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Universal Human Rights in Theory and Practice

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8/ International Human Rights Regimes

Although human rights have hardly replaced considerations of power, security, ideology, and economic interests in international relations, they have, as we have seen, become a significant international concern. This chapter examines the multilateral machinery that has been developed to implement internationally recognized human rights. Chapter 9 considers human rights in bilateral foreign policy.

1. International Regimes

Students of international relations often speak of "international regimes," systems of norms and decision-making procedures accepted by states as binding in a particular issue area.[1] Regime norms, standards, or rules (I use the terms interchangeably here) may run from fully international to entirely national. International human rights norms are widely accepted by states as authoritative. In May 2002, the six leading international human rights treaties had an average of 157 parties.[2]

Decision-making procedures in international regimes can be roughly grouped into enforcement, implementation, and promotional activities. International enforcement involves binding international decision making (and perhaps also very strong forms of international monitoring of national compliance with international norms). International implementation includes monitoring procedures and policy coordination, in which states make regular use of an international forum to coordinate policies that ultimately remain under national control. International promotion involves encouraging or assisting national implementation of international norms.

1. The standard discussion introductory discussion is Krasner (1982). See also Haggard and Simmons (1987), Rittberger and Mayer (1993), Hasenclever, Mayer, and Rittberger (1997), and Hasenclever, Mayer, and Rittberger (2000).

2. See http://www.unhchr.ch/pdf/report.pdf

Figure 8.1 Types of International Regimes

Based on these procedures we can classify international regimes as promotional, implementation, and enforcement regimes, each of which can be further classified as relatively strong or weak. To this, we can add declaratory regimes, which involve international norms but no international decision making (except in the creation of norms). Figure 8.1 diagrams this typology. Table 8.1 in §6 applies the typology to the major international and regional human rights regimes.

2. The Global Human Rights Regime

The Universal Declaration and the Covenants provide the norms of what we can call "the global human rights regime," a system of rules and implementation procedures centered on the United Nations. Its principal organs are the UN Commission on Human Rights, the Human Rights Committee, and the High Commissioner for Human Rights.

A. THE UN COMMISSION ON HUMAN RIGHTS

The most important body in the global human rights regime is the United Nations Commission on Human Rights.[3] Since 1946 it has been the principal forum for negotiating international human rights norms (including the Universal Declaration and the Covenants). Over the past three decades it has also acquired some modest monitoring powers.

Economic and Social Council (ECOSOC) resolution 1503 (1970) authorizes the Commission to investigate communications (complaints) that "appear to reveal a consistent pattern of gross and reliably attested violations of human rights." ECOSOC resolution 2000/3 recently reorganized procedures for handling communications. A new Working Group on Communications, may refer a country's practices to the (also newly created) Working Group on Situations, which may in turn refer the case to the full Commission.

Stringent criteria of admissibility[4] limit the cases considered. Only situations of gross and systematic violations are covered; particular abuses and individual cases cannot be examined. The entire procedure is confidential until a final report is made to ECOCOC.[5] Although confidentiality may encourage cooperation by states, it can dramatically slow an already cumbersome pro-

3. Although somewhat out of date, Tolley (1987) remains the best single work on the Commission. On recent developments, see Dennis (2002, 2001, 2000).

4. See Zuijdwijk (1982: 30–39) and, more briefly, http://www.unhchr.ch/html/menu2/8/1503.htm.

5. The Commission has circumvented some of the strictures of confidentiality by, beginning in 1978, publicly announcing a "black list" of countries being studied. We thus know that practices of more than fifty countries have been examined under the procedure. Given the hurdles involved in reaching this stage, appearance on the blacklist is typically "interpreted as at least demonstrating that the allegations in a communication have some merit" Shelton (1984: 65).

TABLE 8.1 Change in International Human Rights Regimes, 1945–2000

	1945	1960	1975	1990	2000
GLOBAL REGIME	NONE	DECLARATORY	PROMOTIONAL	STRONG PROMOTIONAL	STRONG PROMOTIONAL
Norms	None	Guidelines	Standards with exemptions	Global norms with exemptions	Authoritative global norms
Procedures	None	Weak promotion	Promotion	Strong promotion/monitoring	Strong promotion/monitoring
REGIONAL HUMAN RIGHTS REGIMES					
European Regime	None	Promotional/ Implementation	Implementation/ Enforcement	Enforcement	Strong Enforcement
Norms	None	Guidelines/ regional norms	Regional norms	Authoritative regional norms	Authoritative regional norms
Procedures	None	Promotion/ monitoring	Regional decisions with exemptions	Regional decisions	Binding regional decisions
Inter-American Regime	None	Declaratory	Promotional	Strong Promotional	Strong Promotional
Norms	None	Guidelines	Standards with exemptions	Regional norms	Authoritative regional norms
Procedures	None	None	Promotion/monitoring	Monitoring/very limited regional decisions	Monitoring/very limited regional decisions
African Regime	None	None	None	Declaratory	Declaratory
Norms	None	None	None	Guidelines	Weak standards with exemptions
Procedures	None	None	None	Weak promotion	Weak promotion
Asia	None	None	None	None	None
Middle East	None	None	None	None	None
SINGLE-ISSUE REGIMES					
Worker's Rights	Promotional	Strong Promotional	Strong Promotional	Strong Promotional	Strong Promotional
Norms	Limited guidelines	Standards with exemptions	Strong standards with exemptions	Strong standards with exemptions	Strong standards with exemptions
Procedures	Promotion/ monitoring	Promotion/ monitoring	Promotion/monitoring	Promotion/monitoring	Promotion/monitoring
Racial Discrimination	None	None	Promotional	Strong Promotional	Strong Promotional
Norms	None	None	Standards with exemptions	Strong standards with exemptions	Strong standards with exemptions
Procedures	None	None	Promotion/weak monitoring	Promotion/weak monitoring	Promotion/weak monitoring
Women's Rights	None	None/Very Weak Declaratory	Declaratory	Strong Promotional	Strong Promotional
Norms	None	None/Limited guidelines	Guidelines	Standards with exemptions	Standards with exemptions
Procedures	None	None	Weak promotion	Promotion/weak monitoring	Promotion/weak monitoring
Torture	None	None	Declaratory	Strong Promotional	Strong Promotional
Norms	None	None	Guidelines	Strong standards with exemptions	Global norms
Procedures	None	None	None	Promotion/monitoring	Promotion/monitoring
Genocide	None	Very Weak Declaratory	Very Weak Declaratory	Very Weak Declaratory	Declaratory/Ad hoc Enforcement
Norms	None	Guidelines	Guidelines	Guidelines	Authoritative global norms
Procedures	None	None	None	None	None/Ad hoc Enforcement
Children	None	None	None	Declaratory/Promotional	Promotional
Norms	None	None	None	Guidelines	Standards with exemptions
Procedure	None	None	None	None	Promotion/weak monitoring

cess.[6] In the end, "enforcement" means making publicly available the evidence that has been acquired, along with the Commission's views on it. Only a handful of cases have even reached this stage.

The 1503 procedure is thus largely a promotional device involving weak, sporadic, and limited monitoring. In addition, it is at best semi-independent: the Commission is composed of state representatives, not independent experts. Given the sensitivity of human rights questions, even this may be of real practical value, especially where a government cares about its international reputation. The limitations of the procedure, however, deserve at least as much emphasis as its achievements.

