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The Conditional Effects of International Human Rights Institutions

Xinyuan Dai*

ABSTRACT

Much research on the effects of international human rights institutions (IHRIs) is fixated on whether IHRIs have—"on balance" or "systematically"—generated domestic effect. This essay highlights the path-dependent and conditional nature of domestic effects of IHRIs that the current scholarship has either willfully ignored or proven unable to take seriously. It focuses on causal mechanisms by which IHRIs, as codification of rights and as treaty organizations, impact domestic human rights practice by empowering domestic human rights stakeholders and thereby indirectly influencing states' human rights practice. The essay sheds further light on the conditions under which IHRIs empower domestic stakeholders.

"I have been repeatedly asked whether the Convention can *really* do anything for women. The question I thought should have been asked is what can we *do* with the Convention."

Shanthi Dairiam

Director, International Women's Rights Action Watch Asia Pacific

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I. INTRODUCTION

A central question in International Relations and International Law concerns the effect of international institutions: Do they matter and how do they matter? International Human Rights Institutions (IHRIs) are particularly intriguing. Compared to institutions in other issue areas, IHRIs seem weaker in their enforcement power. Do such institutions work? If so, how? A burgeoning body of scholarship is devoting its attention to whether and how IHRIs influence states' human rights policy and practices on the ground.

Although the effects of IHRIs occupy the center of a large body of active research, the empirical findings are largely divergent. On the one hand, influential works show that in various ways international human rights treaties and accords have positive effects on states' human rights practice. For instance, especially when transnational activists effectively utilize international instruments, international human rights norms have helped push for a positive change in many countries in Latin America.¹ Furthermore, the influence of international human rights norms through transnational activists is not limited by either geography or area of interest.² In fact, many other scholars argue that transnational or domestic actors exploit international human rights instruments to generate pressure on norm-violating governments and push for rights improvements on those grounds.³ Indeed, the very empowering effect of international human rights law lies in its ability to mobilize human rights stakeholders.⁴ On the other hand, however, many empirical studies and particularly those employing large N statistical methods emphasize that IHRIs often fail to induce states' compliance.⁵ They find, in particular, that international human rights treaties do not have positive effects on the most abusive authoritarian states.⁶ In a thoughtful review of the empirical

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1. Kathryn Sikkink, *Human Rights, Principled Issue-Networks, and Sovereignty in Latin America*, 47 INT'L ORG. 411 (1993); Martha Finnemore & Kathryn Sikkink, *International Norm Dynamics and Political Change*, 52 INT'L ORG. 887 (1998); Ellen Lutz & Kathryn Sikkink, *International Human Rights Law and Practice in Latin America*, 54 INT'L ORG. 633 (2000); ALISON BRYSK, *THE POLITICS OF HUMAN RIGHTS IN ARGENTINA: PROTEST, CHANGE, AND DEMOCRATIZATION* (1994).
 2. MARGARET KECK & KATHRYN SIKKINK, *ACTIVISTS BEYOND BORDERS: ADVOCACY NETWORKS IN INTERNATIONAL POLITICS* (1998); *THE POWER OF HUMAN RIGHTS: INTERNATIONAL NORMS AND DOMESTIC CHANGE* (Thomas Risse, Stephen C. Ropp & Kathryn Sikkink eds., 1999).
 3. AUDIE KLOTZ, *NORMS IN INTERNATIONAL RELATIONS: THE STRUGGLE AGAINST APARTHEID* (1995); Andrew Moravcsik, *Explaining International Human Rights Regimes: Liberal Theory and Western Europe*, 1 EUR. J. INT'L RELATIONS 157 (1995); Harold H. Koh, *Why Do Nations Obey International Law?*, 106 YALE L. J. 2599 (1997); Ryan Goodman & Derek Jinks, *How to Influence States: Socialization and Human Rights Law*, 54 DUKE L. J. 621 (2004).
 4. BETH A. SIMMONS, *MOBILIZING FOR HUMAN RIGHTS: INTERNATIONAL LAW IN DOMESTIC POLITICS* (2009).
 5. Linda Camp Keith, *The United Nations International Covenant on Civil and Political Rights: Does It Make a Difference in Human Rights Behavior?*, 36 J. PEACE RES. 95 (1999); Oona Hathaway, *Do Human Rights Treaties Make a Difference?*, 111 YALE L. J. 1935 (2002); Emilie M. Hafner-Burton & Kiyoteru Tsutsui, *Justice Lost! The Failure of International Human Rights Law to Matter Where Needed Most*, 44 J. PEACE RES. 407 (2007).
 6. Keith, *supra* note 5, at 112; Keith, *supra* note 5, at 422–23.

scholarship, Emilie Hafner-Burton documents at least five types of findings that seem to refute the positive effect of IHRIs: 1) IHRIs have a negative effect on states' human rights practice; 2) even when they do not necessarily have negative effects, IHRIs lack independent effects on states' human rights practice; 3) when IHRIs are shown to have a positive effect, that effect is largely a function of other processes; 4) when IHRIs are shown to have a positive and independent effect, that effect is often insignificant; 5) when IHRIs are shown to have a positive, independent and significant effect, it is difficult to claim causality.⁷ Of course, these are high standards for any large N statistical analysis and one may wonder whether they are appropriate. If the theoretical expectation is that IHRIs have direct, uniform, and unconditional effects on states' human rights practice across time and space, these standards might be appropriate. However, if our theoretical expectation is about path-dependent and conditional effects, then the relevant criterion is, instead, whether IHRIs work as expected *given the right conditions*.

