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International human rights: a regime analysis

Jack Donnelly

International regimes is the current “hot” topic in the study of international relations, especially international organization and political economy.¹ Although most discussions restrict regime analysis to economic issues, I shall examine the issue of international human rights in order to illustrate the utility of the concept of international regimes in noneconomic contexts.² In addition, I shall survey and present a preliminary analysis of the creation, evolution, and current state of international human rights regimes.

1. International regimes

“International regimes are defined as principles, norms, rules and decision-making procedures around which actor expectations converge in a given

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1. This status was attested to and spurred by the Spring 1982 special issue of *International Organization* 36.

2. This is not, however, the first published application of the concept of international regimes to the area of human rights. That distinction, I believe, goes to John Gerard Ruggie, “Human Rights and the Future International Community,” *Daedalus* 112 (Fall 1983), pp. 93–110. See also Nicholas G. Onuf and V. Spike Peterson, “Human Rights from an International Regimes Perspective,” *Journal of International Affairs* 38 (Winter 1984), pp. 329–42, for an interesting, if extremely idiosyncratic, discussion. For perhaps the earliest application of the concept of regimes to human rights, see David P. Forsythe, “A New Human Rights Regime: What Significance?” (Paper presented at the Annual Conference of the International Studies Association, March 1981). For a recent analysis largely complementary to the one developed in the following two sections, though without the explicit focus on regimes, see Forsythe, “The United Nations and Human Rights, 1945–1985,” *Political Science Quarterly* 100 (Summer 1985), pp. 249–70.

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issue-area.”³ This “standard” definition, offered by Stephen D. Krasner, is well grounded in more established usage.

In politics, uses of *regime*—“a manner, method or system of rule or government; a system or institution having widespread influence or prevalence” (*Oxford English Dictionary*)—are common in English, as well as in French, where the English word originated. They also preserve the central sense of the Latin root, *regimen*, “rule, guidance, government, command.”

The French “*régime*” also refers to a system of legal rules or regulations (most commonly, but not exclusively, relating to conjugal property). This usage has become well established in international law. For example, in the *Trail Smelter Case* (3 U.N.R.I.A.A. 1905, 1938 [1949]), submitted for arbitration by Canada and the United States half a century ago, a central issue was establishing a “regime,” a system of principles, rules, and procedures, for regulating the discharge of noxious fumes by the offending smelter. In the recently concluded negotiations over the law of the sea, the concept was regularly used. And in the *Hostages Case* (I.C.J. 3 [1980]) the International Court of Justice held that “the rules of diplomatic law, in short, constitute a self-contained regime.” The newly popular idea of international regimes can be seen as an extension of such uses.⁴

In contemporary English, however, “regime” tends to be used pejoratively and to refer to national (especially foreign) governments or social systems. Although the rarity of pejorative connotations in international relations has led at least one critic to suggest that the term has been misapplied,⁵ such usage merely reflects well-known structural differences between national and international politics.

Because national political order usually can be taken for granted, moral or ideological evaluations of particular national systems are common and perhaps even salutary. “Regime” refers to the entire social and political sys-

3. Stephen D. Krasner, “Structural Causes and Regime Consequences: Regimes as Intervening Variables,” *International Organization* 36 (Spring 1982), p. 185. Compare Robert O. Keohane and Joseph S. Nye, *Power and Interdependence: World Politics in Transition* (Boston: Little, Brown, 1977), p. 19, where regimes are defined as “governing arrangements that affect relationships of interdependence,” or, more precisely, “networks of rules, norms, and procedures that regularize behavior and control its effects” in an issue-area.

4. As a matter of historical fact, however, political economy seems to be the principal source of the introduction of the concept into (American) political science. We can also note that “regime” has become a standard term in economics in the last fifteen years, especially in reference to foreign-exchange and foreign-trade policies. The first important use in the field of international organization was John Gerard Ruggie, “International Responses to Technology: Concepts and Trends,” *International Organization* 29 (Summer 1975), pp. 557–84, while Keohane and Nye, *Power and Interdependence*, are most responsible for bringing the term into the mainstream of the literature. On the neglect of the legal bases of the concept in recent discussions, compare Friedrich Kratochwil, “On the Relevance of International Law,” *Journal of International Affairs* 37 (Winter 1984), p. 344.

5. Susan Strange, “*Cave! hic dragones*: A Critique of Regime Analysis,” *International Organization* 36 (Spring 1982), p. 486.

tem, which makes its use in such contexts seem natural. And since most wholesale appraisals tend to be negative—one's own faults, and those of friends and allies, tend to be presented as subject to incremental remedy—pejorative uses predominate. Even at the national level, however, "regime" may be used in positive evaluations, as in praise of a new "revolutionary regime."

In international politics, by contrast, anarchy is the rule. International regimes—principles, norms, rules, and decision-making procedures governing an issue-area—are one way to provide elements of "order," structured regularity despite anarchy. Such islands of order in the sea of anarchy tend to be relatively rare and highly valued—which explains the generally neutral, or even positive, connotations of "regime" in international settings.

What forms of international order merit consideration as regimes? Krasner distinguishes among three.⁶ "Structuralists" (e.g., realists and some neo-Marxists) see power as the only consistently important fundamental cause of international behavior, making regimes perhaps real, but at best epiphenomenal. At the other extreme, "Grotians" see regimes everywhere:⁷ "for every political system . . . there is a corresponding regime"; "a regime exists in every substantive issue-area where there is discernibly patterned behavior."⁸ "Modified structuralists," or neorealists, adopt an intermediate—but not a compromise—position.⁹

For neorealists, regimes are important aspects of contemporary international politics, but not all regularities arise from regimes. International regimes exist (only) when states, in order to avoid the costs of uncoordinated national action, are able to agree (more or less explicitly) on norms or

6. Krasner, "Structural Causes," pp. 189–94.

7. The position Krasner calls "Grotian" in fact has little apparent connection with the work of Hugo Grotius. As Krasner does not explain, or even cite a source for, the label, one must assume that he has adopted it, with considerable modification, from Martin Wight, "Western Values in International Relations" and Hedley Bull, "The Grotian Conception of International Society," in Herbert Butterfield and Martin Wight, eds., *Diplomatic Investigations* (Cambridge: Harvard University Press, 1966). Even Bull, however, recognizes the ambiguous relation of his (much better grounded) label "Grotian" to the views of Grotius. See Bull, *The Anarchical Society* (New York: Columbia University Press, 1977), chap. 2, n.3, and "Grotian Conception," p. 51. By the time we reach Krasner's usage, it is hard to see much of Grotius at all. For Grotius' own natural law views of international law and society, see his *De Jure Belli ac Pacis*, trans. Francis W. Kelsey (Oxford: Clarendon, 1925), especially the "Prolegomena."

8. Donald J. Puchala and Raymond F. Hopkins, "International Regimes: Lessons from Inductive Analysis," *International Organization* 36 (Spring 1982), pp. 246, 247. Compare Oran R. Young, "Regime Dynamics: The Rise and Fall of International Regimes," *International Organization* 36 (Spring 1982), pp. 277–97; and Oran R. Young, "International Regimes: Problems of Concept Formation," *World Politics* 32 (April 1980), pp. 331–56.

9. See especially Arthur A. Stein, "Coordination and Collaboration Regimes in an Anarchic World," *International Organization* 36 (Spring 1982), pp. 299–324, and Robert O. Keohane, "The Demand for International Regimes," *International Organization* 36 (Spring 1982), pp. 325–55.

procedures to regulate their interactions. Such agreements are especially likely in an environment of complex interdependence, characterized by multiple channels of interaction, the absence of a clear hierarchy of issues, and the infrequent use of force by the strong in most issue-areas.¹⁰

The structuralist dismissal of regimes raises largely empirical questions that are well beyond the scope of this article, although demonstrating the heuristic or explanatory utility of regime analysis for human rights (and other noneconomic issue-areas) would count strongly against the structuralist perspective. The differences between "Grotian" and neorealist perspectives, however, are of considerable conceptual importance.

Because the mere existence of an identifiable issue is almost certain to guarantee "discernibly patterned behavior," "regime" for the Grotian means little more than "issue-area" or "political subsystem." At best, this wastes a useful term and pointlessly adds to our already overstocked store of jargon. More serious, since the "rules" of a Grotian "regime" need be nothing more than an outside observer's description of apparent behavioral regularities, they have no necessary explanatory value.

Neorealist regimes, by contrast, involve regularities that arise only when actors (at least in part) *conform* their conduct to norms and procedures they accept as legitimate. Restricted to issue-areas where behavior is at least partially governed by regime norms and procedures, regimes become causal variables, at minimum, intervening variables between state behavior and deeper structural forces such as power or interest.

Therefore, I shall define "international regime" as "norms and decision-making procedures accepted by international actors to regulate an issue area."¹¹ States (and other relevant actors) accept certain normative or procedural constraints as legitimate, thereby partially replacing "original" national sovereignty with international authority. Although sovereignty thus remains the central ordering principle of the society of states, regimes require limited renunciations of sovereign national authority in an issue-area in order to reduce the costs of international anarchy.

10. Keohane and Nye, *Power and Interdependence*, pp. 19–29 and passim. Compare Ernst B. Haas, "Why Collaborate? Issue-Linkage and International Regimes," *World Politics* 32 (April 1980), pp. 357–405, and Haas, "Turbulent Fields and the Theory of Regional Integration," *International Organization* 30 (Spring 1976), pp. 173–212.

11. Cf. Haas, "Why Collaborate?" p. 358. This definition is consistent with, but somewhat narrower than, Krasner's, which permits a "Grotian" reading. I should also note that my definition excludes, implicitly (or, if necessary, by stipulation), claims that a regime exists in the presence of "norms" such as "outcomes are the result of ad hoc bargains based on relative power." (Such situations are likely to involve relatively predictable regularities and thus could be classified as regimes by Grotians.) Thus in the case of international human rights, for example, there was no regime in 1914; no internationally accepted norms or procedures limited state sovereignty in this issue-area.

	National Decisions	Promotion or Assistance	Information Exchange	Policy Coordination	International Monitoring	International Decisions
International Norms	Strong Declaratory		Strong Promotional		Strong Implementation	Strong Enforcement
International Standards with National Exemptions					Weak Implementation	
International Guidelines	Weak Declaratory		Weak Promotional			Weak Enforcement
National Standards	No Regime					
	Declaratory Regime	Promotional Regime	Implementation Regime	Enforcement Regime		

FIGURE 1. *Types of international regimes*

2. Types of international regimes

International regimes are not an all or nothing matter, however; the transfer of authority may take a variety of forms, and its significance may be of varying degrees. Figure 1 provides a rough typology of regime types.