Much the same is true of the Commission's other activities. For example, the 26-member Sub-Commission on the Promotion and Protection of Human Rights (known until 1999 as the Sub-Commission on the Prevention of Discrimination and Protection of Minorities) has undertaken a number of useful studies. Together with the Commission, it has helped to focus international public opinion on conditions in at least a few countries (e.g., South Africa, Chile) and on selected violations and issues such as disappearances, torture, religious liberty, human rights defenders, migrant workers, and indigenous peoples.

Particularly important in this regard are the Commission's "global" or "thematic" procedures involving working groups and special rapporteurs on a wide range of topics, including disappearances, torture, summary or arbitrary executions, and, most recently, human rights defenders, food, housing, and indigenous peoples. In recent years, about twenty separate thematic initiatives have been taking place at any given time.[7] The Commission has also given considerable attention to particular vulnerable groups, especially women, children, indigenous people, minorities, displaced persons, migrant workers, and human rights defenders.

The Commission also addresses human rights situations in individual countries, both in public during its annual session—situations in more than two dozen countries are discussed each year—and through the activities of country rapporteurs and representatives, who have examined situations even in high-profile countries such as Guatemala, Iran, Iraq, occupied Palestinian territories, and Burma.[8] Like their thematic counterparts, the country rapporteurs are individual experts who report to the Commission, rather than the voice of the Commission as a whole. Thus not only do they operate with fewer diplomatic and political constraints, but their narrow mandate also allows them to maintain sustained, focused attention and in some cases even develop a constructive exchange of views with a government.

The limitations of all of these procedures, however, are tragically illustrated by the case of Rwanda. Rwanda was discussed confidentially under the 1503 procedure in 1992 and 1993. In addition, the report of the special rapporteur on extrajudicial executions was discussed in the spring of 1994, just before the outbreak of the genocide. In it, the special rapporteur confirmed reports of official involvement in the massacre of civilians and explicitly suggested that genocidal acts were already occurring. Nonetheless, it was not until May 25—seven weeks after the genocide began, almost a month after the Secretary-General called for Security Council action, and even a week after the Security Council (belatedly) authorized a new peacekeeping force—that the Commission even appointed a country rapporteur.

This example, however, is in many ways unfair. The Commission was never intended to have enforcement powers, let alone the capacity to stop human rights violations before they occurred. In the area of promotion, it does serve a variety of useful roles, particularly as a source of authoritative information and publicity about human rights practices in any country of the world. Furthermore—and I think most important—its role in developing international human rights norms has been, and remains, vital and irreplaceable. For all its limitations, the United Nations Commission on Human Rights is in many ways the heart of the global human rights regime.

B. THE HUMAN RIGHTS COMMITTEE

The second principal body of the global human rights regime is the Human Rights Committee, a body of eighteen independent experts established to monitor compliance with the International Covenant on Civil and Political Rights.[9] The primary function of the Committee is to review periodic reports on compliance submitted by parties.[10]

6. The 1503 procedure rarely can be brought fully into play in less than two or three years after complaints are received (which may be well after serious violations began). A state can usually delay at least a year by pretending to cooperate, as Argentina did in 1979 and 1980. Political considerations often stretch a case out even longer. For example, genocide against Paraguayan Indians remained under scrutiny for nine years without any action. A decision on Uruguay, after seven years of scrutiny, came only after the guilty government had been removed from office. Things have improved a bit since the end of the Cold War, but the procedure still could never be called efficient or timely.

7. For a list of currently operating thematic procedures, see http://www.unhchr.ch/html/menu2/7/b/tm.htm.

8. In 2001, special rapporteurs, representatives, and experts examined situations in Afghanistan, Bosnia and Yugoslavia, Burundi, Cambodia, Democratic Republic of the Congo, Equatorial Guinea, Haiti, Iran, Iraq, Myanmar (Burma), occupied Palestinian territories, Somalia, and Sudan. See http://www.unhchr.ch/html/menu2/7/a/cm.htm for links to reports, documents, and related materials.

9. McGoldrick (1991) is the standard study of the Committee. See also Joseph, Schultz, and Castan (2000). More briefly see Steiner (2000).

10. The International Covenant on Economic, Social, and Cultural Rights also requires periodic reports. These reports were reviewed by a Sessional Working Group of ECOSOC until 1986, when the Committee on Economic, Social, and Cultural Rights, a body of experts roughly analo-

The committee does not formally judge or evaluate state practices. Reports are discussed in a public session, however, often lasting a full day, in which state representatives are questioned in an environment that is relatively free of posturing and, by diplomatic standards at least, neither excessively deferential nor merely pro forma. In many instances, state representatives are responsive, occasionally even thoughtful. In such cases the result is a genuine exchange of views that provides a real element of international monitoring. The procedure has even provoked minor changes in national law, and a number of parties use their dealings with the Committee to review and reexamine national laws, policies, and practices (on Canada, see Nolan 1988).

The reporting procedure thus has provided a fairly widely accepted promotional mechanism,[11] but it involves only information exchange and the weakest monitoring. Even the information exchange is flawed. The reports of many countries are thorough and revealing, but others are farces.[12] Some are not submitted.[13] Furthermore, only parties to the Covenant must report—although with three quarter's of the world's countries now parties (148 in May 2002), this is less of a drawback than in the past.

The Committee also considers individual petitions under the (first) Optional Protocol.[14] Through November 13, 2001, 1026 communications had been registered concerning 69 countries. Approximately half of these cases were either found to be inadmissible or discontinued. Substantive determinations, however, had been reached on 377 communications, and another 206 were still within the system. The procedure seems to be relatively open and highly independent, providing genuine (if extremely limited) international monitoring, which in at least a few cases has altered state practice.

The procedure, however, covers only parties to the Optional Protocol, which in May 2002 numbered 103. Furthermore, almost half of the violations examined have been in two countries, Jamaica and Uruguay. Relatively strong procedures thus apply primarily where they are not most needed. Unfortunately, this is only to be expected, given that participation is entirely voluntary.

gous to the Human Rights Committee, was created. On the operation of the Committee, see Leckie (2000) and Dandan (2000).

11. On reporting procedures in general and in other treaty bodies, see Bayefsky (2000: Part I), especially Connors (2000), and Clapham (2000).

12. For example, many reports consist principally of extracts from national constitutions and statutes. A significant number are simply evasive. For example, Guinea has claimed that "citizens of Guinea felt no need to invoke the Covenant because national legislation was at a more advanced stage" (A/39/40 par. 139). The Mongolian representative, in response to a question by a member of the Committee, proudly claimed that there had never been a complaint about torture or cruel or inhuman treatment made in his country (A/35/40 par. 108).

13. Zaire (Congo) presents an extreme case. Its initial report, due in 1978, was not submitted until 1987, despite ten reminders. Its second report was submitted essentially on time two years later. But as of August 2001 no further reports had been submitted. On the general problem of absent or tardy reports to supervisory committees, see Crawford (2000: 4–5).

14. Steiner (2000) provides a good overview and evaluation of the process. On individual complaint mechanisms more broadly and in other bodies, see Bayefsky (2000: Part III), and especially Byrnes (2000).

