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International Law and Norms

THE PUZZLE *In a world of sovereign states, how can the international community constrain states' actions? When and why do states do what is “right”?*

Above: The international community's failure to stop the genocide that took place in Rwanda in 1994, which killed 800,000 and exiled millions, inspired a reexamination of the norms related to intervention. United Nations secretary-general Kofi Annan (far right) visited Rwanda in the years after the massacres as part of a “healing mission” and reevaluation of the UN’s initial response to the genocide.



Shocked by the suffering of wounded soldiers after the Battle of Solferino, fought in 1859 as part of the Italian wars of unification, Swiss social activist Henry Dunant began a campaign to reform and limit the conduct of states during wartime. The result of Dunant's efforts, and the efforts of many others mobilized to the cause, was the first Geneva Convention, on the treatment of wounded soldiers, adopted in 1864. This agreement was followed by a second convention, on the treatment of members of armed forces at sea, in 1906; and a third convention, on the treatment of prisoners of war, in 1929. These three agreements were revised in 1949 and joined by a fourth convention, on the protection of civilians in wartime.

This set of treaties outlining the laws of war is typically referred to as the Geneva Conventions, and it forms one of the most clearly articulated and respected bodies of international law in today's world. War between states might seem an unlikely interaction to be governed by such an international institution. At the same time that states are sending their soldiers into battle to kill their enemies and possibly die for their country, they generally follow international laws regulating how that killing is done and how prisoners and civilians are to be treated.

The Geneva Conventions are monitored and supervised by the International Committee of the Red Cross, part of the International Red Cross and Red Crescent Movement. The conventions have now been ratified by all 193 members of the United Nations (UN), firmly establishing their provisions as nearly universally acknowledged and respected international law.

The conventions, however, have not ended all atrocities, especially within countries. In 1994, Hutu extremists in Rwanda began a mass murder of ethnic Tutsis. Although a minority, Tutsis had been favored under colonial rule and remained politically dominant within Rwanda. A civil war that began in 1990, which pitted Hutus against Tutsis, ended with the Arusha Accords in 1993, signed by then president Juvénal Habyarimana. Seeking to overturn the agreement, Hutu extremists allegedly killed the president and then carried out systematic killings of Tutsis and Hutus who they believed had collaborated with the regime. Roughly 800,000 people are believed to have been killed within 100 days, although estimates range from 500,000 to 1,000,000. A small UN force deployed in Rwanda to implement the Arusha Accords was overwhelmed and proved ineffective

at controlling the violence. The killings ended only when the Rwandan Patriotic Front, a militia of mostly Tutsi rebels who had originally started the civil war, reentered the conflict and seized control of the country.

The international community watched and condemned this unmistakable act of genocide but did little to stop it. In 1999, then UN secretary-general Kofi Annan challenged the international community to define its obligations to protect endangered peoples when their governments either cannot or will not protect vulnerable populations themselves. Grasping the lead, Canada sponsored the International Commission on Intervention and State Sovereignty in September 2000. In December 2001, the commission issued its report with the provocative title *The Responsibility to Protect*.¹ The report argued that the international community not only must prosecute crimes against humanity, but also has a responsibility to protect at-risk populations through military means if necessary. This new obligation was quickly dubbed R2P, after the title of the report. In April 2006, the UN Security Council affirmed R2P, recognizing it as a new norm of international behavior.

The Geneva Conventions are international treaties in which states consent to treat armed personnel and civilians in humane ways. The conventions have had an important impact, but the agreements do not diminish the sovereignty of states, as the principle of sovereignty includes the right to freely enter into agreements that constrain one's actions. R2P stands in stark contrast to this principle. The UN, with the consent of its member states, has championed a new international norm that explicitly limits national sovereignty in cases of widespread human rights abuses and state-sponsored violence. This is important because it legitimizes the intervention of states in the internal affairs of other states whether or not the targets give their consent. The Geneva Conventions and R2P are both part of a growing collection of laws and norms, respectively, that are broadly referred to as *global governance*.

The puzzle, though, is this: Why would sovereign states agree to be bound by international rules? This is especially curious in the case of norms like R2P, to which individual states have not necessarily agreed to bind themselves but on which they may be held to account. As we saw in Chapter 2, sovereignty implies that states

are the ultimate authorities over their own territories. Yet states today are increasingly governed by laws and norms promoted by the international community in general, and by nongovernmental organizations (NGOs) in particular. Why and how do states collectively constrain their own behavior? How are other, private actors, who are supposedly subject to states under the concept of sovereignty, able to alter state behavior?

Thinking Analytically about International Law and Norms

International law and norms are institutions that seek to shape how states understand their interests and that constrain the many ways in which states interact. States create and abide by international law because of the cooperation it facilitates. Indeed, where we observe strong international laws, the benefits of cooperation to states are generally large enough that international laws are often self-enforcing, or in the interests of states to follow willingly. International law clarifies the obligations of states, defines violations that are subject to retaliation, and sometimes provides for independent tribunals to resolve disputes. Through these mechanisms, international law helps states to understand, meet, and manage their obligations to one another.

International norms affect world politics by changing how individuals and, in turn, states conceive of their interests and appropriate actions in their interactions with other states. Norms are standards of behavior that reflect a community's beliefs about what is appropriate behavior for an actor in a specified condition. Norms affect interactions because they are understood by states to be rules of conduct that are right and morally correct.

As we will see, transnational advocacy networks (TANs) have an important effect on world politics by promoting normative values, which are then reflected in international law or norms. In addition to changing conceptions of interest, TANs facilitate cooperation between states by providing information about international agreements and monitoring compliance.

1. The full report is available at <http://responsibilitytoprotect.org/ICISS%20Report.pdf> (accessed 02/01/14).

What Is International Law?

International law is established by states through either custom or convention as a way to facilitate international cooperation. The Geneva Conventions are one example, but others abound. For instance, the World Trade Organization (WTO) sets rules on the exchange of goods and services and increasingly on investment and property rights; the UN Convention on the Law of the Sea (UNCLOS) governs the use of the oceans and seabed resources; and the Convention on the Prohibition of the Use, Stockpiling, Production, and Transfer of Anti-Personnel Mines and on Their Destruction, more simply known as the Ottawa Convention, outlaws the use and production of land mines and mandates the clearing of existing minefields.

International human rights law, which we will examine in more detail in Chapter 12, intrudes deeply into national political practices. Precisely because the specific rules of international law matter, states often bargain intensely over the rules and their interpretation. Law does not mean the end of conflict between states but is itself the product of political interaction and struggle. Nonetheless, international law is valued and typically followed for the cooperation that it helps bring about.

International law is “a body of rules which binds states and other agents in world politics in their relations with one another and is considered to have the status of law.”² This definition might appear circular at first, with law being constituted by rules having the status of law, but two aspects of the definition help us understand international law more precisely.

First, international law is a *body of rules* linked together in a common logical structure. Law is not simply an ad hoc list of rules issued or even enforced by some authority. Rather, to stand as law, rules must be woven together by one or more unifying principles. In contemporary international law, the primary unifying concept is sovereignty, especially the notion that all states have equal rights to make international law and can be bound by law only by their own consent. Even though sovereignty is often violated in practice, it still forms the foundation on which rules governing state and nonstate behavior become international law.

Second, to have the *status of law*, a body of rules must include both primary and secondary rules.³ Primary rules are the negative and positive rules regulating behavior. They may take the form of “Don’t do *x*,” where *x* is some more or less clearly specified action. The Ottawa Convention, for instance, explicitly prohibits the use of land mines. Or, primary rules may require that actors “must do *y*,” where *y* is also some specified action. The Ottawa Convention also stipulated that states destroy their stockpiles of land mines within four years of the treaty’s coming into

international law

A body of rules that binds states and other agents in world politics and is considered to have the status of law.

2. Hedley Bull, *The Anarchical Society: A Study of Order in World Politics* (New York: Columbia University Press, 1977), 127.

3. This conception of the status of law follows from H. L. A. Hart, *The Concept of Law* (Oxford: Clarendon, 1961).



States cooperate under the Ottawa Convention to clear existing minefields. Although the treaty was ratified in 1999, there is still much work to be done. Here, a member of the Danish Demining Group works to clear a field in Ukraine, which had the highest rate of anti-vehicle mine explosions in the world in 2016.

force, which finally happened on March 1, 1999, when Burkina Faso became the fortieth country to ratify the agreement.

To have the status of law, primary rules must be made in accordance with secondary rules. One can think of secondary rules as akin to a constitution; secondary rules structure the making of primary rules, just as a country's constitutional rules structure the making of other rules in that country. In other words, secondary rules are the rules about how rules are made. To be governed by the "rule of law" is thus to set and enforce primary rules in ways that are consistent with secondary rules. It is the existence of primary rules enacted in compliance with existing secondary rules that gives a rule the status of law. In international law, the principle of sovereignty implies a secondary rule about how other rules are made: under sovereignty, only states can bind themselves to international law. In the case of the Ottawa Convention, its primary rules become law because it was negotiated and ratified by sovereign states as an international treaty.

As a body of rules, duly enacted under secondary rules, international law is distinct from norms (taken up later in this chapter) and other international institutions. Norms are often singular rules, disconnected from any larger body of rules, and can contradict secondary rules, especially sovereignty. Thus, R2P is an emerging norm and not law, even though it was affirmed by the UN Security Council, because it explicitly violates the principle of sovereignty by calling for intervention into the internal affairs of states under some circumstances and has not been accepted as binding by the states most likely to be subject to those interventions.

How Is International Law Made?

States establish and abide by international law, like any other institution, because it facilitates cooperation. States may also bargain over international law, with some preferring one rule over another. For instance, UNCLOS, enacted in 1982, took 9 years of hard negotiations, largely over rules on the exploitation of mineral resources on the ocean floor. It did not come into force until 12 years later, after being ratified by the required 60 countries. Even though 165 countries have now joined the treaty, and it is widely acknowledged as international law governing the use of the seas, the United States was so opposed to some of the provisions that it has refused to sign the final document. Most of the time, however, it is the benefits of cooperation made possible by rules and adherence to those rules that lead states to create and abide by international laws.

In international relations, there are two principal mechanisms for making international law.⁴ The first is custom, or accepted practice, which is carried out by states on the basis of a subjective belief that an action is a legal obligation.

Customary international law usually develops slowly, over time, as states recognize some practices as appropriate and correct. The law of diplomatic immunity, whereby ambassadors and other embassy staff are exempt from a host nation's law, is a classic example. This practice became law by custom because it was in the interests of both home and host countries.

Diplomatic immunity permits embassy personnel to carry out their jobs of reporting on the host country, negotiating with host country representatives, and generally promoting the interests of their home country without fearing possibly politically motivated prosecutions for "trumped-up" crimes. It also prevents potential misunderstandings between countries over the activities of their diplomats from escalating into larger disputes. Countries have learned that rather than imprisoning and punishing diplomats, it is best just to send them home if they violate national laws. Despite occasional abuses, such as diplomats racking up a large number of parking tickets for traffic violations, the practice of diplomatic immunity was sufficiently beneficial to home and host countries that, over time, it came to be recognized as international law.

Although in effect for centuries, this law was codified in the Vienna Convention on Diplomatic Relations enacted in 1961. Freedom of the seas is another important rule that was accepted as customary international law long before it was codified in UNCLOS. Finally, the concept of crimes against humanity also developed largely as customary law and was finally codified in the Rome Statute of the International Criminal Court (ICC), which went into effect in 2002 (see "What Shaped Our World?" on p. 468).

Secondary rules for the establishment of customary international law remain vague, however. The number of countries that must recognize a practice as legitimate and the length of time before it is accepted as law are not specified by any other rule. Increasingly, as the examples of diplomatic immunity, freedom of the seas, and crimes against humanity suggest, customary international law is, for this reason, being codified in formal international agreements.

The second mechanism for creating international law, as just suggested, is international treaties, which are negotiated and then ratified by states. International treaties typically originate in a convention that brings together a large number of states, but not necessarily all countries, to negotiate a new agreement. Some agreements are easily reached, such as the first Geneva Convention (though the original negotiations involved just 12 states). As in the UNCLOS negotiations, however, hard bargaining may ensue precisely because substantial gains are at stake and states seek deals more favorable to their interests.

As explained in the next section, agreements differ in their obligations, precision, and delegation, sometimes in order to address differences in interests that

customary international law

International law that usually develops slowly, over time, as states recognize practices as appropriate and correct.

4. The sources of international law are formally defined by Article 38 of the Statute of the International Court of Justice. In addition to conventions and custom, discussed here, the statute allows for law to follow from "general principles of law recognized by civilized nations" and, as a subsidiary means, "the teachings of the most highly qualified publicists of the various nations." The statute is available at www.icj-cij.org/documents/index.php?p1=4&p2=2&p3=0 (accessed 08/13/11).

WHAT SHAPED OUR WORLD?

Crimes against Humanity

The concept of crimes against humanity is one of the most significant developments in international law of the last century.

Institutions The Rome Statute of the ICC, adopted in 1998 and entered into force in 2002, defines crimes against humanity as any of the following acts when committed as part of a planned and systematic attack directed against any civilian population: (1) murder; (2) extermination; (3) enslavement; (4) deportation or forced population transfer; (5) imprisonment or other severe deprivation of liberty in violation of fundamental rules of international law; (6) torture; (7) rape and other forms of sexual violence; (8) persecution against any identifiable group based on political affiliation, race, nationality, culture, religion, or gender; (9) enforced disappearance of persons; and (10) apartheid. In contrast, war crimes are single, isolated instances of abuse carried out during armed conflict. Crimes against humanity are intentional, systematic violent acts against civilians.

Interests The interests of states in prosecuting crimes against humanity have evolved and grown over time. The first known use of the phrase *crimes against humanity* was in the 1860 Republican Party platform, on which President Abraham Lincoln was elected; it described the reopening of the African slave trade as “a crime against humanity and a burning shame to our country and age.” In May 1915, the Allied powers in World War I denounced the Armenian genocide carried out by the Ottoman government as a “crime against humanity.” The term, however, was first developed systematically in the London Charter of the International Military Tribunal, under which the Nuremberg trials of Nazi leaders were conducted after World War II.

A traditional understanding of war crimes did not allow for the prosecution of government officials for crimes carried out against their own citizens. The Holocaust, in which 6 million Jews were systematically exterminated by the Nazi regime, was not then illegal under international law. Faced with an interest in punishing officials of the Nazi regime for the Holocaust and other atrocities, the drafters of the London Charter gave first real form to the doctrine of crimes against humanity.

The doctrine was carried over into the International Military Tribunal for the Far East and the so-called Tokyo

trials, which prosecuted Japanese government officials for atrocities carried out during the war as well, especially the Nanking Massacre, in which hundreds of thousands of Chinese civilians and disarmed soldiers were murdered and tens of thousands of women were raped by the Japanese Imperial Army. As is clear from this history, the concept of crimes against humanity originated in the desires of the victors of World War II to punish the losing states for atrocities conducted in the course of the conflict and to prevent similar behaviors from recurring in the future.

Interactions Through the charters and military tribunals created after World War II, crimes against humanity became international law largely through custom, being formally codified only when the Rome Statute created the ICC. Government officials are now held responsible for widespread abuses of their own citizens, potentially subject to punishments for violations of basic rights and possibly even to armed intervention to halt abuses.

This relatively recent innovation in international law is important because, like human rights law more generally (see Chapter 12), it defines international law as resting on a common humanity that is superior to the policies of any state. This law clearly constrains the rights and, more important, actions of states within the international community. R2P is an extension of the doctrine of crimes against humanity. It not only allows for the prosecution of such crimes after they have happened, as at Nuremberg and Tokyo, but calls for active responses by the international community to stop the abuses.

As of March 2018, there are 11 official investigations underway, and 24 cases in eight countries have been brought before the ICC, most including indictments of individuals for crimes against humanity. Some of these investigations are aimed at high-level government officials, including Presidents Omar Hassan al-Bashir of Sudan and Uhuru Kenyatta of Kenya. The first conviction by the ICC was handed down in early 2012 against Thomas Lubanga Dyilo for war crimes in the Democratic Republic of the Congo. Having lost his appeal, Lubanga is now in prison serving a 14-year sentence. The indictment of heads of state for crimes against humanity confirms the status of international law in this area and puts leaders on notice that the international community will hold them responsible for abuses of their citizens.

would otherwise prevent agreement. Once finalized by international negotiations, the agreement must then be ratified by each member state in accordance with its domestic constitutional provisions. By ratifying treaties like the Geneva Conventions, states voluntarily take on the constraints of international law. This is not interpreted as a violation of the principle of sovereignty. With international conventions, the secondary rules of international law are quite clear. Countries that sign an international convention are bound to respect the terms of the agreement.

Is All International Law the Same?

Even when states have a shared interest in establishing international law to facilitate cooperation, they must still agree on what form the law will take. International law varies across several dimensions. First, international law varies in **obligation**, or the degree to which agents are legally bound by a rule. High-obligation rules “must be performed in good faith regardless of inconsistent provisions of domestic law” and changing state interests, subject to certain exceptions, such as self-defense or necessity.⁵ High-obligation laws, like the Geneva Conventions or crimes against humanity, are unconditional and, if breached, require reparations to an injured party. Low-obligation laws are merely aspirational, urging states to live up to some standard of behavior. As we will explain in Chapter 12, much early human rights law took this form.

Even high-obligation laws are often contingent or contain escape clauses. The 1994 Framework Convention on Climate Change (FCCC), which we will discuss in Chapter 13, requires parties of the agreement to reduce greenhouse gas emissions, but only after considering “their specific national and regional development priorities.” Likewise, the Limited Test Ban Treaty enacted in 1963, which outlaws certain forms of nuclear weapons testing, permits states to withdraw from the agreement if they decide “extraordinary events” jeopardize their “supreme interests.”

A second dimension on which international law varies is its **precision**, or how specific the obligations that states incur are. More precise laws narrow the scope for reasonable interpretation. An important aspect of precision is that “for a set of rules, precision implies not just that each rule in the set is unambiguous, but that rules are related to one another in a noncontradictory way, creating a framework within which case-by-case interpretation can be coherently carried out.”⁶



Before the concept of crimes against humanity was codified in the Rome Statute of the International Criminal Court, these crimes were first prosecuted by tribunals formed in the aftermath of World War II. The International Military Tribunal for the Far East tried the leaders of Japan for crimes committed during the war.

obligation

The degree to which states are legally bound by an international rule. High-obligation rules must be performed in good faith and, if breached, require reparations to the injured party.

precision

The degree to which international legal obligations are fully specified. More precise rules narrow the scope for reasonable interpretation.

5. We owe these dimensions, and the examples used here, to Kenneth W. Abbott, Robert O. Keohane, Andrew Moravcsik, Anne-Marie Slaughter, et al., “The Concept of Legalization,” in *Legalization and World Politics*, ed. Judith L. Goldstein, Miles Kahler, Robert O. Keohane, and Anne-Marie Slaughter (Cambridge, MA: MIT Press, 2001), 25.

