L L. 324, 338 (2006) ("[R]ealists, who posit that IOs merely serve the predetermined interests of rational states and are effective only to the extent that they serve these needs.").

171. Kenneth W. Abbott & Duncan Snidal, *Why States Act Through Formal International Organizations*, 42 J. CONFLICT RESOL. 3, 5 (1998).

172. Sikkink, *supra* note 76.

2. Clearly Stated Norms

Each ratification campaign framed its mission statement to appeal to powerful normative values such as health and justice. The CICC emphasized the need for international justice, the ICBL framed its issue as a human health concern, and NATT classified the FCTC as an essential public health treaty. In addition, all three campaigns developed extensive publications, fact sheets, and other types of media to persuade international and domestic actors with normative arguments. Constructivism predicts that strategic use of information, ideas, and stories will result in widespread ratification. By contrast, rationalism and liberalism predict that normative messages are unimportant and therefore unlikely to influence ratification. Thus, the strong emphasis on normative arguments in these ratification campaigns strongly supports a constructivist theory of state behavior.

3. Grassroots Information Dissemination

Each ratification campaign discussed above published manuals and other documents targeting domestic organizations. These campaigns made significant efforts to reach domestic grassroots networks and arm them with lobbying strategies. For example, the CICC developed papers specifically targeting political organizations within certain countries.[173] Liberalism explains the success of this strategy. It argues that domestic interests determine state behavior, and therefore states ratify when domestic actors lobby for ratification. Liberal theories explain, in part, why the ratification campaigns that targeted domestic governments succeeded.

Constructivism also explains rapid ratification when campaigns are facilitated by grassroots dissemination of information. Widespread information can "shame" a human rights violator in the international arena and initiate ratification.[174] Shaming can challenge a state to ratify to prove that it acts according to international norms. For example, alerting a domestic government that its nation is a chronic human rights violator has been an impetus for change.[175] On October 2, 1968, the Mexican military fired machine guns into a student demonstration in Tlateloco Plaza. The Mexican government officially admitted forty-three deaths, but survivors confirmed that 300-500 were killed, 2,000 were wounded, and 1,500 were taken

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173. Interview, *supra* note 111.

174. *See* Risse & Sikkink, *supra* note 52, at 34 (presenting a "spiral model" of human rights change whereby governmental mobilization initiates rule-consistent behavior by the state).

175. *Id.*

prisoner. The 1968 massacre did not inspire the same international outrage as China's Tiananmen Square massacre, however, because the Mexican government controlled information.[176] States can be persuaded by international norms to behave a certain way.

Constructivism and liberalism together explain NGO networks' importance in persuading domestic actors through story telling. NGO networks, such as those created by ratification campaigns, are essential for distributing and making normative arguments. Risse and Sikkink argue that NGOs diffuse human rights norms because they are able to tell stories.[177] For example, Harriet Beecher Stowe's novel *Uncle Tom's Cabin*, which sold 300,000 U.S. copies in its first year, fueled the United States' antislavery campaign.[178] Using detailed case studies documenting change in human rights in Latin American countries, Jeffrey Huffines observes that the "role of the NGO community has been essential in generating popular support for human rights . . . and in applying political pressure" to accomplish ratification.[179] Ratification campaigns are able to create political pressure to ratify by making normative arguments to important domestic actors.

B. The Importance of U.S. Support

The ratification rates of the treaties examined in this Note reveal another interesting pattern of state behavior. U.S. support or opposition to a treaty substantially affects the rate of ratification. Although the United States did not ratify the Rome Statute, the Ottawa Convention, or the FCTC, it has actively opposed only one of the treaties discussed above: the Rome Statute.[180] The United States publicly embraced the Ottawa Convention's goals and was among the first to sign the FCTC. By contrast, the Bush Administration announced U.S. opposition to the ICC in 2002, and in that year the ratification rate of the Rome Statute plummeted.[181] Although ratification necessarily decreases after most states have joined, only the Ottawa Convention and the FCTC had already been ratified by

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176. *See* KECK & SIKKINK, *supra* note 63, at vii-ix.

