



# International Law and Human Rights

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POLI 150

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# Announcements

- Final Exam to be available from 12 AM on April 30 through 11:59 PM on May 3. Cumulative, 15-20 multiple choice questions, open-note and open-book, 2 hour 30 minute time limit.
- Prompts 12 and 13 due on April 30.



# Today's Class

- Intl. Law Definitions
- Intl. Law Formation
- Norms
- Enforcement
- What Are Human Rights?
- Human Rights Violations
- Why Do States Care?
- Rwandan Genocide and R2P
- The ICC



# Key Terms

- International law
- Dimensions of international law
- Hard vs. soft law
- Norms
- Transnational Advocacy Networks (TANs)
- Boomerang model
- Human rights
- Negative and positive rights
- International Bill of Rights
- International Criminal Court



# Central Questions of Intl Law

What is international law? How is it made?  
When and why do states follow it?



# Geneva Conventions

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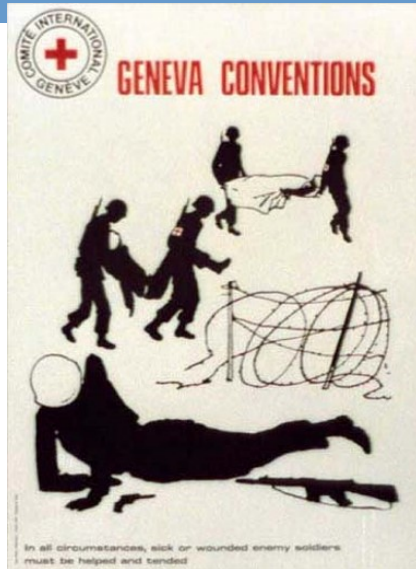


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- **This should be puzzling.**



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- Thus, war is fundamentally non-cooperative.
- Yet, “law” requires some amount of cooperation. How can there be “law” for such a violent and non-cooperative act?



# Definitions

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- Effectively, international law is an **institution** that shapes how states perceive their interests.
- International law can enable cooperation between states through clear obligations and clearly defined conditions for violation.
- How is this definition not circular? “**body of rules**” and “**status of law**” both mean very specific things.



- **Body of rules:** this implies a coherent, unifying set of principles underpinning any laws made.
- **Status of law:** this phrase implies the existence of both primary and secondary rules in any legal structure.



- **Primary rules:** the actual rules of behavior.
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- **Secondary rules:** mechanisms that provide for the creation and modification of primary rules.



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- This has traditionally been interpreted to mean that all states have equal rights to make laws, and can only be constrained by those laws if they consent to be.
- Additionally, only states can choose to be bound by international law.
- Food for thought: how does this clash with observed state actions?



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  - Customary laws are defined by the International Court of Justice Statute as “a general practice accepted as law” (Article 38(1)(b)).





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    - If the domestic political system agrees to be bound by international rules, then this satisfies the fundamental premise of sovereignty.



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- **Obligation:** The extent to which states are legally bound to follow it.
  - Compliance is unconditional for high-obligation law (ex: WTO treaties).
  - Compliance is conditional or aspirational for low-obligation laws (ex: human rights treaties, some environmental treaties).



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  - This means that imprecise language is often deliberate, frequently as a compromise to get more states to sign.



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  - Frequently carried out by international courts, arbitration bodies, or specialized agencies.
- Courts can make new laws if precision is low but delegation is high.
- Example: International Civil Aviation Organization. It establishes rules and standards that help states cooperate on the common goal of safe and orderly air transport.



# Delegation Example: ICAO



Richard Cooke/Alamy



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States may act to enforce hard law via a variety of policy tools ranging from sanctions through military intervention.



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  - Ex: UN Framework Convention on Climate Change (prior to Kyoto Protocol)

Soft law can become hard law over time as subsequent negotiations add more obligations. UNFCCC was soft law, but the Kyoto Protocol made it into hard law.



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- Despite this, international law is another institution that clarifies expectations and enables cooperation.