6. Abbott et al., “Concept of Legalization,” 29.

Much of international law is quite precise, with international treaties running to hundreds and sometimes thousands of pages of definitions, terms, and rules. The UNCLOS treaty, for example, contains 17 parts, 320 articles, and 9 annexes, plus an additional agreement (with 9 more annexes) elaborating on Part XI of the treaty. States often seek to retain control over international law, and to limit future interpretations, by being as precise as possible in the treaty itself.

Other agreements, however, are remarkably imprecise. Commercial treaties, for instance, typically require states to create “favorable conditions” for investment and avoid “unreasonable regulations.” Such imprecise terms are usually not the product of poor legal draftsmanship, but rather reflect continuing disagreement between states over the exact nature of the obligations being specified. Vague terms ensure that law will not bring bargaining to a close and that states will continue to negotiate, albeit now within a legalized framework.

delegation

The degree to which third parties, such as courts, arbitrators, or mediators, are given authority to implement, interpret, and apply international legal rules; to resolve disputes over the rules; and to make additional rules.

Finally, international law also varies in its degree of **delegation** to third parties, wherein courts, arbitrators, mediators, or others are given the authority to implement, interpret, and apply the rules specified; to resolve disputes over the rules; and to make additional rules. In domestic law, courts often have tremendous delegated powers to interpret the law and, in so doing, to fill in legal gaps left in the original statutes. When delegation is high and statutes are imprecise, courts through their interpretations may actually make new law—a result sometimes decried by critics as judicial activism.

In international relations, states are generally reluctant to delegate significant legal authority to third parties. The power to interpret law and possibly make new law has the potential to bind states in ways they did not anticipate and would not have approved if considered in advance. In dispute settlement, delegation ranges from international courts with relatively broad jurisdiction, binding decision-making powers, and the ability to set legal precedents (as in the ICC in the enforcement of crimes against humanity) to limited dispute settlement bodies with more narrow mandates and national vetoes of decisions (as under the old General Agreement on Tariffs and Trade, or GATT). Having even less delegated authority are various arbitrators and mediators, who can recommend more or less binding solutions to disagreements.

In rule making and implementation, administrative bodies can have sweeping powers, usually found only in specialized agencies like the International Civil Aviation Organization (ICAO). In most cases, administrative bodies have more conditional powers subject to override by states, as in the International Monetary Fund (IMF) and World Bank.

By considering these three dimensions—obligation, precision, and delegation—we can distinguish between hard and soft law.⁷ Hard law is obligatory, precisely defined, and delegates substantial authority to third parties, particularly international courts. Soft law is aspirational, ambiguous, and does not delegate significant powers to third parties. Countries often adopt soft law because it is easier to achieve, is more flexible and therefore better suited to dealing with uncertain

7. Kenneth W. Abbott and Duncan Snidal, “Hard and Soft Law in International Governance,” in Goldstein et al., *Legalization and World Politics*, 37–72.

futures, infringes less on state sovereignty, and facilitates compromise. Soft law is not a failure of lawmaking, but reflects intentional choices by states to write law appropriate to the issue area or to the extent of cooperation they are currently prepared to accept.

Although there is no guarantee that soft law will lead to hard law, agreements in new issue areas often begin as soft law that sets goals for states and creates frameworks for continuing negotiations, and may eventually become hard law as states gain experience, bargain over specific issues, and write more detailed treaties. A clear example is the FCCC, which was dismissed by critics as toothless when first signed, but later led to the effective Montreal Protocol, in force since 1999, and to the Kyoto Protocol (see Chapter 13). At the extreme, soft law blends into international norms, like R2P, which we will consider further later in the chapter.

Does International Law Matter?

Can international law “domesticate” international politics? That is, can international law become more like domestic law found within states? Can the use of force in international relations be tamed by international law? Perhaps no questions have vexed scholars of international relations and diplomats more.

Supporters of international law view it as an effective—perhaps essential—tool in facilitating cooperation and managing conflicts. According to international lawyer Louis Henkin, “almost all nations observe almost all principles of international law and almost all of their obligations almost all of the time.”⁸ Sometimes high levels of compliance result from more or less explicit enforcement mechanisms in international law. Yet, states may comply with international law even without enforcement provisions.

International lawyers Abram Chayes and Antonia Chayes argue that states typically do comply with international law, and when they fail to do so, it is either because the law itself is imprecise or because they lack the capacity to fulfill their obligations.⁹ In their view, states want to observe, say, the Geneva Conventions on the rules of war, but they may not have effective control over their own soldiers, who may abuse prisoners, as in the infamous Abu Ghraib scandal that shocked the world in 2004 when pictures of American soldiers abusing Iraqi prisoners surfaced on the Internet. Proponents point to the high rates of compliance as evidence of



Under some international laws, states agree to delegate extensive rule-making powers to specialized agencies, such as the ICAO. The ICAO establishes rules and standards that help states cooperate on the common goal of safe and orderly air transport.

8. Louis Henkin, *How Nations Behave: Law and Foreign Policy* (New York: Columbia University Press, 1981), 47. Italicized omitted.

9. Abram Chayes and Antonia Handler Chayes, “On Compliance,” *International Organization* 47, no. 2 (1993): 175–205.

international law's potential. In this view, law can be a significant constraint on the interactions of states.

More skeptical observers see international law as unrealistic and utopian, or at least a reflection of state interest, rather than as a severe constraint on state action. Two main problems exist. First, law is seldom precise enough to deal with every possible interaction between actors. Indeed, in domestic politics, lawyers earn their livings from and courts are clogged with cases where the parties disagree on what the law says or requires in their specific circumstances. We should hardly expect international law to be more precise and less open to creative interpretation than domestic law is.

In one telling instance, when NATO was considering intervening in Kosovo in 1999, British foreign secretary Robin Cook told U.S. secretary of state Madeleine Albright that he had “problems with our lawyers” over using force without the approval of the UN Security Council. Albright responded that he should “get new lawyers.”¹⁰ Albright’s sentiment still applies today. If international law is malleable and can be interpreted to justify whatever states might want to do, it is a weak constraint, at best, on their actions.

Second, as we have seen, international law is the product of states’ interests and interactions. States decide the rules by which they will constrain themselves, including the degree to which these rules are obligatory, precise, and delegated. That states therefore comply with rules they have written is, at one level, hardly surprising. This is sometimes described as the “selection problem” in international relations.¹¹

For skeptics, therefore, international law does not constrain states, despite seemingly high levels of compliance with the law. Rather, countries only sign agreements and make laws that serve their interests and obligate them to undertake actions they would want to do anyway. With states crafting the laws that constrain them and then interpreting the meaning of those laws for their own purposes, it is very difficult for scholars to demonstrate conclusively that international law has an effect on state behavior over and above state interest.

The truth likely lies somewhere between these extremes. The questions here are how, when, and why international law alters state behavior. International cooperation requires that states often subordinate their short-term interests for long-term benefits. Can international law constrain states to act in ways that are not in their short-term interests?

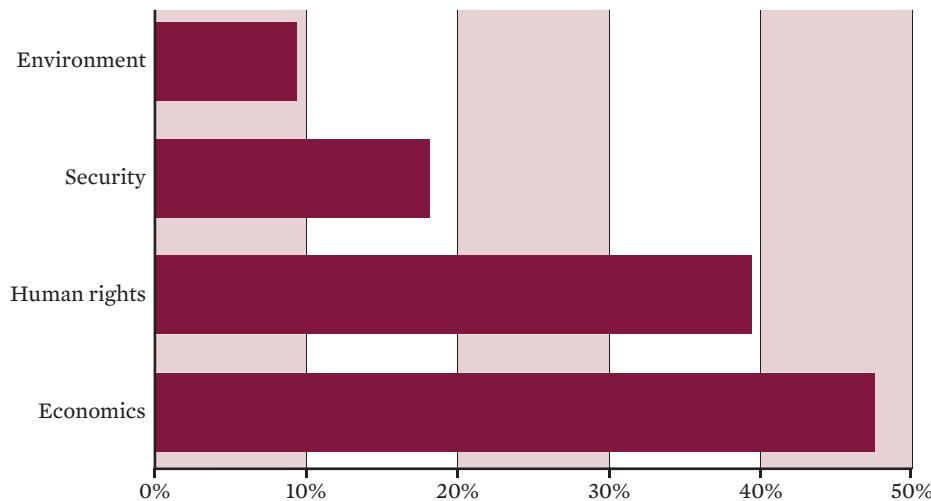
Enforcement provisions in international agreements vary widely. As shown in Figure 11.1, nearly 40 percent of economic and human rights agreements contain clauses empowering members to punish noncompliance, while less than 10 percent of environmental agreements include such provisions.¹² We should note, however, that just because agreements do not contain explicit enforcement provisions does not mean that states cannot use informal mechanisms to punish noncompliance.

10. Michael J. Glennon, *Limits of Law, Prerogatives of Power: Interventionism after Kosovo* (London: Palgrave Macmillan, 2003), 178.

11. George W. Downs, David M. Rocke, and Peter N. Barsoom, “Is the Good News about Compliance Good News about Cooperation?” *International Organization* 50, no. 3 (1996): 379–406.

12. Barbara Koremenos, *The Continent of International Law: Explaining Agreement Design* (New York: Cambridge University Press, 2016), 229.

FIGURE 11.1 Treaties Containing Punishment Provisions



Even though enforcement provisions may be specified in an agreement, the enforcement of international law ultimately depends on the principle of national self-help. It is a truth of world politics that there is no central authority higher than the state that can enforce law between all states. As we discussed in Chapter 5, there are no police in international relations. At most, international law sets the terms and conditions under which victims can legally and legitimately retaliate against countries that violate rules of behavior.

Even in world trade, an area of international relations with strong and well-developed international laws, the WTO only permits victims of illegal trade barriers to retaliate by imposing punitive duties on goods purchased from the violator. The WTO cannot punish violators itself, nor can it mandate that other states punish violators. Each victimized country must, on its own, decide whether to seek and carry out retribution for clearly illegal acts. This dependence on self-help necessarily limits the effectiveness of international law.

At the same time, international law is generally followed because of the very real and important benefits of cooperation that it enables. Like all institutions, international law facilitates cooperation by setting more or less obligatory standards of behavior, helping to verify compliance by articulating more or less precise rules, lowering the costs of decision making by creating rules that do not need to be renegotiated for each interaction, and managing disputes.

In analyzing the problem of restraints on violence during war, as one example, the political scientist James Morrow argues that cooperation depends on reciprocity.¹³ A state is more likely to treat enemy prisoners of war (POWs) well if it expects its opponent to treat its captive soldiers well, and violations by one state are likely

Figure source: Barbara Koremenos, *The Continent of International Law: Explaining Agreement Design* (New York: Cambridge University Press, 2016).

13. James D. Morrow, *Order within Anarchy: The Laws of War as an International Institution* (New York: Cambridge University Press, 2014).

to provoke retaliation by another. The Geneva Conventions, especially when ratified by both parties, make clear that the states understand, accept, and are likely to follow international laws regulating the treatment of POWs. This makes it easier for states to presume that others will treat POWs humanely, and for them to do the same for theirs, and it defines relatively clearly what constitutes a violation that would then be punished through retaliation. By setting rules that help clarify expectations on both sides, the Geneva Conventions reinforce the equilibrium (treating POWs well as long as the other state treats POWs well) that might otherwise prove more fragile or tend to erode under the stress of war.

In facilitating cooperation, obligation and precision may be the most important dimensions of international law, for, as just explained, they set expectations for the behavior of others and reduce the range within which states can argue that the law does not apply to their interactions in a particular instance. Simple words matter here because they define which behaviors are consistent with cooperation and which are not. It is the anticipated benefits of cooperation that lead states to create international law in the first place, and it is the actual benefits of cooperation that lead them to comply with the rules once they are in place.

Widespread transgressions of law undermine the gains from cooperation that states seek, and states fear that the set of rules will unravel and destroy cooperation. This fear of cooperation breaking down prevents states from violating laws in pursuit of their short-term interests. The greater the benefits of cooperation, and the more evenly these benefits are shared, the more international law will constrain the policies of all states. The more states have to lose, the more international law will shape their interactions and alter outcomes.

International law is also more effective when it is delegated to courts, arbitrators, and other tribunals. When states disagree on what the law says, or how it should be applied in specific situations, referring the dispute to an independent body for decision can help prevent conflicts from escalating. The international adjudication procedures of the WTO are one highly developed example of how delegations to a supranational institution can mitigate disagreements that might otherwise undermine international trade relations.¹⁴

Domestic courts, however, are also important to the enforcement of international law. In many countries, including the United States, international treaties are superior to domestic laws, meaning that once enacted, they override domestic laws that contradict their provisions and cannot be changed by subsequent legislation. The treaty thereby becomes part of “domestic” law and is enforced in the same way as all other laws in the ratifying country.

Domestic courts are also increasingly appealing to international law in interpreting strictly domestic statutes. In *Roper v. Simmons* (2005), which overturned laws on the death penalty for juvenile offenders in the United States, the U.S. Supreme Court cited as support the UN Convention on the Rights of the Child, previously signed by the president but never ratified by the Senate. Writing for

14. Christina L. Davis, *Why Adjudicate? Enforcing Trade Rules in the WTO* (Princeton, NJ: Princeton University Press, 2012).

the majority, Justice Anthony Kennedy argued it was “proper that we acknowledge the overwhelming weight of international opinion against the juvenile death penalty. . . . The opinion of the world community, while not controlling our outcome, does provide respected and significant confirmation of our own conclusions.”¹⁵ As international law is directly and indirectly incorporated into domestic law, the enforcement powers of states within their own jurisdictions are being harnessed to it.

In addition, some international law also creates *compliance constituencies* within states that then have interests in ensuring that their governments follow the rules.¹⁶ Even when some domestic groups might benefit from breaking international laws, other constituencies have a strong interest in upholding the law. WTO law, for instance, opens foreign markets to trade and helps ensure nondiscriminatory treatment for goods from different countries. Although import-competing industries that favor protection might advocate policies that violate WTO rules, export industries that are dependent on foreign markets have an interest in ensuring that their governments uphold their obligations. Similarly, militaries are often staunch advocates of upholding the Geneva Conventions, especially with regard to the treatment of prisoners. TANs that propagate norms that are subsequently embedded in international law, as discussed in the next section, are also likely to be continuing advocates for compliance.

Thus, the benefits of cooperation, both to states as a whole and to particular groups within states, can make international law self-enforcing. Although still reliant on and limited by the principle of self-help, states have an interest in following international law so as to help ensure that other states also follow the rules. In this way, international law can significantly influence and constrain the interactions of states even without any external enforcement mechanism. Nonetheless, international law is unlikely to end the bargaining failures that lead states into war or resolve other sources of conflict.

Like other institutions, international law facilitates cooperation, but it does not ensure that cooperation will always prevail. It is a useful tool in altering the interactions of states in more constructive directions and in bringing about desirable outcomes in world politics, but it is not a panacea. The difficulty of demonstrating the independent effect of international law, however, ensures that the debate about how effective law is will continue. As we will see in Chapter 12, the selection problem is central in the debate about the effectiveness of international human rights law.

What Are International Norms?

International norms are also a type of institution that constrains states. **Norms** are standards of behavior for actors with a given identity defined in terms of rights and obligations. They rest on a community’s beliefs about what is appropriate for an

norms

Standards of behavior for actors with a given identity; norms define what actions are “right” or appropriate under particular circumstances.

15. Quoted in Robert Delahunty and John Yoo, “Against Foreign Law,” *Harvard Journal of Law and Public Policy* 29, no. 1 (2005): 291–330. The trend toward citing foreign law is strongly opposed by conservatives, who see it overturning democratic processes within the United States.

16. Miles Kahler, “Conclusion: The Causes and Consequences of Legalization,” in Goldstein et al., *Legalization and World Politics*, 283–84.

actor under some specified condition. Norms may be codified into international law, but norms as institutions can exist and be respected by members of a community even when they are not written down in formal agreements. In our everyday life, many of our interactions are regulated by norms that have nothing to do with law. You are not required by law to hold an elevator for others, for instance. But to intentionally—or even unintentionally—allow the doors to close on someone rushing to the elevator is regarded as rude, and you may even apologize for letting the door close, even though the now excluded passenger cannot hear you.

Similarly, and with greater political importance, norms of fairness—which are not required in any way by law but reflect deep-seated social understandings—shape political appeals and policies in many countries, although exactly what is “fair” is not always clear and has varied considerably over time. In this same way, many now recognize a nuclear “taboo” in international relations—a normative prohibition against the use of nuclear weapons—even though the norm is nowhere found in international law.

Like law, international norms shape the behavior of states in important ways. Norms affect the interactions of states because they are understood by people within those states to be rules of conduct that are right and morally correct. In other words, norms define what it is we *should* do and thereby shape our understanding of our interests. In our everyday lives, of course, individuals and countries do many things they should not. Norms are often violated. They are standards of behavior, not prohibitions or straitjackets. But even if we choose to violate norms, we must then excuse our behavior, justify it, or risk being ostracized by the community.

We can group most norms into three broad categories. The first category, which we refer to as *constitutive norms*, defines who is a legitimate or appropriate actor under what circumstances. What it means to be a state, for instance, is defined largely by norms.¹⁷ At the level of everyday diplomacy, all states have flags, national anthems, and—even in the poorest states—ministries of science and technology. No law requires this, but there is remarkable similarity in the form and practices of states in the world today. To show that they are indeed modern states, many countries also buy advanced military equipment for which they have little use and even less ability to maintain—most notably fighter jets, which appear to have enormous symbolic value. More broadly, norms shape what it means to be sovereign at any point in history. This includes evolving ideas about when states can legitimately intervene in one another’s “sovereign” areas of control, as reflected today in the new norm of R2P.

The second category, *procedural norms*, defines how decisions involving multiple actors should be made. As such, procedural norms are analogous to secondary rules in international law. In domestic politics, procedural norms are often well structured. In legislatures, for instance, ramming through a major

17. Statehood and sovereignty are defined as law through the UN Charter and other international agreements. The “rights” that sovereignty entails, however, have varied dramatically over time, depending on how states choose to interpret the law.

bill late at night without due warning to the opposition, though permitted by the rules, is usually regarded as unfair and illegitimate and taints the resulting legislation.

In international relations, procedural norms are generally less robust. Sovereignty implies that all states are formally equal, and thus each state is entitled to an equal voice in world affairs—at least in principle. This is an important support for multilateralism, the practice of “diffuse reciprocity” in international relations in which states are expected to offer one another roughly equal benefits over time.¹⁸ Yet, more powerful states are often acknowledged to have special rights and greater responsibilities in recognition that their support is necessary for multilateralism to be effective. The United States and other major donors are often consulted, for instance, by IMF staff before loan agreements are formally presented to the executive directors for approval.¹⁹ Such procedural norms give more powerful states a larger voice in diplomatic circles than the formal equality of sovereignty otherwise allows.

