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## **The Conditional Effects of International Human Rights Institutions**

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# The Conditional Effects of International Human Rights Institutions\*

by Xinyuan Dai\*\*

## Abstract

Much research on 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.

*Keywords:* international human rights institutions, domestic human rights stakeholders, mobilization, causal mechanisms

## Zusammenfassung

Ein Großteil der Forschung zu Effekten der internationalen Menschenrechtsinstitutionen (IMRI) beschränkt sich auf die Frage, ob IMRI „bilanzielle“ oder „systematische“ Effekte auf die Innenpolitik von Staaten ausüben. Dieser Essay hebt die pfadabhängige und konditionale Natur dieser innenpolitischen Effekten der IMRI hervor, welche die aktuelle Forschung entweder bewusst ignoriert, beziehungsweise sie nicht ernst genommen hat. Der Fokus liegt auf den kausalen Mechanismen durch welche IMRI, verstanden als in einer vertragsbasierten Organisation kodifizierte Rechte, auf die nationalen Menschenrechtspraktiken einwirken, in dem sie nationale Menschenrechtsaktivisten

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stärken und somit einen indirekten Einfluss auf die staatlichen Menschenrechtspraktiken haben. Außerdem gibt dieser Essay Aufschlüsse darüber, unter welchen Bedingungen IMRI die nationalen Interessengruppen und Aktivisten stärken.

*Schlüsselwörter: internationale Menschenrechtsinstitutionen, nationale Menschenrechtsaktivisten, Mobilisierung, kausale Mechanismen*

“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

## **1. 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 scholarship thus devotes its attention to whether and how IHRIs influence states’ human rights policy and practice on the ground.

While the effect of IHRIs is at the center of a most active area of research, the empirical findings are largely divergent. On the one hand, influential works show that international human rights treaties and accords, in various ways, have positive effects on states’ human rights practice. For instance, some find that international human rights norms help push for a positive change in many countries in Latin America, especially when transnational activists effectively utilize such international instruments.<sup>1</sup> Furthermore, the influence of international human rights norms through transnational activists is neither limited by issue areas nor by geographical regions.<sup>2</sup> In fact, many other scholars argue that transnational or domestic actors exploit international human rights instruments to generate pressure on norm-violating governments so as to push for rights improvements on the ground.<sup>3</sup> Indeed, the very empowering effect of international human rights law lies in its ability to mobilize human rights stakeholders.<sup>4</sup> 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.<sup>5</sup> They find, in particular, that international human rights treaties do not have positive effects on the most abusive authoritarian states. In a thoughtful review of the empirical scholarship, 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 insufficiently large; 5) when IHRIs are shown to have a positive, independent and significant effect, it is difficult to claim causality.<sup>6</sup> Of course, these are high standards for any large N statistical analysis. One may also wonder whether these are the appropriate standards. They might be if the theoretical expectation is that IHRIs have direct, uniform, and unconditional effects on states' human rights practice across time and space. However, if our theoretical expectation is about path dependence 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.<sup>7</sup> 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.<sup>8</sup> Eric Neumayer and Oona Hathaway both find positive effects of international human rights treaties on democratic states that ratify them.<sup>9</sup> Furthermore, Neumayer and Haftner-Burton & 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.<sup>10</sup> 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.<sup>11</sup> Secondly, it is potentially misleading to attribute the difference between the "optimists" and the "pessimists" to the methodological choice. If 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 some times, 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, for instance 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, we 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 multiple stages. One stage, e.g., the international pressure on a government, does not necessarily lead to the next, e.g., 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 thus examines one important way by which IHRIs influence states' human rights practice indirectly through domestic constituencies and, in this context, highlight the necessary conditions for IHRIs to matter. It proceeds as follows. Section 2 briefly reviews the logic why weak international instruments such as IHRIs work most feasibly and effectively through domestic mechanisms and non-state actors and, specifically, why IHRIs

can empower domestic constituents by providing them with information and, with it, political leverage. If IHRIs work primarily in this indirect way, then we must examine the agents who link IHRIs to governmental policies. Section 3 examines the conditions under which these channels of influence materialize into real impact on states' human rights practice. Using empirical examples, I show how IHRIs typically provide two types of functions: treaties and accords codify the rights states have agreed upon; and corresponding treaty organizations manage the process of self reporting and review meetings. Both functions are important and can play into domestic mobilization. Yet 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 impact of IHRIs. Finally, Section 4 concludes by highlighting the path-dependent nature underlying the indirect and conditional effect of IHRIs.

