



The efficacy of international human rights treaties in domestic legal systems: A comparative study

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Abstract

International human rights treaties, such as the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR), establish a universal framework for the protection and promotion of human rights. However, their efficacy largely depends on how these treaties are incorporated and enforced within domestic legal systems. This study examines the implementation of international human rights treaties across a diverse range of countries, focusing on the interplay between international obligations and national sovereignty. By analyzing case studies from democratic, authoritarian, and hybrid political systems, this research identifies the factors that enhance or hinder the effective domestication of human rights treaties. Findings reveal a significant disparity in treaty implementation across legal and political contexts. Democratic states with robust legal systems and active civil societies show higher levels of compliance, whereas authoritarian regimes often exploit ambiguities to evade accountability. The study also underscores the importance of grassroots advocacy and transnational cooperation in bridging the gap between treaty ratification and practical enforcement.

Keywords: International, political, human rights, democratic, civil

Introduction

Inspired by and contributing to the formation of modern global legal standards, the international framework for human rights is based on the principles of equality, dignity, and justice. A person's right to life, liberty, and the pursuit of happiness is guaranteed by international accords that support the system's basic values. Starting with the adoption of the Universal Declaration of Human Rights in 1948 and continuing with following important international covenants and regional accords, a succession of treaties have enabled the worldwide progress of human rights. The treaties' historical setting demonstrates the global community's determination to prevent such disasters. After the Holocaust and two devastating wars, the world came to a shared understanding of the need to put in place a system to protect people's basic rights. In December of 1948, the United Nations General Assembly formally approved the Universal Declaration of Human Rights, which had the support of notable figures including Eleanor Roosevelt. By outlining a thorough framework of rights and principles, the treaty laid the groundwork for succeeding international human rights

accords. The International Covenants on Economic, Social, and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) were adopted in 1966, marking a major step in creating a strong legal framework to protect human rights. Civil and political freedoms, economic and social entitlements, and cultural rights were all laid down in the aforementioned treaties, proving their widespread and everlasting significance in many circumstances.

As a system of rules, treaties, and conventions enacted to control dealings between independent nations and other international actors, international law is fundamental to international government. The fundamental goal of international law is to promote a global order based on human rights, collaboration, stability, and fairness. According to Boyle and Redgwell (2021)^[2], the purpose of this introductory part is to provide a general outline of international law, explain what it is, what it aims to achieve, and the difficulties in measuring its efficacy. On the most basic level, international law is just a collection of concepts and regulations that states are required to follow while

interacting with one another. It covers a wide range of topics, from human rights and war to commerce, environmental preservation, and diplomatic affairs. Global contacts are shaped by a framework of laws that emerges from several sources, such as treaties, customary practices, court judgments, and the works of legal academics (Kanwel, S., Khan, M. I., Usman, M., & Khan, A. 2020) ^[10]. It is impossible to exaggerate the significance of international legal systems. In order to overcome shared difficulties that cut over national lines, they provide the framework for countries to live peacefully and cooperate with one another. International law seeks to foster peace, ease commerce, safeguard human rights, set norms for state conduct, and enforce principles of justice on a global scale by creating rules and standards.

International human rights mechanisms

The term "international human rights mechanisms" describes the systems and programs put in place on a global scale to keep an eye on and protect people's rights. One example of such a system is the special procedures, treaty bodies, and regional human rights courts. The reasons why states should follow human rights treaties are the subject of this research. According to the research, compliance is controlled via constituent-driven domestic compliance mechanisms. These systems are driven by the strong public support for compliance, which makes elected officials more eager to comply. The politicization of human rights law enforcement is the subject of this study's new hypothesis. According to the research, countries often resort to attacks on their enemies on sensitive issues that jeopardize the target regime's power and survival, while chatting with allies about less controversial topics. The research uses data from the UN Universal Periodic Review, a complicated human rights system, to show that states punish human rights violations differently based on their perceived "sensitivity" towards the target state. In this research, we assess the potential for a human rights framework to be established in East Asia. This article reviews previous regional human rights regimes and the contributions of non-governmental organizations (NGOs), delves into the theoretical underpinnings of creating such regimes, and assesses the impact of globalization on human rights. The paper assesses the present situation of human rights in East Asia, the history of efforts to establish regional human rights frameworks in Asia, and the situation of human rights in non-governmental organizations (NGOs) in East Asia.