Although it might be tempting to attribute the divergence of empirical findings to different research methodology, it would not be accurate and may in fact be misleading. First, it is not accurate because there are significant exceptions to this association between research methods and findings. Employing qualitative case study methodology, Kathryn Sikkink does not find success stories everywhere in Latin America.⁸ Similarly, not all studies employing statistical methodology are entirely gloomy. Todd Landman finds that the international treaties protecting civil and political rights have positive effects on the countries that have ratified them.⁹ Eric Neumayer and Oona Hathaway both find positive effects of international human rights treaties on democratic states that ratify them.¹⁰ Furthermore, Eric Neumayer, Emilie Hafner-Burton, and Kiyoteru Tsutsui find that international human rights treaties are more likely to help improve human rights practice in countries where citizens participate in more international nongovernmental organizations.¹¹ In one of the most comprehensive studies of UN human rights treaties, Beth Simmons demonstrates that human rights treaties have significant positive effects on human rights practice on the ground, but particularly in transitional democracies.¹²

Second, it is potentially misleading to attribute the difference between the "optimists" and the "pessimists" to their methodological choice. If

7. Emilie M. Hafner-Burton, *International Regimes for Human Rights*, 15 ANN. REV. POL. SCI. 265 (2012).

8. KATHRYN SIKKINK, MIXED SIGNALS: U.S. HUMAN RIGHTS POLICY AND LATIN AMERICA 104 (2004).

9. TODD LANDMAN, PROTECTING HUMAN RIGHTS: A COMPARATIVE STUDY (2005).

10. Eric Neumayer, *Do international human rights treaties improve respect for human rights?*, 49 J. CONFLICT RESOL. 925, at 950 (2005); Hathaway, *supra* note 5, at 1940.

11. Neumayer, *supra* note 10; Hafner-Burton, *supra* note 5, at 422–23.

12. SIMMONS, *supra* note 4, at 16.

anything, the root of the divergence seems to lie in whether one looks for conditional effects or uniform effects of international human rights treaties. The “optimists” seem realistic: their “yes” is to the question of whether international human rights treaties influence states’ behavior to varying extent in different countries and under different conditions. The “pessimists” seem idealistic: their “no” is to the question of whether international human rights treaties impact human rights practice uniformly in all countries at all times. In fact, more striking than the seeming divergence of empirical findings is the consensus. Indeed, nobody disagrees with the fact that IHRIs lead to improvement of human rights practice in some places under some conditions. That is, the optimists do not believe that international human rights law is a magic bullet, but they seek to understand the factors and contexts that enable its varying effect. Likewise, the pessimists know that international human rights law works sometimes, but not as much as they believe it should. Thus, the agreement, though often unarticulated, is this: yes, IHRIs do influence states’ human rights practice in some countries, at some times, under certain conditions, especially concerning the necessary levels of domestic mobilizations or political institutions; no, such effects of IHRIs cannot be expected to be uniform in all 200 countries without carefully examining the necessary conditions.

Given this underlying consensus, the scholarship on the effects of IHRIs faces a pair of tasks. Empirically, we need to take these conditions much more seriously. Of course, this poses a significant demand on empirical work. While not insurmountable, careful design and laborious data collection need to precede any reliable empirical findings and useful insight. Theoretically, scholars and activists need to more clearly articulate the causal mechanisms and the corresponding conditions for IHRIs to matter. This is challenging for several reasons. For one, IHRIs typically influence states indirectly through diverse actors and channels. Their effects depend on specific channels of influence and the relevant agents in different processes. For another, each of the mechanisms by which IHRIs work may consist of multiple stages. For example, one stage, that of putting international pressure on a government, does not necessarily lead to the next, that of growing activism at home. Thus, the effects of IHRIs may be path-dependent and conditional in complex ways. These tasks may be frustrating to anyone who simply wants to know whether IHRIs work most of the time in most of the countries. Nevertheless, it is crucial to engage the causal mechanisms and corresponding conditions. Otherwise, our empirical findings will be uninformative and our policy implications may be misleading.

This essay examines one important way by which IHRIs influence states’ human rights practice indirectly through domestic constituencies and, in this context, highlights the necessary conditions for IHRIs to be effective. Section 2 briefly reviews the logic of why weak international instruments, such as IHRIs, work most feasibly and effectively through domestic mechanisms

and non-state actors. More specifically, it explores how IHRIs can empower domestic constituents by giving them information, thus providing them with political leverage. Section 3 examines the conditions under which these channels of influence materialize into a real impact on states' human rights practices. Using empirical examples, I show how IHRIs typically provide two types of functions: 1) treaties and accords codify the rights states have agreed upon; and 2) corresponding treaty organizations manage the process of self-reporting and review meetings. Both functions are important and can play into domestic mobilization. However, domestic constituents are the necessary intermediaries who help translate the potential effects of IHRIs into real impact; their characteristics and activities, along with the context in which they operate, condition the actual influence of IHRIs. Finally, Section 4 concludes by highlighting the path-dependent nature underlying the indirect and conditional effect of IHRIs.

II. INDIRECT EFFECT OF INTERNATIONAL HUMAN RIGHTS TREATIES THROUGH DOMESTIC ENFORCEMENT

Some international institutions have powerful and direct effects on states' behavior. Most scholars agree, however, that to study how IHRIs impact states' behavior, one needs to examine their indirect effects on states by looking into how they affect domestic stakeholders at various stages in the process. There are at least two related reasons.

First, in comparison to institutions in other issue areas, IHRIs are weaker. Most of them do not have the authority to directly enforce states' compliance. For example, they do not have an instrument of conditionality like the International Monetary Fund, nor a dispute settlement mechanism like the World Trade Organization. Furthermore, most IHRIs do not have the resources to directly enhance states' capacity to comply like some international environmental institutions have in their ability to offer financial assistance. While scholars and policymakers frequently call to give teeth to human rights institutions, what is often neglected is that institutions in different issue areas are embedded in different incentive structures.

In fact, IHRIs are arguably weak by design. While it is the government's behavior that is being regulated, the beneficiaries of IHRIs are primarily domestic citizens. Thus, we tend to see non-binding declarations and accords or binding institutions that are delegated limited authority and provided with meager resources. Because states are typically unwilling to spend their resources systematically to enforce human rights, most IHRIs are weak in direct enforcement. Simply making states delegate more resources and autonomy to these institutions is not a feasible policy proposal. Rather, a more sensible proposal needs to recognize the incentive structure in human rights institutions and identify alternative channels of influence.