Regime norms, standards, or rules may run from fully international to entirely national; there are roughly four principal types.¹²

- Authoritative international norms: binding international standards, generally accepted as such by states.
- International standards with self-selected national exemptions: generally binding rules that nonetheless permit individual states to “opt out,” in part. (For example, states may choose not to ratify a treaty or to ratify with reservations.)
- International guidelines: international standards that are not binding but are nonetheless widely commended by states. Guidelines may

12. Although I use these terms more or less interchangeably, Krasner, “Structural Causes,” p. 186, distinguishes “principles” from “norms”—“beliefs of fact, causation, and rectitude” from “standards of behavior defined in terms of rights and obligations”—and treats “rules” as “specific prescriptions or proscriptions for action,” which he considers as more akin to procedures than “principles” or “norms.” Although Krasner puts this distinction to good use in his discussion of regime change, it seems to me rather arbitrary, especially in distinguishing “norms” from “rules” largely by the greater specificity of “rules.” In ordinary usage, “rules” has at least as wide a range as norms; consider not only often loose “rules of the game” but also “moral rules” à la Kant. In the interest of clarity, however, I shall at least in part defer to Krasner’s authority and use the relatively neutral term “norms” to refer to the full range of a regime’s normative principles (in contrast to its decision-making procedures). For my purposes, however, Krasner’s distinction between principles, norms, and rules is of no interest or importance.

range from strong, explicit, detailed rules to vague statements of amorphous collective aspirations.

- National standards: the absence of substantive international norms.¹³

Three principal types of international decision-making activities (in addition to norm creation) can be distinguished—*enforcing* international norms, *implementing* international norms, and *promoting* their acceptance or enforcement—and at least six important types of regime decision-making procedures should be distinguished.

- Authoritative international decision making: institutionalized, binding decision making, including generally effective enforcement powers.
- International monitoring: formal international review of state practice but no authoritative enforcement procedures. Monitoring activities can be further categorized in terms of the powers allowed to monitors to carry out independent investigations and make judgments of compliance with international norms.
- International policy coordination: regular and expected use of an international forum to achieve greater coordination of national policies but no significant international review of state practice.
- International information exchange: obligatory or strongly expected use of international channels to inform other states of one's practice with respect to regime norms.¹⁴
- International promotion or assistance: institutionalized international promotion of or assistance in the national implementation of international norms.
- National decision making: full state sovereignty in decision making for the issue-area.

International *enforcement* activities involve international decision making and the stronger forms of international monitoring. International *implementation* activities include weaker monitoring procedures, policy coordination, and some forms of information exchange. *Promotional* activities may involve international information exchange, promotion, or assistance, and perhaps even weak monitoring of international guidelines.

These categories apply as well to regimes, which may be classified as

13. An international regime with purely national standards is logically conceivable, although rather unlikely; significant international decision making could result in a collective decision to permit fully national standard setting. Such a "procedural regime," in its strongest form, would occupy the bottom right corner of Figure 1.

14. Clearly, "higher" types of decision making involve information exchange as well. In fact, each "higher" type generally encompasses the powers available in the "lower" types, although the relative strengths of policy coordination, promotion, and information exchange may vary with issue-area. For a similar categorization of forms of international decision making see Haas, "Turbulent Fields," p. 201, and Ruggie, "Responses to Technology," pp. 570–74.

promotional, implementational, and enforcement (each category can be further described as relatively “strong” or “weak”). Finally, *declaratory* regimes involve international norms but no international decision making (except in the creation of norms).

A regime’s “strength” can be said to increase, roughly, with its normative and procedural “scope”; that is, as we move out from the bottom left corner (no regime) in Figure 1. But paper formalities are far less important to a regime’s strength than the practical realities of its acceptance by states and its coherence,¹⁵ that is, the extent to which states in fact abide by and make use of the norms and procedures to which they have committed themselves and the extent to which the parts of the regime operate together as a smoothly functioning whole.

Although the notion of acceptance is simple and obvious, coherence has at least three important dimensions. Normative incoherence may arise from inconsistencies between individual norms (either outright incompatibility or vagueness that allows for inconsistent interpretation) or from significant “logical” gaps in the overall structure of norms, especially loopholes that effectively cancel other norms. Procedural incoherence may arise from either inconsistent or incomplete decision-making procedures or structures. Finally, incoherence, in a somewhat extended sense, may arise from a “mismatch” between norms and procedures which allows the use of established decision-making procedures to undermine substantive norms.

Incoherence may be inadvertent, but it is much more likely to be planned, a diplomatic codification of unresolved conflicts. And lack of acceptance of formally agreed-to norms or procedures is a standard strategy of states that feel a need or desire to participate in a regime, but only a weak regime. Therefore, the nature and strength of a regime cannot be understood from an analysis of legal texts and constitutional structures alone but requires examining how states (and other relevant actors) use and operate within the formally specified norms and procedures; the real norms and procedures of a regime arise from the practice of its participants, which rarely is unrelated to but often is not exactly what is specified in the legal texts.

3. The international human rights regime

Human rights are regularly addressed today in bilateral foreign policy and in a variety of multilateral schemes. In this section and that which follows, I shall consider only the “universal” or UN-centered regime, which for convenience I shall refer to as “the” international human rights regime. Regional and single-issue regimes are discussed in section 5. Bilateral policy and human rights policy in nonhuman rights forums (e.g., development

15. Compare Ernst B. Haas, “Regime Decay: Conflict Management and International Organizations, 1945–1981,” *International Organization* 37 (Spring 1983), p. 193.

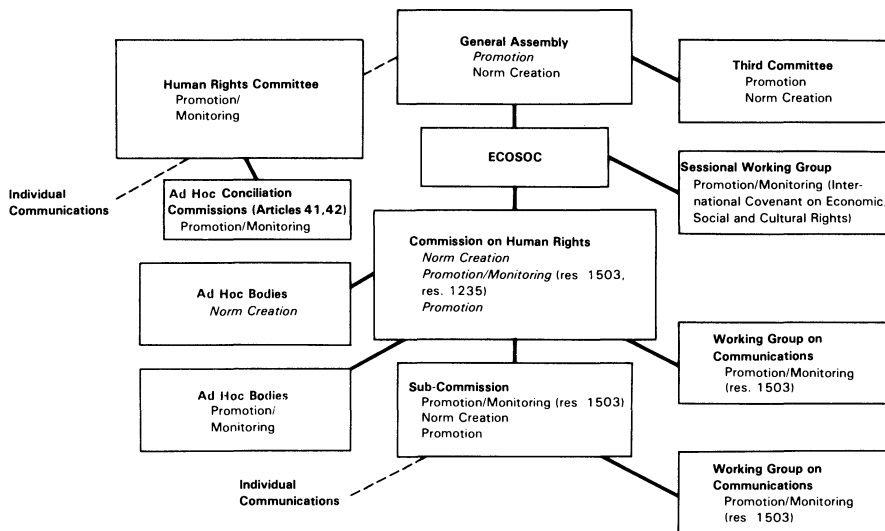


FIGURE 2. *Major bodies in the international (UN) human rights regime*

Note. All the major bodies referred to in this section, and their primary functions, are presented in this figure, nominally arranged according to “constitutional” relationships of authority and subordination. The most important point to note is the size of the rectangle allotted to each body, which represents a judgment of its overall importance in the regime. Italicized functions indicate a particularly important role for the body in that area.

banks) are subjects beyond my scope here. Figure 2 presents a schematic diagram of the UN’s major human rights bodies and their functions, using the typology developed above.

Regime norms

The most important statements of the norms of the international human rights regime are the Universal Declaration of Human Rights, adopted on 10 December 1948 by the UN General Assembly, and the International Human Rights Covenants, which were opened for signature and ratification in 1966 and came into force in 1976.¹⁶ The rights proclaimed in the Universal Declaration—the best-known, most general, and most widely accepted statement of the regime’s norms—are usually divided into civil and political rights and economic, social, and cultural rights, but a more useful and precise classification is possible.

16. UN resolutions 217A (III), 2200 (XXI). They are widely reprinted, for example, in Louis B. Sohn and Thomas Buergenthal, eds., *Basic Documents on International Protection of Human Rights* (Indianapolis: Bobbs-Merrill, 1973); Walter Laquer and Barry N. Rubin, eds., *The Human Rights Reader* (New York: New American Library, 1979); *Human Rights: A Compilation of International Instruments* (New York: UN, 1978); and Ian Brownlie, ed., *Basic Documents on Human Rights*, 2d ed. (New York: Oxford University Press, 1981).

(1) *Personal rights*, including rights to life; nationality; recognition before the law; protection against cruel, degrading, or inhumane treatment or punishment; and protection against racial, ethnic, sexual, or religious discrimination. (Articles 2–7, 15)

(2) *Legal rights*, including access to remedies for violations of basic rights; the presumption of innocence; the guarantee of fair and impartial public trials; prohibition against *ex post facto* laws; and protection against arbitrary arrest, detention, or exile, and arbitrary interference with one's family, home, or reputation. (Articles 8–12)

(3) *Civil liberties*, especially rights to freedom of thought, conscience, and religion; opinion and expression; movement and residence; and peaceful assembly and association. (Articles 13, 18–20)

(4) *Subsistence rights*, particularly the rights to food and a standard of living adequate for the health and well-being of oneself and one's family. (Article 25)

(5) *Economic rights*, including principally the rights to work, rest and leisure, and social security. (Articles 22–24)

(6) *Social and cultural rights*, especially rights to education and to participate in the cultural life of the community. (Articles 26, 27)

(7) *Political rights*, principally the rights to take part in government and to periodic and genuine elections with universal and equal suffrage (Article 21), plus the political aspects of many civil liberties.