177. *Id.* at 5 (arguing that the "diffusion of international norms in the human rights area crucially depends on the establishment and the sustainability of networks among domestic and transnational actors who manage to link up with international regimes, to alert Western public opinion and Western governments").

178. KECK & SIKKINK, *supra* note 63, at 47.

179. Huffines, *supra* note 107, at 652.

180. News Release, *supra* note 120.

181. *See* Table 1, *supra* p. 17.

half of UN member states when their ratification rates decreased. The Rome Statute experienced a decline in ratification rate not explained by a necessary decrease in number of states available to ratify. Brigette Suhr of the CICC acknowledged the United States' powerful influence in a recent interview.[182] She noted, "I have never been on a[n advocacy] mission where someone doesn't ask me about what the U.S. is doing . . . . What the U.S. thinks influences whether states want to support or not support the ICC."[183] As rationalism predicts, therefore, the actions of a world superpower affect the behavior of other nations.

Figure 1: RATIFICATION RATES
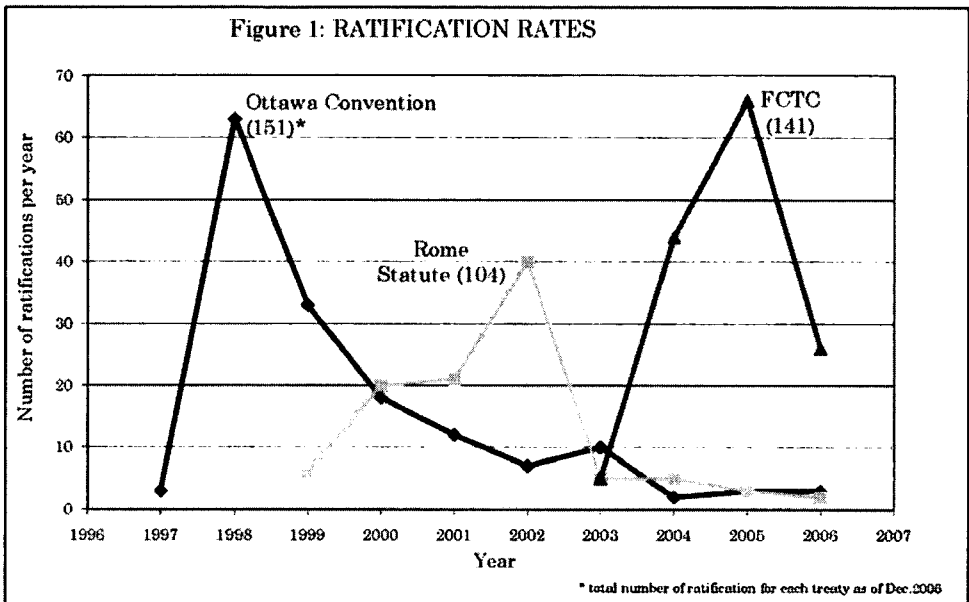
C. Inadequacy of Individual Theories: Case Studies

Previous case studies documenting national ratification debates support the conclusion that each theory explains only a part of the ratification process. For instance, the United States still has not ratified the Convention on Economic, Social, and Cultural Rights ("ICESCR") although the Convention opened for signature and

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182. Interview, *supra* note 111.
183. *Id.*

adoption more than forty years ago.[184] The main reason for this delay is that the U.S. government denies that an economic, social, or cultural human right exists.[185] Put another way, between the United States and the signatories of the treaty, there is a "lack of the necessary community of values."[186] That the United States has delayed ratification for the ICESCR because it disagrees with the norms the treaty embodies suggests that a constructivist theory accurately describes one aspect of the ratification decision. However, liberalism also explains the delay. In addition to a lack of shared values, the United States delayed ratification of the ICESCR because a lack of national support slowed the political process.[187]

In another case study, the United States ratified the Genocide Convention thirty-seven years after the Convention opened for signature.[188] The main obstacle to ratification of the Genocide Convention was that Congress did not prioritize ratification.[189] Other issues took precedence on the political agenda. A lack of U.S. "political capital" impeded ratification of the Genocide Convention.[190] For both the ICESCR and Genocide Convention, therefore, domestic actors did not impart the treaties with enough momentum for ratification.