Second, IHRIs lend support to domestic human rights advocates in both substantive and symbolic ways. This presents an alternative way in which IHRIs can work through domestic stakeholders to impact states' human rights practice indirectly. While states may be unwilling to delegate to IHRIs, domestic constituents may nevertheless utilize IHRIs to push their own governments for better human rights practice. Obviously, for this mechanism to work, governments have to be somewhat accountable to, and thus able to be influenced by, domestic constituents. It is possible that domestic constituents have more political leverage over democratic governments. However, even authoritarian governments are not immune to pressure from domestic constituents and can be held accountable to varying extents.

The key mechanism of influence for IHRIs is, then, to utilize and further empower domestic human rights constituents. This indirect channel of influence is both feasible and important. It is feasible because the stakeholders with the most profound interest in compliance are domestic citizens, and thus it makes sense for international institutions to work through these constituents. Furthermore, this indirect channel of influence is important to both international institutions that lack direct enforcement power, as well as domestic constituents who have limited domestic resources. Therefore, even though their ability to do so varies, both international institutions and pro-compliance domestic constituencies have an interest in utilizing each other.

From this perspective, the efficacy of IHRIs lies in their ability to influence states' behavior through domestic constituencies. Thus, to evaluate the effect of IHRIs, we need to ask not what they do directly to impact states, but rather how they enable domestic stakeholders to achieve their objectives. In other words, we need to focus on the indirect effects of IHRIs that are often conditioned by domestic constituencies.

III. CONDITIONAL EFFECTS OF EMPOWERMENT

By and large, IHRIs carry out two main functions: 1) codification of rights; and 2) implementation of the procedures set out in the treaty. First, all human rights treaties or accords codify rights that states agree upon, rights that may be fairly well accepted in some countries but may be contested in other countries. Second, treaty organizations oversee the process of self-reporting and review meetings. Most international human rights treaties require states to self-evaluate and self-report on their policies and practices. Further, many treaty organizations hold review meetings where individual countries' policies and practices may come under scrutiny. A limited number of IHRIs also provide formal procedures for individuals to file complaints directly to treaty organizations.

Each of these IHRI functions may seem insignificant, especially if we think only of direct enforcement by international institutions. However, in the context of domestic enforcement, what IHRIs do could potentially effect

the mobilization and further empowerment of domestic pro-compliance constituencies. IHRIs, both as codifications of rights and as treaty organizations, provide domestic stakeholders with important information and, with it, political leverage. The specific ways that treaties and organizations do so may vary from case to case. The extent to which such empowerment translates into improvement of human rights practices varies as well. These conditions have to do with domestic constituencies, their characteristics and activities, and the context in which they operate.

Schematically, Figures A and B below capture the fundamental contrast between the two ways of thinking about the effects of IHRIs. If we care only about the average effect of IHRIs in all countries at all times without accounting for the causal mechanisms and corresponding conditions, what we end up doing is looking or searching for the direct effect of IHRIs as in Figure A. Yet few scholars believe this is how IHRIs work. Instead, scholars and activists increasingly believe, as seen in Figure B, that IHRIs work through domestic mechanisms,¹³ largely by empowering domestic human rights activism.¹⁴ A big challenge in the study of IHRIs is to explicate the conditions under which IHRIs empower and the conditions under which that empowerment leads to actual improvement in human rights practice.



Figure A.
Direct & unconditional effects

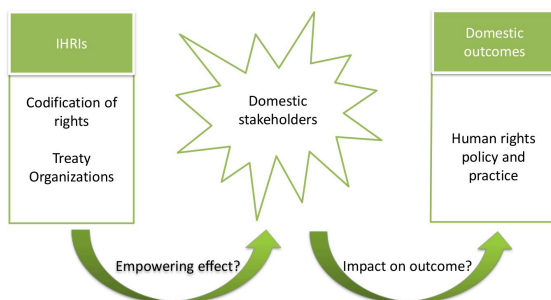


Figure B.
Indirect & conditional effects

13. THE POWER OF HUMAN RIGHTS, *supra* note 2.

14. XINYUAN DAI, INTERNATIONAL INSTITUTIONS AND NATIONAL POLICIES (2007); SIMMONS, *supra* note 4.

Here the focus is on the first of the two steps, which is the first arrow in Figure B, to sort through the various channels of empowerment and their corresponding conditions. Although this does not cover the entire process, this is an important first step in assessing the conditional effects of IHRIs. The domestic process is long and multi-staged. If focus is only on the aggregate association between IHRIs and behavioral outcomes, it might obscure the incremental but crucially important effects of IHRIs. Furthermore, the empowerment of domestic stakeholders by IHRIs is arguably the most important stage for IHRIs when it comes to generating domestic effects. When IHRIs do not play into the domestic politics and realize their empowering effect, the behavioral outcome may have nothing to do with IHRIs. Thus, we need to pay more attention to the empowerment of domestic stakeholders by IHRIs and its corresponding effect. This is done by using concrete empirical examples of IHRIs, such as the Helsinki Final Act (HFA) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).¹⁵ These examples of IHRIs are different from one another. For example, one is a regional treaty from 1975, and the other is a global convention that came into force in 1981. But these examples are also similar in that both have positively impacted states' human rights practice. Yet neither case presents uniform effects of IHRIs; indeed, the empirical variation in these cases allows us to think through the necessary conditions of empowerment.