## **2. 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, to study how IHRIs impact states' behavior, one need 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; they do not have the instrument of conditionality as the International Monetary Fund does nor the instrument of dispute settlement mechanism as the World Trade Organization does. Furthermore, most IHRIs do not have the resources to directly enhance states' capacity to comply, as some of international environmental institutions have with their ability of 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. We thus tend to see non-binding declarations and accords or binding institutions that are nevertheless

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. A feasible policy proposal is not that we simply make states delegate more resources and autonomy to these institutions. Rather, a more sensible proposal needs to recognize the incentive structure in which human rights institutions are embedded and identify alternative channels of influence.

Second, in both substantive and symbolic ways IHRIs lend support to domestic human rights advocates. It 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. Although the leverage domestic constituents have over their governments may vary with the domestic political institutions within which these actors operate, the logic of political accountability operates in diverse political regimes.

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 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 which lack direct enforcement power, as well as domestic constituents who have limited resources domestically. Thus, even though their ability to do so varies, both international institutions and pro-compliance domestic constituencies have an interest to utilize 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. Rather, we need to ask how they enable domestic stakeholders to achieve their objectives. In other words, we need to focus on the indirect effects of IHRIs which are often conditioned by domestic constituencies.

### **3. Conditional effects of empowerment**

In this section, I highlight the conditions under which IHRIs generate domestic effects in specific ways. By and large, IHRIs function as two things. 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 of international human rights treaties require states to self evaluate and self report on their policy and practice. Many treaty organizations further hold review meetings where individual countries' policy and practice may come under the spot light. A limited number IHRIs also provide formal procedures for individuals to file complaints directly to treaty organizations.

Each of these things that IHRIs do may seem insignificant, especially if we think only of direct enforcement by international institutions. However, in the context of domestic enforcement, what IHRIs do has that potential effect of mobilizing and further empowering domestic pro-compliance constituencies. IHRIs, both as codification 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 practice also varies. The conditions have to do with domestic constituencies, their characteristics and activities, along with the context in which they operate.

Schematically, Figures A & B (p. 8) capture the fundamental contrast between 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 to look for the direct effect of IHRIs as in Figure A (p. 8). Yet few scholars believe this is how IHRIs work. Instead, increasingly we believe that IHRIs work through domestic mechanisms<sup>12</sup> and largely by empowering domestic human rights activism<sup>13</sup> as in Figure B (p. 8). 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

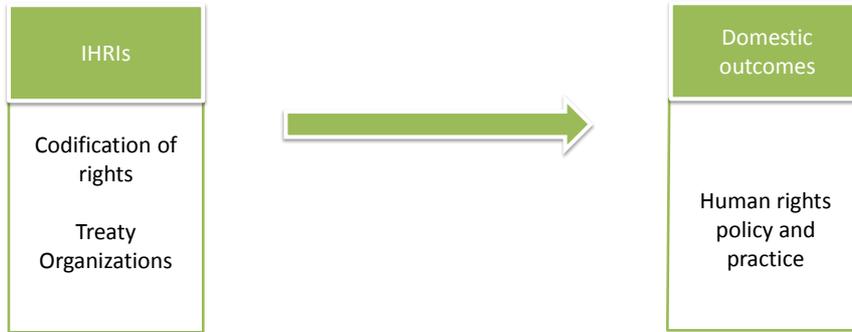
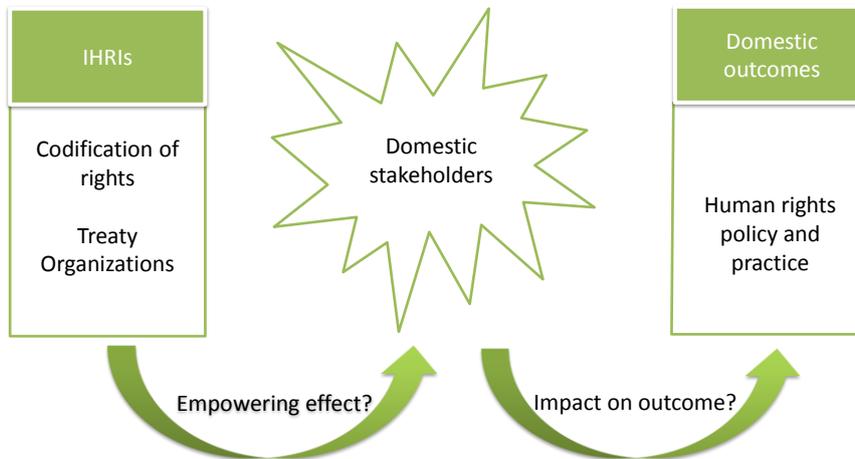


