



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?

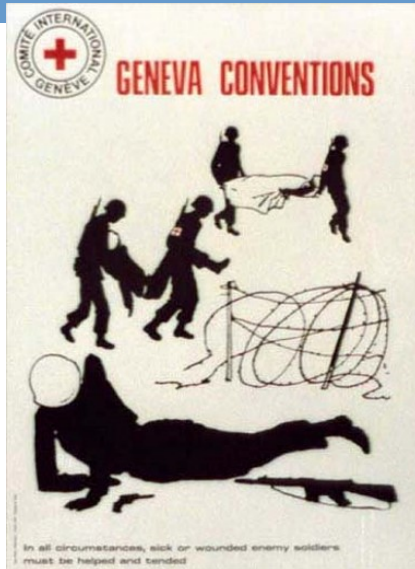


Geneva Conventions

- Signed in 1949, the **Geneva Conventions** are a set of international treaties describing what activities are “legal” in war.
- **This should be puzzling.**



Geneva Conventions





Geneva Conventions

- War is an exercise in attempting to kill the enemy.
- 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?



- **International law:** “body of rules that binds states and other agents in world politics and is considered to have the status of law” (*FLS* 465).
- 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.
 - Geneva Conventions: “In all circumstances, sick or wounded enemy soldiers must be helped and tended.”
- **Secondary rules:** mechanisms that provide for the creation and modification of primary rules.



Definitions

- In international law, state sovereignty is both a central principle and a secondary rule.
- 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?



How does international law form? Two ways:

- 1 **Customary law:** law that develops out of longstanding traditions and practices (and may be later formalized via treaty).
 - Ex: diplomatic immunity. Diplomats who break host country laws are sent home rather than punished under those laws.
 - Customary laws are defined by the International Court of Justice Statute as “a general practice accepted as law” (Article 38(1)(b)).



How does international law form?

- **2 International treaties:** formal documents outlining the laws and responsibilities to which their signatories will adhere.
 - Generally originate from international conventions or meetings (ex: Bretton Woods, Geneva Conventions).
 - Final output is a product of strategic bargaining and thus may have **policy bias**.
 - After signing by a state's diplomats, the final output must also be **ratified** (formally adopted) by the domestic political system of its signatories.
 - If the domestic political system agrees to be bound by international rules, then this satisfies the fundamental premise of sovereignty.



Dimensions of Intl. Law 1

- International law can be conceptualized as having three dimensions: obligation, precision, and delegation.
- **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).



- **Precision:** how specific and clearly defined those obligations are.
 - Most international law is quite precise.
 - Precise law decreases the scope of reasonable interpretation.
 - This means that imprecise language is often deliberate, frequently as a compromise to get more states to sign.



- **Delegation:** how much authority third parties are given to interpret and apply those rules.
 - 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



Two types of international law:

- 1 **Hard law:** precisely defined obligations with meaningful third-party delegation. Generally binding and enforceable.
 - Ex: Geneva Conventions, UNCLOS, GATT/WTO rules

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



Two types of international law:

- **Soft law:** lacks at least one characteristic of hard law; frequently imprecise with little meaningful delegation.
 - 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.



So, how and when do states create and follow international law?

- **Selection effect concerns:** do states only create and follow those laws that align with what they were planning to do regardless?
- States, especially powerful ones, have incentives to create favorable outcomes for themselves, *including in interpretation and implementation of international law.*
- The most powerful states may be able to act without the permission of international law (ex: 2003 Iraq War).
- Despite this, international law is another institution that clarifies expectations and enables cooperation.



Laws and Strategic Incentives

So, how and when do states create and follow international law?

- Empirically, compliance rates are high.
- Laws can create opportunities for mutually beneficial cooperation.
 - Ex: In war, treating enemy POWs well creates an expectation that your enemy will treat your POWs well.
- 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.**



What about international norms?

- **Norms:** behavior standards for a type of actor, dictating proper behavior in a given circumstance. Subtypes:
 - 1 Constitutive: defines a legitimate actors (ex: who counts as a state).
 - 2 Procedural norms: similar to secondary rules; determine how multilateral decisions should be made.
 - 3 Regulative norms: define acceptable behavior between actors.
- Most discussions of norms are about regulative norms.



Norms vs. Laws

- **Norms are not laws.**
- Norms may inspire international laws, but norms lack the formal aspects of international law.
- 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

- 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.)



Norm Life Cycle

- **Convince** actors that the norm is important. This is more effective if the norm is linked to existing norms.
 - Often done by **transnational advocacy networks (TANs)**.
- **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.