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- Laws may also create **compliance constituencies**: groups within the state who benefit from that law, and so lobby the government to follow it.
- **General consensus is that international law matters, but only if states perceive cooperative benefits from following it.**



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  - 3 Regulative norms: define acceptable behavior between actors.
- Most discussions of norms are about regulative norms.



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- Norms form as social constructions.
- Additionally, some of the most important norms are so deeply embedded in society as to be invisible. Ex: against cannibalism.
- This means that studying norm formation and compliance is complicated.





# Norm Creation

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- Norms, especially regulative norms, can arise over a long period of time in a similar way as customary law.
  - Ex: The “nuclear taboo” against using nuclear weapons.
- Norms can also arise in response to specific events (ex: Rwandan Genocide and R2P).
- Finally, norms can be deliberately built by **norms entrepreneurs**, who often lead and coordinate **transnational advocacy networks** campaigning for a specific norm (ex: end of child marriage or labor, abolition of slavery, etc.)



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- **Cascade:** At some point, norm becomes so widespread that it becomes generally accepted; this often speeds further adoption. AKA the “tipping point.”
- **Internalize:** Once norm is universally shared, often can become taken for granted and an unconscious influence on policymaking.



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- This is frequently achieved through monitoring states' compliance with international human rights commitments.
- TANs frequently engage in “naming and shaming” using the boomerang model.



# Boomerang Model

FIGURE 11.3 *The Boomerang Model*

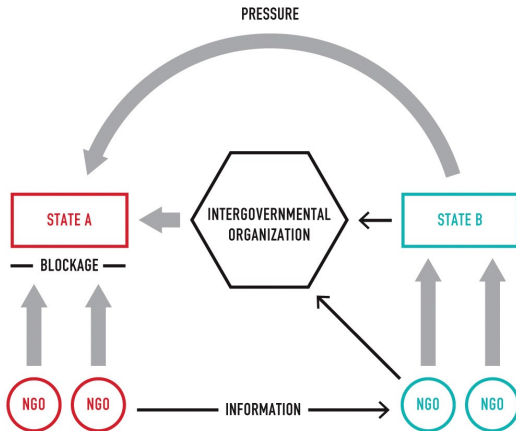


Figure source: Margaret E. Keck and Kathryn Sikkink, *Activists beyond Borders: Advocacy Networks in International Politics* (Ithaca, NY: Cornell University Press, 1998), 13.



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- TANs frequently serve as **information shortcuts** here, quickly supplying information to foreign actors that can pressure the government.



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  - Boomerang model is a primary example of this.
- Danger of unintended side effects. Ex: campaigns against child labor leading to children in unregulated illegal sweatshops.
- Norms have strongly influenced the development of human rights law.





# Summary of Intl Law

- International law and norms are institutions.
- Law and norms can shape the interests of states.
- International law is most effective when it facilitates mutually beneficial cooperation.
- Norms can develop and change over time, and can motivate international laws.
- TANs promote normative values and pressure governments to follow them.



# Central Questions of Human Rights

What are human rights? Why do states undertake costly actions to protect human rights outside their borders?



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- Explicitly codified for the first time (ever!) with the 1948 Universal Declaration of Human Rights (UDHR).
- UDHR motivated by horrors of WWII and the Holocaust.
- Since 1948, multilateral human rights treaties have proliferated.



# Human Rights Agreements

TABLE 12.1 *UN Human Rights Agreements*

TREATY	DATE SIGNED/IN FORCE	BRIEF DESCRIPTION
Universal Declaration of Human Rights (UDHR)	1948	Outlines basic human rights.
Convention on the Prevention and Punishment of the Crime of Genocide	1948/1951	Bans acts committed with the intent to destroy, in whole or part, a national, ethnic, racial, or religious group.
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)	1965/1969	Bans all racial discrimination, with particular attention to policies and practices of apartheid.
International Covenant on Economic, Social, and Cultural Rights (ICESCR)	1966/1976	Details the basic economic, social, and cultural rights of individuals and nations.
International Covenant on Civil and Political Rights (ICCPR)	1966/1976	Details the basic civil and political rights of individuals and nations. Optional protocol (1966/1976) permits petitions from individuals. Second optional protocol (1989/1991) commits state parties to abolish the death penalty.
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	1979/1981	Bans discrimination against women, focusing on education, employment, health, marriage, and the family. Optional protocol (1999/2000) permits petitions from individuals.
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	1984/1987	Bans torture under all circumstances. Optional protocol (2002/2006) establishes regular visits to monitor state practice.