C. THE HIGH COMMISSIONER FOR HUMAN RIGHTS

The office of United Nations High Commissioner for Human Rights, created in 1993, generalizes this investigation-advocacy approach. The High Commissioner has the global reach of the Commission, without its cumbersome procedures. Like the special rapporteurs, the High Commissioner may deal directly with governments to seek improved respect for internationally recognized human rights—but with the added advantage of an explicit mandate to deal with all governments on all issues. Additionally, the High Commissioner holds the office in her personal capacity, not as a representative of any state.[15]

The initial appointee, José Ayala Lasso, who served from 1994 to 1997, showed little enthusiasm for public action. The current incumbent, Mary Robinson, has done much to increase the profile of the High Commissioner and has tried, with some success, to expand her authority and reach. If the Commission on Human Rights is the heart of the global human rights regime, Mrs. Robinson has gone a long way toward making the High Commissioner its public face.[16] Considerable progress has also been made in improving the office's capacity to disseminate information, especially through its admirable website (http://www.unhchr.ch). A fairly extensive system of technical assistance and cooperation has also become institutionalized (see http://www.unhchr.ch/html/menu2/techcoop.htm).

3. Political Foundations of the Global Regime

The global human rights regime involves widely accepted substantive norms, authoritative multilateral standard-setting procedures, considerable promotional activity, but very limited international implementation that rarely goes beyond mandatory reporting procedures. There is no international enforcement. Such normative strength and procedural weakness is not accidental but the result of conscious political decisions.

Regimes are political creations set up to overcome perceived problems arising from inadequately regulated or insufficiently coordinated national action. Robert Keohane (1982) offers a useful market analogy: regimes arise when sufficient international "demand" is met by a state or group of states willing and

15. For the mandate and mission statement of the High Commissioner, see http://www.unhchr.ch/html/hchr.htm;ew and ;owhttp://www.unhchr.ch/html/ohchrmission.htm.

16. For a good, brief official overview of the various dimensions of the United Nations Human Rights Programme, see http://www.unhchr.ch/html/abo-intr.htm.

able to "supply" international norms and decision-making procedures. In each issue area there are makers, breakers, and takers of (potential) international regimes. Understanding the structure of a regime (or its absence) requires that we know who has played which roles, when and why, and what agreements they reached.

World War II marks a decisive break not just in international politics but in international human rights as well: the defeat of Germany ushered in the global human rights regime. Revulsion at the array of human rights abuses that came to be summarized in the term *Nazi* engendered a brief period of enthusiastic international action. Hitler's actions shocked the conscience of the international community, but they did not clearly contravene well-established explicit international norms. It was therefore *relatively* easy to agree on a set of international principles against gross and persistent systematic violations of basic rights—namely, the Universal Declaration and the Convention on Genocide, which was even more clearly a direct legacy of Hitler.

It is perhaps surprising that this moral "demand" should have produced even this much in a world in which more material national interests usually prevail. Immediately following World War II, however, there were willing and able makers, numerous takers, and no breakers of the regime. The moral and emotional demands ran both wide and deep, and, prior to the emergence of the Cold War, countervailing concerns and interests were largely subordinated.

A cynic might suggest that these postwar "achievements" simply reflect the minimal international constraints and very low costs of a declaratory regime: implementation and decision making under the Universal Declaration remained entirely national, and it would be nearly thirty years before even the rudimentary promotion and monitoring procedures of the Covenants came into effect. Yet before the war, even a declaratory regime had rarely been contemplated.

Moving much beyond a declaratory regime, however, has proved difficult. It is in this relative constancy of the regime (critics and frustrated optimists are likely to say "stagnation") that the weakness of the demand is most evident. A strong global human rights regime simply does not reflect the perceived interests of a state or coalition willing and able to supply it.

States typically participate in an international regime only to achieve national objectives in an environment of perceived international interdependence. Even then they usually participate only when independent national action has failed and when participation appears "safe," all things considered—a very serious constraint, given states' notorious jealousy of their sovereign prerogatives. Few states today see a stronger global regime as a safe source of important but otherwise unattainable national benefits.

Moral interests such as human rights are no less "real" than material interests. They are, however, less tangible, and national policy, for better or worse, tends to be made in response to relatively tangible national objectives.

In addition, the extreme sensitivity of human rights practices makes the very subject intensely threatening to many states. National human rights practices often would be a matter for considerable embarrassment should they be subject to full international scrutiny. In a number of cases, such as Iraq, North Korea, Zimbabwe, and Cuba, compliance with international human rights standards would mean removal of those in power.

Finally, human rights—at least in the Universal Declaration model—are ultimately a profoundly national, not international, issue. As I will argue in Chapter 10, international action usually can be, at best, an impetus toward and support for national action to implement and enforce human rights.

If international regimes arise primarily because of international interdependence—the inability to achieve important national objectives by independent national action—how can we account for the creation, and even modest growth, of the global human rights regime? First and foremost, by the persisting relevance of the "moral" concerns that brought it into being in the first place. Butchers such as Pol Pot and the *genocidaires* of Rwanda still shock the popular conscience and provoke a desire to reject them as not merely reprehensible but also prohibited by clear, public, authoritative international norms. Even governments with dismal human rights records seem to feel compelled to join in condemning the abuses of such rulers.

Although cynics might interpret such condemnations as craven abuse of the rhetoric of human rights, they are just as easily seen as expressions of a sense of *moral* interdependence. States—not only governments, but frequently citizens as well—often are unwilling to translate this perceived moral interdependence into action, let alone into an international regime with strong decision-making powers. But they also are unwilling (or at least politically unable) to return to treating national human rights practices as properly beyond international scrutiny and evaluation.

A weak global human rights regime also may contribute, in a way acceptable to states, to improved national practice. For example, new governments with a commitment to human rights may find it helpful to be able to draw on and point to the constraints of authoritative international standards. We can see this, perhaps, in the case of the Alfonsin government, which took power after the Dirty War in Argentina, and in post-Soviet regimes in Central Europe. Likewise, established regimes may find the additional check provided by an international regime a salutary supplement to national efforts, as seems to be the case for many smaller Western powers. And most states, even if only for considerations of image and prestige, are likely to be willing to accept regime norms and procedures that do not appear immediately threatening.

An international regime reflects states' collective vision of a problem and its solutions and their willingness to "fund" those solutions. In the area of human rights, this vision does not extend much beyond a politically weak moral interdependence. States are willing to "pay" very little in diminished national sovereignty to realize the benefits of cooperation. The result is a regime with extensive, coherent, and widely accepted norms but extremely limited international decision-making powers—that is, a strong promotional regime.

4. Regional Human Rights Regimes

Adopting a metaphor from Vinod Aggarwal, Keohane notes that international regimes "are 'nested' within more comprehensive agreements . . . that constitute a complex and interlinked pattern of relations" (1982: 334). Although "nesting" may imply too neat and hierarchical an arrangement, some regional and single-issue human rights regimes can usefully be seen as autonomous but relatively coherently nested international human rights (sub) regimes. This section considers regional regimes. The following section takes up single-issue human rights regimes.