Britain's ratification of the Genocide Convention evinces the ways in which rationalism, constructivism, and liberalism influence the decision to ratify. Brian Simpson recently documented Great Britain's ratification of the Convention and observed that, at its core, the decision to ratify was a political one.[191] Departments within the British government held uncompromising positions and disagreed on the domestic implications of the Convention and its function;[192] this deadlock prevented the government from ratifying the treaty for over two decades.[193] According to Simpson, Britain ultimately yielded to

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184. Winston P. Nagan, *The Politics of Ratification: The Potential for United States Adoption and Enforcement of The Convention Against Torture, The Covenant on Civil and Political Rights and Economic, Social and Cultural Rights*, 20 GA. J. INT'L & COMP. L. 311 (1990).

185. Philip Alston, *U.S. Ratification of the Covenant on Economic, Social and Cultural Rights: The Need for an Entirely New Strategy*, 84 AM. J. INT'L L. 365, 367 (1990).

186. *Id.*

187. *Id.* at 373.

188. Nagan, *supra* note 184, at 311.

189. *Id.* at 337.

190. *Id.*

191. A. W. Brian Simpson, *Britain and the Genocide Convention*, 2002 BRIT. Y.B. INT'L L. 5, 47 (stating that "[a] decision to accede or not accede was a political issue").

192. *Id.* at 64. One view held that the function of the Convention was symbolic, and the other that it was practical. *Id.*

193. *Id.* at 6.

foreign state pressure and ratified.[194] In a subsequent article, Jose Alvarez considered how rationalists, liberals, and constructivists would interpret Simpson's case study.[195] For rationalists, the delayed ratification illustrates the fundamental irrelevance of norms in influencing state behavior because states cannot be rushed to ratify a treaty until it is in their material interest to do so.[196] For constructivists, Simpson's work provides a rich account of the ways in which persuasion and status-oriented concerns ultimately forced ratification.[197] It was only when the international community exerted its power to shame Britain that the state ratified.[198] For liberals, however, the relations between the rival governmental offices reveal the importance of domestic interest groups;[199] the ratification process failed without the support of the domestic factions. Alvarez highlighted an important theme in Simpson's case study: "the real-world practice of states is messy."[200] Indeed, each of the theories of international law explains the process of ratification in a useful way. But examining ratification through the lenses of all three theories together reveals a more complete picture of state behavior.[201]

V. CONCLUSION

This Note takes the initial step of analyzing ratification campaigns and exploring the reasons for their success. It also

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194. *Id.* at 11. ("No other State was so dismissive; as time passed it became increasingly clear that the negative line adopted was becoming embarrassing, and could be viewed as showing indifference to genocide.").

195. José E. Alvarez, *Do States Socialize?*, 54 DUKE L.J. 961, 962 (2004) ("Professor Brian Simpson's work on the history and genesis of the European Convention of Human Rights, based on exhaustive research of recently opened archives within Great Britain, serves as the basis for this critique.").

196. *Id.* at 963 ("Realists like Professor John Mearsheimer would see . . . a cautionary tale that shows the fundamental irrelevance of human rights treaties.").

197. *See id.* at 964 ("Goodman and Jinks presumably would put Simpson's case study to different use. They would focus, instead, on the status-oriented concerns that ultimately drove the British to approve the Genocide Convention when it was first proposed in 1948 and, ultimately, to ratify it many years later.").