This list is further elaborated in two International Human Rights Covenants and a variety of single-issue treaties and declarations on topics such as genocide, political rights of women, racial discrimination, and torture. Although these later documents occasionally deviate from the Universal Declaration—for example, the Covenants prominently add a right to self-determination and delete the right to property—for the most part they elaborate or extend rights proclaimed in the Universal Declaration. Therefore, we can say that the regime's norms are quite coherent. Furthermore, it is generally agreed that these rights form an interdependent and synergistically interactive system of guarantees, rather than a menu from which one may freely pick and choose.¹⁷

17. For one rather simple demonstration of the deeper philosophical basis of this coherence, in the form of an argument that international human rights norms arise from the principles of personal autonomy and equality, see Rhoda Howard and Jack Donnelly, "Human Rights, Human Dignity and Political Regimes," *American Political Science Review* (forthcoming). The only significant exceptions to the claim that all classes of human rights are interdependent are (1) arguments that are still occasionally made that economic and social rights are not truly human rights (Maurice Cranston has made something of a second career out of rehashing this argument for twenty years now; for his latest version, see "Are There Any Human Rights?" *Daedalus* 112 [Fall 1983], pp. 1–17); and (2) a tendency among many Third World and Soviet-bloc commentators to undercut their professions of the interdependence of all human rights by claims of the priority of economic and social rights. I examine and criticize these two (almost mirror-image) deviations in Jack Donnelly, *The Concept of Human Rights* (London: Croom

The standard practice of states is to speak of, and thus in a certain sense treat, the norms of the Universal Declaration and the Covenants as international norms (with limited, self-selected national exemptions); professions of adherence to these norms and charges of failure to live up to them are regular features of contemporary international politics. Although domestic practice regularly falls far short of international profession, these rights are widely viewed as more or less binding international standards. Each state, however, retains almost complete autonomy in *implementing* these norms at the national level; regime norms are fully internationalized, but decision making remains largely national.

Decision-making procedures

The central *procedural* principle of the contemporary international human rights regime is national jurisdiction over human rights questions. The Universal Declaration, though widely accepted as authoritative, is explicitly (only) “a standard of achievement,”¹⁸ and each state retains full sovereign authority to determine the adequacy of its achievements. The Covenants do impose strict legal obligations but on only those states—currently about one-half—that voluntarily accept them by becoming parties to the treaties. Furthermore, as we shall see, national performance is subject to only minimal international supervision.

The regime, however, does verge on authoritative international standard setting or norm creation. States show not merely a willingness but even a desire to use the United Nations, especially the Commission on Human Rights, to create and elaborate human rights norms, and the resulting declarations and conventions usually are widely accepted. These norms do allow self-selected national exemptions—declarations are not strictly binding, while treaty obligations not only must be voluntarily accepted but also may be accepted with reservations—and consensual negotiating, which allows

Helm, 1985), chap. 6, and “Recent Trends in UN Human Rights Activity: Description and Polemic,” *International Organization* 35 (Autumn 1981), pp. 633-55. On the interdependence of all human rights, considered from a more practical point of view, see Rhoda Howard, “The ‘Full-Belly’ Thesis: Should Economic Rights Take Priority over Civil and Political Rights?” *Human Rights Quarterly* 5 (November 1983), and, more briefly, Jack Donnelly, “Human Rights and Development: Complementary or Competing Concerns?” *World Politics* 36 (January 1984), pp. 279-82. One reason that I prefer the sevenfold division of rights presented above—aside from its greater accuracy and specificity—is that the conventional division into civil and political rights and economic and social rights too easily lends itself to misguided or partisan arguments for priority of one set or the other.

18. The Universal Declaration may plausibly be argued to have attained the status of customary international law. Any legal force it has, however, rests on state practice (which is discussed below) and is entirely independent of the fact that it is a UN resolution. Furthermore, as I illustrate in considerable detail below, this normative force has not been translated into strong procedures.

any major group of states an effective veto, has limited the output of new instruments. Nonetheless, norm creation has been largely internationalized, and the extent, specificity, and acceptance of international human rights norms continue to increase.

There has even been significant acceptance by states of an international role in promoting national implementation of international norms. For example, the General Assembly regularly encourages states to ratify the Covenants and adhere to other international instruments, the United Nations Center for Human Rights and other bodies regularly undertake a variety of informational, educational, and publicity activities, as well as advisory services, such as seminars, fellowships, and consultations. As we shall see below, much of the most important work of the Commission on Human Rights is promotional as well. And national foreign policies, both bilateral and multilateral, in the First, Second, and Third Worlds alike, regularly involve efforts to promote the national implementation of international human rights standards.

But widespread, vociferous, and usually effective claims of national sovereignty meet all efforts to move from general exhortations even to observations and recommendations addressed to the practice of most particular states, revealing the ultimate weakness of the regime. Because its norms are strong—that is, both coherent and widely accepted—the overall strength of the international human rights regime rests on its decision-making procedures. But procedures beyond norm creation, promotion, and information exchange are largely absent. The Universal Declaration established a relatively strong declaratory regime, but in the nearly forty years since then, although the regime has grown in strength, only rudimentary, principally promotional procedures have been created.

The Human Rights Committee. The parties to the 1966 International Covenant on Civil and Political Rights “undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights” (Article 40 [1]). These reports are reviewed by the Human Rights Committee, a body of eighteen independent experts.

The Committee’s practice in reviewing reports reflects a narrow reading of its powers:¹⁹ it does not make formal evaluations of or even comments on the compliance or noncompliance of individual states, and its “study” of reports has been restricted to individual review by each member and, most

19. On the general practice of the Committee see Farrokh Jhabvala, “The Practice of the Covenant’s Human Rights Committee, 1976–82: Review of State Party Reports,” *Human Rights Quarterly* 6 (February 1984), pp. 81–106; and Dana D. Fischer, “Reporting under the Covenant on Civil and Political Rights: The First Five Years of the Human Rights Committee,” *American Journal of International Law* 76 (January 1982), pp. 142–53.

important, public questioning of state representatives. This rather haphazard procedure has worked better than might be expected because of the genuine independence of many of the experts and questioning based on information obtained from nongovernmental organizations and other unofficial sources. The Committee's reports, however, have been limited to factual annual reports (plus general promotional comments concerned principally with improving the quality of reports).

The resulting scrutiny of state practice should not be excessively denigrated. Questioning, in open sessions, is often penetrating; the Committee is, for a UN body, remarkably devoid of ideological partisanship; state representatives often are fairly responsive; and the questioning, by diplomatic standards at least, is neither excessively deferential nor merely pro forma. The procedure has even provoked occasional minor changes in national law, and at least a few parties have appeared willing to use their dealings with the Committee as an occasion for a genuine review and reexamination of national laws, policies, and practices.

The reporting procedure, therefore, has provided a fairly widely accepted promotional mechanism. But it involves at most only information exchange and the weakest of monitoring mechanisms. And even the information-exchange procedures are significantly flawed.

The reports of many countries are thorough and revealing. Others are farcical: for example, many Soviet-bloc countries have simply reported that all the enumerated rights were fully implemented before the Covenants were ratified; many reports consist principally of extracts from national constitutions and statutes; and a significant number are simply evasive.²⁰ The Committee has tried, sometimes successfully, to obtain better information, but in the final analysis it is powerless to compel more than pro forma compliance with even this very weak reporting system—and not even that can always be assured, as the report of Zaire, due in 1978 but still not submitted in 1985, despite seven reminders, illustrates. Finally, this reporting procedure applies only to the parties to the Covenant, which numbered eighty in mid-1985. Thus about half the countries of the world are exempt from even this minimal international scrutiny.

The one area where guarded optimism may be appropriate is the Committee's consideration of individual petitions under the Optional Protocol of the Covenant, "the best procedure within the U.N. system for the examination of petitions."²¹ Particular decisions of compliance or noncompliance can be

20. For example, the report of Guinea claimed that "citizens of Guinea felt no need to invoke the Covenant because national legislation was at a more advanced stage" (A/39/40, para. 139). Bulgaria reported that "all the rights and freedoms stipulated in the Covenant were covered in the appropriate national laws" before ratification (A/34/40, para. 112). And 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, para. 108).

21. Ton J. Zuijdwijk, *Petitioning the United Nations* (Aldershot, England: Gower, 1982), p.

made in individual cases, giving the Committee at least moderately strong international monitoring powers, although international enforcement still is impossible.

In its first seven years of operation, through mid-1984, the Committee received 174 communications, with respect to 17 parties to the Optional Protocol. Although 75 were declared inadmissible, discontinued, suspended, or withdrawn, and 44 were still under review, in nearly one-third of its cases the Committee had expressed its views—that is, made a substantive determination on the merits of the case. Even though 39 of these 55 decisions involved a single country, Uruguay,²² the procedure seems to be relatively open and highly independent, and relatively strong as well. The Optional Protocol provides a genuine, if limited, instance of international monitoring, which in at least a few cases has altered state practice.

But only thirty-five countries had accepted the Optional Protocol by mid-1985; that is, only one-fifth of the countries of the world are covered by even this small element of international monitoring of personal, legal, civil, and political rights. Not surprisingly, almost none of those covered are major human rights violators. As a result, relatively strong procedures apply primarily where they are least needed. Unfortunately, this is only to be expected, given that participation is entirely voluntary.²³

The Commission on Human Rights. The Commission on Human Rights, whose central role in norm creation we have already noted, also has important promotional and monitoring functions. Its strongest powers rest on Economic and Social Council (ECOSOC) resolution 1503 (XLVIII) (1970), which authorizes the Commission to investigate communications (complaints) that “appear to reveal a consistent pattern of gross and reliably

361. It should be noted that the Covenant also contains optional provisions (Articles 41–42) for interstate complaints, accepted by eighteen states as of mid-1985, but these have not been and are not likely to be used.

22. See annexes to the annual reports of the Human Rights Committee, 1980–84, UN documents A/35/40, A/36/40, A/37/40, A/38/40, A/39/40. Decisions have also been taken with regard to communications concerning Canada, Colombia, Zaire, Finland, Italy, Madagascar, Mauritius, and Sweden.

23. The International Covenant on Economic, Social and Cultural Rights also requires periodic reports, which are reviewed not by a separate body of experts but by the Sessional Working Group on the Implementation of the International Covenant on Economic, Social and Cultural Rights of the Economic and Social Council. A similar questioning procedure is used, but it is somewhat less rigorous, and the fact that the Covenant is explicitly intended to be implemented progressively rather than immediately (Article 2) effectively precludes any serious attempt at international monitoring. Furthermore, there is no complaint procedure parallel to that of the Optional Protocol to the Civil and Political Covenant. Little secondary literature is available on the activities of the Working Group, but see Kamleshwar Das, “United Nations Institutions and Procedures Founded on Conventions on Human Rights and Fundamental Freedoms,” in Karel Vasak and Philip Alston, eds., *The International Dimensions of Human Rights* (Westport, Conn.: Greenwood, 1982), pp. 333–34, and Dana D. Fischer, “International Reporting Procedures,” in Hurst Hannum, ed., *Guide to International Human Rights Practice* (Philadelphia: University of Pennsylvania Press, 1984), pp. 173–76.

attested violations of human rights."²⁴ The Commission, however, is a body of state representatives, not independent experts; although most Commission members are relatively nonideological (when compared to, say, their counterparts in the Third Committee of the General Assembly), they are still instructed political delegates. Stringent criteria of admissibility limit the cases considered (although certain secondhand information and communications from nongovernmental organizations [NGOs] are admissible).²⁵ And although individuals communicate grievances, the 1503 procedure deals only with *situations* of gross, systematic violations; there are no procedures for investigating, let alone attempting to remedy, particular violations.