Transnational Advocacy Networks

- **Transnational advocacy networks (TANs)** are motivated by principles, and further these by being strategic actors.
- Their goals are usually to change some form of government behavior or inaction.
- 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*

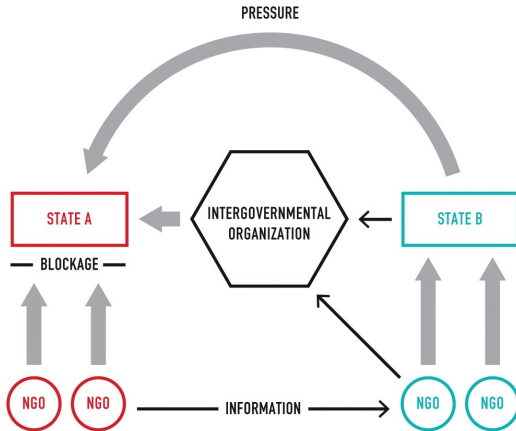


Figure source: Margaret E. Keck and Kathryn Sikkink, *Activists beyond Borders: Advocacy Networks in International Politics* (Ithaca, NY: Cornell University Press, 1998), 13.



Boomerang Model

- This model suggests that, when a domestic group does not expect a reaction from its own government, they can try to create outside pressure through triggering transnational action.
- TANs frequently serve as **information shortcuts** here, quickly supplying information to foreign actors that can pressure the government.



Why Do Norms Matter?

- Norms have the potential to change the preferences and interests of states and other international actors.
- Norms violations exposed by TANS (“naming and shaming”) may impact a state’s reputation and/or draw sanctions from other states, altering their interactions.
 - 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?



What are Human Rights?

- **Human rights:** broadly speaking, those rights possessed by all individuals by virtue of their humanity.
- 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 (accessed 07/24/17).



Human Rights Agreements

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TREATY	DATE SIGNED/IN FORCE	BRIEF DESCRIPTION
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.
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.

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



What Are Human Rights?

- Modern conceptions of human rights usually reflect Western ideals.
- Heavily influenced by English philosopher John Locke's **natural rights**: by nature, humans are free and equal, possessing rights independent of those granted by the laws, customs, or beliefs of society or government.
- Western ideals of human rights have tended to focus on the individual as the primary unit, emphasizing freedom and economic and social rights.
 - 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.



What Are Human Rights?

- While human rights sound appealing in the abstract, defining the obligations of states with respect to human rights is much harder.
- Example: the right of every person to their life.
- 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)?



Negative and Positive Rights

Some philosophers also emphasize the difference between “negative” and “positive” rights.

- **Negative right:** don’t do things that limit the ability of others to enjoy a right. Generally prohibits certain actions.
 - Ex: don’t kill, don’t torture, etc.
- **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.



Postwar Human Rights Law Growth

- UDHR is aspirational soft law, but provides a set of standards for subsequent treaties.
- UDHR was negotiated alongside the **Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention)**, international hard law outlawing genocide.
 - 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.)
- **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...

- 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.



Human Rights and America

- The International Covenant on Civil and Political Rights' (ICCPR) provisions for political and civil rights include limiting the death penalty to the most serious crimes.
- ICCPR forbids death penalty entirely for those under 18 years old.
- As of July 2023, 173 of the UN's 193 member countries were parties to the ICCPR.
- 90 countries have signed an optional protocol of the ICCPR aimed at abolishing the death penalty, while 108 have completely abolished the death penalty ([more info](#)).
- 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?

- Why do states try to avoid fully following these treaties?
- **Fundamental tension between the idea of universal human rights and state sovereignty.**
- 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).



Why Are Human Rights Controversial?

- Human rights provisions can also face domestic opposition from a variety of sources.
 - Policymakers may fear infringements on their state's sovereignty.
 - Certain human rights may be unpopular with voters (ex: **Pew polling** in 2021 and **Gallup polling** in 2022 shows that a majority of Americans still favor the death penalty.)
 - Concerns about human rights as a means of spreading Western influence.



Why Do States Violate Human Rights?

- Poor state capacity
- National security (e.g. Red Scare, WWII Japanese internment camps, Guantanamo Bay)
- Concerns over remaining in power (e.g. Dirty War in Argentina)
- Costs of violating treaties may be low due to lack of enforcement provisions

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.





Homelessness in America

- UN foreign observer visited San Francisco in 2018 as part of a global study on informal settlements ([article](#)).
- 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.”