A. Codification of Rights in Treaties

Some people think of the content of human rights treaties as trivial, tedious, and uncontroversial. The treaties may look laboriously long, but the treaties themselves and the information they contain can be very controversial. In general, human rights treaties regulate what are traditionally considered domestic affairs, and thus may appear to be a threat to national sovereignty. Specifically, the content of widely accepted human rights treaties can be controversial to many countries, including highly democratic ones. For example, the United States still has not ratified CEDAW. In part it has to do with the fact that members of the US Congress and the public believe that CEDAW, if ratified, could have negative effects on family, religion, and sovereignty.¹⁶ For instance, there are heated debates in the US on the potential effects of

15. Conference on Security and Cooperation in Europe: Final Act (Helsinki Accord), adopted 1 Aug. 1975, 73 Dep't State Bull. 323, reprinted in 14 I.L.M. 1292 (1975); Convention on the Elimination of All Forms of Discrimination Against Women, adopted 18 Dec. 1979, G.A. Res. 34/180, U.N. GAOR, 34th Sess., U.N. Doc. A/34/46 (1980), 1249 U.N.T.S. 13 (entered into force 3 Sept. 1981).

16. PATRICK FAGAN, *HOW U.N. CONVENTIONS ON WOMEN'S AND CHILDREN'S RIGHTS UNDERMINE FAMILY, RELIGION, AND SOVEREIGNTY* (2001), available at <http://www.heritage.org/library/backgrounder/bg1407.html>.

CEDAW on family structure and parental rights, abortion, family planning, etc.¹⁷ It is hard to imagine that the contents of treaties like CEDAW would be less controversial in countries where women's rights are in much poorer condition. So, in some sense, the codification of broadly accepted but controversial rights in some countries is already an important step forward.

Of course, no one expects the codification of human rights in treaties in and of itself to lead to improvement of human rights practice. Treaties are instruments. They are consequential only if those who can benefit from them use them effectively. Identified below are a number of mechanisms through which the codification of human rights in treaties enhances the political leverage of human rights activism as well as reflections on how characteristics and strategies of domestic stakeholders shape the empowering effect.

1. Informing and Educating

The codification of rights in international treaties serves an informational and, in some cases, an educational function. International human rights treaties come with a certain degree of "publicness" through the process of states agreeing on a set of rights. Prior to such acceptance, an agenda has to emerge internationally, and deliberation often follows domestically as to whether a country should sign and ratify the relevant treaty or accord. After a country's adoption of a human rights treaty or accord, some publicity may follow as well, depending on whether there are domestic stakeholders and if they can or do help influence the publicity of the treaties.

For example, when the HFA was adopted in 1975, signatory countries were required to publish its full text in their newspapers.¹⁸ The HFA informed ordinary citizens and human rights activists alike what their governments had agreed upon, including concrete commitments regarding their human rights practices. It is, of course, not the case that citizens and activists had no idea of their rights and of governments' obligations prior to the HFA. After all, the Communist constitutions contained the language about political and socioeconomic rights of the citizens, and dissidents had protested against the poor implementation of these rights.¹⁹ Rather, what the HFA informed citizens of was the endorsement of these rights in a highly visible international document. It was the first time many in the Soviet Union heard of "any kind of international obligations in the human rights field of their government."²⁰ Similarly to the Polish workers, the international endorse-

17. LUISA BALANCHFIELD, THE U.N. CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW): ISSUES IN THE U.S. RATIFICATION DEBATE (2011), available at <http://fpc.state.gov/documents/organization/161569.pdf>.
18. Helsinki Accord, *supra* note 15.
19. LUDMILLA ALEXEYEV, SOVIET DISSIDENT: CONTEMPORARY MOVEMENTS FOR NATIONAL, RELIGIOUS, AND HUMAN RIGHTS REGIMES (1985).
20. *Id.* at 336.

ment of the guaranteed right to independent trade unions was particularly significant.²¹ Perhaps more importantly, the humanitarian provisions in the HFA provided an educational function. They helped ordinary citizens and human rights activists to learn a legitimate criterion against which human rights practices should be evaluated. In other words, it provided them with a reference point. In Yury Orlov's view, for instance, "the rights of citizens enumerated in the humanitarian articles were to be treated as minimal international standards for countries who had signed the Helsinki Accords."²² Thus, human rights were no longer a domestic affair but a state's obligation in international relations.

Although this informing function of IHRIs has been previously acknowledged, what has not been made explicit is that an international instrument's potential to inform and educate only becomes real when agents deliberately utilize this function. That, in fact, did not happen automatically with the HFA. Internationally as well as within each country, there was plenty of criticism of the HFA. It was seen as largely fulfilling the Soviet aims to legitimize geopolitical changes from World War II: Create a pan-European forum with the US marginalized in Europe and promote East-West economic cooperation to spur the Soviet economy.²³ Even in the humanitarian provisions of Basket III of the HFA, many activists found the formulations vague and unsatisfactory and feared the provisions would soon be forgotten. The most important reason that they were not later forgotten was because some activists, although recognizing the limitations of the humanitarian provisions, nevertheless seized the opportunity for action. Activists like Orlov insisted on the international obligation to protect human rights and the legitimacy to monitor the implementation of these obligations. If it were not for the vision of these activists and their steadfast effort to bring salience to Basket III, the informing and educating function of the HFA could have been much more limited in scope.

Similarly, CEDAW has provided an informational and educational function. For example, as Dongxiao Liu and Elizabeth Boyle document, when Japanese women took major companies to court for wage discrimination, and the government to court for failure to enforce CEDAW in the mid-1990s, the key questions were what constitutes legitimate criterion for action and what exactly CEDAW meant.²⁴ To the Japanese government, CEDAW did not

21. Daniel C. Thomas, *The Helsinki Accords and Political Change in Eastern Europe*, in *THE POWER OF HUMAN RIGHTS*, *supra* note 2, at 205.

22. ALEXEYEV, *supra* note 19, at 338.

23. JOHN J. MARESCA, *TO HELSINKI: THE CONFERENCE ON SECURITY AND COOPERATION IN EUROPE 1973-1975 (1985)*; STEFAN LEHNE, *THE VIENNA MEETING OF THE CONFERENCE ON SECURITY AND COOPERATION IN EUROPE 1986-1989 (1991)*.