Disparity between human rights rhetoric and women's rights in practice The purpose of this article is to examine the issue of women's rights under international human rights legislation and determine its efficacy in advancing women worldwide. This article argues that current efforts to formalize international human rights law have fallen well short of the lofty goals they originally set out to achieve, both in terms of implementation and enforcement. The employment of universalist legal frameworks will not increase gender equality and rights, as shown by the discrepancy between rhetoric and reality. The purpose of this research is to find out whether national legislatures are able to prove that human rights treaties signed at the international level are legitimate. Research shows that the cost of formalistic oppressive techniques goes up when

lawmakers use the legislative veto to obstruct legislation. Executives' employment of illegal practices might becoming more costly, leading to less repression. This analysis shows that human rights treaties benefit from having more parliamentary veto actors.

Regional Human Rights Courts

Certain areas' civil and political rights are safeguarded by regional human rights courts. Take the AfCHPR, the IACtHR, and the ECtHR as examples. Protests against governments that infringe upon civil and political rights are permitted by these tribunals. Additionally, they judge, establish precedent, and interpret regional human rights laws.

Treaty Bodies

Treaty bodies are established by agreements such as the ICCPR and the CAT, which stand against torture. Members of these groups are impartial specialists whose job it is to keep an eye on how well each state is carrying out its obligations under treaties. Their duties include evaluating national reports, fostering positive relationships with countries, offering suggestions, and providing reliable interpretations of treaty provisions.

Domestic and transnational mobilization

Human rights mobilization and advocacy on a global and national scale is the focus of the second mechanism discussed in this article. Liberal notions on mobilisation and domestic politics form the basis of this mechanism. Theories put forth by Neumayer (2005) ^[13], Hafner-Burton and Tsutsui (2005) ^[7], and Simmons (2009) ^[18] all center on the idea that domestic institutions, like domestic courts, and the mobilization of domestic advocacy groups, NGOs, and political parties can influence governments to alter their behavior. Policy changes may not always have to be preceded by, or even be contingent upon, international pressure. The backing and resonance of people at home is vital to this transformation (Gourevitch 1978: 911; Putnam 1988: 429-430) ^[6, 14]. "To secure such compliance by convincing domestic government institutions, directly and through pressure from private litigants, to use their power on its behalf" was the main point of discussion for Helfer and Slaughter when discussing the capacity of a supranational tribunal (Helfer and Slaughter 1997: 278) ^[9]. Human rights organizations "coopt" local players, according to Moravcsik, who then exert pressure "from within" their governments. A policy shift may result from a realignment of domestic power dynamics brought about by changes in international norms and institutions, which in turn may cause a shift in the alliances and calculations that underpin government policy (Moravcsik 1995) ^[12]. In a similar vein, Alter ruled that international courts have the potential to serve as "tipping point actors" by providing resources to groups who advocate for compliance. By doing so, they may shift political power in the direction of policies that are consistent with global standards (Alter 2011) ^[11]. According to Börzel and Risse (2000) ^[2], Schimmelfennig and Sedelmeier (2004) ^[17], and Hafner-Burton (2013) ^[8], domestic players might gain an advantage over their opponents by gaining access to more resources via the norms and pronouncements of international tribunals.

International norms and institutions, according to Dai's idea of domestic compliance constituency as "decentralised enforcers" (Dai 2005 and 2013) ^[5], may provide domestic actors a focal point, giving them more influence and legitimizing their demands. Simmons' theory of domestic politics on human rights treaty compliance as "a tool to support political mobilization" (Simmons 2009: 135, see also Hillebrecht 2014b) ^[18] is reflected in this as well.