A. EUROPE

A strong regional regime exists among the (primarily Western European) members of the Council of Europe. Personal, legal, civil, and political rights are guaranteed by the (European) Convention for the Protection of Human Rights and Fundamental Freedoms (1950) and its Protocols, and economic and social rights are laid down in the European Social Charter (1961, revised 1996).[17] The lists of rights in these documents are very similar to those of the Universal Declaration and the Covenants. The decision-making procedures of the European regime, however, are of special interest, especially the authoritative decision-making powers of the European Court of Human Rights.

A two-tier system was initially created. The European Commission of Human Rights, an independent body of experts (one from each member state),

17. I shall restrict the term "European human rights regime" to the norms and procedures established in these documents. For a brief introduction see O'Boyle (2000). For extended legal analyses, see Dijk and Hoof (1998), Harris, O'Boyle, and Warbrick (2001), and Mowbray (2001). The official website (http://www.echr.coe.int/) is excellent. Although the international human rights activities of the European Union have become increasingly significant (see Alston 1999), for reasons of space they are not considered here. Of particular symbolic importance was the adoption in 2000 of the Charter of Fundamental Rights of the European Union. Space also precludes considering the Organization for Security and Cooperation in Europe (OSCE), which has a historically important place in the process leading to the end of the Cold War and which has undertaken some important human rights initiatives through its Office for Democratic Institutions and Human Rights (see http://www.osce.org/odihr/overview/), especially in the area of minority rights (see Kemp 2001).

reviewed "applications" (complaints) from persons, groups of individuals, nongovernmental organizations (NGOs), and states alleging violations of the rights guaranteed by the Convention. If friendly settlement could not be reached, the Commission was authorized to report formally its opinion on the state's compliance with the Convention. Although these reports were not legally binding, they usually were accepted by states. If not, either the Commission or the state involved could refer the case to the Court for binding enforcement action.

Not only are these procedures, which have been implemented with scrupulous impartiality, of unmatched formal strength and completeness, they also have been almost completely accepted in practice. Decisions of the European Commission and Court have had a considerable impact on law and practice in a number of states (Blackburn 1996). For example, detention practices have been altered in Belgium, Germany, Greece, and Italy. The treatment of aliens has been changed in the Netherlands and Switzerland. Press freedom legislation was altered in Britain. Wiretapping regulations have been changed in Switzerland. Legal aid practices have been revised in Italy and Denmark. Procedures to speed trials have been implemented in Italy, the Netherlands, and Sweden. Privacy legislation was revamped in Italy.

The impact of the Court has been especially strong and important because of its adoption of the principle of "evolutive interpretation." The Court interprets the European Convention not according to the conditions and understandings that existed in 1950 when it was drafted but in light of the current regional practices. This has resulted in a slowly but steadily rising bar and considerable pressure on states that lag behind European norms. Examples include restrictions on corporal punishment in schools in the United Kingdom and eliminating discrimination against unmarried mothers and children born outside of marriage in Belgium.

The growing success of the system and the post–Cold War expansion of membership, however, led to a crushing administrative burden. In 1981 the Commission registered 404 applications. By 1993 this had increased to 2037, and by 1997 the number had jumped to 4750 (with nearly 8000 additional files opened that did not lead to registered applications). Cases referred to the Court in those years rose from 7 to 52 to 119.

A complete restructuring was proposed in 1994 in Protocol No. 11, which was ratified in 1997 and came into effect the following year. In late 1999, the Commission was merged into a completely restructured European Court of Human Rights. In addition, jurisdiction of the Court was made compulsory (previously states had the option to participate in only the Commission and not the Court).

The Parliamentary Assembly of the Council of Europe elects one judge for each member state (currently forty-one) for a six-year term. The Court is di-

vided into four Sections, with attention to geographical and gender balance and representation of different legal systems. Each Section includes a committee of three judges that performs much of the filtering work previously assigned to the Commission. Seven member Chambers in each Section (including the Section President and a judge representing the state in question) hear cases. There is also a seventeen-member Grand Chamber representing all the Sections.

Another notable post–Cold War innovation has been the creation of a Council of Europe Commissioner for Human Rights in 1999 (see http://www.commissioner.coe.int/). This entirely independent institution aims to promote education and awareness of human rights issues, improve the enjoyment of recognized rights, and identify possible shortcomings in national law and practice. Other than the requirement that he or she not deal with individual complaints, the Commissioner may look into any aspect of human rights in Europe, deal directly with governments, and issue opinions, reports, and recommendations. Member states even have a positive obligation to facilitate the independent and effective functioning of the Commissioner. On paper at least, these powers are of unprecedented strength and scope, and there seems every reason to believe that they will be utilized, especially as the Commissioner—Alvaro Gil-Robles of Spain was elected in 1999— and his staff become settled in their work.

The system for dealing with economic, social, and cultural rights has also changed significantly. The substance of the 1961 European Social Charter was substantially expanded by protocols in 1988, 1991, and 1995. In 1996 these changes, and some others, were consolidated into a Revised Charter of Social Rights, which entered into force in 1999. The net result was not only to expand the rights covered but also to strengthen the supervisory system and open it more fully to NGOs and so-called social partners such as workers' organizations. Rather than judicial settlement, however, supervision is through a system of reporting and collective complaints to an Independent Committee of Experts, which reports to the Council of Ministers for further action (see Harris 2000).

The Council of Europe system also includes a European Committee for Equality Between Women and Men, a Human Rights Documentation Center, and a Steering Committee for Human Rights (with three expert committees, dealing with the further development of human rights norms, improving procedures, and promotion, education, and information, respectively). There are also well-developed procedures for NGO participation.

The real strength of the European regime lies in voluntary acceptance of the regime by its participating states. The machinery of even the strongest international regime primarily checks backsliding, applies pressure for further progress, provides authoritative interpretations in controversial cases, and remedies occasional deviations (compare Chayes and Chayes 1995). These are hardly negligible functions; they are precisely what is lacking in the global regime. Strong international procedures, however, rest ultimately on national commitment, which is both wide and deep in Europe. Strong procedures are less a cause than a reflection of the regime's strength.

A regime's shape and strength, as I argued in §3, usually can be explained by perceptions of interdependence, of benefits to be received (including burdens avoided), and of the risks of turning over authority to an international agency. The strong national commitment of the European states to human rights greatly increases the perceived value of the "moral" benefits that states can expect to achieve, suggesting that moral interdependence can occasionally rival material interdependence in political force. Furthermore, relatively good national human rights records reduce the political risks of strong international procedures. The European regime is also "safe," because it operates within a relatively homogeneous and close sociocultural community, which greatly reduces both the likelihood of radical differences in interpreting regime norms and the risk of partisan abuse or manipulation of the regime. Perceived community also helps to increase the perception of moral interdependence.

Although voluntary compliance is the heart of the regime's success, we should not belittle either the strength or the significance of the European regime's enforcement measures. Not only is completely voluntary compliance a utopian ideal, but the European case also suggests a process of mutual reinforcement between national commitment and international procedures. A strong regime is a device to increase the chances that states will enjoy the best that they "deserve" in that issue area—that is, the best to which they will commit themselves to aspire, and then struggle to achieve.