24. Dongxiao Liu & Elizabeth Heger Boyle, *Making the Case: The Women's Convention and Equal Employment Opportunity in Japan*, 42 *INT'L J. COMP. SOCIO'Y* 389, 396 (2001).

require it to eliminate all types of gender discrimination.²⁵ However, Japanese women found the fact that CEDAW called for governments to prohibit all forms of discrimination against women particularly useful and used it in their legal challenges.²⁶ Specifically, although Japanese law only covered direct discrimination against women, CEDAW prohibits both direct and indirect discrimination.²⁷ According to Liu and Boyle, Japanese women were able to bypass domestic law by going directly to CEDAW for a legitimate criterion against practices of indirect discrimination.²⁸ Further, as Susanne Zwingel documents, CEDAW helped present alternative visions to women's rights activists in Chile and, indeed, women's rights organizations sought to utilize CEDAW to disseminate information and raise awareness among women about their rights.²⁹

Just like the case of the HFA, the informing and educating function of CEDAW was not automatic. Rather, it very much hinged on the activism of women's groups and their forceful interpretation of CEDAW as prohibiting both direct and indirect discrimination against women in Japan. One can imagine when the need to resort to CEDAW arises in the future, such interpretation by women's groups might shape the informational function, perhaps even more than the actual wording of CEDAW does. Thus, successful domestic stakeholders do not passively get informed; rather, they help determine which part of the information from IHRIs is useful in their context.

The informing effect of IHRIs depends not only on the characteristics and strategies of the agents who may utilize them, but also on the varying distribution of information across countries. In particular, the degree of information monopolized by the government has two different effects. The stronger the government's control of information, the harder it is for human rights activists to effectively interpret IHRIs and disseminate information to the broader public. However, to the extent that domestic stakeholders can make an opening to allow the informational effect of IHRIs, such effects add greater value to the structurally disadvantaged human rights activists.

2. Legitimizing Human Rights Initiatives

The codification of human rights in international treaties seems to have a solemn nature. After all, governments have to put their own signatures on international human rights treaties or accords. The information available

25. *Id.* at 396.

26. *Id.*

27. *Id.* at 397.

28. *Id.*

29. Susanne Zwingel, *How Do International Women's Rights Norms Become Effective in Domestic Contexts : An Analysis of the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)*, Dissertation, Ruhr-Universität Bochum 265 (2005).

through them thus has a potentially legitimating effect, which originates from a number of sources. One source is the “yard-stick effect.” Because international human rights treaties are endorsed by a large number of countries, evidence of worse treatment of citizens in one country as compared to another country challenges the competence and legitimacy of the government. Another source of legitimacy is the moral principle that a responsible, mature individual should keep his/her promises. A third source of legitimacy is state autonomy or sovereignty, an extension of which means that the government’s word should count. Just like a state wants its citizens to abide by its rules, the government’s signature on an international agreement should be observed.

For example, the HFA was frequently referenced in human rights activists’ struggle for freedom of association and freedom of expression. Shortly after the conclusion of the HFA, the Moscow Helsinki Watch Group was created to promote compliance with the HFA in the USSR. This group used the Soviet propaganda to justify the importance of the HFA. As its opening statement stated, the group would hold the Soviet government to its word and would work in the framework that the government itself had elected.³⁰ In Poland, workers used the Polish government’s signature on the HFA to defend workers’ associations such as the Workers’ Defense Committee.³¹ Similarly, human rights activists frequently resorted to the Communist governments’ endorsement of the HFA in their demand for freedom of speech.³² Most of the post-Helsinki groups actively maintained publications to disseminate information and generate independent public opinion. Furthermore, human rights activists also resorted to the HFA to defend the freedom of expression in terms of protests. This was significant, particularly given that earlier efforts by human rights activists towards freedom of speech were met with harsh treatment, such as the political imprisonment of writers and critics in the mid-1960s and the renewed crackdown of dissidents in the early 1970s.³³

However, even such a powerful legitimation effect was not uniform or unidirectional, partly because this power was threatening to the Soviet government who then sought to delegitimize the human rights movement. The authorities seized such an opportunity from the bombings of the Moscow subway in early 1977.³⁴ Political crackdowns would follow beginning

30. JOSHUA RUBENSTEIN, *SOVIET DISSIDENTS: THEIR STRUGGLE FOR HUMAN RIGHTS* 219 (1980).

31. Adam Michnik, *The Moral and Spiritual Origins of Solidarity*, in *WITHOUT FORCE OR LIES: VOICES FROM THE REVOLUTION OF CENTRAL EUROPE IN 1989–90*, at 242 (William M. Brinton & Alan Rinzler eds., 1990).

32. JAN J. LIPSKI, *KOR: A HISTORY OF THE WORKERS’ DEFENSE COMMITTEE IN POLAND 1976–1981*, at 280 (1985).

33. ALEXEYEV, *supra* note 19, at 16.

34. Roman Kupchinsky, *The Moscow Metro Bombing*, RADIO FREE EUROPE RADIO LIBERTY VOL. 4 No. 8 (2 Mar. 2004), available at <http://www.rferl.org/content/article/1342336.html>.

in early 1977 till the early 1980s. Thus, the IHRI process of legitimization of domestic stakeholders is also a process where interest competition shapes the actual effect of legitimization.