Note: For texts and updated membership information, consult [www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx](http://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx) (accessed 07/24/17).



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Convention on the Rights of the Child (CRC)	1989/1990	Details the special rights of children. Optional protocol (2000/2002) bans children in the armed forces from participating in hostilities. Second optional protocol (2000/2002) prohibits the sale of children, child prostitution, and child pornography. Third optional protocol (2011/2014) allows the submission of complaints by individual children.
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)	1990/2003	Details the special rights of workers outside their country of origin.
Convention on the Rights of Persons with Disabilities (CRPD)	2007/2008	Mandates equal status and treatment for individuals with disabilities. Optional protocol (2007/2008) permits petitions from individuals.
International Convention for the Protection of All Persons from Enforced Disappearance	2007/2010	Prohibits arrest, detention, or abduction of individuals without acknowledgment by the state.

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  - Note the tension with socialism's focus on the community during the Cold War, or the "Asian values" discourse in the 1990s, which focused more heavily on collectivism and community.
- Modern human rights treaties tend to reflect Western ideals.



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- A basic understanding of this: you have no right to take away my life (and vice versa).
- Most people would agree that this means murder is not to be tolerated.
- But what about capital punishment (the death penalty)?





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- **Positive right:** Defines actions that should be taken to ensure all individuals have equal opportunity to enjoy a right.
  - Ex: some activists have argued that, to fully enjoy the “right to life,” individuals also require material support.
  - It is difficult to live without a place to live of one’s own; thus, “right to life” should include a right to have a home.



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  - Signed by US in 1948 but not ratified until 1988. Why? Sovereignty concerns.
- Two legally binding agreements were born out of UDHR: the **ICCPR** and the **ICESCR**.



- **International Covenant on Civil and Political Rights (ICCPR)**: focus on civil and political rights (life, liberty, freedom of thought, religion, etc.)



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- **International Covenant on Economic, Social, and Cultural Rights (ICESCR)**: focuses on rights to minimum wages for dignified living, right to form unions, compensation for maternity leave, etc.
- Combined with the UDHR, these two covenants form the **International Bill of Rights**.



# Human Rights and America

Consider America's relationship with these treaties...

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- US ratified the ICCPR in 1992 while also declaring it as non-self-executing, effectively not truly ratifying it at all.



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- Signed the Genocide Convention in 1948 but did not ratify it until 1988 (**details**).
  - The Convention is a non-self-executing treaty, meaning that it requires additional domestic legislation to actually turn its provisions into binding US law.
- US ratified the ICCPR in 1992 while also declaring it as non-self-executing, effectively not truly ratifying it at all.
- US signed ICESCR in 1977 but never ratified it.



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- The United States is an outlier among advanced industrialized states, and routinely condemned by Amnesty International for its use of capital punishment.



# Death Penalty Protests



Laurent Fievet/AFP/Getty Images



# Why Are Human Rights Controversial?

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- The idea of human rights says that there are some actions states *cannot take against their citizens*—that is, an external constraint on their sovereign authority.
- Human rights can be weaponized politically at the international level (ex: Western vs. Communist emphasis on ICCPR vs. ICESCR during Cold War; civil rights viewed as Trojan Horse for Western influence).



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  - Concerns about human rights as a means of spreading Western influence.



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Autocracies and unstable democracies usually violate human rights more than consolidated democracies, but they are not immune...



# Homelessness in America



**SFGATE**

Newsle

News // Bay Area & State

## UN expert on San Francisco homelessness: 'I couldn't help but be completely shocked'



**Amy Graff** SFGATE

Jan. 23, 2018 | Updated: Jan. 24, 2018 2:29 p.m.