B. THE AMERICAS

The American Declaration of the Rights and Duties of Man (1948) presents a list of human rights very similar to that of the Universal Declaration. The American Convention on Human Rights (1969) recognizes personal, legal, civil, and political rights, plus the right to property. The 1988 "Protocol of San Salvador," which deals with economic, social, and cultural rights, came into force in 1999. As in the European case, though, the procedures rather than the norms are of most interest.[18]

The Inter-American Court of Human Rights, established in 1979 and sitting in San Jose, Costa Rica, may take binding enforcement action, although its ad-

18. Medina Quiroga (1988), although often dry and technical, is excellent on the Cold War era. Harris and Livingstone (1998) is probably the best single source today.

judicatory jurisdiction is optional.[19] The Court may also issue advisory opinions requested by members of the Organization of American States (OAS). The Court, however, has handled far fewer cases, with much less impact, than the European Court, despite an apparently much greater potential caseload.

The procedural heart of the regime lies instead in the Inter-American Commission of Human Rights. It is empowered to develop awareness of human rights, make recommendations to governments, respond to inquiries of states, prepare studies and reports, request information from and make recommendations to governments, and conduct on-site investigations (with the consent of the government). The Commission also may receive communications (complaints) from individuals and groups concerning the practice of any member of the OAS, whether a party to the Convention or not.

An "autonomous entity" within the Organization of American States (OAS), established twenty years before the Inter-American Court, the Commission has vigorously exploited this autonomy, especially in the 1970s and 1980s, in the face of strongly resistant states. It has adopted decisions and resolutions arising from individual communications from more than twenty countries in the region, including the United States. Country Reports documenting particularly serious human rights situations in more than a dozen countries have been issued, usually to be followed up by renewed and intensified monitoring. The Commission has also adopted special resolutions on major regional problems, such as states of siege.

The wide-ranging nonpartisan activism of the Commission can be attributed largely to the fact that its members serve in their personal capacity; it is more a technical, quasi-judicial body than a political body. But how are we to explain the fact that the American states, many of which have not been notably solicitous toward human rights (especially during the Cold War), have allowed the Commission to be so forceful and so active? A large part of the explanation lies in the dominant power of the United States.

The literature on international economic regimes suggests that the power of a hegemonic state typically is crucial to establishing (although not necessarily to maintaining) strong, stable regimes (Keohane 1984). Although hegemonic power had virtually nothing to do with the European regime, it has been central to the genesis and operation of the Inter-American regime. The United States, for whatever reasons, has often used its hegemonic power to support the Inter-American regime, which has also been strongly supported by some of the more democratic regimes of the region.

Consensual commitment and hegemonic power are, to a certain extent,

19. By 2000, twenty states had accepted the Court's jurisdiction. On the functioning of the Court, see Davidson (1992) and Travieso (1996) and the relevant portions of Buergenthal and Shelton (1995), Davidson (1997), and Harris and Livingstone (1998).

functional equivalents for establishing state acceptance. Voluntary compliance is, of course, the ideal, both for its own sake and because of the limited ability of even hegemonic power to overcome persistent national resistance. Coercion, however, may produce a certain level of limited participation. Consider, for example, the grudging participation of military dictatorships in Chile and Argentina during the 1970s.

Nevertheless, the relative mix of coercion and consensus does influence the nature and functioning of a regime. Coerced participation is sure to be marked by constant and often effective national resistance, and regime procedures are likely to be more adversarial. Hegemony may ensure a certain degree of international monitoring, but even a hegemon can impose only a limited range of changes.

Democratization in the region over the past two decades has led to voluntary acceptance largely replacing external coercion. It has also created a much more genuinely regional commitment to human rights. Nevertheless, only very modest incremental growth has occurred in the regime. Consent has largely replaced coercion without any significant increases in regime strength.

Both the Court and the Commission have modestly increased their levels of activity. New conventions, on torture (1985), disappearances (1994), violence against women (1994), and disabled persons (1999, not yet entered into force), have been adopted. The OAS General Assembly, the Inter-American system's principal political organ, has become much more sympathetic to human rights (in sharp contrast to its stance in the 1970s, when it was often an active impediment to the Commission). Democracy promotion activities have increased dramatically. States have even adopted much less adversarial attitudes toward the Commission. They have not, however, shown any enthusiasm for strengthening regional institutions (compare King-Hopkins 2000).

C. AFRICA, ASIA, AND THE MIDDLE EAST

In 1981 the Organization of African Unity (OAU) adopted The African Charter on Human and Peoples' Rights, drafted in Banjul, Gambia.[20] There are some interesting normative innovations in the African (Banjul) Charter, most notably the addition of and emphasis on collective or "peoples'" rights (Art. 19–24), such as the rights to peace and development, and the particularly prominent place the Charter gives individual duties (Art. 27–29). Typically, however, the substantive guarantees are narrower or more subject to state discretion than in other international human rights regimes.

20. Evans and Murray (2002) provide the first comprehensive scholarly evaluation of the operation of the African Charter system. Murray (2000) adopts a feminist perspective that leads to some unusual but often interesting assessments. On the issue of the relationship between the African Charter and national law and practice in the region, see Lindholt (1997).

The Banjul Charter creates an African Commission on Human and Peoples' Rights that may receive interstate complaints and individual communications. The activities of the Commission, however, are severely hampered by woefully inadequate administrative resources[21] and a requirement of complete confidentiality until an investigation has been completed. Little of substance seems to have emerged from its proceedings, although it has played a significant role in fostering the development and improving the functioning of local and regional human rights NGOs (Welch 1995; International Commission of Jurists 1996).

The regional organizational environment in Africa is extremely unpromising for any substantial strengthening of the regime. Previous efforts at regional and even subregional cooperation in other issue areas have not been very successful. The OAU is not only highly politicized but extremely deferential to sovereignty. Although this is understandable, given the weak states and strong subnational loyalties in most of black Africa, there is no reason to expect the OAU to deviate from its standard practice in an area as sensitive as human rights.

The prospects are no better when we took at national practice. During the Cold War, the human rights record of the typical African country was about average for the Third World, despite lurid and relatively overreported aberrations such as occurred under the rule of Idi Amin and "Emperor" Bokassa. Today, only the Middle East has a worse regional record. In the absence of strong pressure by a regional hegemon, the national human rights record of the typical African government suggests a high degree of aversion to international monitoring. Furthermore, the low level of autonomous economic, social, and political organization in most African states suggests that this situation is unlikely to be changed soon through mass popular action.

Even the weak procedures of the African regime, though, are far more developed than those in Asia and the Middle East. In Asia there are neither regional norms nor decision-making procedures.[22] The Association of South East Asian Nations (ASEAN) is perhaps the most promising subregional organization, but even there deference to sovereignty is high and regional cooperation low (compare Thio 1999).

The League of Arab States established a Permanent Arab Commission on Human Rights in 1968, but it has been notably inactive, except for publicizing

21. On the broad issue of resource shortages, which are a serious problem in all international human rights (with the possible but only partial exception of Europe), see Evatt (2000) and Schmidt (2000).

22. The 1996 Asian Human Rights Charter is an interesting effort by Asian NGOs to forge a regional document, but it clearly reflects NGO perspectives. See http://www.ahrchk.net/charter/final_content.html. For a report on the most recent official discussions of a regional system, see United Nations (1996).

the human rights situation in the Israeli-occupied territories. Even the regional normative environment is weak. The Arab Charter of Human Rights languished largely ignored from its drafting in 1971 until it was finally adopted by the Council of the League in 1994.[23] There currently is no basis for even the weakest of regional regimes, which is not surprising given the generally dismal state of national human rights practices in the region.[24]

5. Single-Issue Human Rights Regimes

A different type of "nested" human rights (sub)regime is represented by universal membership organizations with a limited functional competence and by less institution-bound single-issue regimes. Single-issue regimes establish a place for themselves in the network of interdependence by restricting their activities to a limited range of issues—for example, workers' or women's rights—to induce widespread participation in a single area of mutual interest.