Similar legitimizing effect can be shown concerning CEDAW. As documented by Ilana Landsberg-Lewis, in some countries the language of CEDAW has been incorporated into the constitution while in others CEDAW was cited in court rulings.³⁵ This reflects both the outcome of legitimization as well as the source of further legitimization. Even in cases where governments only symbolically and half-heartedly signed on to CEDAW, as is arguably the case of Japan, CEDAW had a similarly legitimizing effect for local claims.³⁶ Regardless of how sincere or insincere it was, the government's endorsement of the Convention made Japanese women's claims for equal treatment more legitimate and the government's attempt to limit the applicability of CEDAW less so. In fact, as Liu and Boyle argue, the legitimizing effect of CEDAW was an important factor in Japan's revision of its Equal Employment Opportunity Law in the mid-1990s.³⁷

Just as in the case of the HFA, however, the legitimating effect of CEDAW similarly hinges on the advocacy of stakeholders. In almost all cases, it is the framing, articulation, and often the counter-arguments and debates by these groups that shape what is legitimate. The drivers are women themselves. CEDAW provided them a "powerful, internationally recognized lever."³⁸

3. Enabling Strategic use of International Norms

When states endorse international human rights treaties and accords, they may be motivated by a diverse set of factors. They may genuinely identify with the rights codified in the treaties and further prioritize these rights in national policy making. On the other hand, they may endorse the principles in the treaties without intending to devote resources to the implementation of any concrete measures. Sometimes, they may strategically endorse human rights treaties or accords for other tangible or intangible gains. Regardless of why states sign or ratify human rights treaties, once publically endorsed, human rights treaties become a potential strategic tool for those with a stake in the rights protection. The treaties may add an additional instrument to the stakeholders in their demand. Indeed, the codification of human rights in international treaties and accords enable domestic human rights activists to make strategic use of IHRIs.

35. ILANA LANDSBERG-LEWIS, BRINGING EQUALITY HOME: IMPLEMENTING THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN 10–17, 18–31 (1998).

36. Liu & Boyle, *supra* note 24, at 393.

37. *Id.*

38. Landsberg-Lewis, *supra* note 35, at 7.

In the case of the HFA, human rights activists vigorously resorted to the humanitarian provisions within the HFA in order to promote general awareness of and respect for social and political rights. They also utilized the HFA to advance their specific interests and concrete goals. In the Soviet Union, human rights activists referred to the HFA to justify civil associations that defended the rights of religious believers and to protest the use of psychiatry for political purposes. In the Soviet Republics, human rights activists resorted to the HFA to address issues of nationality as well as religion.³⁹ In Czechoslovakia, following the HFA, disaffected intellectuals and former Communist officials during the Prague Spring demanded to lift the policy of normalization, to remove Soviet troops, and to reconsider the aborted Prague Spring reform.⁴⁰ In Poland, opposition groups used the HFA to protest against revising the Constitution to further institutionalize the bond with the Soviet Union and the dominance of the Communist Party.⁴¹

Again, the enabling effect of the HFA was conditional on those human rights activists who defended their specific objectives based on the terms of the HFA; it took place as a competition between human rights activists and Communist authorities. As we know, the HFA was a compromise among states with alternative goals. It thus included many and sometimes conflicting principles, such as sovereignty and non-intervention in internal affairs, as well as human rights and self-determination of peoples. While groups such as the Moscow Helsinki Group singled out the latter set, Communist authorities emphasized the former. What followed, therefore, was a competition between human rights activists and the Communist authorities to reframe and reinterpret the HFA. Two things can be said about this competition. On the one hand, the odds of winning in this competition favored the government as a result of its monopoly of media and control. On the other hand, even though both the governments and the human rights activists sought to strategically utilize the HFA, the value added was greater to human rights activists, precisely because the governments had already enjoyed the monopoly of political control while the oppositions had been in need of additional instruments.

4. Suggesting a Focal Point

Human rights treaties and accords typically endorse general principles as well as a wide-ranging set of specific rights. As a result, they allow differ-

39. ALEXEYEV, *supra* note 19.

40. VLADIMIR V. KUSIN, FROM DUBČEK TO CHARTER 77: A STUDY OF NORMALIZATION IN CZECHOSLOVAKIA (1978).

41. Jacques Rupnik, *Dissent in Poland, 1968–78: the End of Revisionism and the Rebirth of the Civil Society*, in *OPPOSITION IN EASTERN EUROPE 78–79* (Rudolf L. Tökés ed., 1979).

ent human rights groups to utilize the international codification of rights to advance their own specific agendas. However, human rights treaties and accords also have the potential to provide different social movements with a focal point.

In the case of the HFA, such a focal point shaped the coalition of opposition movements in at least two ways. First, under the HFA, activists formed a common ideological basis: signatory countries of the HFA should simply observe the humanitarian provisions. Second, under the HFA, activists adopted the common strategy of nonviolence. The HFA therefore gave dissidents a sense that the law was on their side. By resorting to humanitarian provisions in the HFA, most opposition movements became human rights movements in terms of their demands and their methods. Indeed, the humanitarian principles provided the banner of human rights, under which different movements within a country and across countries united or formed alliances against repressive governments. After the HFA, activists in Moscow and elsewhere in the Soviet Union formed separate but loosely connected Helsinki Watch Groups.⁴² Religious groups and national movements shared information and sometimes issued documents jointly with Helsinki Watch Groups. In Poland, the unifying effect of the HFA was central to the oppositions across the ideological spectrum and it helped facilitate the broad alliance that Solidarity is based upon. In Czechoslovakia, the focus on human rights shaped the programs of opposition movements in at least three ways. First, such a focal point enabled those who endorsed the Prague Spring reform to revive their opposition to the authoritarian regime with a legitimized cover. Second, human rights principles were often the chief justification for protests. Third, human rights principles also served to help form an alliance between independent activities among the young and among the religious with human rights organizations such as Charter 77.⁴³ Throughout much of Eastern Europe, the focal point provided by the humanitarian provisions in the HFA also facilitated the cooperation and alliance of civic associations across borders.

However, this unifying effect could not be attributed entirely to the HFA. As mentioned earlier, the HFA endorsed a diverse set of principles. Governments and oppositions favored different principles. Even for the oppositions, it was actually not inevitable that human rights became the banner under which oppositions united. After all, the Universal Declaration of Human Rights in 1948, though very much focused on human rights, did not provide a focal point in these countries. So, what enabled opposition movements to unite under the banner of human rights this time? In the HFA, human rights

42. Human Rights Watch, *Our History*, HRW.ORG, available at <http://www.hrw.org/node/75134>.

43. *Charter 77*, FREEDOMCOLLECTION.ORG, available at http://www.freedomcollection.org/artifacts/c/charter_77/.

were not defined entirely as domestic affairs, in contrast to the Universal Declaration of Human Rights. Rather, the protection of human rights was an international obligation in East-West cooperation. Furthermore, human rights were linked to the officially acceptable terms of peace and security. The importance the Communist governments gave to the HFA may have made the terms of human rights more tolerable than previously. Leaders of opposition movements in the Soviet Bloc effectively seized the opportunity to use the banner of human rights, while emphasizing the peace and non-violence aspects of a country's international obligation.