Figure B  
Indirect & conditional effects



Here I focus on the first of the two steps, that is, the first arrow in Figure B (p. 8). I seek to sort through the various channels of empowerment and their corresponding conditions. Though this does not cover the entire process, this is an important first step in assessing the conditional effects of IHRIs. We are dealing with a domestic process that is long and multi-staged. If we only focus on the aggregate association between IHRIs and behavioral outcomes, we 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 to generate 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. I do so 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). These examples of IHRIs are different from one another. For example, one is regional from a while back and the other is global and more recent. But these examples are also similar in that both have positively impacted states' human rights practice and yet in neither case do we find uniform effects of IHRIs. Indeed, the empirical variation in these cases allows us to think through the necessary conditions of empowerment.

### **Codification of rights in treaties**

Some people tend to think 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 deeply believed as domestic affairs and thus they may appear as a greater 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 Congress and the public believe that CEDAW, if ratified, can have negative effects on family, region, in addition to sovereignty.<sup>14</sup> There are, for instance, heated debates in the US on the potential effects of CEDAW on family structure and parental rights, abortion, family planning, etc.<sup>15</sup> 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 rights broadly accepted but controversial 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 leads to improvement of human rights practice. Treaties are instruments. They are consequential only if those who can benefit from them use them effectively. Below I identify a number of mechanisms through which the codification of human rights in treaties enhances the political leverage of human rights activism. At each step along the way, I pause and reflect on how characteristics and strategies of domestic stakeholders shape the empowering effect.

### ***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 where a set of rights are agreed upon by states. Prior to it, 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 of it may follow as well, depending on whether there are domestic stakeholders and whether they 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. The HFA informed ordinary citizens as well as human rights activists what governments have agreed upon, including concrete commitments regarding their human rights practices. It is of course not the case that citizens and activists had no idea, prior to the HFA, of their rights and governments’ obligations. After all, the Communist Constitutions contained the language about political and socio-economic rights of the citizens, and dissidents had earlier protested against the poor implementation of these rights. Rather, what the HFA informed citizens of was the endorsement of these rights in a highly visible international document. It was the first time for many in the Soviet Union to hear of “any kind of international obligations in the human rights field of their government.”<sup>16</sup> Similarly, to the Polish workers, the international endorsement of the guaranteed right to independent trade unions was particularly significant.<sup>17</sup> 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. It provided 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 signatory countries.<sup>18</sup> Thus, human rights were no longer a domestic affair but a state' 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 as largely fulfilling the Soviet aims to legitimize geopolitical changes resulting from the World War Two, to create a pan-European forum with the US marginalized in Europe, and to promote East-West economic cooperation to spur Soviet economy.<sup>19</sup> Even in the humanitarian provisions of Basket III of the HFA, many activists found the formulations vague and unsatisfactory and would soon be forgotten. The most important reason that they were not later forgotten was because some activists, though recognizing the limitations of the humanitarian provisions, nevertheless seized the opportunity for action. Activists like Yury Orlov insisted on the international obligation to protect human rights and the legitimacy to monitor the implementation of these obligations. If it were not because of the vision of these activists and their steadfast effort to bring salience to Basket III, the HFA could have been much more limited in its informing and educating function.