Finally, the third category, *regulative norms*, governs the behavior of actors in their interactions with other actors. R2P is one example, as is the norm of election monitoring. The nuclear taboo is also a regulative norm.²⁰ Although the United States did drop two atomic bombs on Japan in 1945, ending World War II, no country since has used nuclear weapons, despite the fact that at least nine countries are now believed to possess workable bombs. Although nuclear weapons are held in reserve as the ultimate defense—a lingering threat to all enemies—political leaders are reluctant to contemplate using them, even when they are technically feasible and possibly efficient. To destroy hardened underground bunkers—whether of the type that hid Saddam Hussein during the Iraq War or those that protect the Iranian or North Korean nuclear programs—the United States has devoted considerable resources to developing large conventional “bunker-busting” bombs, even when existing tactical nuclear weapons could likely accomplish the same task more effectively.

That countries do not use nuclear weapons for fear of retaliation is undoubtedly part of the explanation for this norm. But such weapons are not used—and not contemplated for use—even when the target does not have nuclear weapons or the

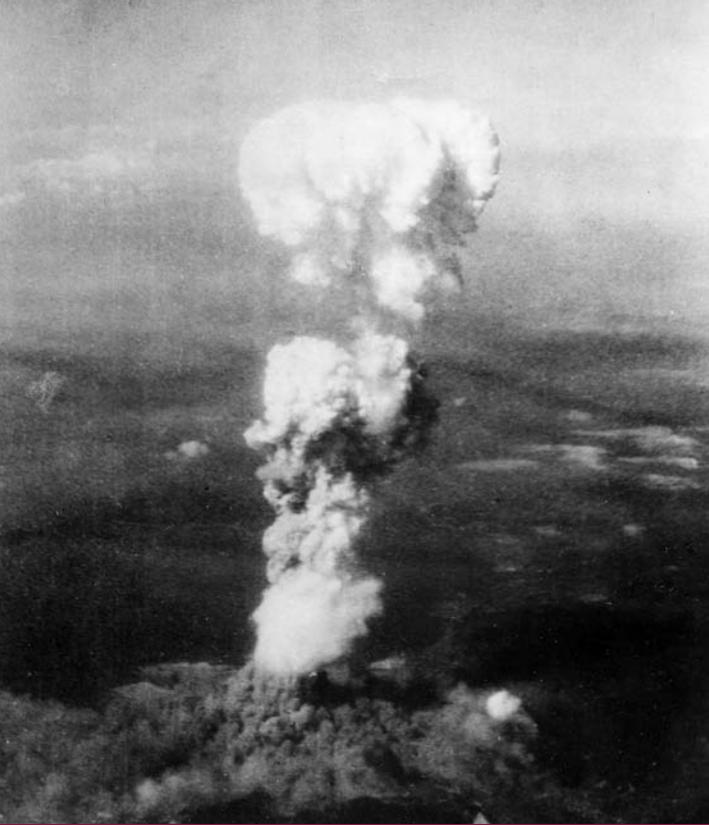


The possession of advanced military equipment has come to be a powerful symbol of legitimate statehood, even for countries that have little need for it. Venezuela, for instance, owns dozens of fighter jets.

18. John Gerard Ruggie, ed., *Multilateralism Matters: The Theory and Praxis of an Institutional Form* (New York: Columbia University Press, 1993), 11.

19. Randall W. Stone, *Controlling Institutions: International Organizations and the Global Economy* (New York: Cambridge University Press, 2011).

20. Nina Tannenwald, “The Nuclear Taboo: The United States and the Normative Basis of Nuclear Non-use,” *International Organization* 53, no. 3 (2003): 433–68.



The taboo against the use of nuclear weapons is an example of a regulative norm. Since the U.S. bombing of Hiroshima (above) and Nagasaki in 1945, no country has resorted to a nuclear attack, at least in part because of the international norm against the use of such weapons.

capacity to retaliate against the user directly. Deterrence alone cannot explain the taboo. Leaders appear reluctant to cross the nuclear threshold for fear of being branded as immoral, either personally or on behalf of their country.

Norms are often difficult to identify. When not written down, they exist only by collective assent. In turn, when norms are deeply internalized, actors typically do not even consciously contemplate violating them, meaning that behavior consistent with the norm appears entirely voluntary or as the exercise of free will. To take an extreme example, nearly all societies have strongly internalized norms against cannibalism, yet this norm almost never appears to affect our conscious choices. We do not wake up in the morning and consider eating our neighbor for breakfast. That we do not want to violate the norm is not evidence that the norm is unimportant, but rather that it is so deeply internalized that we are not even aware that it constrains our behavior.

In a far less extreme form, the nuclear taboo works in similar ways. That nuclear first strikes are not on the list of options that leaders in diplomatic disputes consider does not mean that the norm is not having an effect, but instead suggests that the norm is sufficiently internalized that we are not aware of how fundamentally it shapes our interests and interactions.

Norms are often most easily observed when they are violated. Their presence is revealed both by the censure of others and, usually, by the justifications or excuses given by the offending party. For example, since 1945 there has been a growing norm against changing international borders through the use of force, described as the “territorial integrity” norm.²¹ When Saddam Hussein invaded and seized Kuwait in August 1990, the international community quickly condemned his actions. Although Hussein challenged the prior border as an anachronism of British colonial rule—in an attempt to reframe the issue as one of decolonization—and proclaimed Kuwait to be the long-lost nineteenth province of Iraq, his justifications for the land grab were broadly rejected by the rest of the international community. The United States and a coalition of other states fought a war to return Kuwait to sovereignty.

21. Mark W. Zacher, “The Territorial Integrity Norm: International Boundaries and the Use of Force,” *International Organization* 55, no. 2 (2001): 215–50.

Similar objections were raised when Russia annexed the Crimea from Ukraine in 2014, claiming it as part of its historical territory. Although no state or coalition rose to reverse Russia's action in this case, it was nonetheless the reactions of norm-abiding others and the types of justifications or excuses offered by Russia that display most clearly the territorial integrity norm at work. No actor needs to justify its behavior to others unless it is at risk of transgressing a norm held by the community it belongs to.

Unlike law, norms need not be consistent with one another or with secondary rules. Indeed, the norm of national self-determination conflicts with sovereignty: if the state is the ultimate authority within a territory, how can a nation within that territory freely decide to secede? We have already discussed how R2P conflicts with sovereignty, and the same holds for many of the human rights norms examined in the next chapter.

The tension between norms creates opportunities for actors to interpret rules selectively for their own advantage. When faced with two morally just but conflicting rules, which one do you follow? Germans faced exactly this kind of choice in deciding whether to back NATO's intervention in Kosovo. On the one hand, many Germans were committed to a foreign policy that eschewed war and the use of force; on the other, they had pledged to never again stand idly by as a genocide unfolded. Despite contradictions such as these, however, norms—as with law—can serve as important constraints on states in their interactions.

How Are International Norms Created?

For a principle or idea to become institutionalized as a norm, the standard of behavior it specifies must be accepted as morally right and appropriate by a sufficiently large proportion of any given population, although that proportion is not always clear. Norms change. Where once it was acceptable to own slaves, we now find the practice morally repugnant—though many people around the world are still held in various forms of bondage, not least in the sex trade.

Something is not considered immoral until a sufficiently large number of us decide that it is wrong or objectionable. Child labor is one such principle that remains contested and thus has failed to attain the status of a norm (see “Controversy” on p. 480). Once we agree, in turn, practices that once might have been common become odious or at least inappropriate and even sometimes unimaginable. Over time, norms can develop a taken-for-granted quality, an unquestioned and perhaps unquestionable status. But all norms were originally just principles or ideas without widely accepted moral implications.

Some principles become norms simply by the force of their own inherent moral standing. The nuclear taboo may be one such example of a principle that so obviously improves human welfare that almost everyone accepts it. Other norms are propagated by powerful states or through international organizations. The Washington Consensus on economic liberalism (see Chapter 10, p. 450), which

CONTROVERSY

Toys Made for Children, by Children

Tariq was 12 years old, stitching soccer balls for the equivalent of 60¢ apiece in Pakistan. It took him all day to make one ball, for an average of about 6¢ per hour. Featured in *Life* magazine in 1996, Tariq became the face of child labor in the developing world and sparked a major global civil society action to stop the commercial exploitation of children. Today, over 168 million children ages 5–17, about one in six worldwide, are still engaged in some form of child labor.^a Children work in a host of occupations, including rug weaving, the production of surgical instruments, mining and construction, and—like Tariq—the making of toys for other children.



Applying the Concepts

interactions, however, are more complex than they may seem. If the norm or **institution** prohibiting child labor takes hold, we must take into account the opportunities that poor workers, especially children, have in their societies.

Since Tariq appeared in *Life*, a norm against child labor has indeed emerged, at least in developed countries. Consumers in rich countries are increasingly avoiding goods that are known to be produced by child labor. For many people in developed countries, the concept of child labor is now abhorrent, nearly unthinkable, and assumed to be exploitative. Nonetheless, this principle has probably not yet hit the tipping point where enough individuals accept the principle that it acquires a broad moral status. Why?

As TANs have directed attention to child labor, consumers in developed countries have acquired new **interests** in ethical consumption; more consumers are making informed purchases to reward improved working conditions and practices. These market

interactions, however, are more complex than they may seem. If the norm or **institution** prohibiting child labor takes hold, we must take into account the opportunities that poor workers, especially children, have in their societies.

The issue of child labor is more complicated than it first appears. Clearly, the economic exploitation of children is wrong. But the evil of child labor must be balanced against the alternatives to work for children in the poorest countries. These alternatives are often quite dismal. Most children and their families are not choosing between work and play or even education, but between work and starvation.

Although low, the wages earned by children are often essential to supplement the meager incomes of their parents. In families living on mere dollars a day, a child's earnings might be the difference between subsistence and starvation. In turn, for most villages where children work, schools are typically few and far away. Moreover, families dependent on child labor can rarely afford even the small fees required for schooling where it exists. In the end, banning child labor may only force child workers further into the informal economy—outside government oversight and regulation, where they are even more easily exploited—or into the sex trade.

Indeed, after the Child Labor Deterrence Act was introduced in the U.S. Senate in 1992, the mere threat of prohibitions on child-produced garments led business owners in Bangladesh to summarily dismiss many children from their jobs. According to a unique follow-up study that tracked those children, some were forced to take jobs “in more hazardous situations, in unsafe workshops where they were paid less, or in prostitution.”^b Thus, the core problem is the lack of other opportunities for child laborers.

A toy-making factory in Bangladesh.



a. International Labour Office, *Marking Progress against Child Labour: Global Estimates and Trends, 2000–2012* (Geneva, Switzerland: International Labour Office, 2013), 3–5. The number of child laborers is down from 246 million in 2000.

Under these circumstances, banning child workers can be seen as another form of Western cultural imperialism—a projection of values that are now dominant in the richest countries onto individuals and families struggling to sustain themselves in some of the world's poorest areas. After all, minimum age requirements for employment in the United States were not enacted until 1938. In 1910, 2 million children were employed outside the agricultural sector in the United States—a number that would be much larger if we included farm labor.

Although the states had moved individually to regulate child labor, only during the Great Depression—when unemployment rates rose to extraordinary levels—could Progressives finally enact national minimum age standards for workers. This standard, combined with free primary schooling, led the proportion of children working to drop rapidly to less than 1 percent. Child labor was common in the now developed countries before they became rich. Why should consumers or voters in these countries now seek to deny employment to children in the poorest countries?

Clearly, it is not enough to simply ban child labor. Advocates must couple ending child labor with expanded educational opportunities and financial support for poor families to replace lost income. This task will be expensive, at least in the short term. The International Labour Organization demonstrates clearly that the long-term benefits of shifting children from work to education are enormous. More education not only frees children from labor but increases their earning capacity over the course of their lifetimes. But paying to educate cohorts of children, monitoring compliance with anti-child labor laws, and subsidizing families to replace the income lost incurs substantial net costs for approximately the first 20 years of any program.^c

Only after generations of children have completed their educations and entered the adult workforce do the economic gains begin to outweigh the costs. Politicians everywhere are notoriously shortsighted. To bear costs for 20 years before the gains arrive is a challenge, and one that even farsighted leaders may not easily manage.

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- b. UNICEF, *The State of the World's Children* (New York: Oxford University Press, 1997), 23, www.unicef.org/sowc97/report.
- c. International Labour Office, *Investing in Every Child: An Economic Study of the Costs and Benefits of Eliminating Child Labour* (Geneva, Switzerland: International Labour Office, 2003), 6.



To ask the poorest countries to incur such costs over two decades is, perhaps, to expect too much.

Though the norm against child labor that is taking hold in developed countries hardly seems objectionable, these consumers and politicians who advocate for this norm on moral grounds may not actually be helping children unless they also support expanded education and income transfers to those they leave with fewer—rather than more—opportunities in the world's poorest countries.

Thinking Analytically

1. How does a growing interest in ethical consumption affect others, especially producers? Do the interests of consumers and producers always coincide?
2. Should rules and norms prevalent in rich countries be followed by poor countries? Should certain institutions be universal? If so, which ones and why?

held broad sway in the 1990s and early 2000s, was heavily promoted by the United States through its policies and the IMF and World Bank. Still other norms may be championed by virtuous leaders seeking to distinguish themselves from the perhaps less virtuous. These leaders' efforts to signal their commitment to democracy have been a factor in spreading the norm of inviting monitors to oversee elections in other new democracies (see Chapter 2, p. 72).

Norms typically begin with individuals or groups who seek to advance a principled standard of behavior for states and other actors. Transnational advocacy networks (TANs) are central to spreading norms throughout the international system. Comprising individuals and NGOs deeply committed to ethical beliefs, TANs aim to persuade other individuals and groups to share their commitment. We call these individuals and groups **norms entrepreneurs**.

The International Campaign to Ban Landmines (ICBL), for instance, is a clear example of how a group of committed activists were able to call attention to an issue and convince many other people around the globe that existing practices were morally wrong. The ICBL is a network of hundreds of NGOs in some 100 countries, working to outlaw and remove land mines, which still kill and maim over 6,000 people worldwide each year. It was the primary force behind the negotiation and adoption of the Ottawa Convention.

The convention was negotiated and signed in 1997 and entered into force in March 1999. As of March 2018, 164 countries have joined the convention, and only 32 countries remain outside the treaty entirely, including China, Egypt, India, Israel, Pakistan, Russia, and the United States.²² In 1997, the ICBL and its coordinator, Jody Williams, were awarded the Nobel Peace Prize for their work. In bestowing the award, the Norwegian Nobel Committee applauded the campaign for moving the ban from “a vision to a feasible reality” and acclaimed the organization as a model for international disarmament and peace.

Once norms are adopted, supporters of those norms then hold their governments accountable to acceptable standards of international behavior. Political leaders who hold deep normative commitments may decide to rule out certain policy options, deeming them immoral in the face of these international standards. Even if tempted to violate norms, leaders may fear punishment by their constituents for violating widely accepted standards of behavior. Political leaders may also be held to account by citizens of other states, who press their governments to enforce compliance to norms they hold dear, as in the anti-apartheid movement, which we will discuss in Chapter 12. In this way, even authoritarian governments that are not accountable to their own people can be pressed to uphold international norms.

TANs: Changing Minds, Altering Interests Transnational advocacy networks (TANs) are, as the name implies, sets of activists allied in the pursuit of a common normative objective, including (in the contemporary era) human rights; the

norms entrepreneurs

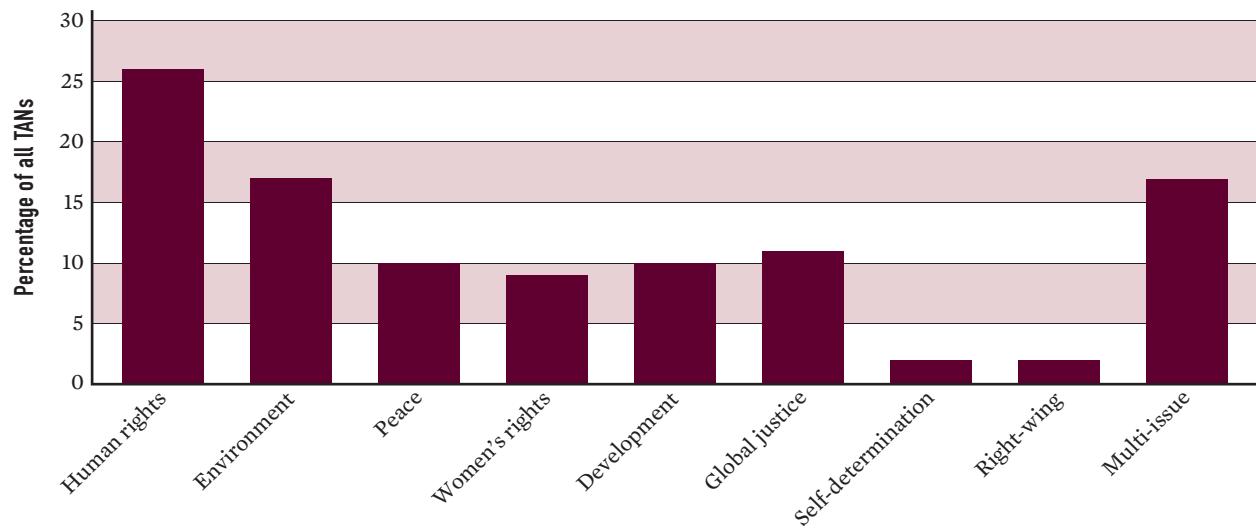
Individuals or groups that seek to advance principled standards of behavior for states and other actors.

transnational advocacy network (TAN)

A set of individuals and nongovernmental organizations acting in pursuit of a normative objective.

22. See www.icbl.org/en-gb/the-treaty/treaty-status.aspx (accessed 08/03/17).

FIGURE 11.2 Issue Focus of Transnational Advocacy Networks, 2000*



environment; economic and social justice; democracy; women's rights; and abortion rights or, conversely, the right to life (Figure 11.2). The actors that make up TANs may include (1) international and domestic NGOs involved in research and advocacy; (2) local social movements; (3) foundations and other philanthropic organizations; (4) the media; and (5) churches, trade unions, and consumer and other civil organizations.²³ The number of TANs has grown dramatically over the past 50 years: in 1953, there were about 100 identifiable TANs; today, they number well into the thousands—so many, in fact, that a proper count is nearly impossible.²⁴

Nearly all the major issues that engage citizens within countries now have an international counterpart. For example, the Planned Parenthood Federation of America, often on the front lines of the movement to make or keep abortion legal, has 10 foreign affiliates and cooperates with hundreds of other organizations and countless individuals worldwide in the women's rights and legalized abortion movement. Heartbeat International, a network of pro-life pregnancy centers, has affiliates in more than 47 countries and works with many churches and other organizations to promote the right to life. First gaining momentum in the United States,

Figure source: Jackie Smith, "Exploring Connections between Global Integration and Political Mobilization," *Journal of World System Research* 10, no. 1 (2004): 266, Table 2.