A. WORKERS' RIGHTS

The first international human rights regime of any sort was the functional regime of the International Labor Organization (ILO),[25] established by the Treaty of Versailles. Most of the regime's substantive norms were developed after World War II, including important conventions on freedom of association, the right to organize and bargain collectively, discrimination in employment, equality of remuneration, forced labor, migrant workers, workers' representatives, and basic aims and standards of social policy. Although developed autonomously, these rules supplement and extend parallel substantive norms of the global regime.

Because regime norms are formulated in individual Conventions and Recommendations, which states adopt or not as they see fit, there is neither universality nor uniformity of coverage. Nevertheless, states are required to submit all Conventions and Recommendations to competent national authorities to be considered for adoption, and they may be required to submit reports on their practice even with respect to Conventions they have not ratified.

23. For the text, see http://www1.umn.edu/humanrts/instree/arabhrcharter.html. I can find no evidence that it has had any appreciable effect. The Cairo Declaration on Human Rights in Islam may also be of some normative interest. See http://www1.umn.edu/humanrts/instree/cairodeclaration.html.

24. On the general regional situation, see Magnarella (1999), Dwyer (1991), and Strawson (1997). See also Waltz (1995), which provides a careful and still largely accurate overview of the opportunities for and limits on human rights activism in the region.

25. The classic study of human rights in the ILO is Haas (1970). See also Wolf (1984) and Bartolomei de la Cruz, Potobsky, and Swepston (1996).

Periodic reports are required on compliance with ratified Conventions.[26] The highly professional Committee of Experts on the Application of Conventions and Recommendations reviews reports. Although it may only make "observations," it does so with vigor and considerable impartiality, and Committee observations have often induced changes in national practice.

Much of the success of this reporting-monitoring system lies in the ILO's "tripartite" structure, in which workers' and employers' delegates from each member state are voting members of the organization, along with government representatives. Because "victims" are represented by national trade union representatives, it is relatively difficult for states to cover up their failure to discharge their obligations, especially if some national workers' representatives adopt an internationalist perspective and question practices in countries where labor has less freedom to organize and advocate.

The issue of workers' rights has also been important to the strength and success of the ILO regime, providing considerable ideological homogeneity across a universal membership. During the Cold War, Western, Soviet bloc, and "socialist" Third World regimes certainly had different interpretations of the meaning of "freedom of association" and other relevant norms, but all faced serious internal and ideological constraints on overt noncompliance.

In a reversal of the usual pattern, however, post-Cold War changes have not been favorable for workers' rights. Globalization and neo-liberal structural adjustment have not been kind to organized labor and its advocates. Furthermore, the Cold War era's warm ideological embrace of workers pretty much across the mainstream of the political spectrum has turned tepid, and in some cases downright chilly.

To the extent that organizational structure and ideological appeal explain the success of the ILO's functional human rights regime, the prospects for other single-issue regimes seem dim. Direct voting representation for victims has not been, and almost certainly will not be, replicated in other organizations and only a handful of other human rights issues have near-universal ideological appeal.

B. RACIAL DISCRIMINATION

Racial discrimination, however, is one such issue.[27] The 1965 International Convention on the Elimination of All Forms of Racial Discrimination provides a clear and powerful extension and elaboration of the global regime's norms

26. There is a procedure for interstate complaints, but it is rarely used. Of more importance is the special complaint procedure for freedom-of-association cases arising under Conventions 87 and 98, which works through national and international trade union complaints, reviewed by the Governing Body's Standing Committee on Freedom of Association.

27. See Alston and Fredman (2001), Banton (1996), and more briefly Banton (2000) on the racial discrimination regime.

against racial discrimination, but its implementation provisions are fairly weak. The Committee on the Elimination of Racial Discrimination (CERD), a body of experts established under the Convention, has very narrowly interpreted its powers to "make suggestions and general recommendations based on the examination of the reports and information received from the States Parties" (Art. 9[2]). The interstate complaint procedure has never been utilized and fewer than two dozen individual communications have been considered. Even the information-exchange elements of the reporting procedure are not without flaws; the public examination of reports, although sometimes critical, often is less penetrating than in the Human Rights Committee.

Much of the explanation of this weakness lies in the very different institutional environments of the ILO and CERD. Most of the hundreds of ILO Conventions and recommendations are technical instruments regulating working conditions: for example, hours of work, minimum age, weekly rest and holidays with pay, seafarers' identity documents, radiation protection, fishermen's medical examinations, and exposure to benzene. Much of the work of the Committee of Experts thus deals with relatively uncontroversial technical matters. In the course of this work, expectations of neutrality are established and reconfirmed, so that when human rights issues are considered they are examined in a relatively depoliticized context as only one part of the work of an essentially technical body of experts. In addition, the wide range and great number of ILO activities tie states into a web of interstate, transgovernmental, and transnational relationships centered on the organization. CERD enjoys none of these advantages.

C. TORTURE

Another human rights issue with nearly universal appeal is torture. The 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment contains a strong elaboration of norms against torture, providing a good illustration of the contribution of additional treaties to the progressive development of substantive international human rights law. "No exceptional circumstances whatsoever, whether a state of war or threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture" (Art. 2[2]). Orders from superiors are explicitly excluded as a defense. Special obligations are established for training law enforcement personnel and reviewing interrogation regulations and methods. To reduce incentives for torture, statements obtained through torture must be made inadmissible in all legal proceedings. The convention also requires that wherever the alleged torture occurred, and whatever the nationality of the torturer or victim, parties must either prosecute alleged torturers or extradite them to a country that will.

A Committee against Torture receives and reviews periodic reports from

states parties every four years. The Convention also contains optional provisions that allow the Committee to receive communications analogous to those permitted under the 1503 procedure, as well as interstate complaints and individual communications.[28]

Although the Convention and the Committee stand at the core of the international regime against torture, other actors are important participants. The Special Rapporteur on Torture of the UN Commission on Human Rights has played a prominent role, especially in the 1980s. We should also note the very strong European regional regime against torture (Evans and Morgan 1998; Morgan and Evans 1999), which has unprecedented on-site investigatory powers. The weaker 1985 Inter-American Convention to Prevent and Punish Torture is also of some note, especially in the context of the history of the region.

Ongoing promotional activities should also be noted. For example, the UN Voluntary Fund for Victims of Torture, established in 1982, makes grants to groups throughout the world. In 2000 and 2001, it disbursed about $7 million to approximately 150 NGOs in 65 countries.

Finally, the NGO dimension is particularly significant in the area of torture (as well as in women's rights, considered immediately below).[29] The campaigns of Amnesty International contributed greatly to the creation of both the Convention and the Special Rapporteur and have been extremely important in continuing to publicize the issue, thus increasing the impact of the regime. In a very different vein, Copenhagen is the home of an international Rehabilitation and Research Center for Torture Victims, a location that reflects the leading role of Denmark in international action against torture. Similar centers operate in Canada, Norway, and other countries.