Additionally, the mobilization method is based on literature on international human rights activism, much of which is constructivist. The five-stage spiral model of human rights change proposed by Risse, Ropp, and Sikkink provides the most extensive analysis. One way in which people's identities, interests, and actions change is through a process known as "norms socialization," which is essentially "the process by which principled ideas held by individuals become norms in the sense of collective understandings about appropriate behavior" (Risse and Sikkink 1999: 10) ^[16]. Transnational human rights pressures, policies, and, most importantly, advocacy networks determine the dissemination and domestic change in regard to human rights, according to the spiral model. International and local human rights NGOs, political parties, academics, media, and international institutions are all part of these networks (Keck and Sikkink 1999). Keck and Sikkink's "boomerang effect," which explains how non-governmental organizations (NGOs) and other domestic compliance constituencies seek foreign financing and form transnational networks to exert pressure on their own nations, is included into the model. Thanks to their global connections, they are able to influence the conversation by bringing fresh perspectives, standards, and discourses to the table, while also increasing the volume and intensity of their demands (Risse and Sikkink 1999: 18; Keck and Sikkink 1999: 90 and 93) ^[16, 11]. Both rationalist and constructivist causal processes often work in tandem, as shown by Risse and Sikkink's spiral model (Börzel and Risse 2000: 2; Raustiala 2000: 399; Checkel 2001: 581) ^[2, 15, 4]. The two logics working together in this way is consistent with what Checkel calls "social sanctioning" (2001: 558). To put further pressure on policymakers to do a cost-benefit analysis, domestic actors may use international standards as "an additional tool" or "an additional weapon for shaming" (Checkel 2001: 569) ^[4].

Domestic legal orders and the legal effects of treaties

As we saw in the previous section, various international courts and supervisory organs have issued pronouncements regarding the general requirements that domestic law must follow when interpreting treaties' internal legal effect. In this section, we will examine the opposite side of the coin, namely the various domestic approaches to this issue. Treaties' impact on domestic law is an important and rapidly expanding domestic constitutional issue, and with more than 190 states in the globe, there will obviously be a lot of diversity. But there are two main schools of thought when it comes to constitutional systems; one class of systems automatically incorporates certain types of treaties into domestic law, while the other does not. This fundamental contrast will be further explained by providing a high-level outline of the strategy used by the original member states of the European Union and the first group of newcomers. In Chapter II, we shall examine the Treaty of Rome's

provisions pertaining to the legal consequences of foreign agreements in the EU legal system. The attitude of the founding Member States may provide the most insight into what the drafters may have meant with these articles. In contrast to the founding Member States' dualist stance, the initial wave of newcomers embraced a constitutionalist stance. Why is this important? Well, it's because these countries' jurisprudence on the legal effects of international agreements was developed during the time they acceded. So, the judges on the ECJ were deeply rooted in their unique constitutional traditions and had to deal with government submissions on the same issues. By comparing and contrasting the two schools of thought in this way, the next chapter may better explain how the ECJ's core jurisprudence on the constitutionality and legal consequences of EU agreements affects home legal systems.

The domestic judicial determination of the direct effect of treaty norms

The significance of the domestic determination of the 'direct impact' of treaties and treaty provisions is crucial to comprehend the legal implications of treaties in domestic legal regimes due to their automatic incorporation. Courts often have to meet a threshold criterion before they may use a treaty for purposes other than providing interpretation. Whatever the case may be, courts, academics, and practitioners often use the terms "direct effectiveness," "domestically applicable," "directly applicable," and "self-executing" to describe these criteria.