*The most recent data available are from 2000 but are still useful in providing a sense of the issue areas that contemporary TANs focus on.

23. Margaret E. Keck and Kathryn Sikkink, *Activists beyond Borders: Advocacy Networks in International Politics* (Ithaca, NY: Cornell University Press, 1998), 9. We exclude international organizations and governments from this list, although individuals in these organizations may interact with transnational networks. On public transnational networks, see Anne-Marie Slaughter, *A New World Order* (Princeton, NJ: Princeton University Press, 2004).

24. For the latest available figures, see Kathryn Sikkink and Jackie Smith, "Infrastructures for Change: Transnational Organizations, 1953–1993," in *Restructuring World Politics: Transnational Social Movements, Networks, and Norms*, ed. Sanjeev Khagram, James V. Riker, and Kathryn Sikkink, 30, Table 2.1 (Minneapolis: University of Minnesota Press, 2002); and Jackie Smith, "Exploring Connections between Global Integration and Political Mobilization," *Journal of World System Research* 10, no. 1 (2004): 266, Table 2.

the struggle over abortion has now become an international political issue with transnational networks on both sides of the question coordinating action, sharing information and tactics, and mobilizing new members. TANs coordinate the activities of participants around the globe and initiate, lead, and actively direct collective action on issues of concern.

TANs promote norms to alter interests and change interactions at the individual and state levels. TANs alter the way actors first define their interests by bringing new knowledge to public attention. For example, as evidence of global warming has become increasingly clear, the issue has been brought to the attention of people around the globe by environmental TANs such as Greenpeace and former vice president Al Gore's Alliance for Climate Protection. By increasing public awareness, TANs have persuaded at least some individuals to place a higher priority on reducing global warming. New public pressure, in turn, has helped to elevate the issue on the political agenda, even if action on policy remains halting and tentative. Such pressure helped promote agreement on the 2016 Paris Accord, under the terms of which many countries pledged to reduce greenhouse gas emissions. This pressure, however, did not sway President Donald Trump, who indicated that he intended to withdraw from the agreement negotiated by his predecessor (see Chapter 13).²⁵

Yet scientific or technical knowledge seldom translates directly into policy change. Expert consensus can call attention to new problems and point to possible solutions, but groups negatively affected by the proposed policy changes will also mobilize politically to influence government decisions. For example, the scientific community agreed for decades on the hazards of smoking before the tobacco industry lobby in the United States was finally defeated and the policy altered. In many countries, government policy still favors smokers, even in the face of nearly universal scientific agreement on the harmful effects of smoking.

Similarly, despite widespread scientific concern about carbon dioxide emissions into the atmosphere, policies to limit global climate change are often blocked by countries and industries that use carbon intensively. American oil and gas industries' support for President Trump, for instance, was likely a key factor in his withdrawal from the Paris Agreement. Knowledge is power—but it alone may not be enough to create a norm or set policy.

Perhaps more important, TANs also change how actors conceive of their interests by promoting new moral values. In essence, TANs urge actors to have preferences over certain practices—owning slaves, using land mines—rather than thinking only about the possible outcomes of those practices, such as greater wealth or victory on the battlefield. Of course, norms existed and spread throughout the world system prior to the recent proliferation of TANs. After all, not all norms are connected with TANs and their activities. But one important function

25. Communities of technical experts who create and promote new knowledge are often called epistemic communities but are, in practice, similar to TANs. See Peter M. Haas, ed., *Knowledge, Power, and International Policy Coordination* (Columbia: University of South Carolina Press, 1997).

of TANs is to encourage and support socially appropriate behavior and help spread norms across national borders. Martha Finnemore and Kathryn Sikkink, two leading scholars of norms in international relations, posit a three-stage **norms life cycle** that can help us understand how TANs shape norms and interests and, thus, political outcomes.²⁶

In the first stage, norms entrepreneurs actively work to convince a critical mass of other individuals in other states to embrace their beliefs. The norm that medical personnel on the battlefield and wounded soldiers be treated as neutral noncombatants, now embodied in the Geneva Conventions, was rooted in the crusade by Henry Dumont, a Swiss banker, who helped found the International Committee of the Red Cross.

Similarly, the National Rifle Association (NRA) is working globally to promote the principle that owning a gun is a natural right. Although its charter prohibits the organization from funding groups in other countries, it is building a network of like-minded organizations around the world. Whether the NRA will succeed in establishing gun ownership as a right outside the United States is not clear, but its efforts helped defeat a national gun control law in Brazil in October 2005.²⁷ It is during this first stage of the norms life cycle that most TANs become vehicles for the dissemination of new norms.

Norms entrepreneurs frame “issues to make them comprehensible to target audiences . . . [and] attract attention and encourage action.”²⁸ Perhaps most important, they find creative ways to connect the behavior they wish to encourage to other, preexisting norms; because these norms are already widely accepted, audiences are likely to see the value in the desired behaviors or ends. Activists “win” by framing principles they want to promote so that they connect to principles that are already accepted in a community.

One effective frame is to redefine undesirable behaviors as perpetrating violence against innocent persons, which is nearly universally abhorred. The women’s rights movement, for instance, failed to make progress for many years in the 1980s and 1990s because it was caught among three competing frames: one of discrimination, emphasizing the principle of gender equality articulated in the 1979 Convention on the Elimination of All Forms of Discrimination against Women; one of economic development and the need to improve the quality of life for women; and one of general human rights, claiming that civil and political rights for everyone could not be secured without protecting the rights of women as well, adopted at the 1993 World Conference on Human Rights. Seeking to build an integrated transnational movement, activists finally framed the issue as one of violence against women and made this approach the centerpiece of the UN’s World Conference on Women in Beijing in 1995, successfully bridging the competing orientations and rallying

norms life cycle

A three-stage model of how norms diffuse within a population and achieve a taken-for-granted status.

26. Martha Finnemore and Kathryn Sikkink, “International Norm Dynamics and Political Change,” *International Organization* 52, no. 4 (1998): 887–917.

27. David Morton, “Gunning for the World,” *Foreign Policy* (January–February 2006), 58–67.

28. Keck and Sikkink, *Activists beyond Borders*, 2–3.

the women's rights network behind a unified message of opposition to all forms of violence against women.²⁹

In the case of female genital cutting, opponents framed the practice simply by changing the name from *female circumcision* (thereby breaking its association with the traditional practice of male circumcision, which does not produce the same long-term health problems) to *female genital mutilation*, which carries stronger connotations of violence against women. Traditionalists, in turn, attempted to frame the issue as one of local culture against Western values imposed by colonial governors and Christian missionaries.³⁰ By connecting the practice to the larger anticolonial struggle, they ensured some continuing support among local communities and, thus, continuing controversy.³¹ Similarly, the NRA attempts to frame the issue of gun ownership by linking it to the concept of human rights, while advocates of gun control emphasize firearm safety and the threat to children.

During the second stage of the norms life cycle, once a new frame has taken hold, a *norms cascade* occurs as the number of adherents passes a tipping point beyond which the idea gains sufficient support that it becomes a nearly universal standard of behavior to which others can be held accountable. The tipping point is often hard to identify in advance; it is determined not only by the number of actors that adopt the new belief, but also by those actors' leadership or visibility within the international community. Conformity to the new norm can then be established through coercion (such as economic sanctions in the case of human rights norms) or through socialization (a process akin to peer pressure in which, say, states adopt new behaviors because that is what "good" states do).

The norm of national election monitoring appears to have recently crossed this threshold. Although this norm was essentially unknown before 1978, virtually all democratizing states now invite other governments or transnational NGOs to monitor their first elections (see the "How Do We Know?" box in Chapter 2, p. 72). It is not clear, given the prominent countries that have not yet committed to eliminate their use, whether the ban on land mines has reached this stage.

In the third stage of the cycle, norms are internalized or become so widely accepted that they acquire the taken-for-granted quality that makes conforming almost automatic. Indeed, even contemplating violation of the deeply internalized norms against, say, cannibalism or eating certain foods can make some people feel ill. Norms against slavery or violence against political prisoners, once the subjects of TAN activity, are now at least partially internalized within many countries, although violations still occur. Few norms governing

29. Keck and Sikkink, *Activists beyond Borders*, chap. 5.

30. See, for example, Makau Mutua, *Human Rights: A Political and Cultural Critique* (Philadelphia: University of Pennsylvania Press, 2002).

31. Keck and Sikkink, *Activists beyond Borders*, 67–71.

interactions between states have reached this final stage, although the nuclear taboo may be close. Were North Korea to use a nuclear weapon, for instance, it would likely be strongly condemned by the international community for violating the norm, indicating the robust presence of the taboo and its role as a constraint in other cases.

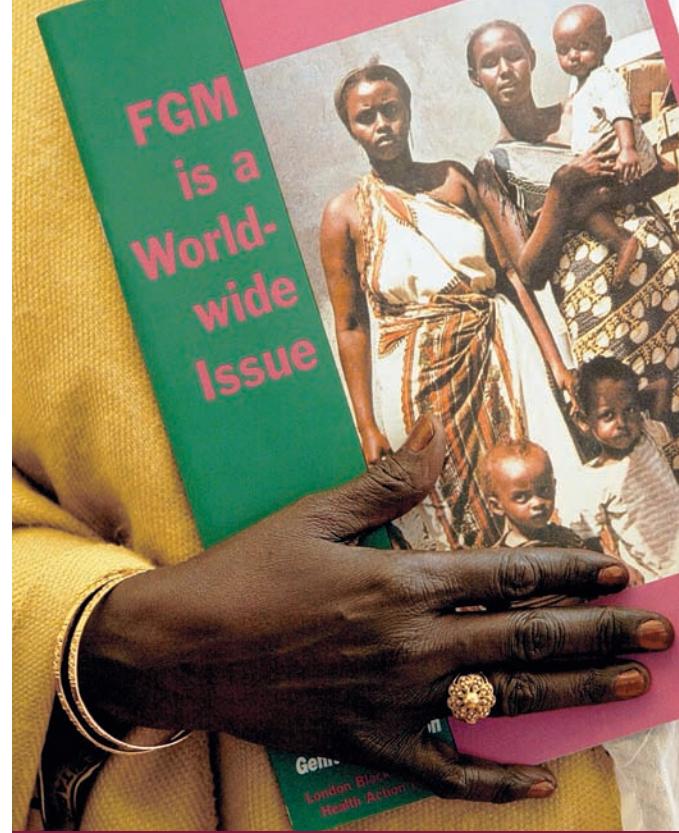
Once internalized, norms affect the way actors conceive of their interests. Prior to this stage, norms are enforced by the sanctions or moral disapproval of others. These forms of punishment raise the costs of engaging in behaviors that violate the norm, thereby affecting the choices actors make in particular interactions. But once a norm is internalized, certain actions are simply not considered, because they are normatively prohibited (taboo), and others are favored as appropriate or correct. At this deepest level, internalized norms lead actors to reconceive their interests by reordering how they evaluate alternative political outcomes and the appropriate means of achieving them.

Do Norms Matter?

Norms constrain states and other actors in two principal ways, first by redefining interests, and second, by changing their interactions. In both cases, isolating the effects of norms on policy is difficult. To the extent that norms define how individuals and states perceive their interests, the selection problem identified in the preceding discussion of international law becomes even more acute. If norms shape interests, and states act on those interests, distinguishing the independent effect of norms on action is nearly impossible. Nonetheless, there is reason to believe that the effects of norms on state action may be considerable.

Norms define interests by shaping what actors believe is right and appropriate behavior under specific circumstances. Countries as a whole may respect norms out of concern for their reputations as honorable or norm-abiding states. Such a reputation may have intrinsic value. It may also be valued because it facilitates cooperation with other countries. As individuals, leaders may seek for their own egotistic reasons to be seen as moral and “upstanding.” Other leaders may do the right thing simply because it is right. Even if leaders are cross-pressured by circumstances or self-interested groups to act in ways that contravene norms, however, they can be held to account by their own citizens, and especially by voters.

TANs play an important role in enforcing norms, by calling attention to violations of widely held beliefs—a practice known as naming and shaming. States and



TANs and other groups try to frame issues in a way that will win sympathy for their position. In the case of female circumcision, opponents have framed it as female genital *mutilation* to emphasize the violence of the practice.

their leaders typically value their reputations as “good” countries or individuals that respect and comply with standards of appropriate behavior. By calling attention to violations of norms, TANs mobilize domestic citizens, as well as the “court of world opinion,” to castigate and shame states into altering abhorrent behavior. They also challenge and potentially damage the reputations of offending states. If countries violate norms frequently and are called to account repeatedly by TANs, they risk becoming international pariahs that other states will be reluctant to trust. Although naming and shaming might seem like a weak tool to leverage good compliance from otherwise strong states, over the long run it can severely weaken a state’s reputation and put potentially profitable cooperation at risk.

boomerang model

A process through which NGOs in one state are able to activate transnational linkages to bring pressure from other states on their own governments.

Norms also change the interactions of states and their outcomes by invoking the coercive power of other states. In the **boomerang model** proposed by Margaret Keck and Kathryn Sikkink, NGOs in one state are able to activate transnational linkages to bring pressure from other states to bear on their own governments (Figure 11.3).³² This process is most likely to be effective when NGOs are blocked from influencing their own governments, as is common in many nondemocratic regimes. Unable to appeal to their own governments, NGOs activate their transnational network and bring their plight to the attention of NGOs and individuals in other countries, who, in turn, press their governments or, perhaps, international organizations into action. These other governments then demand that the first state alter its behavior or remove the block on its own NGOs. In this way, foreign states are mobilized to try to influence the offending state.

Reflecting the importance of domestic political institutions, the boomerang model is most likely to be activated by NGOs originating in nondemocratic regimes and directed at NGOs in more democratic states, where governments are more sensitive to social demands pressed by their voters. New forms of social media have likely accentuated the strength and speed of the boomerang effect as news and often graphic video of state repression can be transmitted broadly across the globe instantaneously (see “How Do We Know?” on p. 490).

The anti-apartheid movement in South Africa is a good example of the boomerang model in action (see Chapter 12). Excluded from power and influence in the White-dominated government, Black South Africans, their NGOs, and their allies in the society appealed to foreign TANs in their struggle. These advocacy networks mobilized opinion and voters in other countries—mostly in Western democracies—whose governments placed sanctions on South Africa and eventually helped topple the apartheid regime. As this example suggests, the essence of the boomerang process involves domestic NGOs bringing greater pressure to bear on their government than they would be able to exert on their own. The process does not require any actor to alter its perceived interests; instead, the activation of transnational ties changes the nature of the political interactions in which the domestic actors are engaged and makes socially inappropriate behavior more costly.

³² Keck and Sikkink, *Activists beyond Borders*, 12–13.

FIGURE 11.3 *The Boomerang Model*

This stylized depiction of the boomerang model shows how NGOs that are blocked from influence within their own state (State A) can appeal to other transnational NGOs, which can press their states (State B) or an international organization to press State A to change its policy.

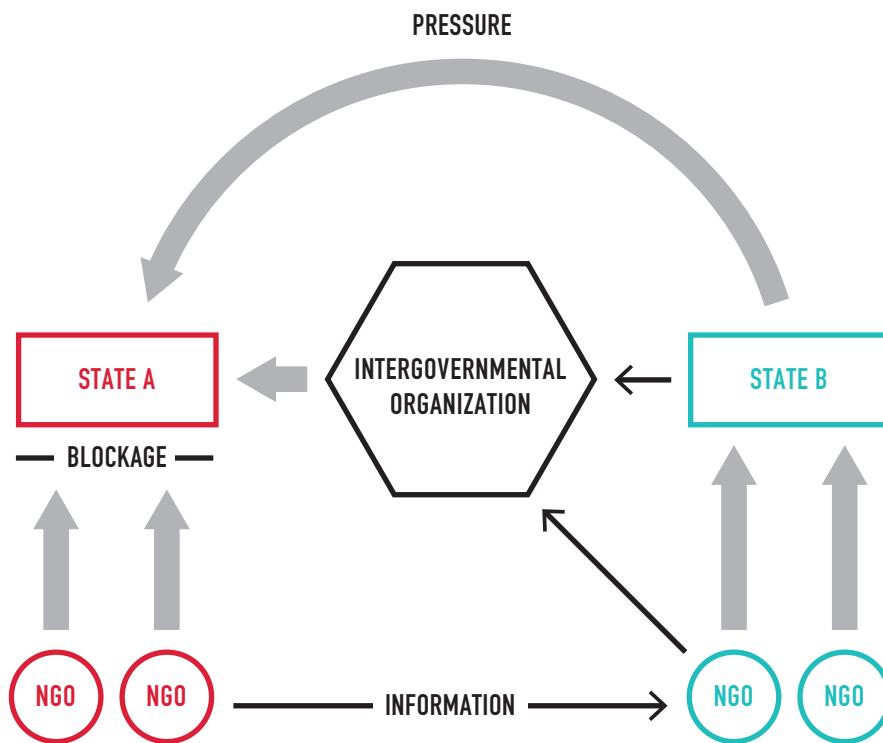


Figure source: Margaret E. Keck and Kathryn Sikkink, *Activists beyond Borders: Advocacy Networks in International Politics* (Ithaca, NY: Cornell University Press, 1998), 13.

Beyond Norms: TANs and International Cooperation

In addition to promoting norms, TANs can affect behavior and outcomes by providing information to states both as endorsers before a final agreement is reached and as monitors afterward. In both cases, the information provided by TANs facilitates interstate cooperation that would otherwise fail. In this way, TANs provide important support for international cooperation that goes beyond their role as norms entrepreneurs.

TANs as Endorsers International agreements can be quite complex. We assume that the negotiators themselves know and agree on the terms of any given treaty or executive agreement they sign, although many agreements contain imprecise language to paper over differences between parties, or do not consider all possible contingencies under which the agreement might hold. But members of the legislature that must ratify the agreement or implement its terms typically

HOW DO WE KNOW?

Social Media and the Arab Spring

Starting in Tunisia in December 2010, political protests rolled across North Africa and the Middle East. In a matter of months, as protests spread, regimes were toppled in Tunisia, Libya, and Egypt. Meanwhile, the government in Bahrain cracked down on demonstrators, deterring further protests, and civil war broke out in Syria. Many of these events played out across social media platforms, including Facebook and Twitter, where protesters posted video, provided commentary, or simply communicated with friends and family. Indeed, social media were believed to be so central at the time that the Arab Spring was also called the “Twitter revolution.” Yet, some have pushed back against the importance of social media as a political force, pointing out that “Twitter cannot stop a bullet.”^a What role did social media play in the Arab Spring?