Another major drawback is that the entire procedure is confidential until it has been concluded. Although confidentiality may encourage cooperation by states, it may greatly delay the process and largely precludes an activist role for the Commission in the uncovering and spotlighting of violations. The Commission has circumvented some of the strictures of confidentiality by publicly announcing a blacklist of countries being studied; the practices of some twenty-eight countries were examined between 1978 and 1984.²⁶ Although the resulting international notoriety, however slight, may not be entirely negligible, should we commend such ingenuity or bemoan the need to resort to it?

Finally, although the Commission may, with the consent and cooperation of the state in question, appoint a committee to investigate a situation, no such investigation has ever occurred. In the case of Equatorial Guinea the Commission in 1979 instead chose to pursue a public investigation through a special rapporteur, a process less restricted by procedural constraints. In 1980 the Commission concluded its consideration of the treatment of Jehovah's Witnesses in Malawi, which had been frustrated by official non-cooperation, with a resolution that merely expressed the hope that all human

24. For an excellent, thorough discussion of the procedure, see Howard Tolley, "The Concealed Crack in the Citadel: The United Nations Commission on Human Rights' Response to Confidential Communications," *Human Rights Quarterly* 6 (November 1984), pp. 420-62. Tolley's forthcoming book, *The United Nations Commission on Human Rights*, is certain to become the standard source on that body. See also Dinah L. Shelton, "Individual Complaint Machinery under the United Nations 1503 Procedure and the Optional Protocol to the International Covenant on Civil and Political Rights," in Hannum, *Human Rights Practice*. It should be noted that the Commission had been authorized since 1948 to "receive" communications. However, as they could not be discussed or acted on, this "power" was of no practical significance until the 1503 procedure was established.

25. See Antonio Cassese, "The Admissibility of Communications on Human Rights," *Revue des Droits de l'Homme/Human Rights Journal* 5 (1972), pp. 375-93; and Zuijdwijk, *Petitioning the United Nations*, pp. 30-39. The Secretariat initially screens the communications. Before they even reach the Commission, those that are deemed worthy of substantive review are examined by a working group of the Subcommission, then the whole Subcommission, and then a working group of the Commission. See Tolley, "The Concealed Crack," pp. 432-47. For a petition to reach the Commission, therefore, it must present a very strong *prima facie* case, and referral to the Commission "is often interpreted as at least demonstrating that the allegations in a communication have some merit." Shelton, "Individual Complaint Machinery," p. 65.

26. Tolley. "The Concealed Crack." Table 2.

rights were being respected in Malawi. In 1984 a public resolution called for continued consultations between the secretary general and Haiti. And in 1985, the documentation on Uruguay was, with the agreement of the Uruguayan government, opened to public scrutiny.²⁷ But other than these very limited achievements, the public portions of the 1503 procedure have had no apparent impact, although confidential actions almost certainly have had at least a marginal influence on policy in some cases.

The 1503 procedure, therefore, is in practice largely a promotional device, involving some very sporadic and limited monitoring. Given the sensitivity of human rights questions, even this may be of real practical value. Nevertheless, its weakness is evident.

Much the same is true of the Commission's other activities. For example, annual discussions in public meetings of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities, the Commission's own public discussions, under the authority of ECOSOC resolution 1235 (XLII), and a variety of ad hoc procedures have increased general awareness of human rights issues and helped to focus international public opinion on particular violations (e.g., racial discrimination, torture) and the situation in at least a few countries (e.g., Chile). The Commission, along with the Secretariat, also undertakes a variety of public information activities and coordinates and encourages the use of advisory services in the field of human rights.²⁸ But virtually nothing has been achieved in the areas of international implementation and enforcement.

The Commission's one real advantage is that it may look into situations—insofar as it is able to look anywhere—in all countries, not only those party to a particular treaty. Therefore, it is in many ways the procedural core of the international human rights regime.

4. Political foundations of the international human rights regime

The international human rights regime is a relatively strong promotional regime, composed of widely accepted substantive norms, largely internationalized standard-setting procedures, some general promotional activ-

27. For a brief review of the Equatorial Guinea case see Randall Fegley, "The UN Human Rights Commission: The Equatorial Guinea Case," *Human Rights Quarterly* 3 (February 1981), pp. 34–47. An on-site visit did take place, but not under the 1503 procedure and only because the offending Macias Nguema regime had been overthrown. (The rapporteur's report is available as UN document E/CN.4/1371 of 12 February 1980.) On Malawi, Haiti, and Uruguay see Commission decisions 10(XXXVI), 1984/109 and 1985/107 and E/1980/13, E/1984/14 and E/1985/22.

28. For a summary of recent UN public information activity and advisory services see UN documents E/CN.4/1984/23; E/CN.4/1985/9, 16, 30, 31, 32, 36; and Commission resolutions 1985/27, 30, 34.

ity, but very limited international implementation, which rarely goes beyond information exchange and voluntarily accepted international assistance for the national implementation of international norms. There is no international enforcement. Such normative strength and procedural weakness, however, is the result of conscious political decisions.

Regimes are political creations to overcome perceived problems arising from inadequately regulated or insufficiently coordinated national action. Robert O. Keohane offers a useful market analogy: regimes arise when sufficient international “demand” is met by a state (or group of states) willing and able to “supply” international norms and decision-making procedures.²⁹ The shape and strength of an international regime reflect who wants it, who opposes it, and why—and how the conflicting objectives, interests, and capabilities of the parties have been resolved. As Krasner puts it, in each issue-area there are makers, breakers, and takers of (potential) international regimes,³⁰ 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. In this section I shall examine the interaction of supply and demand which has led to the international human rights regime described above.

Prior to World War I, human rights were almost universally viewed as the exclusive preserve of the state; despite occasional references to minimum standards of civilized behavior, there was not even a weak declaratory international human rights regime. In the interwar period, the International Labour Organization (ILO) undertook some minor efforts in the area of workers’ rights, but it was functionally restricted to this one class of rights and its work was of interest primarily to developed, capitalist, liberal-democratic states. The League of Nations’ Minorities System,³¹ the only other significant international human rights activity in this period, was not only restricted to a single class of rights but for the most part covered only those states defeated during or created in the aftermath of World War I. With these very few exceptions, as recently as fifty years ago human rights were not even considered to be a legitimate international concern.

World War II marks a decisive break;³² the defeat of Germany ushered in

29. Keohane, “Demand for International Regimes.”

30. Stephen D. Krasner, “United States Commercial and Monetary Policy: Unravelling the Paradox of External Strength and Internal Weakness,” in Peter J. Katzenstein, ed., *Beyond Power and Plenty* (Madison: University of Wisconsin Press, 1978), p. 52.

31. See C. A. Macartney, *National States and National Minorities* (London: Oxford University Press, 1934), pt. 2; Lucy P. Mair, *The Protection of Minorities* (London: Christophers, 1928); Inis L. Claude, Jr., *National Minorities: An International Problem* (Cambridge: Harvard University Press, 1955); and Julius Stone, *International Guarantees of Minority Rights* (London: Oxford University Press, 1932).

32. John P. Humphrey, in his recent memoir *Human Rights and the United Nations: A Great Adventure* (Dobbs Ferry, N.Y.: Transnational, 1984), appositely titles his second chapter “The Catalyst of the Second World War.” Compare Louis Henkin, “Introduction,” *The International Bill of Human Rights: The Covenant on Civil and Political Rights* (New York: Columbia University Press, 1981), p. 3.

the contemporary international 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, culminating in the passage in 1948 of the Universal Declaration.

Although Hitler’s actions shocked the conscience of the international community, they did not clearly contravene explicit international norms; for example, at Nuremberg the essential charge of crimes against humanity palpably lacked an authoritative international legal foundation. In such an environment, it was relatively easy to reach general agreement on a set of international principles against gross and persistent systematic violations of basic rights—namely, the Universal Declaration (followed the next year by the Convention on Genocide, which was even more clearly a direct legacy from Hitler).

It is perhaps surprising that this moral “demand” should have produced even such a declaratory regime in a world in which more material national interests usually prevail. In the years immediately following the war, however, there were willing and able makers, numerous takers, and no significant breakers of an international human rights regime. The moral and emotional demands for an international human rights regime seem to have run relatively deep, even in some important national leaders—strong support came from several countries, including the United States, and none seriously opposed either the Declaration or, later, the Covenants—while no countervailing concerns or interests had yet emerged.

A cynic might suggest, with some basis, that these postwar “achievements” simply reflect the minimal international constraints and very low costs of a declaratory regime; decision making under the Universal Declaration remained entirely national, and it would be more than twenty years until resolution 1503 and nearly thirty years before even the rudimentary promotion and monitoring procedures of the Covenants came into effect. Yet prior to the war even a declaratory regime had rarely been contemplated. In the late 1940s, human rights became, for the first time, a recognized international issue-area.

Moving much beyond a declaratory regime, however, has proved difficult. As we have seen, procedural innovations have been modest. Even the legal elaboration of substantive norms has been slow and laborious: for example, it took nine years to move from a declaration to a convention on torture; work on stronger, more precise norms on religious liberty is now in its third decade. 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.

To the extent—probably considerable—that the international human rights regime arose from postwar frustration, guilt, or unease, the very proclamation (“supply”) of the Declaration, along with the adoption of the Genocide Convention, seems to have satisfied the demand. To the extent—

again probably considerable—that it rested on an emotional reaction to the horrors of Hitler and the war, time sadly but predictably blunted the emotion. Time also revealed both the superficial, merely verbal commitment of many states and substantive disagreements over particular rights, causing enthusiasm to wane further. And with the cold war heating up, not only was the desire to move on to other issues strong, but East-West rivalry itself soon came to infect and distort the discussion of human rights.

The most important problem, however, was and remains the fact that a stronger international human rights regime does not rest on any perceived material interest of a state or coalition willing and able to supply it. In the absence of a power capable of compelling compliance, states participate in or increase their commitment to international regimes more or less voluntarily. Barring extraordinary circumstances, states participate in an international regime only to achieve *national* objectives in an environment of perceived international interdependence, to address national problems caused by the existing international state of affairs.