Because of the weight that direct impact has in Europe as a result of ECJ case law, it is the word that will be used throughout this section. Since the concept of "direct effect" is controversial under EU law, its application here is not meant to be completely synonymous with that context. Still, much as in EU law, the direct impact here does not include trying to interpret a national legal norm so that it conforms to the treaty norm. In European Union law, this is sometimes referred to as the concept of "indirect effect" or the idea of consistent interpretation. That a treaty may affect domestic law in this way is an important but often overlooked facet of its potential influence.

The direct effect of a treaty provision, as understood in a more technical sense, refers to legal impacts other than the indirect one of a treaty provision being used to affect the interpretation of a provision of national law. This, however, is to be differentiated from such an impact. The following is an incomplete list of examples: domestic courts directly interpreting treaty provisions to provide individual rights; using a treaty provision directly, even if the provision does not provide individual rights, so that it is used instead of domestic regulations that are conflicting with it; examining and, if necessary, removing domestic regulations that are incompatible via the use of a treaty provision.

For these kinds of "direct legal effects" in legally binding decisions where treaties have been automatically integrated, domestic courts often analyze whether they think the treaty or a pertinent treaty provision meets this minimum standard. While the need that treaties meet this standard was first imposed by the courts, it has now been incorporated into many constitutional texts and expressed in a single legislative text dealing with treaty law. In constitutional systems that allow for automatic treaty incorporation,

lawmakers and the executive branch have both removed this decision-making power from the courts in specific instances by stating in the approval Act that the treaty or its provisions will not have direct effect.

The substance of this threshold test is where the real complexity begins; although different constitutional systems have agreed on a common name for it, the standards used to determine the direct effectiveness of a treaty or treaty provision differ across systems and courts, even within the same legal orders, and have diverged over time. Therefore, not only may courts in other nations arrive at different verdicts regarding the same treaties, but even courts within the same nation have gone their own ways in reaching these verdicts.

Both subjective and objective criteria are often used, however they are often classified differently. In most cases, the parties' intentions are seen to be at the heart of the subjective component. The sought-after purpose is expressed differently in various courts around the globe and even within the same nation. There are many terms used to describe what courts are supposedly searching for when deciding whether a treaty "imposes obligations on individuals" or "confers subjective rights," or if it establishes "private rights," "private rights of action," or a "cause of action."

Domestic law ratification and incorporation, countries' human rights treaty ratification processes

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The treaty must next be reviewed and approved by the domestic legal system of each country. As a result of their unique constitutional frameworks and legal systems, different countries use this strategy in different ways. Most of the time, you'll need the help of relevant government agencies, advice from attorneys, and sometimes even approval from lawmakers. Prior to a country's official ratification or accession to a treaty, it is common for that nation to conduct a thorough assessment and then approve it. Governments publicly pledge their support for a treaty when they send the ratification document to the depositary, which is usually an international agency like the UN. The formal procedure known as "accession" allows a state that did not originally sign the convention to become a member of it. The treaty's terms are made into domestic law after a nation accedes or ratifies to them, making them legally binding. In order to fulfill its obligations under the treaty, the government must ensure that its policies, regulations, and practices are in line with its promises. When a country ratifies an international human rights treaty, it shows that it is willing to uphold these treaties within the framework of international law.

A typical term for the organization that receives a country's ratification or accession document is the depositary of the treaty. When a country makes this deposit, it is formally acknowledging that it has accepted the treaty and is thereby becoming a party to the treaty. As part of the treaty's requirements for a monitoring agency or committee, the nation in question may be required to provide reports on a

regular basis outlining the steps it has taken to comply with the treaty's provisions and protect the rights granted by it. Independent experts make up the treaty bodies tasked with overseeing and executing international accords. The treaty's commitment to a country is assessed by these groups, which then provide recommendations to increase compliance. Consistent reporting, discussion, and action is required to meet treaty body recommendations. This level of involvement is essential for promoting accountability and protecting human rights.