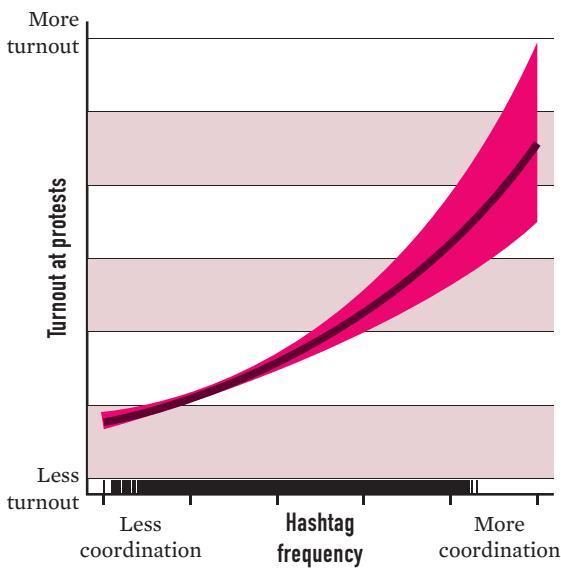
Zachary C. Steinert-Threlkeld examined the effect of tweets on protest activity in 16 countries during the Arab Spring.^b In any protest, there is safety in numbers—especially when the government is likely to target demonstrators. In considering whether to attend a protest, each person must anticipate whether others will attend as well, making protest a highly strategic interaction with other protesters and the state. Because the stakes are so high, individuals rely on many signals about the likely behavior of others. In the past, such signals included conversations with family and friends, declarations made in coffee shops, and encouragement from local religious or union leaders. Today, social media allow for broader communication in real time. Does wider communication make a difference?

Steinert-Threlkeld begins by distinguishing between “core” members of a community with numerous followers on Twitter, many of whom are likely political activists working with various transnational advocacy or nongovernmental organizations, and “peripheral” members, who have few followers. Core members, he argues, tweet a lot, are highly visible, and may be essential for planning protests. The 5 percent of Twitter users in Syria with the most followers,

a. Jared Keller, “Evaluating Iran’s Twitter Revolution,” *Atlantic*, June 18, 2010, www.theatlantic.com/technology/archive/2010/06/evaluating-irans-twitter-revolution/58337.

b. Zachary C. Steinert-Threlkeld, “Spontaneous Collective Action: Peripheral Mobilization during the Arab Spring,” *American Political Science Review* 111, no. 2 (May 2017): 379–403.

FIGURE A Coordination on Twitter and Protest Turnout



Source: Adapted from Zachary C. Steinert-Threlkeld, “Spontaneous Collective Action: Peripheral Mobilization during the Arab Spring,” *American Political Science Review* 111, no. 2 (May 2017): 379–403.

for instance, sent out nearly 50 percent of all tweets in that country surrounding the 2011 protests. But protest turnout, he shows, is driven by peripheral individuals.

The more that peripheral members coordinate their activities, measured by the use of the same hashtags on Twitter, the more protests occur. Figure A shows that as individuals with fewer followers (the periphery) tweet using the same hashtags, representing more coordination, more protestors participate the next day. Conversely, frequent tweeters—core members—do not affect protest turnout; the corresponding graph (not shown) is essentially flat.

Frequent tweeters may be essential for planning protests, yet it’s the tweets from everyday people that inspire protesters to show up. Rather than getting their information only from the local bar or market, protesters may coordinate their activities today more effectively through social media. Although we cannot know what would otherwise have happened in the Arab Spring, Twitter may have raised overall turnout—and helped to bring down several governments.

do not have a detailed understanding of its provisions. Furthermore, the voters who must reelect the executive who negotiated the deal, or the legislators who concurred, almost certainly do not know much about the agreement undertaken in their name.

Legislators and voters can learn whether to support or oppose an agreement from TANs that track the negotiations, study the final text, and endorse or reject its provisions. Legislators or voters need not know a great deal about the substance of the policy issue or the agreement, but they can make informed choices by taking cues from groups that (1) share their preferences or have some external incentive (such as penalties for lying) to truthfully reveal what they know and (2) possess real knowledge about the agreement.³³ Thus, in considering whether to support a proposed environmental treaty, a legislator need not study the text closely, but can observe whether representatives of a trustworthy TAN have endorsed the agreement and decide how to vote accordingly. Legislators who support tighter environmental regulations will vote for treaties endorsed by, say, the Sierra Club, Greenpeace, and similar organizations; those who prefer less stringent regulations will vote against treaties endorsed by those same groups.

The endorsements by TANs provide an informational shortcut that allows legislators and voters to make decisions (nearly) identical to those they would make if they were completely informed. TANs are often particularly effective endorsers precisely because they are perceived as principled actors with strongly held normative beliefs. When they speak for or against an issue on which they are perceived to possess expertise, their voices are typically quite loud and are heard clearly by legislators and voters.

By helping voters or legislators to make appropriate decisions on the basis of limited information, TANs enhance the prospects for cooperation between states. Whenever a domestic legislature must ratify an international agreement, the effect is to make cooperation between two countries either equally as likely or less likely than it is when only the executive is directly involved.³⁴ If the legislature is uncertain about the content and meaning of the agreement negotiated between the executive and the foreign state, it may mistakenly reject agreements that all three parties would prefer. Similar to the problem of bargaining in war (see Chapter 3), uncertainty makes bargaining inefficient and more likely to fail. TANs can reduce such uncertainty and improve the likelihood of cooperation by providing information to all the parties. In this way, TANs facilitate cooperation between states that would otherwise not occur.

33. This discussion draws on Arthur Lupia and Mathew D. McCubbins, *The Democratic Dilemma: Can Citizens Learn What They Need to Know?* (New York: Cambridge University Press, 1998).

34. See Helen V. Milner, *Interests, Institutions, and Information: Domestic Politics and International Relations* (Princeton, NJ: Princeton University Press, 1997). The existence of an effective legislature never makes cooperation more likely.

TANs as Monitors TANs can also monitor whether and how states comply with international law and other agreements, as well as international norms. By revealing information about compliance, TANs allow states to have greater confidence that present and future agreements will be honored.

Having enacted a law, reached an agreement, or recognized a norm, states acquire information about compliance in one of three ways. First, they can rely on the self-reports of others. Many international agreements depend on this mechanism, requiring states to report on their efforts to reduce atmospheric emissions, for instance. This mechanism is, in fact, relatively weak, as states that have incentives to cheat on agreements are also likely to have incentives to lie about their cheating. Self-reports are useful only when they can be verified by one of the other mechanisms.

Second, states can monitor one another's behavior directly. For example, the arms control agreements negotiated between the United States and the Soviet Union during the Cold War depended on direct monitoring. Yet, direct monitoring is often quite expensive, as each state must expend resources in collecting information about often hard-to-observe behaviors by others. Direct monitoring is sometimes likened to police patrols actively circulating on their "beats" looking for violations of the law.³⁵ Such direct monitoring can be inefficient, since monitors must be in the field even when violations are not occurring. It can also be imperfect, since monitors may be occupied or distracted elsewhere when violations do occur. Nonetheless, this practice is a common means of monitoring compliance in international relations.

Third, states can monitor indirectly by listening to the testimony of trustworthy third parties. Here TANs can be useful in identifying and calling attention to violations of international agreements. Having championed the ban on land mines into international law, the ICBL now monitors state compliance very closely. Indirect monitoring is common in the human rights issue area, where organizations like Amnesty International and Human Rights Watch track practices globally and issue calls to their members and states when violations are observed.

Similar practices are emerging in the issue area of the environment. Nearly 10,000 NGOs were officially permitted to participate in the 1992 Earth Summit, the largest-ever gathering of national leaders to discuss protecting the environment. Not only did these organizations conduct a parallel summit and make policy proposals to the interstate meeting, but through their participation they were accredited and legitimized as the watchdogs of the agreements made at the conference. With its new acceptance and prominence, this transnational environmental network has played an important role in calling international attention to poor environmental policies and practices worldwide.

35. See Mathew D. McCubbins and Thomas Schwartz, "Congressional Oversight Overlooked: Police Patrols versus Fire Alarms," *American Journal of Political Science* 28, no. 1 (February 1984): 165–79.



TANs may protest complex international laws to draw broader public attention to policies that they find objectionable. Greenpeace frequently stages outsize demonstrations that it knows will attract an audience against laws that it sees as harmful to the environment.

Indirect monitoring is similar to fire alarms: when problems arise, concerned parties pull the alarm and alert others who respond, but only when necessary.³⁶ When trustworthy monitors are available, indirect monitoring is far less expensive to states and more efficient than the alternatives. By facilitating monitoring and reducing its costs, TANs help promote cooperation that states would otherwise be reluctant to pursue.

Conclusion: Can States Be Constrained?

Can state behavior be changed by international law and norms? This remains a lively debate in which scholars do not have settled answers. On one side, traditionalists argue that international law binds states only to the extent they want to be bound; in turn, transnational networks exist only because states that might otherwise regulate, control, and limit the interactions of those networks permit them to flourish. From this perspective, international law is at best a soft constraint, and TANs and the norms they promote reflect the interests and international prominence of liberal, democratic states that have active domestic civil societies and project these onto the global system. Were these states to weaken or choose otherwise,

36. McCubbins and Schwartz, “Congressional Oversight Overlooked.” On the credibility of transnational NGOs, see Peter Gourevitch, David A. Lake, and Janice Gross Stein, eds., *The Credibility of Transnational NGOs: When Virtue Is Not Enough* (New York: Cambridge University Press, 2012).

both international law and international norms might be undercut by less supportive governments.³⁷

On the other side, globalists argue that international law and transnational networks are emerging as effective forms of global governance. In this view, political authority previously exercised by states is migrating to new supranational authorities, which can regulate states through international law, and to TANs, which are gradually assuming some responsibilities formerly fulfilled by states.³⁸ Here, law is respected because of the large gains from the cooperation it facilitates, and TANs are promoting new norms of global civil society and pressing states to change their behavior. For the globalists, international law and norms are increasingly constraining states in their actions both at home and with one another.

As with all such debates, there are no easy answers. The growth of international law and norms does appear to be changing patterns of state interaction in some issue areas, including human rights and the environment, discussed in the following chapters. International law constrains some actions of some states at least some of the time, punishing or at least sulllying the reputation of states that violate legitimate rules. TANs make cooperation between countries more likely by serving as endorsers and monitors of international agreements. They perform essential roles in supporting and observing compliance with both the international human rights and environmental regimes.

Although the traditionalists may be correct in their view that states, in principle, still have the authority to set international law and control transnational groups, it is not clear that they retain the ability or political will to do so. Precisely because international law and norms are often useful to states, it will become increasingly difficult for states to ignore their restraints.

Globalists, however, may exaggerate the extent to which international law and TANs can substitute for government at the global level. International law is still hampered by the need for self-enforcement. TANs that are active in promoting social causes are voluntary associations that cannot legally bind their own members, much less others. Lacking the political authority attributed to states, they must rely on voluntary compliance from their targets, which is often uneven.

Despite the hopes of some, international law and norms appear not to have displaced the central role of states on the world stage. States make international law. Even though TANs are influencing interests, the norms advocated

37. Among other traditionalist sources, see Robert Gilpin, *Global Political Economy* (Princeton, NJ: Princeton University Press, 2001), chap. 15; and Stephan D. Krasner, "Power Politics, Institutions, and Transnational Relations," in *Bringing Transnational Relations Back In: Non-state Actors, Domestic Structures and International Institutions*, ed. Thomas Risse-Kappen, 257–79 (New York: Cambridge University Press, 1995).

38. See David Held, Anthony G. McGrew, David Goldblatt, and Jonathan Perraton, *Global Transformations: Politics, Economics, and Culture* (Stanford, CA: Stanford University Press, 1999), esp. chap. 1; Walter Mattli, "Public and Private Governance in Setting International Standards," in *Governance in a Global Economy: Political Authority in Transition*, ed. Miles Kahler and David A. Lake, 199–225 (Princeton, NJ: Princeton University Press, 2012); and Virginia Haufler, "Globalization and Industry Self-Regulation," in Kahler and Lake, *Governance in a Global Economy*, 226–52.

by TANs are still very much norms about appropriate *state* behavior. It is the human rights, environmental, economic, and political practices of *states* that TANs typically seek to change. Similarly, although TANs activate transnational linkages, they do so to mobilize foreign groups to urge their *states* to press the offending state to change its policy. Finally, although TANs facilitate cooperation, it is cooperation between and among *states* that is altered, and the information the TANs provide is about states to other states. Even as law and TANs have proliferated and grown in prominence, world politics remains very much an arena of states.

Study Tool Kit

Interests, Interactions, and Institutions in Context

- International law and norms are institutions that seek to shape how states understand their interests and to constrain the ways in which they interact.
- States create and abide by international law because of the cooperation it enables. Although states are typically dependent on “self-help” for enforcement, the benefits of cooperation to states are often large enough that international laws are self-enforcing, or in the interests of states to follow apparently willingly.
- International norms affect world politics by changing how individuals and, in turn, states conceive of their interests and appropriate actions in their interactions with other states.
- TANs have an important effect on world politics by promoting normative values. TANs also alter interactions between states and facilitate cooperation by providing information about international agreements and monitoring compliance.

Key Terms

international law, p. 465

customary international law, p. 467

obligation, p. 469

precision, p. 469

delegation, p. 470

norms, p. 475

norms entrepreneurs,

p. 482

transnational advocacy network (TAN), p. 482

norms life cycle, p. 485

boomerang model, p. 488

For Further Reading

Abbott, Kenneth W., Jessica F. Green, and Robert O. Keohane, “Organizational Ecology and Institutional Change in Global Governance,” *International Organization* 70, no. 2 (April 2016): 247–77. Explains the role of private transnational regulatory organizations in global environmental politics.

Adler-Nissen, Rebecca. “Stigma Management in International Relations: Transgressive Identities, Norms, and Order in International Society.”

International Organization 68, no. 1 (2014): 143–76. Demonstrates that international order is formed in part by stigmatizing nonconforming and norm-violating states.

Goldstein, Judith L., Miles Kaher, Robert O. Keohane, and Anne-Marie Slaughter, eds. *Legalization and World Politics*. Cambridge, MA: MIT Press, 2001. Some of the best contemporary research on international law by political scientists.

Guzman, Andrew T. *How International Law Works: A Rational Choice Theory*.

New York: Oxford University Press, 2008. Explains how international law can succeed through reciprocity, reputation, and retaliation even in the absence of third-party enforcement.

Hathaway, Oona A., and Scott J. Shapiro. *The Internationalists: How a Radical Plan to Outlaw War Remade the World*. New York: Simon and Schuster, 2017. A lively historical account of the 1928 plan to abolish war through international law, with relevance to today.

Keck, Margaret E., and Kathryn Sikkink. *Activists beyond Borders: Advocacy Networks in International Politics*. Ithaca, NY: Cornell University Press, 1998. A classic study of the growth and role of TANs.

Morrow, James D. *Order within Anarchy: The Laws of War as an International Institution*. New York: Cambridge University Press, 2014. Examines how law conditions expectations and state behavior in the context of the Geneva Conventions.

Stroup, Sarah S., and Wendy H. Wong. *The Authority Trap: Strategic Choices of International NGOs*. Ithaca, NY: Cornell University Press, 2017. Explores how leading NGOs command deference from various powerful audiences and influence the practices of states, corporations, and other organizations.

Towns, Ann E. *Women and States: Norms and Hierarchies in International Society*. New York: Cambridge University Press, 2010. Examines the changing international norms that govern the relationship between women and their states.

political struggle, defining what is and is not acceptable government behavior toward its own citizens. Countries differ in their views on which rights they are bound to protect. They also differ on which rights they should seek to enforce when abused by others. Thus, we must examine not just human rights law, but also the interests and interactions of states to account for the politics of international human rights.

Why Do Individuals and States Care about the Human Rights of Others?

Proponents of improving human rights, including TANs such as Amnesty International, Human Rights Watch, and hundreds of other nongovernmental organizations (NGOs), clearly suggest that individuals and states possess and act on an interest in the human rights of others around the globe. But the puzzle still remains. Why would individuals and states care about the way other states treat their citizens? Why is it in their interests to promote and potentially enforce laws governing the human rights practices of other states? In turn, as sovereign entities, why would states want to constrain the way they deal with their own people and open themselves to the scrutiny of others? In answering these questions, we begin by addressing why states violate human rights in the first place.

Why Do States Violate Human Rights?

States violate human rights for many reasons. Some violations arise from a lack of state capacity. Many poor countries, for instance, may sincerely want but simply cannot afford to provide free primary schooling to everyone, as required under the ICESCR. Other governments may not be able to control their militaries or police sufficiently to stem human rights abuses. Even though it was not official policy, the United States was appropriately criticized when its troops, apparently acting under their own volition, abused prisoners at Abu Ghraib prison in Iraq during the 2003 war. Recognizing varying capacities to implement standards, many human rights are soft law, understood to be aspirations or goals toward which states should strive rather than strict rules to which they can and should be held accountable.¹³

In other cases, however, states violate human rights in defense of their national security. Violent or potentially violent opposition to the state is illegal everywhere, and thus it counts as criminal, not political, behavior. Amnesty International specifically excludes as POCs any individuals who use or advocate violence. Nelson Mandela, a leader of the anti-apartheid movement in South Africa, was originally designated a POC in 1962 after his arrest for organizing strikes to protest apartheid.

13. See Wade M. Cole, "Mind the Gap: State Capacity and the Implementation of Human Rights Treaties," *International Organization* 69, no. 2 (2015): 405–41.

But Mandela's status was revoked by Amnesty after he was convicted in 1964 of trying to overthrow the government violently. Yet the dividing line between criminal and political activities is often ambiguous, and some states prosecute individuals as criminals for political actions that would be considered legal elsewhere. Even when actions are clearly criminal, however, prosecution and punishment may be abusive when individuals are not given due process under the law.

When under attack or perceived attack, states are sometimes tempted to violate the rights of groups or individuals that they fear may be allied with a foreign power. Thus, the United States violated the civil and political rights of many of its own citizens in the infamous Red Scare of 1917–20, following the Bolshevik revolution in Russia. During the first Red Scare, between 3,000 and 10,000 individuals were arrested, denied due process, and sometimes beaten during questioning. The United States also violated the rights of approximately 110,000 Japanese Americans who were interned in concentration camps following the attack on Pearl Harbor and the start of World War II. And, in the second Red Scare (1947–57), the U.S. government blacklisted, jailed, and deported Americans suspected of following a communist or other left-wing ideology.

Today, following the terrorist attacks of September 11, 2001, the United States has been criticized for violating the human rights of citizens or residents accused of planning additional attacks or associating with terrorist organizations abroad.¹⁴ Targeted drone attacks that President Obama authorized against U.S. citizens abroad accused of planning terrorism were especially controversial. Other countries have responded similarly to attacks on their own people or soil. Indeed, the existence of an interstate or civil war is strongly associated with increased human rights violations.¹⁵ In justifying these violations, governments often claim that national security trumps the human rights of individuals.

Governments also violate the human rights of their citizens to preserve their own rule. This motivation differs from the national security rationale just described. In these cases, the country is not under attack, but political opponents are abused in an effort to suppress internal dissent. To weaken and deter opponents, governments in essence declare war on their own citizens. One of the most egregious cases of such abuse occurred in Argentina following a military coup in March 1976. The three-man junta, led by General Jorge Rafael Videla, immediately began a seven-year campaign known as the Dirty War against suspected political dissidents and opponents of the military regime. Although some were publicly detained, many more individuals were “disappeared.”