198. Simpson, *supra* note 191, at 48.

199. *See* Alvarez, *supra* note 195, at 964 ("The saga of Britain and the Genocide Convention, rife with interdepartmental turf battles, is rich in Weberian insights.").

200. *Id.* at 968 (stating that in the real world "too many factors and personalities come into play").

201. COAL. FOR THE INT'L CRIMINAL COURT, STATES PARTIES TO THE ROME STATUTE OF THE ICC, ACCORDING TO THE UN GENERAL ASSEMBLY REGIONAL GROUPS (last updated July 17, 2007), http://www.iccnow.org/documents/RatificationsbyUNGroup_18July07.pdf; ICBL, States Parties, http://www.icbl.org/treaty/members (last visited Feb. 23, 2008); World Health Organization, Updated status of the WHO Framework Convention on Tobacco Control, http://www.who.int/tobacco/framework/countrylist/en/index.html (last visited Feb. 23, 2008).

examines the common features of a group of treaties that quickly entered into force with the support of an NGO campaign. These case studies reveal deficiencies in the three generally accepted theories of state behavior and support an integrated theory of international law. Each existing theory of state behavior alone is inadequate to explain what makes a ratification campaign successful, suggesting that an integrated theory of international law best explains a state's decision to ratify.

A. Limitations

This Note focuses on NGO-driven treaty ratification campaigns and the ways in which theories of state behavior explain their success, but it does not address all of the factors that may influence ratification—elements like the substantive content of a treaty, its relative legal strength, or the current political regime in the ratifying country. For example, a "no reservations clause" allows little room for states to manipulate treaty terms in their favor and may slow ratification. Further inquiries might explore which states are more reluctant to ratify certain laws. One study has shown that the most reluctant states may be those who are most likely to change their behavior to comply with a treaty.[202] Therefore, commitment to a treaty depends in part upon the decision to comply with its terms.[203] Thus, legal enforcement and "collateral consequences" of treaty ratification influence whether ratification occurs.[204] Where legal enforcement of a treaty is weak, states may be more likely to commit to a treaty.[205] In sum, commitment and compliance are interwoven: states commit based on their incentives to comply.[206] The effect of treaty enforcement on a state's decision to ratify is a valuable inquiry. However, this Note is limited to examining the commonalities of successful ratification campaigns.

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202. Hathaway, *supra* note 16, at 494.

203. *Id.* at 473.

204. *Id.* at 492. "Legal enforcement is determined by the terms of the treaty and the enforcement of those terms as specific obligations . . . . Collateral consequences arise from the anticipated reactions of individuals, states, and organizations to the state's decision to commit to the treaty and then to abide or not by its terms." *Id.*

205. *Id.* at 519.

206. *Id.* at 535 ("Commitment and compliance are interwoven: States commit based on their incentives to comply, and states comply based on their incentives to commit.").

B. Implications for International Law Theory

This Note finds that certain features of treaty ratification campaigns determine their success in achieving broad ratification. While international law scholars present three general theories of state behavior, they have not tested these theories against the dynamics of ratification campaigns, nor has any legal study analyzed treaty ratification campaigns to determine what makes them effective. This Note takes the first step in filling this gap in legal and international relations scholarship.

By exposing the strengths and weaknesses of existing international relations theories, a more complete understanding of state behavior emerges within the context of treaty ratification. This Note analyzes empirical information and explores the common features of successful ratification campaigns. The treaty ratification campaigns this Note examines share three features: the support by a powerful IO, the development of normative arguments, and the targeting of domestic actors. Testing these common features against the three general theories of state behavior reveals that an integrated theory best describes a state's decision to ratify. Rationalist, constructivist, and liberal theories might explain widespread ratification individually, but only when applied together can one fully understand the success of these treaties. Thus, the ratification patterns examined in this Note suggest that an integrated theory of international law would better describe why states ratify.

*Uta Oberdörster**