The official approval of a treaty by several countries is accompanied by interpretative remarks or reservations. By adding a reservation, a country may change its obligations inside a treaty, and by making a declaration, it can clarify certain parts of the treaty. In order to determine if these statements and reservations are compatible with the treaty's basic principles and purposes, the treaty's goals will be used. A nation's dedication to upholding international human rights standards is shown via the ratification process. The possibility of a government declining or withdrawing from such an agreement does exist, albeit it is rare. There is usually a formal mechanism for a country to withdraw its support from a treaty.

Human rights treaties' applicability and justice

Because of fundamental differences in constitutional frameworks and legal systems, the degree to which domestic courts may directly apply human rights treaties differs greatly among nations. It is more likely that human rights accords will be implemented by countries that adopt a monist legal system. The domestic laws of a ratifying country will be amended to conform to the provisions of the international human rights treaty. Thus, citizens of that country will be able to directly use local courts to assert and defend their rights. This approach is shown by the constitutions of two countries, South Africa and Germany, which place utmost priority on international law and permit the adoption of international treaties into state law.

Human rights treaties within the geographical bounds of states with a dualist legal system sometimes need the promulgation of domestic legislation to provide instant effect. Consequently, even after ratification, local courts may find it difficult to execute treaty commitments. On the other hand, they must go through a process of "domestication," which usually entails getting the green light from the relevant governing body and then making their way through their legislative agendas. Dualist administrations, such as those in the UK and Australia, push for changes to domestic laws to bring them in line with international accords. While human rights treaties may have an indirect but significant influence on domestic courts acting inside dualist regimes, this influence is nevertheless visible. To ensure that their decisions are in conformity with the terms of relevant treaties, U.S. courts may adopt a reading of the law that is consistent with universally acknowledged human rights principles. A jurisprudential framework may be gradually put in place to effectively incorporate treaty notions into domestic law. Even in places where human rights accords do not have immediate direct application, this procedural process allows their inclusion into domestic court verdicts.

The norms of human rights treaties may not be directly

applicable in domestic courts when governments ratify them with reservations or declarations. Certain treaty sections may have restricted effect inside a nation due to reservations or declarations. When interpreting and applying the treaty, domestic courts must take these assertions and reservations into consideration, because they affect the speed with which domestic legal proceedings may enforce treaty commitments. In determining whether a treaty is immediately enforceable, supervisory authorities with jurisdiction over treaty compliance for example, the Human Rights Committee under the ICCPR have substantial impact. The decisions made by international organizations may have an indirect impact on local courts in countries where people can take their complaints to a higher level. Domestic courts have the discretion to consider the findings and recommendations of these bodies where human rights treaty breaches are suspected. A country's constitutional provisions, legislative enactments, and judicial interpretations are among the factors that determine the degree to which domestic courts may directly apply human rights treaties. A legislative method is often used by most states to make treaties legally binding. Nonetheless, treaties have direct relevance inside the domestic legal system of a number of nations. Human rights accords may have a substantial impact on domestic judiciary judgments even in dualistic political systems, helping to bring international human rights ideals into the national environment in a more steady and methodical way.

Conclusion

The impact of international human rights treaties on domestic legal systems plays a pivotal role in the protection and preservation of human rights on a global scale. The significance of these treaties lies in their establishment of fundamental principles for the global safeguarding of human rights. Various nations employ distinct techniques when it comes to the integration of treaties into their domestic legal systems, namely the monistic and dualism approaches. Consequently, this impedes the effective implementation of rights derived from international treaties inside domestic judicial systems. State judiciaries play a crucial role in facilitating the alignment of international human rights standards with local law systems through the provision of legally enforceable interpretations and implementations. In addition, the reporting mechanisms implemented by the treaties facilitate enhanced levels of openness and accountability, as they enable external observers to evaluate a state's adherence to its treaty obligations. In an era characterized by growing interdependence among individuals, the significance of international treaties as crucial mechanisms for safeguarding human rights, attaining justice, and fostering a more equal global society persists.

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