While denying any official knowledge or involvement, the Argentine military eventually kidnapped, tortured, and killed nearly 10,000 perceived political

14. The United States is also accused of violating international humanitarian law, specified in the Geneva Conventions, when it treats foreign detainees as “enemy combatants” supposedly outside international law. On the Geneva Conventions and laws of war, see James D. Morrow, “The Institutional Features of the Prisoners of War Treaties,” *International Organization* 55, no. 4 (2001): 971–91.

15. Steven C. Poe and C. Neal Tate, “Repression of Human Rights to Personal Integrity in the 1980s: A Global Analysis,” *American Political Science Review* 88, no. 4 (1994): 853–72; and Matthew Krain, “State-Sponsored Mass Murder: The Onset and Severity of Genocides and Politicides,” *Journal of Conflict Resolution* 41, no. 3 (1997): 331–60.

Argentina's Dirty War, which began in 1976, provoked a strong response from a vast transnational human rights network. Here, the Mothers of the Plaza de Mayo in Argentina gather to protest abuses by the junta and to demand information on their "disappeared" children.



opponents.¹⁶ Many of the disappeared, we now know, were taken on death flights on which they were pushed from airplanes high above the Atlantic Ocean. As many as 500 newborns were taken from their imprisoned mothers and given to childless military families because, as General Ramón Camps (head of the Buenos Aires Provincial Police) later attempted to explain, “subversive parents will raise subversive children.”¹⁷ This was government-sponsored cruelty on a dramatic scale intended to crush and intimidate political opponents and keep the military regime in power. Like the case of apartheid in South Africa, the Dirty War in Argentina was critical in mobilizing the human rights TAN, and that network, in turn, was instrumental in bringing about political change in Argentina.

Fear of “others” within a society who may undermine the state, as well as fragile governments seeking to preserve their rule, often come together in genocides, the most extreme form of human rights abuse, in which entire identity groups are singled out for systematic persecution and murder. Genocide is one of the extreme crimes against humanity. The Armenian Genocide in Turkey during World War I and the Holocaust perpetrated by Germany during World War II led to the concept of genocide and modern human rights law.

16. The Argentine National Commission on the Disappeared provides an “official” figure of about 9,000 “disappeared” between 1976 and 1983. Internal documents from the Argentine security services suggest a figure of 22,000. Human rights organizations estimate that the total number of casualties of this Dirty War may be as high as 30,000.

17. Translated from Nancy Berger-Levrault, *Disparus: Rapport à la Commission indépendante sur les questions humanitaires internationales* (London: Zed Books, 1986), 29. For more on Camps, see “Ramon Camps, 67, Argentine General in the ‘Dirty War,’” *New York Times*, August 23, 1994, www.nytimes.com/1994/08/23/obituaries/ramon-camps-67-argentine-general-in-the-dirty-war.html; and Francisco Goldman, “Children of the Dirty War,” *New Yorker*, March 19, 2012, www.newyorker.com/magazine/2012/03/19/children-of-the-dirty-war. There have been 77 documented cases of kidnapped newborns.

More recently, genocides have occurred in Rwanda (see Chapters 5 and 11); in the former Yugoslavia, where perpetrators of the Srebrenica massacre were prosecuted for the crime; and in Sudan, where President Omar Hassan al-Bashir has been indicted by the International Criminal Court (ICC) on three counts of genocide.

More generally, autocracies and unstable democracies are significantly more likely to violate the human rights of their citizens than are established democracies, where political competition is respected and channeled through regular elections in which incumbent governments accept defeat and leave office.¹⁸ Overt acts of torture (and possibly other human rights abuses as well) are most likely to occur in multiparty dictatorships. In single-party or personalist dictatorships, political opponents are sufficiently repressed that fewer acts of torture are necessary. These states might use torture if necessary, and broad civil liberties are typically denied, but opponents are deterred from challenging the government; thus, the regime does not often need to use violence against individuals to maintain its rule. In multiparty dictatorships, however, the political opposition usually remains visible and viable, and the government is tempted to use torture to suppress opponents so that it can stay in power.¹⁹ In all cases, the weaker or less legitimate the government, the more likely it is to abuse human rights.

There is no single explanation for why countries violate human rights. In turn, there is no single explanation for why individuals, groups, and states seek to protect human rights at home and abroad. Repressing human rights is a political strategy that states and governments employ to protect themselves from real and perceived threats. It should be no surprise, then, that protecting human rights is also a political strategy that a variety of political actors use for a variety of aims.

Why Do States Sign Human Rights Agreements?

Some states have an interest in imposing human rights law on themselves as a means of demonstrating their commitment to democracy and political liberalization. While some governments have an interest in repressing human rights to retain political power, liberal or liberalizing governments often have an interest in promoting human rights as a means of committing themselves and their successors to political reforms.

Political scientist Andrew Moravcsik argues that democratizing states that sincerely seek to shed their autocratic and possibly abusive pasts sign human rights

18. Christian Davenport, "Multi-dimensional Threat Perception and State Repression: An Inquiry into Why States Apply Negative Sanctions," *American Journal of Political Science* 39, no. 3 (1995): 683–713; and Steven C. Poe, C. Neal Tate, and Linda Camp Keith, "Repression of the Human Right to Personal Integrity Revisited: A Global Cross-national Study Covering the Years 1976–1993," *International Studies Quarterly* 43 (1999): 291–313. Todd Landman, *Protecting Human Rights: A Comparative Study* (Washington, DC: Georgetown University Press, 2005), finds that states whose democratic status is more recent are more likely to engage in human rights abuses.

19. James Raymond Vreeland, "Political Institutions and Human Rights: Why Dictatorships Enter into the United Nations Convention against Torture," *International Organization* 62, no. 1 (2008): 65–101.



Many supporters of human rights abroad are motivated by compassion for the suffering of others. The plight of the Rohingya refugees, driven from their homes in Myanmar by armed violence, inspired people around the world to demand action by their own governments and the UN.

hope to facilitate the lock-in of democracy in transitional governments—and to use the threat of expulsion to persuade states to keep their promises.

As the example of the established democracies suggests, states also ratify international human rights treaties not to bind themselves, but to constrain the human rights practices of others. They accept international oversight of their own affairs in order to secure their ability to scrutinize others. There are both altruistic and self-interested reasons why individuals and states seek to influence human rights in other countries.

Moral and Philosophical Motivations Many individuals identify with a common humanity and feel personally affected by the welfare and treatment of others, including those in countries other than their own. As social animals, humans possess a degree of empathy that is weaker in some, stronger in others, but present in all.²² The sense of empathy is evident most dramatically in the international responses to natural disasters when individuals across the globe donate to relief efforts. The hurricanes that battered the Caribbean in late summer and fall of 2017 generated outpourings of support and donations to victims, although for months later Puerto Rico remained without many essential services and little assistance from the mainland. When others suffer, we may hurt as well; this response can be a profound motivator of political action.

Empathy produces support not only for victims of natural disasters, but also for victims of human rights abuses. Indeed, human rights for all, and especially for the

22. For more on social preferences in humans, see Samuel Bowles and Herbert Gintis, *A Cooperative Species: Human Reciprocity and Its Evolution* (Princeton, NJ: Princeton University Press, 2011).

disadvantaged, is a cause that many individuals feel deeply about and are driven to try to protect by strong feelings of empathy. Gross violations of human rights, like genocide, strongly affect and motivate individuals and states to respond.

Closer to home, our own human rights depend on state respect for the individual. It is our status as humans that creates and sustains our rights. It follows in the views of some philosophers and human rights advocates that we cannot secure these rights domestically unless we also seek to promote respect for rights abroad. If it is acceptable for some governments to abuse the rights of some people, what principled defense can we give if our own government wants to abuse our rights? In this view, human rights are secure only if they are universal not merely in principle, but also in practice.

Finally, as much as, if not more than, on other issues, we have been socialized to identify with universal human rights. Human rights NGOs and the larger human rights advocacy network have played a critical role in educating the public about human rights and human rights practices, calling attention to human rights abuses, and eventually bringing pressure to bear on states.

As discussed in Chapter 11, the human rights TAN has successfully framed the issue of international human rights in terms that resonate with the political freedoms and civil rights that already exist in established democracies. Given the wide acceptance of these principles within states, it is easier to persuade people to actively defend these rights abroad. The international human rights TAN has vigorously promoted concern with human rights among broad publics and has emphasized to many groups and individuals the extent to which human rights practices abroad affect our daily lives. It is in framing issues and socializing individuals to see their interests in different ways that TANs may have their greatest impact on the international politics of human rights.

Self-Interest Motivations Even if we do not have altruistic interests in protecting the human rights of others, we do have self-interests in promoting peace and prosperity, which, in a globalizing world, cannot flourish at home without flourishing abroad too. Recall that modern human rights originated in the depths of the Great Depression and World War II. Reflecting on the causes of these twin disasters, President Roosevelt and others drew the conclusion that protecting human rights against fascism and other forms of totalitarianism was essential to the maintenance of international peace.

By connecting human rights to the epic struggles against totalitarianism that defined much of the twentieth century, Roosevelt laid out the case that promoting human rights abroad was in the self-interest of both Americans and the citizens of other countries. This observation may be no less true today. As the democratic peace discussed in Chapter 4 shows clearly, there is an increasing recognition that democracy and the protection of political freedom can promote peace, economic interdependence, and growth that are of direct benefit to all countries.

More immediately, to the extent that suppressing human rights creates domestic political unrest and possible insurrection, such civil conflicts may spill into neighboring states either directly or indirectly. As a result, all states have an interest in preventing abuses in neighboring countries. The United States was forced

to become involved in Haiti's internal political unrest in 1994 to stem the flow of people escaping by boat to southern Florida over treacherous waters. European countries sent troops into Bosnia to prevent political instability and ethnic violence in the former Yugoslavia from spilling over into the rest of the Balkans and possibly beyond. Much of the current concern about the ongoing civil war in Syria is driven by refugee flows into neighboring Turkey and, especially, into the European Union. In an interdependent world, political instability and repression in one country can have direct consequences for others.

In addition to general self-interest motivations, particular interests within countries have promoted human rights law abroad for their own instrumental purposes. This is most evident in the labor movements within the United States and Europe, which now demand that human rights (and environmental) clauses be inserted into nearly all regional trade agreements (RTAs).²³ The North American Free Trade Agreement (NAFTA), for instance, includes extensive labor provisions that guarantee freedom of association and the right to organize, the right to bargain collectively and strike, freedom from discrimination, access to labor tribunals, and effective employment standards and minimum wage laws; it even establishes a tri-national ministerial commission to monitor the labor provisions of the agreement.²⁴

Labor unions promote such clauses to level the political and economic playing fields on which their own workers compete. To protect their ability to organize and strike for higher wages at home, unions want to ensure that workers in labor-abundant and low-wage countries have similar rights and, indeed, possess the broader political rights necessary to protect their ability to form effective trade unions. In this way, the economic self-interest of workers in developed states can dovetail with the interests of citizens in developing countries in more effective protections for human rights.

Labor demands for human rights clauses, however, may also disguise a form of trade protectionism. By inserting human rights clauses into RTAs, the unions may be making free-trade pacts less appealing to foreign trading partners and, therefore, less likely to be approved. For example, the Mexican government strongly opposed the human rights clauses of NAFTA. Moreover, human rights provisions open up the opportunity for subsequent claims that the trading partner is violating the terms of the agreement and that the trade concessions made by the home country should be withdrawn. For labor in the developed countries, human rights provisions in RTAs may be "poison pills" that are used to prevent further movements toward free trade.

Together, these various motivations for protecting human rights abroad suggest that interests are multiple and often quite complex. Each reason, however, prompts individuals or groups to press their governments to promote international human rights law. One person may be particularly motivated by a general concern for human well-being, another by a concern with protecting democracy at home, and

23. Emilie M. Hafner-Burton, "Trading Human Rights: How Preferential Trade Agreements Influence Government Repression," *International Organization* 59, no. 3 (2005): 593–629.

24. Collectively, the labor provisions of NAFTA are referred to as the North American Agreement on Labor Cooperation. See www.dol.gov/ilab/trade/agreements/naalcgd.htm (accessed 09/27/17).

a third by a hidden desire for trade protection, but all combine to bring pressure to bear on their governments to make international human rights a priority.

Such pressure on governments may be increasing. As human rights NGOs grow and succeed, as they have done in a more globalized world, they influence the views of more and more individuals. In turn, the same technology that facilitates the growth of TANs also brings the horror of human rights abuses to immediate public attention. The genocide in the Darfur region of Sudan was brought into our homes via television and the Internet. In the summer of 2014, protests of democratic activists in Hong Kong were watched in real time around the globe. The Syrian government's use of barrel bombs and sarin gas against its own people is documented on the nightly news.

It is now much harder to ignore human rights abuses or to deny that we knew about the violations while they were occurring. This realization heightens awareness and may prompt individuals to demand that their governments be more aggressive in promoting international human rights. This greater awareness was an important driver of the Arab Spring protests that diffused across North Africa and the Middle East in 2010–11 (see Chapter 11).²⁵

Rarely would we expect governments to promote human rights abroad to the exclusion of all other interests that they might be seeking in their relations with other states. Nonetheless, founded in the tragedy of World War II, supported by a growing transnational human rights movement, and accelerated by new technologies that bring abuses to the public's immediate attention, individuals and groups now increasingly recognize international human rights as part of their nations' interests and demand that their governments act accordingly.

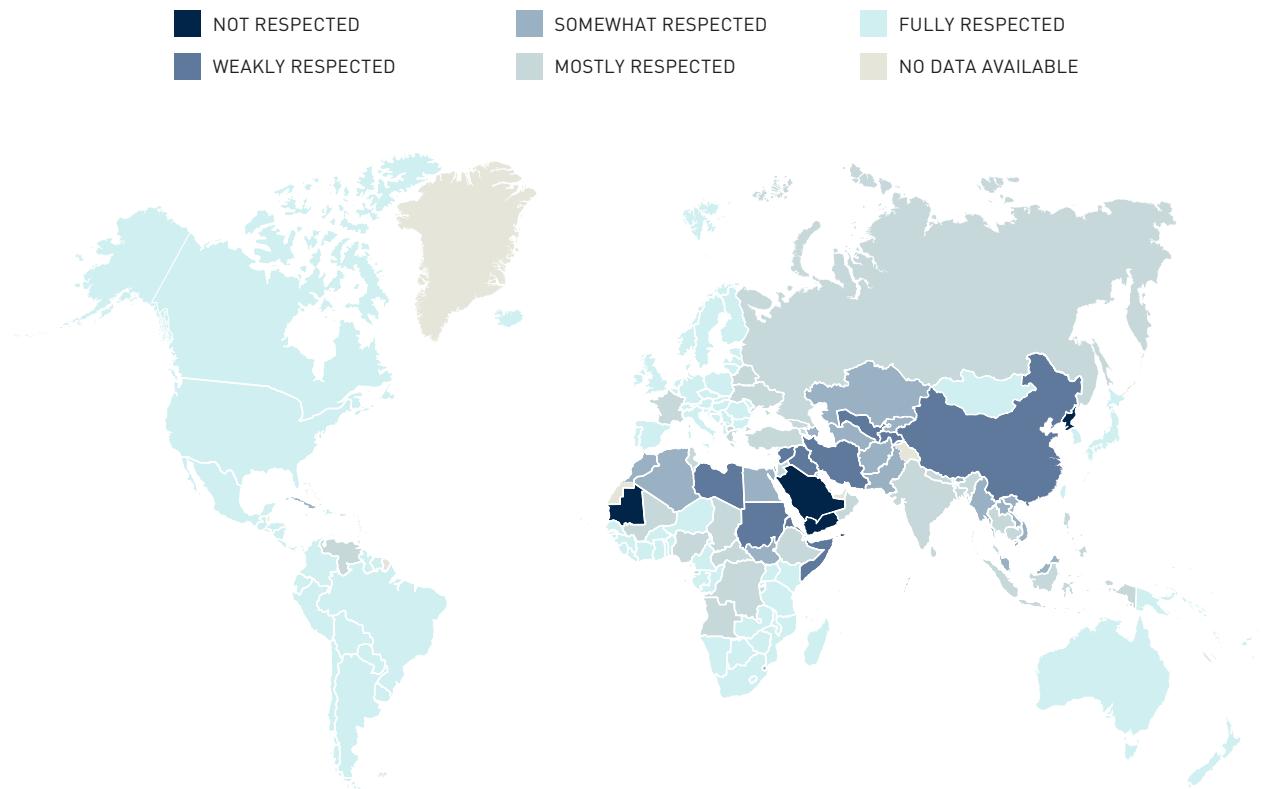
Do States Observe International Human Rights Law?

Given a now extensive body of international law, broad agreement on human rights norms, and growing interests in promoting rights, do states actually protect human rights abroad? Is interest reflected in practice? In the case of human rights practices, we can view the proverbial glass as half empty or half full. Although international human rights institutions are being developed, large-scale abuses continue to occur. Maps 12.1, 12.2, and 12.3 graphically illustrate the extent of the problem. While it can be difficult to measure such rights, and some of the information in the maps may seem surprising, the data reflected in the maps are the best available and, on the whole, indicate that human rights violations still occur across the globe. (See “How Do We Know?” on p. 526 about the difficulty of measuring human rights practices.)

At the same time, however, it appears that human rights practices have improved substantially since 1980. Even if, in the view of optimists, the glass of human rights practices is half full, it is still possible to ask: Why has there not been even greater

25. Zachery C. Steinert-Threlkeld, “Spontaneous Collective Action: Peripheral Mobilization during the Arab Spring,” *American Political Science Review* 111, no. 2 (May 2017): 379–403.

MAP 12.1 *Respect for Freedom of Religion by Public Authorities, 2016*



improvement, given the development of a body of robust international human rights law, an extensive transnational advocacy network, and growing norms of appropriate state behavior?