Why Sign Human Rights Agreements?

States have a variety of reasons to sign these agreements:

- New democracies may want to institutionalize norms of human rights.
- Issue linkage can also play a role: other states may offer aid, trade agreements, etc. conditional on a state joining.
- Signaling: states may sign treaties to signal to international investors that they are a safe/secure place to invest. Additionally, many regional trade agreements contain human rights clauses that have small but meaningful impacts.
- States join agreements to try to constrain actions of other states via diplomatic pressure.



Why Care About Human Rights Abuses?

Why would states be concerned about human rights abuses outside of their sovereign territory?

- Altruistic reasons: empathy for the disadvantaged, as framed by TAN advocacy and human rights advocates.
- Strategic reasons: fear of conflict spillover, as civil wars and repression may lead to international refugee flows (ex: Syrian civil war).
- Domestic reasons: lobbying for improved human rights may directly or indirectly benefit domestic actors for altruistic or strategic reasons.
 - Ex: labor unions demanding human rights provisions in trade treaties, to prevent criminally exploited labor that is also cheaper than their own.



- Relatively few human rights violators are punished.
- It is costly to punish violators, and enforcement may be a collective action problem; knowing this, states feel able to violate HR, especially if they are powerful.
 - Naming and shaming may provoke the target to retaliation.
 - Ex.: Anti-NBA backlash in China over Hong Kong support (info).
 - Publicly denouncing HR violations may reduce a state's ability to cooperate on other areas of mutual interest.
 - US and China must cooperate on environmental protection measures.



Under what conditions are states likely to enforce human rights?

- 1 Domestic demands for action, such as TAN lobbying.
- 2 If action against human rights abusers serves the country's larger political interests.
 - Ex: US intervention in Iraq also helped strengthen petrodollar system.
- 3 If action can be framed as consistent with the norms of sovereignty and noninterference.
 - 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.



Responsibility to Protect

- The question of enforcement was forced into the international community's attention by the Rwandan genocide in 1994.
- The failure of the international community to effectively act, and attempts by major powers like the US to avoid acting, enabled the genocide to continue.
- UN advocacy afterwards led to the 2001 articulation of **Responsibility to Protect (R2P)**: the international community is obligated to protect threatened populations from genocide, war crimes, ethnic cleansing.
- R2P invoked to justify intervention in the Libyan civil war in 2011.
- **Note the clash with the idea of state sovereignty.**



HR Violations and Punishment

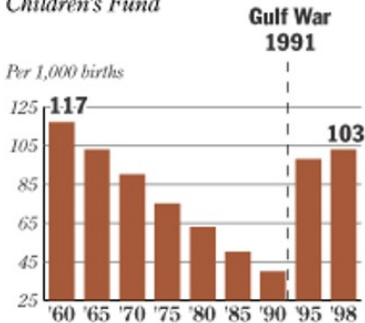
- Economic sanctions are one of the most common forms of punishment in those cases where states do agree to punish violators.
- Mixed findings in the literature on the effectiveness of sanctions (including smart sanctions targeting elites) and whether wide-ranging sanctions hurt the population.
- Example: 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





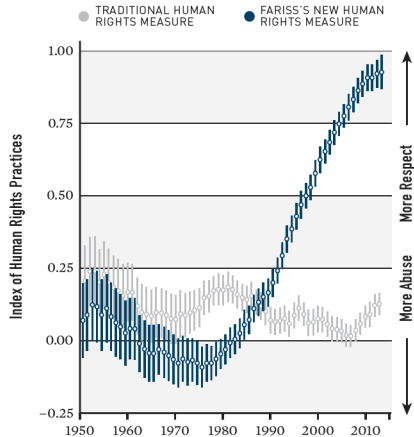
Do States Respect Human Rights?

- The legal framework for defining HR and punishing HR abuses is more developed than it has ever been in human history.
- However, abuses still continue, even from states that have signed these treaties.
- In addition to selection problem effects, the actual measurement of human rights is a murky subject. HR are frequently monitored and measured by TANs, as governments rarely advertise their abuses.
- 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.



The International Criminal Court

- ICC's first conviction was in March 2012 of Thomas Lubanga Dyilo, sentenced to 14 years for forcibly recruiting child soldiers in the DRC.
- 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.



Summary of Human Rights

- Most of the international system agrees in principle on what most human rights are, most of the time.
- States are most likely to respect the human rights of their citizens when those rights are strongly institutionalized and violation would lead to negative economic and political consequences (sanctions, denunciations, loss of cooperation, etc.).
- 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.