D. WOMEN'S RIGHTS

Women's rights was until recently something of a stepchild in the field of human rights.[30] Although racial discrimination is considered in the UN Commission on Human Rights and throughout the UN-centered regime, gender discrimination was largely segregated in the UN Commission on the Status of Women. In past two decades, though, there have been a substantial normative and procedural changes in the women's rights regime and the language of

28. On the Committee against Torture, see United Nations (1992), Bank (2000), and Burns (2000).

29. For a good introduction to the role of NGOs in UN treaty bodies, see Bayefsky (2000: Part IV) and especially Grant (2000).

30. Among the substantial literature on women's human rights, see, for example, Askin and Koenig (1999), Grimshaw, Holmes, and Lake (2001), Wallace (1997: chap. 2), and Cook (1994). On the particularly important issue of national legal implementation, see Byrnes, Connors, and Bik (1997), Adams and Byrnes (1999), and United Nations (2000).

"women's human rights"—as opposed to classic "women's rights"—has entered the mainstream of discussions.[31]

The Commission on the Status of Women, a subsidiary body of ECOSOC established in 1947, has played a role in norm creation very similar to that played by the Commission on Human Rights, having drafted a variety of specialized treaties, such as the 1952 Convention on the Political Rights of Women, as well as the major general treaty in this area, the 1979 Convention on the Elimination of All Forms of Discrimination against Women. The Commission has also undertaken various promotional activities and studied individual communications between 1984 and 2000.

The Optional Protocol to the Convention, which entered into force at the end of 2000, has moved the consideration of communications to the Committee on the Elimination of Discrimination against Women (CEDAW). CEDAW, which meets annually, has examined reports of states parties since its inception in 1982 (see Shalev 2000). It now has an array of powers roughly comparable to that of the Human Rights Committee. Although the symbolism of this change was very important to a number of activists, it is much too early to say whether it will have much impact on the functioning of the regime.[32]

The strengthening of the women's rights regime can be traced primarily to the changing international awareness of women's issues centered around the designation of 1975 as International Women's Year and the associated World Conference in Mexico City. In conjunction with political and "consciousness-raising" activities of national women's movements, a major international constituency for women's rights was created; a growing set of regime makers and takers emerged, while potential breakers were deterred from active opposition either by domestic ideological stands or by the emerging international normative consensus. Follow-up conferences in Nairobi in 1985 and Beijing in 1995 have helped to solidify and deepen this international consensus. They have also provided striking illustrations of the important role of NGOs, and their dramatic proliferation, especially in the non-Western world.

E. CHILDREN

Children are perhaps the only group with more universal appeal than victims of racial or gender discrimination and torture.[33] Nonetheless, the speed with

31. For a useful discussion of these linguistic issues and some of their implications, see Peach (2001).

32. For a thoughtful assessment of the opportunities and constraints facing the Committee, see Bustelo (2000).

33. Alston, Parker, and Seymour (1992), Asquith and Hill (1994), Wallace (1997: chap. 5), Van Beuren (1998), Fottrell (2000), and Detrick (2000) provide good general overviews of the children's rights regime. For a more philosophical approach, see Freeman (1997). On the Convention on the

which the 1989 Convention on the Rights of the Child came into force was stunning: it took less than a year to obtain the twenty required parties (in contrast to two and a half years for the Convention against Torture) and barely more than two years to reach 100 parties. In May 2002 it had 191 parties, by far the most of any international human rights treaties.

The Committee on the Rights of the Child is structured and functions much like other treaty-based supervisory committees (Lansdown, 2000; Karp, 2000). It does not have the power to receive individual communications.

F. GENOCIDE

The 1948 Convention on the Prevention and Punishment of the Crime of Genocide was a central part of the first wave of post–World War II international human rights action.[34] It was the most direct international response to the Holocaust, which played a decisive role in moving human rights onto international agendas. In the ensuing decades, however, the genocide regime remained purely declaratory and of little or no practical effect.

The Genocide Convention envisions enforcement solely through national and international courts; it establishes no supervisory machinery. The UN Commission on Human Rights and its Sub-Commission, which might have had the authority to explore issues of genocide, were notably silent on this important class of violations. In fact, genocide until very recently has been treated largely outside the framework of international human rights law and institutions.[35]

One of the major changes in the post–Cold War politics of international human rights has been the development of a practice of multilateral armed intervention against genocide (see Chapter 14). At the same time, and through closely related political processes, a system of individual criminal responsibility has been established through ad hoc tribunals for Rwanda and the former Yugoslavia and the creation of the International Criminal Court.

The interesting, although very odd, result has been the development of a regime with real powers of international judicial punishment and even the capacity to intervene with military force. Yet the regime still lacks a clear institutional focus or any multilateral supervisory mechanism. Furthermore, international

Rights of the Child in particular, see Detrick, Doek, and Cantwell (1992) and LeBlanc (1995). The important issue of integrating international standards with traditional values and practices, which provides an interesting context for exploring some of the issues we considered in Part II, is considered in Alston and Gilmour-Walsh (1996) and Douglas and Sebba (1998).

34. The standard international legal discussion is now Schabas (2000). On the rather tortured relationship of the United States to the Genocide Convention, see LeBlanc (1991) and Ronayne (2001).

35. During the Cold War in particular it was much more likely to have been addressed in the context of international humanitarian law or even the law of war. On the relationship between human rights and humanitarian law, see Provost (2002) and Meron (2000).

efforts remain largely focused on punishing violators rather than on the promotional and preventive activities characteristic of most other international human rights regimes.

G. MINORITIES

The final international human rights regime I want to consider here is the emerging one on minority rights.[36] Although racial discrimination has been a central international human rights concern at least since the 1960s—the racial discrimination convention was adopted even before the Covenants—discrimination against other minorities was largely ignored until well into the 1980s. In 1992, however, the UN General Assembly adopted the Declaration on the Rights of Persons belonging to National, or Ethnic, Religious and Linguistic Minorities. The Working Group on Minorities and Indigenous Peoples of the UN Sub-Commission has done important promotional work in recent years.

The most interesting work, however, is being done in Europe, where the issue of minority rights first received significant multilateral attention (during the interwar period) and where the aftermath of the breakups of Yugoslavia and the Soviet Union have given the issue immense topic significance (Jackson Preece 1998). Both the Council of Europe and the Organization for Security and Cooperation in Europe have active and innovative promotional programs that involve working with both states and civil society at local, national, and regional levels (see Cumper and Wheatley 1999).

6. The Evolution of Human Rights Regimes

What, if anything, can we say in general about the nature, creation, and evolution of international human rights regimes? Table 8.1 presents a summary overview of the regimes discussed in this chapter, viewed at several intervals since 1945. The most striking pattern is the near-complete absence of international human rights regimes in 1945, in contrast to the presence of several in all the later periods. We can also note the gradual strengthening of most international human rights regimes over the last thirty years. Even today, though, promotional regimes remain the rule.