Similarly, CEDAW has provided an informational and educational function. For example, as Liu and Boyle document, when Japanese women took major companies to court for wage discrimination and the government for failure to enforce CEDAW in the mid-1990s, the key question was what constitutes as the legitimate criterion for action and what exactly CEDAW means.<sup>20</sup> To the Japanese government, CEDAW did not require it to eliminate all types of gender discrimination. But the information that the Japanese women found particularly useful and thus played up in their legal challenges was the fact that CEDAW called for governments to prohibit all forms of discrimination against women. Specifically, although Japanese law only covered direct discrimination against women, CEDAW prohibits both direct and indirect discrimination. 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. For another example, 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.<sup>21</sup>

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 the case of Japan. One can imagine, on subsequent occasions when the need to resort to CEDAW arises, such interpretation by women's groups might shape the informational function perhaps more than the actual wording in CEDAW does. Thus, successful domestic stakeholders do not passively get informed. Rather they help determine which part of the information from IHRIs end up informing in their context.

The informing effect of IHRIs depends not only on the characteristics and strategies of the agents who may utilize them. It also depends on the varying distribution of information across countries. In particular, the degree of information monopoly 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 crack an opening to allow the informational effect of IHRIs, such effect brings greater value added to the structurally disadvantaged human rights activists.

### ***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 availed through them, thus, has a potentially legitimating effect, which originates from a number of sources. One source is the yardstick 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 words should count. Just like that a state wants its citizens to abide by its rule, 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.<sup>22</sup> In Poland, workers used the Polish government's signature on the HFA to defend workers' associations such as the Workers' Defense Committee.<sup>23</sup> Similarly, human rights activists frequently resorted to the Communist governments' endorsement of the HFA in their demand for freedom of speech.<sup>24</sup> 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.<sup>25</sup>

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. Political crackdowns would follow beginning in early 1977 till the early 1980s. Thus, the process of legitimation of domestic stakeholders by IHRIs is also a process where interest competition shapes the actual effect of legitimation.

Similar legitimizing effect can be shown concerning CEDAW. As documented by Ilana Landsberg-Lewis,<sup>26</sup> in some countries the language of CEDAW has been incorporated into the constitution while in others CEDAW was cited in court rulings. This reflects both the outcome of legitimation as well as the source of further legitimation. Even in cases where governments only symbolically and half-hearted signed on to CEDAW, as arguably in the case of Japan,<sup>27</sup> CEDAW had a similarly legitimizing effect for local claims. 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 CEDAW's applicability 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.

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 and articulation and, often counter arguments and debates – by these groups that shape what is legitimate. The drivers are women themselves. CEDAW provided them an additional “lever.”<sup>28</sup>

### ***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. 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 potentially a strategic tool for those who have a stake in rights protection. They 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.

In the case of the HFA, human rights activists vigorously resorted to the humanitarian provisions in the HFA 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 to defend 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.<sup>29</sup> In Czechoslovakia, following the HFA, disaffected intellectuals and former Communist officials during the Prague Spring demanded to lift the policy of normalization, remove Soviet troops, and to reconsider the aborted Prague Spring reform.<sup>30</sup> 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.<sup>31</sup>

Again, the enabling effect of the HFA was conditional on those human rights activists who resorted to the terms of the HFA to defend their specific objectives. Also, it took place in 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 governments, based on their 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 enjoyed the monopoly of political control while the oppositions had been in need of additional instruments.

### ***Suggesting a focal point***

Human rights treaties and accords typically endorse general principles as well as a wide ranging set of specific rights. They thus allow different 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 simply should 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. 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 based upon. In Czechoslovakia, the focal point 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 alliance between independent activities among the young and the religious respectively with human rights organizations such as Charter 77. 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 in fact endorsed a diverse set of principles. Governments and oppositions favored different principles. Even for the oppositions, there was actually nothing 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 such 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 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 the 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 that opportunity to use the banner of human rights emphasizing the aspect of international obligation and the aspect of peace and nonviolence.