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- Her assessment: “If I could add, the other thing that just struck me ... but I’m sorry, California is a rich state, by any measures, the United States is a rich country, and to see these deplorable conditions that the government is allowing, by international human rights standards, it’s unacceptable. I’m guided by human rights law.”



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- States join agreements to try to constrain actions of other states via diplomatic pressure.



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  - Ex: labor unions demanding human rights provisions in trade treaties, to prevent criminally exploited labor that is also cheaper than their own.



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    - US and China must cooperate on environmental protection measures.



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  - Ex: Anti-apartheid movement in South Africa was framed as anti-colonial struggle over domestic representation.
  - Note: This is most likely to occur when there is significant request for help from local actors; not clear same case can be made without local groups asking for assistance.



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- **Note the clash with the idea of state sovereignty.**



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- Example: after Iraq invaded Kuwait in Persian Gulf War in 1991, UNSC passed a resolution imposing sanctions on the Iraqi economy, banning exports to Iraq that were not basic food or medicine.



# HR Violations and Punishment

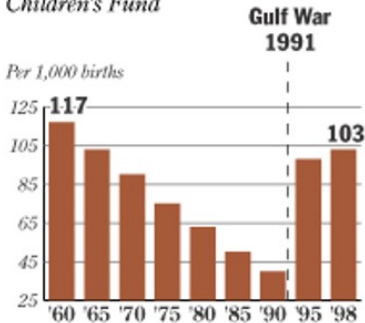
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- Example: after Iraq invaded Kuwait in Persian Gulf War in 1991, UNSC passed a resolution imposing sanctions on the Iraqi economy, banning exports to Iraq that were not basic food or medicine.
- Sanctions did not force Saddam out of power, but had a serious impact on the wellbeing of average Iraqi citizens...



# Sanction Consequences

## MORTALITY RATE

*Estimates of Iraq's infant-mortality rate from the United Nations Children's Fund*





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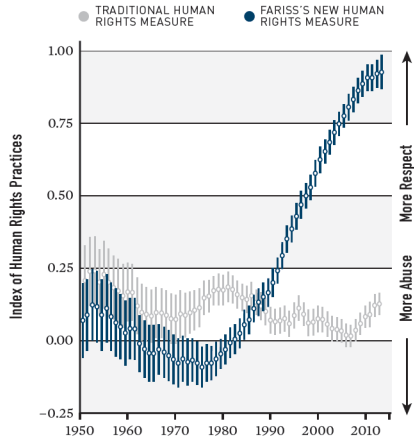
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- Developing HR standards over time further complicate measurement.
- Determining effectiveness of agreements is a complex task.
- Despite all this, human rights respect is (probably) improving over time. One reason for hope is the ICC...



# Measuring Human Rights

FIGURE A *Estimates of Human Rights Practices around the World, 1946–2015*





# The International Criminal Court

- Some states grant in their constitutions the right of individual citizens to appeal to international bodies for final jurisdiction in rights cases (but remember selection effects).
- They usually appeal to the **International Criminal Court**.
  - The ICC can try individuals for war crimes and threats to peace.
  - Before the ICC's creation in 1998, only states could be tried.
  - Though more than 100 states have accepted the jurisdiction of the ICC since it was established in 1998, the United States refuses to join.
  - As of November 2023, 31 cases have been brought before the court for investigation and trial.



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- Ratification of the ICC and prosecutions by the Court have been found to reduce state sponsored violence, while prosecutions reduce rebel group abuses.
- Other research has found that that involvement of the ICC in a conflict prolongs the strife and killings, especially when the risk of domestic prosecution is relatively low.
  - Risk of prosecution may motivate factional leaders to fight on longer than they would otherwise.
- ICC also criticized for its focus on Africa.



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- States are most likely to act to enforce human rights outside of their own territory if domestic actors/TANs effectively lobby for it, enforcement serves strategic goals, and enforcement does not violate sovereignty norms.
- Respect for human rights may be increasing over time; institutions such as the ICC probably help.