Both theory and practice suggest that states will relinquish authority only to obtain a significant benefit beyond the reach of separate national action or to avoid bearing a major burden. Furthermore, relinquishing sovereign authority must appear “safe” to states who are notoriously jealous of their sovereign prerogatives. A stronger international human rights regime simply does not present a safe prospect of obtaining otherwise unattainable national benefits.

Moral interests such as human rights may be no less “real” than material interests. They are, however, less tangible, and policy, for better or worse, tends to be made in response to relatively tangible national objectives. Moral interests, which are far less likely to be a major political concern of powerful national actors, also are much more easily lost in the shuffle of the policy-making process. They are more subject to political manipulation, because they usually are vaguely expressed and the criteria for determining success in realizing moral interests are particularly elusive. And human rights claims usually are met, justifiably or not, with the politically potent charge of misguided moralism.

Furthermore, the extreme sensitivity of human rights practices makes the very subject intensely threatening to most states. National human rights practices often would be a matter for considerable embarrassment should they be subject to full international scrutiny, and compliance with international human rights standards in numerous countries would mean the removal of those in power.

In addition, and perhaps most important, human rights are ultimately a profoundly *national*—not international—issue. States are the principal violators of human rights and the principal actors governed by the regime’s norms; international human rights are concerned primarily with how a government treats inhabitants of its own country. This situation arises from the

basic structure of contemporary international politics: in an international system where government is national rather than global, human rights are by definition principally a national matter, as reflected in the purely national implementation of regime norms and thus the absence of policy coordination procedures and even rudimentary mechanisms of international enforcement.

Human rights are also a national matter from the perspective of practical political action. Respecting human rights is extremely inconvenient for a government, even in the best of circumstances. And the less pure the motives of those in power, the more irksome human rights appear. Who is to prevent a government from succumbing to the temptations and arrogance of position and power? Who can *force* a government to respect human rights? The only plausible candidates are the people whose rights are at stake.

Foreign actors may overthrow a repressive government. With luck and skill, foreign actors may even be able to place good people in charge of finely crafted institutions based on the best of principles. They may provide tutelage, supervision, and monitoring; moral and material support; and protection against enemies. This scenario, however, is extremely unlikely, especially if we do not impute unrealistically pure motives and unbelievable skill and dedication to external powers, for whom “humanitarian intervention” usually amounts to little more than a convenient cover for partisan politics. And in any case, a regime’s ultimate success—its persistence in respecting, implementing, and enforcing human rights—depends on *internal* political factors.

A government that respects human rights is almost always the legacy of persistent national political struggles against human rights violations. Most governments that respect human rights have been created not from the top down, but from the bottom up. Domestically, paternalistic solutions, in which human rights are given rather than taken, are likely to be unstable. Internationally, paternalism is no more likely to be successful.

But if international regimes arise primarily because of international interdependence—the inability to achieve perceived national objectives by independent national action—how can we account for the creation and even modest growth of the international human rights regime? First and foremost, the “moral” concerns that brought the regime into being in the first place persist. Butchers such as Pol Pot and Idi Amin still shock the conscience of mankind and provoke a desire to reject them as not merely reprehensible but prohibited by clear and public, authoritative international norms; even regimes with dismal human rights records seem to feel impelled to join in condemning the abuses of such rulers, and lesser despots as well.

Although cynics might interpret such uses of the language of human rights as merely craven abuse of the rhetoric of human rights, it can just as easily be seen as an implicit, submerged, or deflected expression of a sense of *moral* interdependence. Although states—not only governments but often the public as well—often are unwilling to translate this perceived moral

interdependence into action or into an international regime with strong decision-making powers, they also are unwilling (or at least politically unable) to return to treating national human rights practices as properly beyond all international norms and procedures.

A weak international 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 Alfonsín government in Argentina. Likewise, established regimes may find the additional check provided by an international regime a salutary supplement to national efforts; this 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—especially norms—that do not appear immediately threatening.

States also may miscalculate or get carried away by the moment, and procedures may evolve beyond what the regime's participants originally intended. For example, ECOSOC resolution 1235, which provides the principal basis for the Commission on Human Rights' public study and discussions of human rights situations in individual countries, was explicitly established in 1967 to focus principally on the pariah regimes in Southern Africa, but it has evolved into a procedure with universal application (or at least, one that may be applied to any country that a majority of members decide to consider). Although procedures seldom expand to such an extent, the possibility should not be overlooked.

The current international human rights regime thus represents a politically acceptable international mechanism for the collective resolution of principally national problems. Because perception of the problem rests on a politically weak sense of *moral* interdependence, however, there is no powerful demand for a stronger regime; even policy coordination seems too demanding, and there is little reason for states to accept international monitoring, let alone authoritative international decision making.

In any international regime, even strong decision-making procedures are largely supervisory mechanisms; "enforcement" must be the exception if institutional overload and a corrosive overuse of coercion are to be avoided. Even where a regime includes binding international decision making, the great bulk of the work of implementing and enforcing international norms lies with states.

In conditions of material interdependence, "good faith" compliance can be largely reduced to calculations of long-run national interest. Material interdependence implies that each side has more or less unilateral power to prevent the enjoyment of mutual or reciprocal benefits available only through cooperation. Self-help retaliation, therefore, is likely to be readily

available and relatively effective, and good faith compliance with regime norms is roughly equivalent to pursuing long-run self-interest. As a result, policy coordination, or even just information exchange, may be sufficient to maintain a relatively stable and effective regime. Strong international decision-making procedures certainly would strengthen and help to stabilize even a regime resting on material interdependence. Some material benefits of cooperation—for example, collective goods in conditions with high incentives to free-ride—may be realizable only with stronger international procedures. But the “need” for strong procedures is *relatively* low in such conditions.

By contrast, the primarily national character of human rights violations and the basis of the regime in perceived moral (rather than material) interdependence drastically increase the need for, while at the same time reducing the likelihood of, international implementation and enforcement. Other states are not directly harmed by a government’s failure to respect human rights; the immediate victims are that government’s own citizens, making the incentives to retaliate for violations of regime norms low or at least intangible. Furthermore, “retaliation” is particularly difficult: because the only leverage available, beyond moral suasion, must be imported from other issue-areas such as trade or aid, retaliation is likely to be more costly and involve an escalation in conflict, and because the means of retaliation are no longer clearly and directly tied to the violations, their legitimacy may become questionable.

This is not to belittle the importance of international procedures—the more effective the monitoring and enforcement procedures, the stronger the regime and the more likely it is to achieve its objectives—but, rather, to stress the fact that regime procedures largely reflect underlying political perceptions of interest and interdependence. Compliance with regime norms rests primarily on authority and acceptance, not force or even enforcement.

An international regime reflects states’ collective vision of a problem and its solution, and their willingness to “fund” that solution. In the area of human rights, this vision seems not to extend much beyond a politically weak moral interdependence, and states are willing to “pay” very little in the way of diminished national sovereignty in order 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.

5. Regional and single-issue human rights regimes

Keohane, adopting a metaphor from Vinod Aggarwal, notes that international regimes “are ‘nested’ within more comprehensive agreements . . . that

constitute a complex and interlinked pattern of relations."³³ Although "nesting" implies too neat and hierarchical an arrangement, even within a single issue-area there may be multiple levels and types of regimes. In the case of human rights there are several "lower level" regional and single-issue human rights regimes, which might be considered as largely autonomous, but relatively coherently "nested," (sub)regimes.

The European regime

A strong regional regime exists among the (primarily West European) members of the Council of Europe.³⁴ Personal, legal, civil, and political rights are guaranteed by the 1950 [European] Convention for the Protection of Human Rights and Fundamental Freedoms (entered into force 3 September 1953) and its Protocols, while economic and social rights are laid down in the 1961 European Social Charter (entered into force 26 February 1965). Both sets 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 strong monitoring powers of the European Commission of Human Rights and the authoritative decision-making powers of the European Court of Human Rights.

The principal function of the European Commission of Human Rights, an independent body of experts (one from each member state), is to review "applications" from persons, groups of individuals, NGOs, and states alleging violations of the rights guaranteed by the convention in the seventeen (of twenty-one) parties that have authorized the Commission to receive applications. If friendly settlement cannot be reached (Articles 28–30), the Commission may formally report its opinion on the state's compliance with the convention (Article 31). These reports, though not legally binding, are usually accepted as authoritative by states.

Of the 10,709 applications registered through 1983, only 343 (less than 3%) were declared admissible.³⁵ The criteria of admissibility (Articles 26, 27),

33. Keohane, "Demand for International Regimes," p. 334.

34. I shall restrict the term *European human rights regime* to the norms and procedures established in these documents. This definition excludes the human rights activities of the economic communities and the human rights provisions of the Helsinki Final Act, both of which are weak, not innovative, and substantively and procedurally peripheral. On the European Communities see, for example, Pierre Pescatore, "The Context and Significance of Fundamental Rights in the Law of the European Communities," *Human Rights Law Journal* 2 (December 1981), pp. 295-308. For a good, brief introduction to the European regime, see Rosalyn Higgins, "The European Convention on Human Rights," in Theodor Meron, ed., *Human Rights in International Law: Legal and Policy Issues* (Oxford: Clarendon, 1984), and Karel Vasak, "The Council of Europe," in Vasak and Alston, *International Dimensions*.

35. European Commission on Human Rights, *Stocktaking on the European Convention on Human Rights, The First Thirty Years: 1954 until 1984* (Strasbourg: European Commission on Human Rights, 1984), p. 312. These figures refer only to petitions registered by the Secretariat; a substantial number are routinely refused registration because they patently do not fall under

however, are reasonable and reasonably applied: domestic remedies must be exhausted and the application filed no more than six months later, while anonymous, redundant, or manifestly ill-founded applications are not allowed. In about half of the admissible cases the Commission concludes its consideration with a finding that the state is not in compliance with the convention, while another 10 percent typically are resolved through friendly settlement between the petitioner and his or her government.³⁶ The hurdle of admissibility, therefore, reflects the human rights practices of the parties to the convention more than anything else.

Within three months of the Commission's report, either the Commission or the state in question—but not the individual victim—may refer the case to the European Court of Human Rights (Articles 47, 48) for binding enforcement action. Through 1983, 72 cases, involving 110 applications, had been brought before the Court. Those cases not referred to the Court are sent to the Committee of Ministers, which, like the Court, is empowered to make legally binding decisions.

These procedures are not only of unprecedented formal strength and completeness, they are almost completely accepted in practice. This acceptance is in considerable measure explained by the impartiality of these procedures, which is ensured by the fact that members of the Commission and judges of the Court are independent experts of the highest standing and integrity, operating almost entirely free of the political influence of the member states.