In sum, the codification of rights in international human rights treaties and accords is, indeed by nature, a piece of paper. But when it is effectively utilized, this piece of paper

can be consequential. I have shown how this piece of paper under certain conditions contributes to the empowerment of domestic stakeholders. I have highlighted how the empowering effect is conditional on the characteristics and activities of domestic stakeholders, along with the context in which the domestic competition of interests takes place.

### ***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 which manage, through national self-reports and international review meetings, information collection and dissemination. These activities on the part of treaty organizations are usually seen as feeble. However, self reports and review meetings, coupled with the 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.

### ***Information collection and dissemination***

Information on what rights states have agreed upon is important. In addition, 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 also the starting point for domestic mobilization to press governments to improve their human rights practice. Yet, how do we know 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. Yet, 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.

Yet, the process of gathering governmental self-reports and evaluating these reports at subsequent review meetings is nevertheless a useful vehicle 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.<sup>32</sup>

While human rights NGOs may sometimes collaborate with their governments in drafting national reports, they more often 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.<sup>33</sup> 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.<sup>34</sup> 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, it presents NGO's shadow report side by side with the governmental self-report.

Furthermore, the 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 who 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 in Japan.<sup>35</sup> 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.<sup>36</sup> Increasingly, independent reports by NGOs not only get voiced at review meetings, they help shape the review by the CEDAW Committee of the country in question.

Finally, the process of reporting and review meetings plays an important role in facilitating human rights activists to disseminate information. 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, the 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 on not only the treaty organizations, but also reporting governments and, crucially, 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 serve 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 make into the discussion and review at treaty organization, 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 in which and the extent to which human rights NGOs seek to use this information.

### ***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, and thus enable 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.<sup>37</sup> 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 reach broader audiences and build broader alliances.

Second, the process of reporting and review meetings help 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 some, although possibly thin, 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, defending the legitimacy in disseminating information to the public in the context of the review meetings.<sup>38</sup> 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 eye of national public.<sup>39</sup>

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 a forum for continuing mobilization. Some activists and human rights NGOs, such as Charter 77, deliberately took advantage of each of the review meetings to influence public opinion domestically and internationally.<sup>40</sup> At the same time, the deliberate drive of human rights activists to take advantage 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 such 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 to state parties in addition to help generate and disseminate information.

While this empowering effect is real and at times powerful, the extent to which it is translated from a potential to actual empowerment depends on other actors, among which

the domestic human rights constituency. For instance, it was not in every country that human rights groups mobilized around the HFA and certainly these groups did not resort to the review meetings with the same urgency and determination as Charter 77. Thus the empowering effect was contingent on whether activists found the need and had the ability to utilize the tools review meetings offered them in pursuit of their own agenda.

To summarize, whether we think of IHRIs as codification of rights or 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 around early 1970s, they were there to seize the opportunity that HFA provided them. Secondly, the empowering effect also depends on the activities of domestic stakeholders, and how they perceive IHRIs and how they resort to them. 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 were able to call out the greater empowering effect from the HFA, as compared to activists in Bulgaria and Romania.

#### **4. 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 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 they lack the power in direct enforcement, 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, thus, to better appreciate the indirect effects of IHRIs and more explicitly articulate the conditions for IHRIs to work.

This essay has highlighted the indirect pathways through which IHRIs influence states' behavior. I have 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 effects depend on those who can and do use them.

One practitioner's words, as quoted at the beginning of this essay, are right on as to how we should evaluate the effects of IHRIs. IHRIs, in and of themselves, do not directly impact states' policy or behavior. Rather, others – interested stakeholders and human rights activists – may (or may not) use them to gain additional leverage to push for improvement in rights practice. When and where these agents derive added value from IHRIs, they may (or may not) effectively translate that leverage into rights improvement. 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.

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