The most frequent and deadliest form of violence in the world today is by governments against their own citizens (including governments fighting civil wars). In violation of the ICCPR, governments continue to inflict violence against political dissidents. Defying the ICESCR, governments also violate the human rights of their citizens by misguided economic or social policies that lead to widespread suffering and deaths. For example, the Great Leap Forward in China (1958–62) created a nationwide famine and left as many as 38 million people dead. R. J. Rummel, who coined the word *democide* to describe such government-sponsored killing, graphically writes:

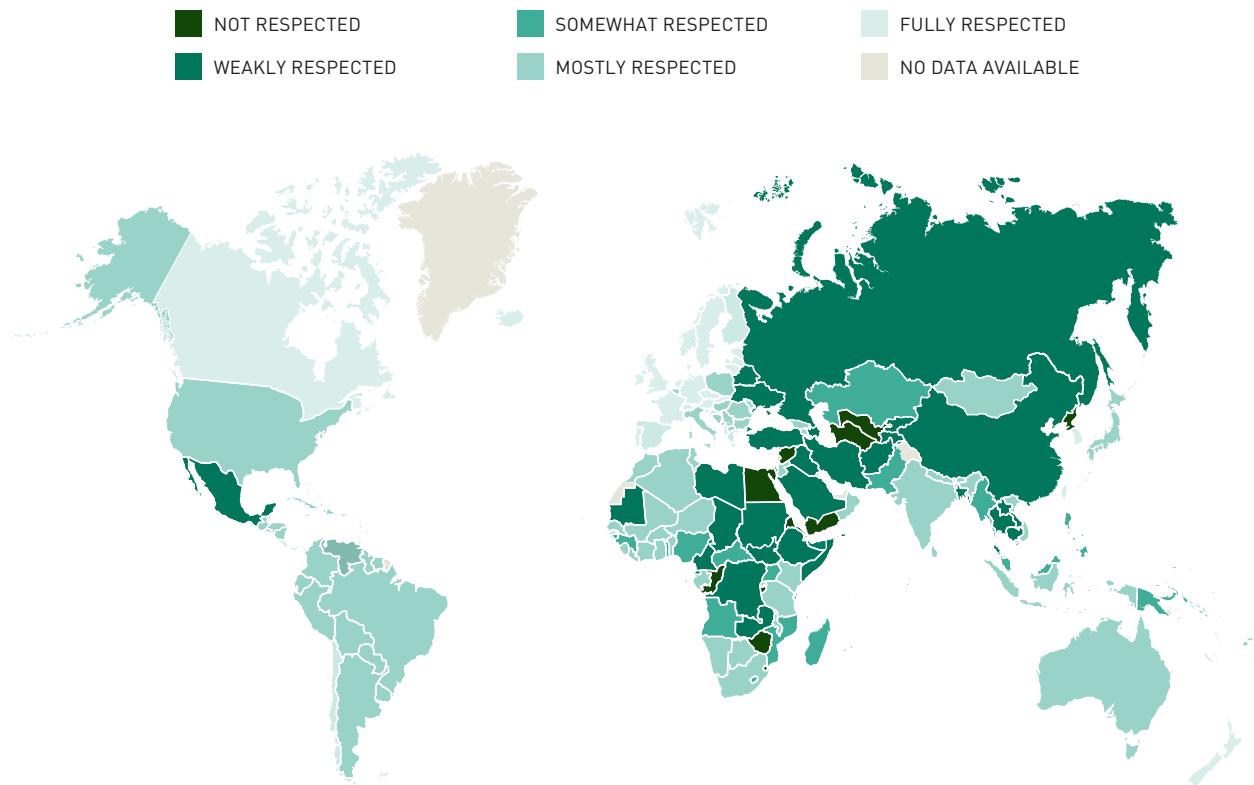
In total, during the first eighty-eight years of [the twentieth] century, almost 170,000,000 men, women, and children have been shot, beaten, tortured, knifed, burned, starved, frozen, crushed, or worked to death; or buried alive, drowned, hung, bombed, or killed in any other of the myriad ways governments have inflicted death on unarmed, helpless citizens or foreigners. . . . This is as though our species has been devastated by a modern Black Plague.²⁶

Note: The data in this map measure the extent in 2016 to which individuals and groups had the right to choose a religion, change their religion, and practice that religion in private or in public, as well as to proselytize peacefully without being subject to restrictions by public authorities.

Map source: Michael Coppedge, John Gerrings, Staffan I. Lindberg, Svend-Erik Skaaning, et al., “V-Dem Codebook v7.1,” Varieties of Democracy (V-Dem) Project, www.v-dem.net/en/data/data-version-7-1 (accessed 09/25/17).

26. From www.hawaii.edu/powerkills/POWER.ART.HTM (accessed 07/24/17).

MAP 12.2 *Respect for Norms against Torture by Public Authorities, 2016*



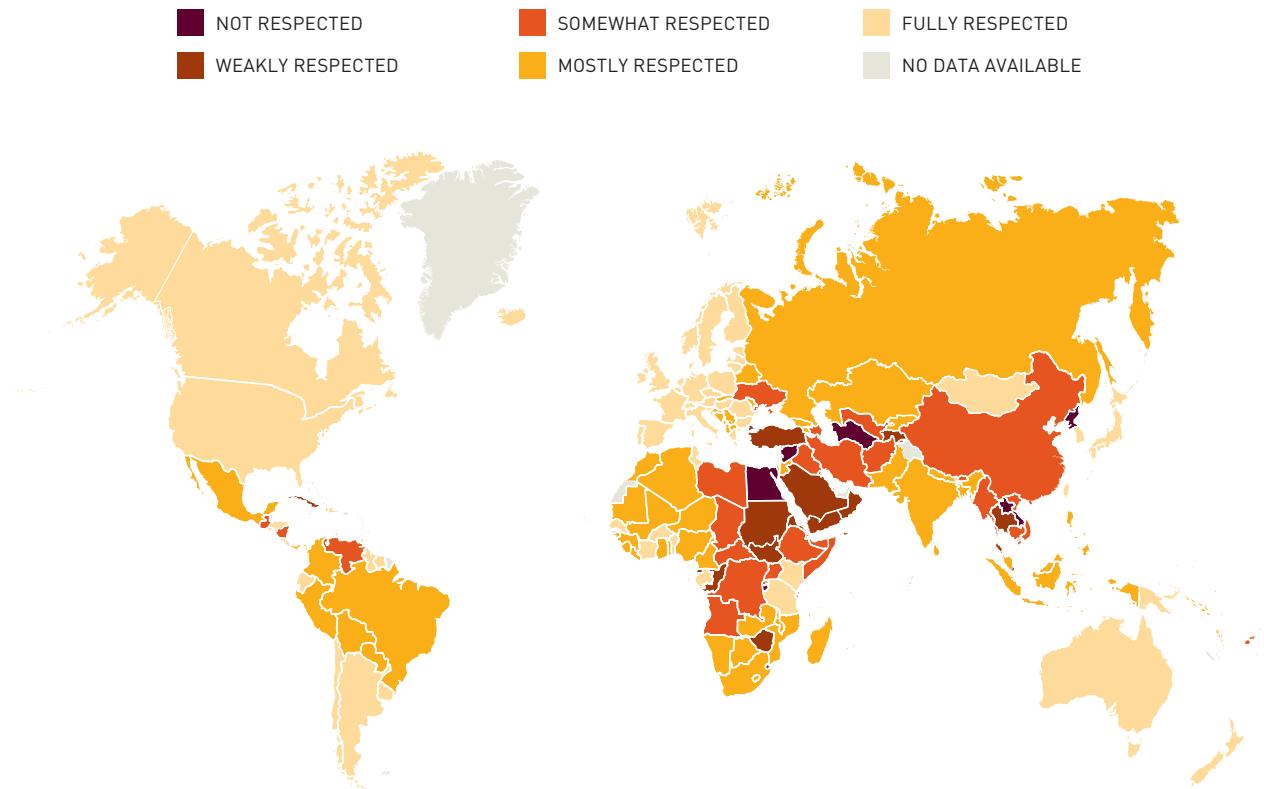
Note: The data in this map measure the extent in 2016 to which state officials or other agents of the state purposefully inflicted extreme pain, whether mental or physical, on individuals in a state of incarceration with an aim to extract information or intimidate victims.

Map source: Michael Coppedge, John Gerring, Staffan I. Lindberg, Svend-Erik Skaaning, et al., “V-Dem Codebook v7.1,” Varieties of Democracy (V-Dem) Project, www.v-dem.net/en/data/data-version-7-1 (accessed 09/25/17).

According to political philosopher Thomas Hobbes (1588–1679), states were created to lift humans out of the state of nature in which life was “solitary, poor, nasty, brutish, and short.” This statement may be true; we do not know how dangerous life would be without states to provide a measure of social order and protection against other individuals—although failed states like Somalia suggest that life in the state of nature may be close to that envisioned by Hobbes. But today, governments around the world may themselves be the biggest threats to our human rights and, indeed, to our very lives.

Rummel’s data do show that the twentieth century appears to have been more violent and deadly than past centuries, but this may have more to do with the “improved” technology of state killing than with any change in state intent or practice. The best evidence indicates, however, that human rights practices on average have improved fairly significantly in recent decades, especially in South America, which enjoyed a wave of democratization in the 1980s, supported in part by popular outrage at the human rights abuses of the prior military regimes, and Central and Eastern Europe, which democratized in the 1990s after the fall of communism.

MAP 12.3 Respect for Women's Freedom of Discussion by Public Authorities, 2016



Does International Human Rights Law Make a Difference?

Given the pattern discussed in the previous section, does international human rights law make a difference? Even if abuses continue to occur, do countries that sign human rights treaties protect the rights of their citizens better than those that have not signed the agreements? Do these human rights institutions constrain state behavior in significant ways?

The accumulating evidence on the impact of international human rights agreements on state practice is mixed. This question is, as discussed in Chapter 11, a difficult problem for researchers because the countries most likely to sign human rights agreements are also those most likely to respect human rights. If we simply examined the relationship between signing agreements and protecting human rights, we would conclude, perhaps incorrectly, that the agreements were having a huge effect on practice when, in fact, these two factors simply occur together as a reflection of some underlying trait, such as democracy and a concern for political and civil rights, that leads states both to sign agreements

Note: The data in this map measure the extent in 2016 to which women were able to engage in private discussions, particularly on political issues, in private homes and public spaces without fear of harassment by other members of the polity or the public authorities; includes restrictions by the government and its agents, as well as cultural restrictions or customary laws that are enforced by other members of the polity, sometimes in informal ways.

Map source: Michael Coppedge, John Gerring, Staffan I. Lindberg, Svend-Erik Skaaning, et al., "V-Dem Codebook v7.1," Varieties of Democracy (V-Dem) Project, www.v-dem.net/en/data/data-version-7-1 (accessed 09/25/17).

and to protect those rights. As a result of these difficulties, as well as the measurement problems discussed in the previous section, different analysts have found different results.

Some researchers find that international human rights agreements make no difference on practice, or even have a negative effect once other factors (like income per capita and economic growth) that affect state practice are taken into account. This implies that signing agreements is associated with worse human rights practices,²⁷ suggesting that international human rights law just might not matter very much. After all, international law, like most international agreements, depends on self-help. In the absence of any third-party enforcers, international law places the burden of enforcement on the victims of the crime, who, in the case of human rights law, are the politically powerless individuals and groups who were abused in the first place. The burden of enforcement, therefore, rests on others who can speak and act on behalf of these victims. Yet not all states have a strong interest in penalizing violators of human rights; thus, international human rights law is, at best, sporadically enforced. Knowing this, states can choose to violate human rights with a degree of impunity.

As described by international law professor Oona Hathaway, countries may sign international human rights agreements for their “expressive value” rather than as a commitment to better behavior.²⁸ By signing human rights agreements, she suggests, states may hope to give the appearance of conforming to civilized norms of behavior while continuing to engage in actual practices that violate human rights behind the scenes or out of the public eye.

Our most developed explanation for the negative effect of international agreements on practice comes from political scientist James Vreeland. Focusing on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Vreeland shows that the negative relationship is rooted primarily in multiparty dictatorships that both sign the CAT and use torture at higher-than-average rates. Multiparty dictatorships, he argues, are pressed by domestic political opponents, who have some influence, to ratify international conventions in hopes of changing the government’s behavior over the long run. But since domestic opponents remain viable and their rule is unstable, dictators are also most likely to abuse human rights, including by using torture against insurgents.²⁹ In the case of the despotic rule of Paul Biya in Cameroon, for instance, levels of torture were rated as “isolated” and infrequent, but once multiple parties were permitted in 1992, the practice became “common.”³⁰ Putting these two trends together appears to explain why multiparty dictatorships sign human rights agreements and are also more likely to abuse those rights.

27. Linda Camp Keith, “The United Nations International Covenant on Civil and Political Rights: Does It Make a Difference in Human Rights Behavior?” *Journal of Peace Research* 36, no. 1 (1999): 95–118; Oona A. Hathaway, “Do Human Rights Treaties Make a Difference?” *Yale Law Journal* 111, no. 8 (June 2002): 1935–2042; and Daniel W. Hill Jr., “Estimating the Effects of Human Rights Treaties on State Behavior,” *Journal of Politics* 72, no. 4 (2010): 1161–74.

28. Hathaway, “Do Human Rights Treaties Make a Difference?”

29. Vreeland, “Political Institutions and Human Rights.”

30. See Vreeland, “Political Institutions and Human Rights,” 76, for this and other examples.

By contrast, other researchers find that signing international human rights agreements actually improves practice.³¹ They reach this conclusion either by modeling the selection process directly or by adjusting for the changing standards of human rights over time (see “How Do We Know?” on p. 526).

Others find that the effects of international agreements are contingent on or exist only when combined with certain other factors. Agreements “work” in essence only when combined with specific domestic political institutions, strong domestic courts and the rule of law, large NGO contingents, the expected tenure of political leaders, and legal standards of proof for particular rights violations.³² Taken together, this more recent research appears to be gaining the upper hand, indicating that international human rights law is having a positive effect, but in subtle ways and only under certain limited conditions.

As reflected in these inconsistent results, however, it is very difficult to isolate the effect of international human rights agreements on state behavior. Joining human rights conventions might indeed be leading to better protections of human rights than otherwise, but at the same time, the effect on practice is overwhelmed by a number of countries signing agreements to hide their practices and insulate themselves from international pressure. Isolating the impact of international institutions from the underlying interests of states to join agreements is difficult. Although additional research is still necessary, there may be some grounds for optimism by advocates of international human rights law.

Even if international human rights institutions have only a limited effect in the short term, they may exert a more beneficial effect on human rights norms and practices in the long run.³³ Rather than just binding states, international human rights law also empowers social actors to conceive of their interests in new ways, provides a shared vocabulary of judgment, and emboldens societies to advocate for their own rights, sometimes leading to massive political change.

For instance, the Helsinki Final Act of 1975, which established the applicability of human rights in all of Europe, served as the opening wedge that allowed

31. In *Protecting Human Rights*, p. 157, Todd Landman uses a broader set of agreements and longer time period than other studies do, as well as a nonrecursive model, and reports a positive effect of human rights agreements on practice. In a later survey of this debate, however, he concludes judiciously that no definitive evidence exists; see Todd Landman, *Studying Human Rights* (New York: Routledge, 2006), 103. Using his dynamic standard measure (see “How Do We Know?” on p. 526), Christopher J. Fariss, in “The Changing Standard of Accountability and the Positive Relationship between Human Rights Treaty Ratification and Compliance,” *British Journal of Political Science* (forthcoming), finds consistent support for a positive relationship. See also Yonatan Lupu, “The Informative Power of Treaty Commitment: Using the Spatial Model to Address Selection Effects,” *American Journal of Political Science* 57, no. 4 (2013): 912–25.

32. Eric Neumayer, “Do International Human Rights Treaties Improve Respect for Human Rights?” *Journal of Conflict Resolution* 49, no. 6 (2005): 925–53; Beth A. Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics* (New York: Cambridge University Press, 2009); Amanda N. Murdie and David R. Davis, “Shaming and Blaming: Using Events Data to Assess the Impact of Human Rights INGOs,” *International Studies Quarterly* 56, no. 1 (2012): 1–16; Courtenay R. Conrad and Emily Hencken Ritter, “Treaties, Tenure and Torture: The Conflicting Domestic Effects of International Law,” *Journal of Politics* 75, no. 2 (2013): 397–409; and Yonatan Lupu, “Best Evidence: The Role of Information in Domestic Judicial Enforcement of International Human Rights Agreements,” *International Organization* 67, no. 3 (2013): 469–503.

33. The statistical evidence on long-term effects is, at best, ambiguous as well. See Emilie M. Hafner-Burton and Kiyoteru Tsutsui, “Justice Lost! The Failure of International Human Rights Law to Matter Where Needed Most,” *Journal of Peace Research* 44, no. 4 (2007): 407–25.



Human rights TANs, including groups like Amnesty International, promote public awareness of human rights issues and monitor states' compliance with international laws. In these ways, they pressure other states to take action against governments that violate human rights.

human rights activists to mobilize within the communist bloc countries of Eastern Europe. Three years earlier, the 35-country Conference on Security and Co-operation in Europe had convened to resolve political and territorial issues left over from World War II, and to expand economic contacts between East and West. Much against the wishes of the communist regimes, the countries of Western Europe insisted on the inclusion of human rights on the agenda. Trading concessions on other issues, the Western states were eventually able to gain the assent of their Eastern counterparts to the principle of “respect for human rights and other fundamental freedoms, including freedom of thought, conscience, religion or belief.”³⁴

Although the communist countries first attempted to suppress publication and discussion of this principle, word spread and domestic groups began to agitate for their rights and make contact with their transnational counterparts in the West. In the bright lights of public awareness, the societal groups activated by the Helsinki Accords were eventually able to mount effective challenges to the autocratic regimes that had long suppressed all dissent. Although many factors contributed to the fall of the communist regimes in Eastern Europe in 1989, the political freedom first created by the Helsinki agreement is broadly seen as a contributing cause of that political earthquake.³⁵

In addition, international human rights law permits TANs to bring pressure to bear on governments to enforce human rights standards. Human rights TANs, of course, have no legal standing to issue mandatory sanctions or other punishments,

34. Conference on Security and Cooperation in Europe, Final Act, Helsinki, 1975, sec. 1, (a) VII, www.osce.org/helsinki-final-act?download=true (accessed 09/20/14).

35. Daniel C. Thomas, “The Helsinki Accords and Political Change in Eastern Europe,” in Risso, Ropp, and Sikkink, *Power of Human Rights*, 205–33.

but they do exert an important influence by naming and shaming violators of human rights.³⁶ Equally important, if not more so, by promoting public awareness and monitoring state human rights practices, TANs create political pressure that may eventually force states to act. TANs are not superseding the role of the state, but they do shape the political context in which states interact with their citizens and one another. Thus, even if international human rights law may not cause governments to change their behavior in the short run, it may lead to significant political change over time by legitimizing and encouraging the mobilization of domestic political forces.

What Can Lead to Better Protection of International Human Rights?

Few human rights violators are actually punished. States do sanction one another for human rights abuses, as discussed already, but such penalties remain rare. Although states may be named and shamed by transnational human rights organizations, and some may modify their behavior to avoid public condemnation, most escape any significant costs for violating the rights of their citizens.

The key problem in human rights is that the gains from cooperation that make international law self-enforcing, as explained in Chapter 11, are small or nonexistent, meaning that states have few incentives to bear high costs for enforcing the law. States that violate human rights have no interest in enforcing the law against themselves. This much is obvious. But although other states have interests in supporting human rights in principle, few gain directly from better human rights practices abroad, as discussed shortly. They have some interest in enforcing human rights standards, but only if the costs are not too high.