In sum, the codification of rights in international human rights treaties and accords is, by nature, a piece of paper. But when effectively utilized, this piece of paper can be of great consequence. The previous sections show how this piece of paper, under certain conditions, contributes to the empowerment of domestic stakeholders. It highlights how the empowering effect of human rights treaties are conditional on the characteristics and activities of domestic stakeholders, along with the context in which the domestic competition of interests takes place.

B. Self Reports and Review Meetings Through Treaty Organizations

IHRIs are not simply documents of agreed-upon international norms or obligations. Rather, they are also treaty organizations and other relevant inter-governmental organizations that manage information collection and dissemination through national self-reports and international review meetings. These activities on the part of treaty organizations are usually seen as feeble. However, self-reports and review meetings, coupled with complementary activities by human rights activists, often help improve information on states' compliance. Indeed, such information can be consequential in that the process of information collection and dissemination through treaty organizations is also a process of empowerment for human rights activism.

1. Information Collection and Dissemination

Information on what rights states have agreed upon is important; information on states' subsequent compliance with these agreements is also crucial. Empirically, the gap between actual human rights practices and the reference point set by human rights agreements is the starting point for domestic mobilization to press governments to improve their human rights practice. Yet, how do we determine how well states are complying with international human rights agreements? States typically delegate only limited authority to human rights treaty organizations; self-reporting is the primary mode agreed upon by states in collecting compliance information. However, all

the problems associated with self-reporting are intensified by noncomplying governments' incentives to cover up their wrongdoings. Thus, self-reporting in human rights regimes is, by itself, problematic.

Nevertheless, the process of gathering governmental self-reports and evaluating these reports at subsequent review meetings is still a useful method of information collection and dissemination. When a government's self-report becomes due at the treaty organization, there is a growing need for governmental branches and, increasingly, interested human rights organizations to gather information on a country's human rights practice. For example, according to Afra Afsharipour, while Bangladesh's second report to CEDAW was scanty, its third and fourth reports were a dramatic improvement; this was largely because women's NGOs were heavily involved in the information gathering and the drafting of these later reports.⁴⁴

While human rights NGOs may sometimes collaborate with their governments in drafting national reports, more often they work to produce counter reports or shadow reports. These alternative reports sometimes check the information in governmental reports and often add information beyond the scope and depth of the governmental reports. They thus help improve the quality of information and provide independent information on states' compliance with IHRIs. As documented by Susanne Zwingel, after the age of dictatorship and as civil society got more active, periodic reports from Chile to CEDAW were increasingly accompanied by shadow reports from domestic women's rights NGOs.⁴⁵ The reports from NGOs critically discussed the information in the governmental reports. Indeed, according to Ivanka Corti, who was once the chairperson of the CEDAW Committee, it happens regularly that NGOs provide special reports on the countries to be reviewed by the CEDAW Committee.⁴⁶ Take, for example, CEDAW in Action in Southeast Asia. It collects information on the CEDAW-related activities of governments throughout the region. Concerning each country, CEDAW in Action presents the shadow reports of NGOs side by side with the governmental self-report.

Furthermore, review meetings where governmental reports are discussed also help improve information on states' human rights practice. Indeed, human rights treaty organizations are increasingly open to independent information from human rights NGOs, which often serve as the authoritative monitors of states' human rights practice. When the Japanese government's report was discussed by the CEDAW Committee, a group of Japanese women attended the session to present their alternative assessment of women's rights

44. Afra Afsharipour, *Empowering Ourselves: The Role of Women's NGOs in the Enforcement of the Women's Convention*, 99 COLUM. L. REV. 129, 146 (1999).

45. Zwingel, *supra* note 29, at 260.

46. Afsharipour, *supra* note 44, at 167.

in Japan.⁴⁷ In part bolstered by the Japanese women's counter reports, the CEDAW Committee criticized Japan's "indifference to integrating women fully" in the national economy.⁴⁸ Increasingly, independent reports by NGOs not only get voiced at review meetings, but they also help shape the review of the country in question by the CEDAW Committee.

Finally, the process of reporting and review meetings plays an important role in facilitating the dissemination of information by human rights activists. Made public in various ways, alternative reports by human rights NGOs disseminate information not only on the actual human rights practice in a country, but also on the interpretation of international human rights treaties or accords as the benchmark of evaluation. These reports, made public through and around review meetings, may raise public awareness of the gaps between governments' international commitments and their actual practice. Interested stakeholders may then mobilize to push governments to bring their practice closer to international human rights norms codified in treaties and accords. For example, review meetings following the HFA provided a forum for information to be compiled and further disseminated in a mixture of state and societal channels. Although human rights activists usually published their reports of human rights abuses domestically through samizdat, the review meetings provided them with additional channels to influence international as well as domestic public opinion. The compliance information sent to the international conferences often went back to the originating countries, either through samizdat or foreign broadcasting, often with added legitimacy.

Obviously, this mode of information production in IHRIs is very much an interactive process, where the production and quality of information depends not only on the treaty organizations, but also on reporting governments and, crucially, on human rights activists and NGOs. In such a process, the outcome depends on the availability of human rights NGOs and their actual utilization of the review process. The participation of human rights NGOs in the drafting of governmental self-reports serves as independent verification of the content. The shadow reports of NGOs provide an independent source of information. In those cases where the shadow reports of NGOs enter the discussion and review of treaty organization, the shadow reports may lead governments to revise not only their reports but also clean up their act before the next reports are due. How such deliberations at treaty organizations are further disseminated again depends on the way and the extent to which human rights NGOs seek to use this information.