Once states accept norms stronger than nonbinding guidelines, declaratory

36. The literature on minority rights has exploded in recent years. Perhaps the best places to start are Jackson Preece (1998), which despite its focus on Europe has wide general applicability, Wallace (1997: chap. 3), and Alfredsson and Ferrer (1999). Claude (1955) still merits consideration, despite being obviously dated. Among other sources, I would single out Phillips and Rosas (1995), Henrard (2000), Rehman (2000), and Skurbaty (2000). In large part as a result of the work and influence of Will Kymlicka, an excellent theoretical literature, with direct practical application, is available. See especially Kymlicka (1995) and Kymlicka and Norman (2000). The issue of group human rights for minorities is addressed in §12.5.

regimes readily evolve into promotional regimes. If the regime's norms are important or appealing enough for states to commit themselves to them, then it is difficult to argue against promoting their further spread and implementation. The move to implementation or enforcement, however, involves a major qualitative jump that most states resist, with considerable vigor when necessary, and usually with success.[37]

Regime evolution may be gradual and largely incremental within declaratory and promotional regimes (and perhaps within implementation and enforcement regimes as well), but there seems to be a profound discontinuity in the emergence of implementation and enforcement activities. Promotional regimes require a relatively low level of commitment. The move to an implementation or enforcement regime requires a major qualitative increase in the commitment of states that rarely is forthcoming. Most of the growth in international human rights regimes has therefore been "easy" growth that does not naturally lead to further expansion. This would seem to explain the merely incremental growth of almost all international human rights regimes in the post–Cold War era, despite the substantially improved international human rights climate.

We have already considered some of the central factors that explain this pattern of limited growth, emphasizing both awareness and power, which usually are created or mobilized by conceptual changes in response to domestic political action (e.g., women's rights) or international moral shock (e.g., the global regime or torture). By galvanizing support for the creation or growth of a regime and delegitimizing opposition, human rights advocates may make moral interdependence more difficult for states to resist. National commitment, cultural community, and hegemony are of significant importance in the processes of change.

National commitment is the single most important contributor to a strong regime; it usually is the source of the often mentioned "political will" that underlies strong regimes. If a state has a good human rights record, then not only will a strong regime appear relatively unthreatening but also the additional support it provides for national efforts is likely to be welcomed. The European regime's unprecedented strength provides the most striking example of the power of national commitment.

The importance of cultural community is suggested by the fact that the only enforcement regimes are regional. In the absence of sociocultural and ideological consensus, strong procedures are likely to appear too subject to partisan use or abuse to be accepted even by states with good records and strong national commitments.[38] For example, opponents of stronger procedures in the global human rights regime and in single-issue regimes include major countries from all regions with good, mediocre, and poor national human rights records alike. The broad membership of all but the regional regimes undercuts the relative homogeneity that seems almost necessary for movement beyond a promotional regime.

37. For an interesting recent attempt to theorize the national adoption of international human rights norms, based on carefully designed and executed case studies, see Risse, Ropp, and Sikkink (1999).

Finally, we must stress the importance of dominant power and hegemony, which should be kept analytically distinct. Beyond mere dominant power, hegemonic leadership requires substantial ideological resources, a crucial element in the acceptance of, or at least acquiescence in, the authority of the hegemon. The effective exercise of even hegemonic power usually requires not merely dominating material and organizational resources, but also an ideological justification sufficiently powerful to win at least acquiescence from nonhegemonic powers.

Leaders require followers; regime makers need takers. The reasons for taking a regime may be largely accidental or external to the issue, but sometimes the reasons for taking a regime are connected with the ideological hegemony of the proposed project.[39] The seemingly inescapable normative appeal of human rights over the past half century, even during the ideological rivalry of the Cold War, thus is an important element in the rise of international human rights regimes. Power, in the sense that the term traditionally has had in the study of international politics, still is important, but true hegemony often is based on ideological "power" as well. We might even argue that the ideological hegemony of human rights is more important than dominant material power.

A hegemonic idea such as human rights may actually draw power to itself; power may coalesce around, rather than create, hegemonic ideas, such as human rights and the regimes that emerge from them. For example, the overriding ideological appeal of the idea of workers' rights has been crucial to the success of the ILO. In Europe, the "hegemonic" power behind the very strong European regime came not from any single dominant state but from a coalition built around the ideological dominance of the idea of human rights. The ideological hegemony of human rights is essential to explaining the creation of an African human rights regime in the face of the OAU's notorious respect for even the tiniest trappings of sovereignty. The emergence of the global human rights regime cannot be understood without taking account of this impulse, discussed earlier in terms of perceived moral interdependence.

38. The United States presents an exaggerated version of such fears, most strikingly in the U.S. Senate's extended resistance to, for example, the Genocide Convention and the International Covenant on Civil and Political Rights, with which U.S. law and practice already conformed in almost all particulars. These fears, in a less extreme form, are common and widespread.

39. Ruggie's (1982) account of "embedded liberalism" and the importance of the ideology of the welfare state in the creation of postwar economic regimes might be read in this way.

Hegemonic power, however, does ultimately require material power, and even hegemonic ideas have a limited ability to attract such power. Hegemonic ideas can be expected to facilitate states accepting relatively weak regimes, but beyond promotional activities (that is, once significant sacrifices of sovereignty are required) something more is needed. In other words, hegemony too points to the pattern of limited growth noted earlier.

The evolution toward strong promotional procedures can be expected to continue, but we should expect states to resist, usually successfully, efforts to cross over to implementation and enforcement. We have little reason to expect that the 2010 column of Table 8.1 will show many significant changes from 2000.[40] We must not forget, though, how far we have come since 1945.

40. Over the coming decade, I would expect only the development of weak declaratory regimes for the rights of indigenous peoples (see §12.7) and of the disabled (see Degener and Koster-Dreese [1995] and Wallace [1997: chap. 6]). In the dozen years between the first and second editions of this book, the only significant changes were (a) in the genocide regime, which was sufficiently weak and moribund that I did not even include it in the table, and (b) the creation of a weak declaratory minority rights regime.

9/ Human Rights and Foreign Policy

In addition to the activities in the multilateral forums discussed in Chapter 8, human rights have become increasingly important in the bilateral policies of many states. Few states, however, make more than occasional, modest sacrifices of other foreign policy interests in the name of human rights. In this chapter I try to draw attention to both the reality and the limits of states' concern with international human rights.

1. Human Rights: A Legitimate Concern of Foreign Policy?

I want to begin, however, with debates over incorporating human rights concerns into national foreign policies. As John Vincent put it at the outset of *Foreign Policy and Human Rights*, "there is no obvious connection between human rights and foreign policy" (1986: 1). In fact, there are at least three standard arguments against making the connection.

The realist rejects a concern for international human rights because foreign policy ought to be about the national interest defined in terms of power. The statist (or legalist) considers an active concern for the human rights practices of other states inconsistent with the fundamental principle of state sovereignty. The relativist (or pluralist) views international human rights policies as moral imperialism.

These arguments point to problems in overemphasizing human rights in foreign policy. They do not, however, establish that the human rights practices of other states are or ought to be an illegitimate concern of foreign policy.

A. THE REALIST ARGUMENT

Realists see international politics as a struggle between self-aggrandizing states in an environment of anarchy. Faced with a world of (potential or real) enemies and no government to turn to for protection, a concern for power must override just about everything else. To act in any other way—for example, to pursue justice or act out of compassion—would leave one's state open to, even invite, attack. Foreign policy, to use Hans Morgenthau's famous formulation, is