Any particular set of procedures can be operated in a relatively politicized or a relatively objective, technical fashion. And given the political sensitivity of human rights, even the most impartial procedures cannot be substantively neutral; even the "facts" of compliance with or violation of regime norms are morally and politically charged. Therefore, depoliticized, ultimately judicial procedures are of special importance in the area of human rights. Without such impartiality, European states almost certainly would not accept or use the procedures to the extent that they do now, regardless of the depth of their commitment to the regime's norms.³⁷

the convention. Details of cases can be found in European Commission on Human Rights, *Decisions and Reports*.

36. Computed from *Stocktaking on the European Convention on Human Rights* (Strasbourg, 1982), Appendix D, Tables 3, 5, and Vasak, "Council of Europe," Table 16.2. See also *Stocktaking 1984*, pp. 312, 320–24.

37. This same lesson is very clear in the UN bodies that deal with human rights. Ranged from most politicized to most judicialized, the major bodies are the General Assembly (especially its Third Committee) and ECOSOC; the Commission on Human Rights and the ECOSOC Sessional Working Group; and the Human Rights Committee and the Subcommission. Not surprisingly, these last two, groups of experts serving in their personal capacities, are, respectively, the body with the strongest (monitoring) powers and the body that is most actively and most energetically attempting to stretch the limits of the system. The uneasiness of most states with independent experts is underscored by the ECOSOC decision (resolution 9 [VI]) to transform the Commission on Human Rights from a body of members serving in their personal capacity, as it was initially constituted, to a body of national representatives selected by the Council.

Although the convention also allows interstate complaints, through 1983 only 9 admissible interstate cases, involving 17 applications, had been filed, two-thirds of which involved foreign co-nationals (Greeks in British-controlled Cyprus, Austrians in Italy, Irish in Ulster, and Greek Cypriots in Turkish-held territory). The peripheral nature of interstate procedures underscores the point made above, namely that human rights are primarily a national matter. Except in extraordinary cases, such as the Greek junta, only victims, fellow citizens, or (co-)nationals can be counted on to struggle to see that human rights are respected.

Economic and social rights, laid out in the European Social Charter,³⁸ are supervised through separate procedures somewhat weaker than those established by the convention. Implementation is entirely through biennial reports (Article 21), which are reviewed, along with comments from national organizations of employers and workers, by the Committee of Experts (Article 24). Individual communications are not permitted by the charter, nor are interstate complaints, and there is no machinery for authoritative enforcement.

Nonetheless, in practice reporting has yielded some policy coordination and rather strong monitoring: the Committee of Experts is not restricted to official sources of information; it may and regularly does make comments on compliance; and in recent years the Committee of Ministers, to whom the experts ultimately report, has begun to exercise its powers of recommendation. Furthermore, and most important, the genuine commitment of the parties to the regime's norms often makes the give-and-take discussion of reports adequate incentive for policy changes, especially given the official participation of workers' and employers' organizations and the national political pressure they and other private groups can exert "from below."

That states accept the European Convention and Social Charter is its real strength. Formal procedures may support and strengthen national resolve, but in the final analysis they largely supplement national commitment and state acceptance; strong procedures are less a cause than a reflection of the regime's strength. In any international regime, strong procedures serve primarily to check backsliding, apply pressure for further progress, remedy occasional deviations, and provide authoritative interpretations in controversial cases. Although these are hardly negligible functions—they are pre-

38. Parties to the European Social Charter agree to a comprehensive list of nineteen rights (part I of the charter) and must agree to be legally bound by a set of these rights (specified in more detail in part II) individually selected by each state according to the rule of the "double minimum floating nucleus," which requires acceptance of five of seven basic rights—the rights to work, to organize, to bargain collectively, to receive social security, to receive social and medical assistance, and the rights of the family to receive social, legal, and economic protection, and of migrant workers and their families to receive protection and assistance—plus others totaling 10 (of 19) full articles or 45 (of 68) numbered paragraphs. Such complexity "bears witness to the desire of the Member States of the Council of Europe to show their political unity in the social field while taking into account their economic disparities" (Vasak, "Council of Europe," p. 538).

cisely what is lacking in the international regime—strong international procedures, as noted above, rest ultimately on national commitment.

Above I argued that a regime's shape and strength could be explained largely by perceptions of interdependence, the benefits states expect to receive (or the burdens they hope to avoid), and the risks they expect to incur in 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 states can expect to achieve, suggesting that moral interdependence can indeed rival material interdependence in political force when national commitment to moral goals is particularly strong. 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. This greatly reduces the likelihood of radical differences in interpreting regime norms and dramatically decreases the risk of partisan abuse or manipulation of the regime. Perceived community also helps to increase the perception of moral interdependence.

Thus, while it may be true, as Ralph Beddard observes, that "few applicants have been better off, except in peace of mind, by applying to the European Commission"—recall the very small number of cases actually investigated by the Commission—this largely misses the point. Beddard himself implicitly admits this when he goes on to note that often "the individual has benefited either because of the mere presence of the treaty and its machinery or through the application [complaint] of someone else in a similar position,"³⁹ especially because Commission and Court decisions have significance as possible precedents for all member states.

National compliance is the key. If this is achieved voluntarily, as it is for the most part in Europe, so much the better; if the regime's impact is primarily indirect, it is no less real.⁴⁰ So long as states conform their behavior to the regime's norms—and in Europe they clearly do—the relatively infrequent use of authoritative regional decision-making procedures is, if anything, desirable rather than regrettable.

Having said this, though, we should belittle neither the strength nor significance of the European regime's enforcement measures. Not only is completely voluntary compliance a utopian ideal, but one would expect, and the European case suggests, a process of mutual reinforcement—feedback loops—between national commitment and international procedures. A strong regime is a device to increase the chances that states will enjoy the

39. Ralph Beddard, *Human Rights and Europe: A Study of the Machinery of Human Rights Protection of the Council of Europe*, 2d ed. (London: Sweet & Maxwell, 1980), pp. 174, 175.

40. One particularly interesting indirect effect is the impact of regime norms on new and revised European constitutions. See Christian Starck, "Europe's Fundamental Rights in Their Newest Garb," *Human Rights Law Journal* 3 (1982), pp. 103–40.

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.

The Inter-American regime

The American Declaration of the Rights and Duties of Man, adopted in 1948, presents a list of human rights very similar to that of the Universal Declaration.⁴¹ The 1969 American Convention on Human Rights, a binding treaty, is, like its European counterpart, limited to personal, legal, civil, and political rights (plus the right to property), in recognition of the inappropriateness of strict, universal legal obligations with respect to economic and social rights, given the low level of economic development of most American countries. The Inter-American regime’s norms are rounded out by a variety of single-issue treaties, such as the Inter-American Convention on the Granting of Political Rights to Women (1948). (There is no American equivalent to the European Social Charter or the International Covenant on Economic, Social and Cultural Rights.)

The Inter-American Court of Human Rights, which was established in 1979 and sits in San José, Costa Rica, may take binding enforcement action. As in the European regime, its adjudicatory jurisdiction is optional; by mid-1985 eight states recognized its jurisdiction. As in the European regime, individuals have no direct access to the Court, although the Commission may bring cases involving individuals to the Court. The Court may also issue advisory opinions requested by members of the Organization of American States (OAS). Although the Inter-American Court has begun to hear and decide cases, it is still too early to say much about its ultimate impact or significance.

The Inter-American Commission of Human Rights, established twenty years before the Court and even ten years before the convention, is the procedural heart of the regime. The Commission 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 OAS, the Commission has vigorously exploited this autonomy.⁴²

41. For a thorough and up-to-date discussion of the procedures of the Inter-American regime, see Thomas Buergenthal and Robert E. Norris, *Human Rights: The Inter-American System*, 3 vols. (Dobbs Ferry, N.Y.: Oceana, 1982–84 and updates). More briefly, see Thomas Buergenthal, “The Inter-American System for the Protection of Human Rights,” in Meron, *International Law*.

42. A recent recommendation to human rights lawyers to choose the Commission when possible among available competent bodies has underscored its strength. See Robert E. Norris,

In the past twenty years the Commission has adopted decisions and resolutions arising from individual communications from more than twenty countries in the region—including the United States! It has issued country reports documenting particularly serious human rights situations in more than a dozen countries, most of which have been followed by renewed and intensified Commission monitoring. And it has adopted special resolutions on major regional problems, such as the 1978 resolution on states of siege.

The wide-ranging nonpartisan activism of the Commission can be largely attributed 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 states, many of which are not notably solicitous towards human rights, allow the Commission to be so active? Why, given that the dominant political culture is not one in which official respect for human rights is deeply ingrained, have such strong procedures been established?

Much of the explanation lies in power, particularly the dominant power of the United States. In the literature on international economic regimes, it is often argued that the power of a single hegemonic state is crucial to the establishment of strong, stable regimes.⁴³ Although such hegemonic power had almost nothing to do with the European regime, the Inter-American human rights regime is probably best understood in these terms. The United States, for whatever reasons, decided that a regional regime with relatively strong monitoring powers was desirable, then exercised its hegemonic power to ensure its creation and support its operation. There is always a U.S. member of the Commission and even a U.S. judge on the Court, despite the fact that the United States is not a party to the convention. And the United States has on numerous occasions acted to persuade reluctant, even recalcitrant, governments of the wisdom of cooperation with the investigations of the Commission.

Consensual commitment and hegemonic power are to a certain extent functional equivalents for establishing state acceptance. Despite the impor-

"The Individual Petition Procedure for the Inter-American System for the Protection of Human Rights," in Hannum, *Human Rights Practice*, p. 127.

43. For representative statements and defenses of the theory see Stephen D. Krasner, "State Power and the Structure of International Trade," *World Politics* 28 (April 1976), pp. 317-47; and Robert O. Keohane, "The Theory of Hegemonic Stability and Changes in International Regimes," in Ole R. Holsti, Randolph M. Siverson, and Alexander L. George, eds., *Change in the International System* (Boulder: Westview, 1981), pp. 131-62. For representative critiques see Arthur A. Stein, "The Hegemon's Dilemma: Great Britain, the United States, and the International Economic Order," *International Organization* 38 (Spring 1984), pp. 355-86; David A. Lake, "Beneath the Commerce of Nations: A Theory of International Economic Structures," *International Studies Quarterly* 28 (June 1984), pp. 143-70; and Timothy J. McKeown, "Hegemonic Stability and 19-Century Tariff Levels in Europe," *International Organization* 37 (Winter 1983), pp. 73-91. The most recent, and most subtle, version (or modification) of the theory is in Robert O. Keohane, *After Hegemony* (Princeton: Princeton University Press, 1984).

tance of largely voluntary compliance and the limited ability of even hegemonic power to overcome persistent national resistance, coercion may produce a certain level of limited participation from states that otherwise would not accept a regime. The very immateriality of the moral interdependence underlying human rights regimes may make hegemonic power unusually effective, should the hegemon choose to exercise it.