47. Liu & Boyle, *supra* note 24, at 398.

48. *Id.*

2. Empowerment Through the Process of Reporting and Review Meetings

In addition to the informing effect, the process of self-reporting and implementation reviews also has the empowering effect. This may happen in three distinctive ways. First, follow-up review meetings provide human rights NGOs and activists additional channels of information dissemination, thus enabling them to reach a larger and broader audience. In addition to publicizing, information dissemination often takes the form of argumentation and justification. For instance, the Moscow Helsinki Group took advantage of these review meetings and increased the number of documents it prepared from twenty-six at the Belgrade conference to one hundred thirty-eight documents at the Madrid conference six years later.⁴⁹ Many other associations in the Soviet Union and throughout Eastern Europe also appealed to these review conferences. This process of information generation and dissemination lent an additional instrument to domestically disadvantaged human rights activists to allow them to reach broader audiences and build broader alliances.

Second, the process of reporting and review meetings helps renew the legitimacy of human rights activists as monitors and information disseminators. They thus lend certain protection to human rights activists. The HFA, for instance, made it legitimate for citizens to monitor states' compliance with the humanitarian provisions and thus offered, although possibly thin, a shield of protection for monitoring human rights practices and disseminating such information. When the preparatory talks for the Belgrade review conference started in June 1977, the Committee for the Defense of Workers (KOR) issued numerous statements declaring that the human rights provisions in the HFA were not respected in Poland and, at the same time, defended the legitimacy of disseminating information to the public in the context of the review meetings.⁵⁰ Similarly, in the case of CEDAW, the authority of the experts serving on the CEDAW Committee added legitimizing weight to the arguments by the NGOs in the eyes of national public.⁵¹

Third, regular and somewhat institutionalized review meetings give renewed relevance to compliance with IHRIs. The review meetings following the HFA, for instance, provided human rights activists with a forum for continued mobilization. Some activists and human rights NGOs, such as Charter 77, deliberately took advantage of each of the review meetings to influence public opinion, both domestically and internationally.⁵² At the same time, the deliberate drive of human rights activists to take advantage

49. ALEXEYEV, *supra* note 19, at 344–46.

50. Lipski, *supra* note 32, at 166–67.

51. Zwingel, *supra* note 29, at 265–66.

52. H. GORDON SKILLING, SAMIZDAT AND AN INDEPENDENT SOCIETY IN CENTRAL AND EASTERN EUROPE 56 (1989).

of the international forum to influence public opinion further enabled the facilitating functions of these meetings. Similarly, in CEDAW, each time a state's self-report is due or each time a self-report is evaluated by the CEDAW committee, it presents an opportunity for women's rights NGOs to renew the relevance of the rights and obligations of state parties in addition to helping to generate and disseminate information.

While this empowering effect is real and at times powerful, the extent to which it is translated from potential to actual empowerment depends on other actors, among which is the domestic human rights constituency. For instance, human rights groups did not mobilize around the HFA in every country, and these groups certainly did not resort to the review meetings with the same urgency and determination as Charter 77. As a result, the empowering effect was contingent on whether activists found the need and had the ability to utilize the tools that review meetings offered them in pursuit of their own agenda.

To summarize, whether we think of IHRIs as codifications of rights or as treaty organizations, their empowering effect depends on the availability and strategies of human rights activists. First of all, it depends on the availability of domestic stakeholders. While IHRIs may awaken latent stakeholders, they do not create them. In other words, there has to be a certain level of domestic activism for IHRIs to empower. This may in part explain why the HFA has realized a much greater empowering effect in the Soviet Bloc than the 1948 Universal Declaration of Human Rights. In the Soviet Union, the dissident movement began in the mid to late 1960s. Although many dissidents were driven underground in the early 1970s, they were present to seize the opportunity presented by the HFA. Secondly, the empowering effect also depends on the activities of domestic stakeholders, how they perceive IHRIs, and how they utilize the instruments. This may in part explain why the empowering effect of the HFA was in fact different across Eastern Europe. Human rights activists were more mobilized in the Soviet Union, Poland, and Czechoslovakia and thus able to call out the greater empowering effect from the HFA, as compared to activists in Bulgaria and Romania.

IV. CONCLUSION

The study of IHRIs is exciting because of both the opportunities it presents and the challenges it faces. First of all, this literature has the potential to help us better understand international institutions. In particular, it forces us to think hard about how and under what conditions the traditionally weak international institutions may impact states' behavior. Secondly, this literature also faces crucial challenges. Given that IHRIs are often weaker by design and lack enforcement power, it would be misleading to focus merely

on the association between treaty ratification and behavioral outcomes without examining the domestic mechanisms and conditions under which IHRIs work. A challenge, as well as an opportunity, is to better appreciate the indirect effects of IHRIs and more explicitly articulate the conditions necessary for IHRIs to work.

This essay has highlighted the indirect pathways through which IHRIs influence states' behavior. It has focused on how IHRIs—both as codification of rights and as treaty organizations—may empower domestic stakeholders under certain conditions. The empowering effect of IHRIs crucially depends on the existence and activities of domestic stakeholders. It is a function of whether domestic stakeholders resonate with IHRIs, have the ability to utilize them, and manage to translate the help of IHRIs to their advantage in their strategic interaction with the governments. Thus, IHRIs are tools. As such, their actual effect depends on those who can and do use them.

One practitioner's words, as quoted at the beginning of this essay, are on point as to how we should evaluate the effects of IHRIs. IHRIs, in and of themselves, do not directly impact states' policies or behaviors. Rather, others—interested stakeholders and human rights activists—may (or may not) use them to gain additional leverage to push for improvement in human rights practices. Depending on when and where these agents derive added value from IHRIs, they may (or may not) effectively translate that leverage into improvement of human rights. Indeed, this indirect channel through which IHRIs work is rather long. Their effect is neither uniform across countries nor unidirectional within a country. To take IHRIs seriously is to appreciate their indirect and conditional effect in a path-dependent process.