This combination of mostly empathetic interests in human rights practices abroad and few incentives to actually punish violators produces, for most states, an inconsistent human rights policy. Even the United States, a strong promoter of human rights, has often chosen not to act against abuses by states it supports—including the use of poison gas against Iraq's Kurdish minority in the late 1980s by Saddam Hussein, who was then being backed by the United States in his war against Iran, as well as widespread abuses by the military junta in Chile following an American-backed coup in 1973. At the same time, the United States did press human rights concerns against the White-majority regime in South Africa, contributing to the peaceful revolution that eventually led to Black-majority rule, and spoke out in support of the pro-democracy protesters in Egypt and Libya during the Arab Spring in 2011.

36. The effectiveness of naming and shaming is open to debate. See Emilie M. Hafner-Burton, "Sticks and Stones: Naming and Shaming the Human Rights Enforcement Problem," *International Organization* 62, no. 4 (2008): 689–716.

This inconsistent enforcement may explain why international human rights law is often ineffective. Facing opposition to their rule at home, states may be willing to take the small risk of international punishment to secure their tenure in office. That is, for some governments the temptation to ignore human rights law to secure their hold on power may be stronger than the fear of international penalties. With regime survival as a strong core interest and minor punishments carried out only a small percentage of the time by the international community, few leaders may feel tightly constrained by international human rights institutions or the laws that they themselves have accepted as binding.

It is costly for states to enforce international human rights laws. Naming and shaming may anger a violator whose cooperation is needed on some other diplomatic issue. Pressing the human rights provisions of the Helsinki agreement, for instance, meant that European states gave up bargaining leverage on other issues they also cared about. Economic sanctions impose costs on the target state, but they also impose costs on exporters within the home state, who lose a potential market for their goods. Businesses strongly resisted divesting from South Africa when it meant forgoing access to raw materials, cheap labor, and Africa's wealthiest consumers. If sanctions hurt the target state, they will also hurt the home state (see "Controversy" on p. 510). Promoting human rights always carries a price. States do sometimes act to punish human rights violations, but under what conditions?

When Do States Take Action on Human Rights?

States are most likely to pay the costs of enforcing human rights law under three conditions. First, states act when faced with domestic pressure to do something to stop human rights abuses. As noted already, few governments have intrinsic interests in promoting international human rights, and most do so only in response to domestic political pressure. Governments normally weigh demands to stop abuses, however, against costs to business interests or other diplomatic initiatives. Domestic pressure often produces merely toothless condemnations of the abuse or loose and ineffective economic sanctions.

Nonetheless, the more outrageous the abuse, the greater the domestic pressure on governments to act. In a particularly extreme case, when President Bashar al-Assad of Syria used chemical weapons against his own civilians in April 2017, U.S. president Donald J. Trump punished the regime by launching 59 cruise missiles against the Shayrat air base near Homs. Although President Trump had derided foreign military interventions during the campaign, this use of force against Syria received broad support at home.

The boomerang effect (described in Chapter 11) employed by TANs also plays an important role in protecting human rights. Victims or other advocates in one country who are blocked from influencing their own states can bring their plight to the attention of concerned others in foreign countries, who can then press their own governments into action against the offending regime. Domestic pressure also explains why democratic states are typically the most important promoters of international human rights. Not only are such rights more consistent with the states'

own practice, but also they are more susceptible to the demands of the states' citizens to undertake costly efforts to advance human rights abroad.

In turn, domestic demands for action are more likely when citizens are better informed about abuses in other countries. It is here, as monitors of practices around the globe, that human rights TANs play perhaps their most important role. Almost by their very nature, human rights abuses are hidden. They are typically perpetrated against individuals and groups that, though perhaps a potential threat to the regime, are nonetheless excluded from political power. Governments that violate human rights, in turn, are also likely to control access to the international media and other routes by which the abused might publicize their plight. It is through the links between domestic activists, who are often the victims of abuses, and trans-national activists, who largely operate out of established democracies, that human rights violations are most often brought to light.

Amnesty International's annual reports are an important vehicle for documenting state practice. Even though the U.S. Department of State issues its own annual reports, many of the abuses in those reports are first uncovered and brought to public attention by TANs. Without TANs, many more governments would be able to abuse their citizens, confident that their odious practices would escape international scrutiny. This is one issue area where the networks of individuals and groups promoting new international norms, and pressing their governments to make greater efforts in pursuit of those goals, have had a significant effect on state practice.

The second condition under which states are more likely to act against human rights violators is when doing so serves larger geopolitical interests. Raising human rights issues as part of the Helsinki Accords was applauded by many in the West as another way to bring pressure to bear on the Soviet Union and its allies for political and economic reform. Saddam Hussein's human rights record became an issue in the relations between Washington and Baghdad only after the Iraqi dictator invaded Kuwait in August 1990. His human rights violations later became one of several reasons given by President George W. Bush to remove Hussein from power in the Iraq War of 2003. Likewise, President Trump might have been more reluctant to punish Syria for using chemical weapons against its citizens if it were not aligned with Russia and Iran. Raising human rights concerns and demanding policy change in other states can be goals in themselves, but they may also be instruments in larger political and economic struggles.

The third condition making the action of states against human rights violators more likely is when the gap between the principle of sovereignty and international human rights law can be bridged. Central to the concept of sovereignty is the principle of nonintervention, which is often jealously protected by precisely those states most likely to be sanctioned by the international community for their violations of human rights law. States are, therefore, reluctant to criticize one another, except when the principle of nonintervention can be reconciled with other principles. The anti-apartheid movement was broadly supported, for instance, because it was framed not as foreign intervention, but as an anticolonial struggle; thus, it fell under the right to national self-determination guaranteed in the ICCPR and ICESCR.



The Truth and Dignity Commission of Tunisia collected approximately 62,000 submissions between 2014 and 2016 as part of its investigation into human rights violations perpetrated by the Tunisian dictatorship beginning in 1955.

individual petition

A right that permits individuals to petition appropriate international legal bodies directly if they believe a state has violated their rights.

Advocates of transitional justice argue that it is better for the society to acknowledge and publicize past human rights abuses than to focus on criminal prosecutions. Criminal proceedings are adversarial, pitting prosecutors who may not have strong evidence of abuses that the previous government intentionally hid from public view against defendants who have no incentive to admit past wrongdoing or provide information. Criminal prosecutions may also create incentives for human rights abusers to fight longer and harder to stay in power, lest they be accused in court and likely punished.³⁸ To ease the transition to democracy and the rule of law, advocates suggest, revealing past abuses can heal a society and allow it to move forward rather than remain mired in prior conflicts.

The most difficult issue in transitional justice deals with amnesty, especially for the most serious crimes against humanity. Amnesties pardon individuals who committed human rights abuses or other political crimes, typically as part of an effort to move on by putting past conflicts to rest. Amnesty was common in Latin American countries undergoing transitions to

democracy in the 1980s. Conditional amnesties grant forgiveness to individuals in return for their full and truthful accountings of their role and knowledge of past abuses.

One of the most successful conditional amnesty-granting institutions was the South African Truth and Reconciliation Commission, which ran from 1995 to 2002, following the end of apartheid. Its goals were laid out in the 1993 Interim Constitution, which stated that “there is a need for understanding but not for vengeance, a need for reparation but not retaliation, a need for ubuntu [the essence of being human] but not for victimization.”³⁹ Conditional amnesties are also frequently combined with lustrations. All amnesties, however, conflict with laws proscribing crimes against humanity, which can be prosecuted internationally, and with the new ICC, which defers to national courts only when a criminal investigation has been carried out in full, as we will see. The tension between international human rights law and the desire of countries to move beyond the past through transitional justice has not been resolved.

Individual Petition One of the most important developments in international human rights law was the right of **individual petition** to a supranational court, found most prominently in the European Convention on Human Rights (ECHR),

38. For a contrary view, see Kathryn Sikkink, *The Justice Cascade: How Human Rights Prosecutions Are Changing World Politics* (New York: Norton, 2011).

39. Quoted in Simon Chesterman, *You, the People: The United Nations, Transitional Administration, and State-Building* (New York: Oxford University Press, 2004), 158.

adopted in 1950 by the Council of Europe and its now 47 member states.⁴⁰ Though it preceded the ICCPR by 26 years, the ECHR recognizes many of the same rights ultimately in the ICCPR. It does not incorporate economic, social, or cultural rights into the corpus of rights that it protects. The ECHR's most innovative features are the European Court of Human Rights and its right of individual petition.⁴¹ The court currently consists of 47 judges from the member states of the Council of Europe. It hears cases, offers decisions that are binding on members, and awards damages. Although there is no formal mechanism for ensuring compliance, responsibility for enforcing the decisions of the court rests with the Committee of Ministers of the Council of Europe. Enforcement is informally overseen by the European Union.

Since 1998, individuals in all member states have possessed the right to petition the court for redress. Prior to this date, an optional protocol allowed individuals to petition the European Commission of Human Rights, which could then launch cases in the court on their behalf. By adopting the measure known as Protocol 11, all members are now required to allow individuals to petition the court directly if they believe a state has violated their rights as specified in the ECHR. This provision is nearly unique in international law, in which states—not individuals—are normally the subjects. In the court, individuals can now bring suit against their own governments for violations of internationally recognized human rights.

In the year before the new provisions took effect, 5,891 petitions were filed with the commission—already a large number. In 2001, the first full year under the new rules, 13,845 petitions were filed, representing an increase of approximately 138 percent. In 2016, the most recent year for which data are available, 53,500 applications were filed, of which 1,926 were ultimately decided by the court.⁴² Today, nearly all petitions before the court are from private individuals, and the success rate is over 50 percent, indicating that petitioners quite often win their cases against their own states. The ECHR is clearly having a profound effect on human rights practices in Europe, and especially in the relatively new democracies of eastern Europe.

Without the right of individual petition, states act as gatekeepers, blocking international courts from hearing cases that they might lose. Some human rights activists advocate expanding the right of individual petition to other supranational courts as a check against human rights abuses. This move would open channels to international courts now blocked by states and would likely lead to greater attention to, if not better enforcement of, human rights violations.

40. Rights of individual standing are also found in several optional protocols (see Table 12.1). In all cases, however, states must actively declare their willingness to allow the appropriate UN review committee to accept petitions from individuals. On how the right of individual petition can “trap” countries that sign agreements but do not intend to honor them, see Heather Smith-Cannoy, *In sincere Commitments: Human Rights Treaties, Abusive States, and Citizen Action* (Washington, DC: Georgetown University Press, 2012).

41. On the court, see www.echr.coe.int/Pages/home.aspx?p=home (accessed 09/20/14).

42. On the court’s caseload, see European Court of Human Rights, Analysis of Statistics 2016, www.echr.coe.int/Documents/Stats_analysis_2016.ENG.pdf (accessed 09/25/17). Although the courts themselves have different rules, procedures, and roles for comparison, the U.S. Supreme Court for the 2015 term (the most recent for which data are available) received 6,475 case filings, of which 70 were decided. See the annual report of the Supreme Court at www.supremecourt.gov/publicinfo/year-end/2016year-endreport.pdf (accessed 09/25/17).

The right of individual petition is now found in several optional protocols to international human rights treaties, such as the ICCPR (see Table 12.1 on p. 505). Ratified by fewer states than the main agreements, these optional protocols are a significant step forward.

International Criminal Court (ICC)

A court of last resort for human rights cases that possesses jurisdiction only if the accused is a national of a state party, the crime took place on the territory of a state party, or the UN Security Council has referred the case to the prosecutor.

The International Criminal Court The **International Criminal Court (ICC)** was established in 1998 and came into force in July 2002 after receiving the necessary 60 ratifications of its founding treaty. Today, more than 124 states have accepted the jurisdiction of the ICC and thus have become “state parties.” The ICC possesses jurisdiction only if the accused is a national of a state party, the crime took place on the territory of a state party, or the UN Security Council has referred the case to the prosecutor. Moreover, the ICC is a court of last resort, meaning that it cannot act if a national judicial authority has genuinely investigated or prosecuted a case—regardless of the outcome of that investigation or prosecution. The ICC can act only when a state cannot or will not act itself. As of March 2018, 24 cases in eight countries have been brought before the ICC for investigation or trial.⁴³

Although the number of prosecutions by the ICC has been relatively small, this does not necessarily mean the court is ineffective. The real question is whether the existence of the court, and the possibility of prosecution, deters human rights abuses. In principle, the most effective court is one that does not need to hear any cases, because no crimes are committed, but we know this is not the case for human rights abuses. Does the ICC make any difference at all? Emerging research suggests that the ICC can deter at least the most egregious human rights violations in some circumstances. Both ratification of the ICC and prosecutions by the court have been found to reduce state-sponsored violence, while prosecutions reduce rebel group abuses.⁴⁴ These findings indicate that the court is deterring some abuses, at least at the margin.

This effect, however, may not be entirely positive. Other research finds that involvement by the ICC in a conflict prolongs the strife and killings, especially when the risk of prosecution at home is relatively low. Similar to the gambling-for-resurrection logic explained in Chapter 4 (p. 151), the risk that the leader who loses the conflict will face arrest and prosecution by the ICC creates an incentive to fight on longer than would otherwise be the case.⁴⁵ We will get a clearer picture of the ICC’s effects on human rights as the court develops and investigates more cases.

The ICC remains highly controversial. As it begins to investigate and prosecute possible crimes against humanity, critics point out that all the cases are

43. For the most recent updates, see www.icc-cpi.int/en_menus/icc/situations%20and%20cases/pages/situations%20and%20cases.aspx (accessed 07/24/17).

44. Hyeran Jo and Beth A. Simmons, “Can the International Criminal Court Deter Atrocity?” *International Organization* 70, no. 3 (2016): 443–75. Stephen Chaudoin, in “How Contestation Moderates the Effects of International Institutions: The International Criminal Court and Kenya,” *Journal of Politics* 78, no. 2 (2016): 557–71, argues that the ICC only enhances compliance when pro- and anticompliance groups are roughly balanced within states.

45. Alyssa K. Prorok, “The (In)compatibility of Peace and Justice? The International Criminal Court and Civil Conflict Termination,” *International Organization* 71, no. 2 (2017): 213–43.

from Africa, yet severe human rights violations are found elsewhere as well.⁴⁶ This pattern of prosecutorial conduct, they charge, reflects either blatant racism or, perhaps less insidiously, a willingness by the court to proceed only in regions where the major states do not have significant interests. Many African countries are quite critical of the ICC and are threatening to withdraw. Either way, the ICC risks becoming a political entity rather than a true court of last resort.

The United States remains highly critical of the court. The treaty establishing the ICC was signed by President Bill Clinton shortly before he left office, which permitted the United States to participate in further negotiations on the court's rules of procedure. Almost immediately on taking office, however, President George W. Bush "unsigned" the treaty—a largely symbolic act.

The U.S. government raises many objections to the ICC.⁴⁷ Foremost is the fear of frivolous and politically motivated prosecutions against political leaders or American military personnel for actions taken to protect the security of the United States or on peacekeeping or peacemaking missions abroad. Given what is often seen as the special role of the United States in maintaining international peace and security, and real anti-Americanism in many countries, some skeptics of the ICC fear a string of political prosecutions in which leaders are tried not for violations of law, but merely for "show" or because others disagree with their policies.

There is also concern that leaders would be constrained by fears of future politically motivated prosecutions. Although the United States could avoid prosecution by the ICC by undertaking a genuine investigation or prosecution under its national laws, in defining what constitutes an adequate national-level inquiry the statute is sufficiently ambiguous that politically motivated prosecutions might still be possible.

The U.S. government also claims that the ICC is insufficiently accountable and lacks oversight mechanisms for both the judges and the prosecutors. On the dimensions of international law discussed in Chapter 11, critics fear that the ICC has been delegated too much power to interpret still-imprecise laws. Without the ability to remove activist judges, opponents are concerned that personnel at the ICC may escape political control and develop too much independence. In addition, international human rights case law and precedent are thin. Without adequate guidance from state parties on the intent of international law, the court might not just interpret, but essentially make, international law itself. Finally, given its prosecutorial and judicial independence, critics claim that the ICC might clash with the more political and problem-solving approach of the UN Security Council. Whereas diplomacy must be flexible and aware of context,

46. David Bosco, "Why Is the International Criminal Court Picking Only on Africa?" *Washington Post*, March 29, 2013, www.washingtonpost.com/opinions/why-is-the-international-criminal-court-picking-only-on-africa/2013/03/29/cb9bf5da-96f7-11e2-97cd-3d8c1afe4f0f_story.html. There is an open investigation in the country of Georgia, suggesting that a case may be filed soon.

47. See the statement by John R. Bolton, then undersecretary for arms control and international security at the Department of State, and later U.S. ambassador to the United Nations, <http://2001-2009.state.gov/r/pa/prs/ps/2002/9968.htm> (accessed 09/20/14). For a review, see the Congressional Research Service's report, www.fas.org/sgp/crs/misc/RL31495.pdf (accessed 09/20/14).



In March 2012, Thomas Lubanga Dyilo (seated, back right) became the first person to be convicted by the ICC. He was sentenced to 14 years in prison for the crime of forcibly recruiting child soldiers in the Democratic Republic of the Congo. Though Lubanga has appealed his conviction, he began serving his sentence in December 2015.

judicial proceedings that stress precedent, statutory interpretation, and equity across similar cases may conflict with the UN Security Council's charge to maintain peace and security.

After the ICC entered into force in 2002, the administration of President George W. Bush worked aggressively to exempt American nationals from the court's jurisdiction. Most important were the Article 98 agreements that were urged—some might say forced—on other countries. Article 98 of the ICC exempts a country from handing over a foreign national to the court if it is prohibited from doing so by a bilateral agreement with the national's country of origin. Under President Bush, over 100 countries signed such bilateral agreements with the United States under threat of losing all foreign and military aid or having American peace-keeping forces withdrawn. Despite sometimes significant aid cutoffs, other countries, including

Barbados, Brazil, Costa Rica, Peru, Venezuela, Ecuador, Saint Vincent and the Grenadines, and South Africa, refused to sign these agreements. Although the Obama administration softened the U.S. stance toward the ICC, it did not move toward becoming a state party and accepting the court's jurisdiction. There is much concern that President Trump will seek to further undermine the ICC, though he has not made any statements one way or the other about the court.

Harnessing Material Interests A final source for optimism is the proliferation of RTAs with human rights provisions. As we saw in Chapter 7, nearly every country in the world now belongs to at least one RTA, and nearly all RTAs contain some provisions on human rights. Some agreements are soft, or merely declarative, and appear to have no effect on behavior. Increasingly, though, RTAs contain obligatory and precise human rights provisions that bind states to international standards of behavior and threaten to withdraw trade and financial benefits if periodic reviews find substantial abuses of human rights. These hard provisions link concrete, material benefits of market access to a state's human rights practices. Unlike human rights agreements in general, and even soft RTAs, these hard provisions do have a significant, if small, effect on the level and extent of human rights violations.⁴⁸

Ironically, protectionist groups that are looking to insulate themselves from import competition by including human rights provisions in free-trade agreements may have devised effective weapons to protect human rights abroad—and their self-interest in seeing benefits revoked may make threats to use these weapons

48. Hafner-Burton, "Trading Human Rights."