Material interdependence in an issue-area limits the use of even hegemonic power. Consider the case of trade. A hegemon is likely to prefer an open trading regime—the most productive gain the most in a liberal/free market order. Yet there are severe constraints on using force in order to open any but very weak economies (which are not likely to be of much value). Material *interdependence* implies that even middle powers command valued resources or opportunities outside of the control (at a reasonable cost) of the hegemonic power; material interdependence entails countervailing power (specific to that issue) on the part of the (overall) relatively weak, whose cooperation is essential to realizing the joint benefit that rests on that interdependence.

When the interdependence is moral, however, issue-specific countervailing power is largely absent. This is especially true in the case of human rights, where the benefit (namely, respect for human rights) is largely under national control. If a hegemon chooses to exercise its power through or on behalf of a human rights regime, the weak repressive government does not have much countervailing power available to it; the repressive government's noncooperation cannot forestall mutual enjoyment of some material joint benefit.

Nonetheless, the relative mix of coercion and consensus does influence the nature and functioning of a regime. In particular, 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, and in extreme cases hegemonic power may be mobilized to ameliorate a situation that otherwise would be beyond the reach of an international regime, but even a hegemon can impose only a limited range of changes. The result is something of a paradox: the Inter-American Commission is relatively active and effective in the worst cases, which by their very extremity mobilize relatively strong pressure or support from the United States; but it is relatively less active in less serious situations, which therefore are in many ways harder to ameliorate through international action.

Africa, Asia, and the Middle East

The African Charter on Human and Peoples' Rights, drafted in Banjul, The Gambia, in June 1980 and January 1981, was adopted by the Organiza-

tion of African Unity (OAU) in Nairobi in June 1981.⁴⁴ There are some interesting normative differences between the African (Banjul) Charter and all other international human rights regimes, most notably the addition of and emphasis on collective or "peoples' " rights (Articles 19–24),⁴⁵ such as the rights to peace and development, and the particularly prominent place the charter gives to individual duties (Articles 27–29).

The Banjul Charter creates an African Commission on Human and Peoples' Rights (Articles 30–46), allows for interstate complaints (Articles 47–54), and even envisions the receipt of individual communications (Articles 55–60). However, all of these provisions are quite vague, there is no reporting system, and the best we can say at this early date is that they leave the Commission, once it is in operation, a limited opening to establish itself as a (weak) monitoring body. There is, however, no judicial organ or any other mechanism for authoritative regional enforcement of decisions. And although the Banjul Charter still lacks sufficient ratifications to have entered into force, virtually all the factors identified above as important to strong, successful decision-making procedures seem to be absent.

The regional organizational environment is extremely uncondusive. The OAU is not only highly politicized but the most deferential of all regional organizations to sovereignty. Although this is quite understandable, given the weak states and strong subnational loyalties in most of black Africa, there is no reason to expect the organization to deviate from its standard practice in an area as sensitive as human rights. And previous efforts at regional or subregional cooperation in other issue-areas have not been very successful.

The prospects appear no better when we look at national practice. Over the last twenty years, the human rights record of the typical African country has been about average for the Third World, despite lurid and relatively overreported aberrations such as Idi Amin and "Emperor" Bokassa. Nonetheless, in the absence of strong pressure by a regional hegemon, the national human rights record of the typical African government suggests a high

44. The best analysis of the charter is Richard Gittleman, "The Banjul Charter on Human and Peoples' Rights: A Legal Analysis," in Claude E. Welch, Jr., and Ronald I. Meltzer, eds., *Human Rights and Development in Africa* (Albany: State University of New York Press, 1984). See also, Edward Kannyo, "The Banjul Charter on Human and Peoples' Rights: Genesis and Political Background," in Welch and Meltzer, *Human Rights and Development*; and Olusola Ojo and Amadu Sesay, "The O.A.U. and Human Rights: Prospects for the 1980s and Beyond," *Human Rights Quarterly* 8 (February 1986), pp. 89–103.

45. The Banjul Charter, however, at least clearly distinguishes between human rights (i.e., inalienable rights of individuals) and the rights of peoples, which helps to clarify the potential conflict between these quite different types of rights. In contrast, in UN circles peoples' rights are usually treated as merely a new generation of human rights. On such misguided tendencies, with special reference to the so-called right to development, see Jack Donnelly, "In Search of the Unicorn: The Jurisprudence and Politics of the Right to Development," *California Western International Law Journal* 15 (Summer 1985), pp. 473–509.

degree of aversion to international monitoring. Furthermore, the low level of independent 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 currently unclear procedures of the African regime, however, are far more developed than those in Asia and the Middle East. In Asia there are neither regional norms nor decision-making procedures. The Association of South East Asian Nations (ASEAN) is perhaps the most promising sub-regional organization, but even there the level of cooperation and perceived regional community remains relatively low, and the national human rights records of the two dominant ASEAN countries—Indonesia and the Philippines—are hardly promising.⁴⁶

The League of Arab States established the Permanent Arab Commission on Human Rights in 1968, but there are no substantive regional human rights norms: the Arab Charter of Human Rights has languished largely ignored since it was drafted in 1971; the Draft Arab Covenant on Human Rights, formulated at the 1979 Symposium on Human Rights and Fundamental Freedoms in the Arab Homeland, seems destined to a similar fate. Not surprisingly, the Arab Commission has been notably inactive. One commentator has discreetly observed that “rather sparse information is available about the results achieved.”⁴⁷ The principal reason for this is that the Commission’s few concrete activities seem to have involved publicizing the human rights situation in the Israeli-occupied territories.⁴⁸ This is hardly a basis for even the weakest of regional regimes.

Single-issue regimes

Quite a different type of “lesser” human rights 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—in order to induce universal participation in a single area of mutual interest.

The first international human rights regime of any sort was the functional regime of the ILO,⁴⁹ an organization established by the Treaty of Versailles.

46. Compare Hiroko Yamane, “Asia and Human Rights,” in Vasak and Alston, *International Dimensions*, p. 664. See also A/37/422, Annex and General Assembly resolution 39/116.

47. A. H. Robertson, *Human Rights in the World*, 2d ed. (New York: St. Martin’s, 1982), p. 164.

48. B. Boutros-Gail, “The League of Arab States,” in Vasak and Alston, *International Dimensions*, pp. 577–81.

49. For general discussions of human rights in the ILO, see Ernst B. Haas, *Human Rights and International Action* (Stanford: Stanford University Press, 1970); Nicolas Valticos; “The International Labour Organization,” in Vasak and Alston, *International Dimensions*; Lee

ILO conventions and recommendations in the interwar years, however, were largely concerned with technical issues of working conditions; 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 can be seen as complementary elaborations of parallel substantive norms of the international regime.

Since 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. Nonetheless, states are required to submit all conventions and recommendations to competent national authorities for consideration for adoption, and they may be periodically required to submit reports on their practice with respect to conventions they have *not* ratified. Most important, periodic reports are required on compliance with ratified conventions.⁵⁰

Reports are reviewed by the highly professional Committee of Experts on the Application of Conventions and Recommendations, which has available to it some independent sources of information in addition to the states' reports themselves. Although the Committee of Experts has only limited formal powers to make observations, it exercises these powers with vigor and considerable impartiality, and Committee observations have often induced changes in national practice.

Much of the explanation for 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. With the "victims" 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 is less free.

The very issue of workers' rights has also been important to the strength and success of the ILO regime, providing a reasonable degree of ideological homogeneity across a now genuinely universal membership. Certainly Western, Soviet-bloc, and "socialist" Third World regimes have quite different

Swepson, "Human Rights Complaint Procedures of the International Labour Organization," in Hannum, *Human Rights Practice*; Ernst B. Haas, *Beyond the Nation State* (Stanford: Stanford University Press, 1964), chaps. 9, 11, and 12; and Francis Wolf, "Human Rights and the International Labour Organization," in Meron, *International Law*.

50. There is an established procedure for interstate complaints, but it is very 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. See Haas, *Beyond the Nation State*, chap. 12.

interpretations of the meaning of “freedom of association” and other relevant norms, but all face serious internal ideological constraints on overt noncompliance.

To the extent that these factors of organizational structure and ideological appeal explain the success of the ILO’s functional human rights regime, the prospects for other functional regimes seem dim. Tripartism has not been and almost certainly will not be replicated in other organizations. Furthermore, very few other separate human rights issues possess the near universal appeal of workers’ rights. One exception, though, is racial discrimination, the second major single-issue human rights regime.

The 1964 International Convention on the Elimination of All Forms of Racial Discrimination (entered into force 4 January 1969) provides a clear and powerful extension and elaboration of the international regime’s norms against racial discrimination.⁵¹ The ratification of the convention by 124 countries (through mid-1985) makes it a major normative instrument. Its provisions for implementation, however, are weak.

The Committee on the Elimination of Racial Discrimination, 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” (Article 9(2)). Furthermore, the interstate complaint procedure (Article 11) has never been utilized, and only eleven states have authorized the Committee to receive communications from individuals (Article 14). Even the elements of information exchange in the reporting procedure are not without flaws: by the summer of 1985, more than 10 percent of the required reports had not been received, with some reports as many as nine years late despite a dozen or more reminders. And the public examination of reports, while sometimes critical, is less thorough or penetrating than in the Human Rights Committee.

Why did the Committee adopt such a narrow view of its mandate? The simple answer is that this is the most plausible interpretation of the relevant provisions of the convention. Why, though, was the Committee’s mandate drawn so narrowly? Much of the explanation lies in the very different institutional environments of the ILO and the political organs of the UN.

Most ILO conventions are truly 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—so that most of the work of the Committee of Experts deals with relatively uncontroversial technical matters. In the course of this work, expectations of neutrality are established and reconfirmed. Therefore, when reports dealing with hu-

51. The controversy over Article 4’s requirement of suppression of speech and organizations that incite racial hatred or discrimination should not obscure the important and otherwise widely accepted substantive provisions of the convention.

man rights issues are considered, they are examined in a highly depoliticized context as only one part of the work of an essentially technical body of experts. In addition, there are literally hundreds of ILO conventions and recommendations, and the organization has existed for over sixty years. States thus are often closely tied into a web of interstate, transgovernmental, and transnational relationships centered on the organization. The Racial Discrimination Committee does not enjoy these advantages.

The one other human rights issue whose appeal has recently neared that of racial discrimination is torture. The Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment was opened for signature and ratification by General Assembly resolution 39/46 of 10 December 1984 and received two dozen signatures in just three months. Part 1 is a strong elaboration of norms against torture, building on the 1975 Declaration on the Protection of All Persons from Being Subjected to Torture. And the procedures outlined in part 2 are potentially strong.

A Committee against Torture will be established to receive and review periodic reports from states parties every four years. Much will depend on how the Committee interprets its powers to "make such general comments on the report as it may consider appropriate" (Article 19), but the potential at least exists for rather strong monitoring. The convention also contains three optional provisions that allow the Committee to receive communications analogous to those permitted under the 1503 procedure, interstate complaints, and individual communications. The effect of such provisions, of course, will depend on how many and which states exercise the option to authorize such monitoring and on the emerging practice of the Committee. For now at least there is a relatively strong declaratory regime on torture, which is likely to develop into a perhaps notable promotional regime within the next decade.

Ongoing promotional activities include, for example, the UN's Voluntary Fund for Torture Victims, established in 1981. And the recent Amnesty International campaign on torture has been an important effort by an NGO to publicize a major problem. Amnesty has a much higher profile than most, but NGO efforts—especially promotional activities such as publicity, information gathering, and local monitoring—can be of considerable significance in the day-to-day operations of all the regimes we have considered.

The final major single-issue human rights regime is that for women's rights, which has traditionally been something of a stepchild in the field of human rights. Racial discrimination is considered in the UN Commission on Human Rights and throughout the UN-centered regime, yet discussion of sexual discrimination as a human rights issue has been largely segregated in the UN Commission on the Status of Women.⁵² In the last ten years, though,

52. Even in UN human rights organs, subtle denigrations of women's rights still occur regularly; for example, the Secretariat's referral of family separation communications to the Commission on the Status of Women, as if they involved women's issues only (see E/1984/15,

there has been a substantial normative and procedural evolution of the women's rights regime,⁵³ and women's rights issues are beginning to move closer to the mainstream of international human rights discussions.

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 of the Commission on Human Rights, having drafted both a variety of specialized treaties, such as the 1952 Convention on the Political Rights of Women, and the major general treaty in this area, the 1979 Convention on the Elimination of Discrimination against Women. The Commission has also engaged in a variety of promotion-and-assistance activities. And in 1984 it began studying individual communications. Although it is still too early to say how this procedure will operate, the lack of a mandate to monitor individual country practices is likely to restrict the process to very general promotional activities.⁵⁴ The fact that the Commission meets only biennially further reduces its potential impact.

In some ways more promising is the reporting procedure under the Convention to the Elimination of Discrimination against Women (entered into force 3 September 1981). It appears that the Committee on the Elimination of Discrimination against Women, which has met annually since 1982, will function similarly to the Human Rights Committee (although without the optional complaint procedures), and that the study of reports and public questioning of state representatives are and will continue to be "informed, intelligent, and often critical."⁵⁵ Like other treaty-based promotion and monitoring bodies, though, the Committee may only consider conditions in countries that are parties to the convention. Therefore, the weaker powers of the Commission are of continuing importance to the regime. As in the international regime, there is a political tradeoff between the strength of a particular set of procedures and their coverage.

The recent strengthening of the women's rights regime can be traced primarily to the changing awareness of women's issues which occurred in the 1970s. At the international level this process of perceptual change cen-

para. 69), and the Human Rights Committee's lumping of questions of family life and sexual discrimination in its review of issues considered under the Optional Protocol (see A/39/40).

53. The following discussion draws heavily on Margaret E. Galey, "International Enforcement of Women's Rights," *Human Rights Quarterly* 6 (November 1984), pp. 463-90, which is particularly good on procedures and up-to-date through the spring of 1984. See also Natalie Kaufman Hevener, "An Analysis of Gender-based Treaty Law: Contemporary Developments in Historical Perspective," *Human Rights Quarterly* 8 (February 1986), pp. 70-78; and Laura Reanda, "Human Rights and Women's Rights: The United Nations Approach," *Human Rights Quarterly* 3 (May 1981), pp. 11-31.

54. On the development of the communications procedure, see Galey, "International Enforcement," pp. 465-75. In 1984, the Working Group on Communications reviewed 121 communications and brought to the attention of the full Commission the disturbing trend in the communications of "widespread physical violence against women while in official custody" (E/1984/15, para. 70).

55. *Ibid.*, p. 487.

tered 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 (including countries such as the United States and Great Britain) and regime takers emerged, while potential regime breakers were deterred from active opposition either by domestic ideological stands or by the emerging international normative consensus.

6. Regime creation and growth

What, if anything, can we say in general about the nature, creation, and evolution of international human rights regimes? In particular, are there any patterns of historical change across the individual regimes discussed above? Table 1 presents a summary overview of each of the international human rights regimes at ten-year intervals from 1945 to 1985. 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; that is, the postwar creation of human rights as an international issue-area. We can also note the gradual strengthening of most international human rights regimes over the last thirty years. But even today promotional regimes are the rule, the only exceptions being the regional regimes in Europe and the Americas, and workers' rights, all three of which are "special cases" (cultural homogeneity and good human rights records in Europe; U.S. hegemony in the Americas; and tripartism, institutional history, and the issue of workers' rights in the ILO).

Once states accept norms stronger than guidelines, declaratory regimes readily evolve into promotional regimes; if the regime's norms are important or appealing enough for states to make a commitment to, then it is hard to argue against promoting their further spread and implementation. But the move to implementation or enforcement involves a major qualitative jump that most states strongly resist—usually successfully.

Most of the growth in international human rights regimes, therefore, though important, has been "easy" growth that does not naturally lead to further growth. 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, however, requires a major qualitative increase in the commitment of states. This commitment is rarely forthcoming.

The one partial exception that cannot be explained by special environmen-

TABLE 1. *Change in international human rights regimes*

	<i>1945</i>	<i>1955</i>	<i>1965</i>	<i>1975</i>	<i>1985</i>
The International Human Rights Regime	None	Declaratory	Strong Declaratory	Promotional	Strong Promotional
norms	none	guidelines	strong guidelines	standards with exemptions	standards with exemptions
procedures	none	weak promotion	promotion	strong promotion	strong promotion/ weak monitoring
<i>Regional Human Rights Regimes</i>					
The European Regime	None	Implementation	Implementation/ Enforcement	Enforcement	Enforcement
norms	none	guidelines/ regional norms	regional norms	regional norms	regional norms
procedures	none	promotion/ monitoring	monitoring/ regional decisions	regional decisions	regional decisions
The Inter-American Regime	None	Declaratory	Weak Promotional	Promotional	Strong Promotional/ Enforcement
norms	none	guidelines	guidelines	standards with exemptions	regional norms
procedures	none	none	promotion	monitoring	monitoring/ regional decisions
The African Regime	None	None	None	None	Declaratory
norms	none	none	none	none	standards with exemptions
procedures	none	none	none	none	none
Asia and Middle East	None	None	None	None	None

Single-Issue Regimes

Workers' Rights	Promotional	Promotional/ Implementation	Promotional/ Implementation	Promotional/ Implementation	Promotional/ Implementation
norms	weak standards	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	Declaratory	Strong Promotional	Strong Promotional
norms	none	none	guidelines	strong standards with exemptions	strong standards with exemptions
procedures	none	none	none	promotion/ monitoring	promotion/ monitoring
Women's Rights	None	Declaratory/ Promotional	Declaratory/ Promotional	Declaratory/ Promotional	Strong Promotional
norms	none	guidelines	guidelines	guidelines	standards with exemptions
procedures	none	promotion	promotion	promotion	promotion/ weak monitoring
Torture	None	None	None	Weak Declaratory	Strong Declaratory
norms	none	none	none	guidelines	standards with exemptions
procedures	none	none	none	none	none/ promotion

tal factors is the monitoring procedure of the Optional Protocol to the International Covenant on Civil and Political Rights. But less than three dozen countries are covered by this procedure. The weak monitoring of the 1503 procedure presents perhaps the greatest opportunity for making the jump to implementation or enforcement, given the relatively subtle nature of the required changes. Experience with the procedure to date, however, provides no evidence that such an evolution is on the horizon.

In the course of discussing individual regimes, we have already considered some of the central factors that explain this pattern of (limited) growth. To begin with, we can note the importance of awareness and power in the creation of international human rights regimes, which usually are created or mobilized in the case of human rights by conceptual changes in response to domestic political action or international moral shock. Awareness and power galvanize widespread support for the creation or growth of a regime, while delegitimizing opposition; supporting power is mobilized and opposing power demobilized. Together these changes make moral interdependence increasingly difficult for states to resist.

In the case of racial and sexual discrimination, the conceptual transformations triggered by national movements for decolonization, civil rights, and women's rights created a broad, crossnational demand that helped to mobilize the power of potential regime makers and takers. The rise of national labor movements prior to World War I, and their loyal performance during the war, probably had an analogous impact on the creation of the ILO workers' rights regime. The shock of Hitler provoked a similar empowering conceptual reorientation in the international (UN) regime as well as in the European and Inter-American regimes. The barbarities of Amin, Bokassa, and Macias Nguema in the 1970s probably encouraged the formation of the African regime. Most recently, progress on a regime against torture seems to have been triggered by widespread revulsion at the increasing frequency and severity of torture in numerous countries and regions. But conceptual changes leading to a wider perception of moral interdependence alone suggest only weak (declaratory or promotional) regimes.

On the basis of the cases examined above, we can also stress the importance of national commitment, cultural community, and hegemony, which largely explain the unusual strength of the European and Inter-American regimes.

National commitment is the single most important contributor to a strong regime; it is the source of the oft-mentioned "political will" that underlies most strong regimes. If a state has a good human rights record, then not only will a strong regime appear relatively unthreatening but 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.

That the only enforcement regimes are regional suggests the importance of cultural community. In the absence of the sociocultural and ideological consensus characteristic of Europe, strong procedures, as noted above, are likely to appear too subject to partisan use or abuse to be accepted even by states with good records and strong national commitments. Although the United States presents an exaggerated version of such fears—most strikingly in the U.S. Senate's resistance to, for example, the Genocide Convention and the International Covenant on Civil and Political Rights, to which U.S. law and practice already conform in almost all particulars—they are, in a less extreme form, common and widespread. As several examples above illustrate, there is a tradeoff between regime strength and inclusiveness.

The importance of a relatively close cultural community seems to be confirmed by the pattern of opposition to stronger international human rights regimes; opponents of stronger procedures in the general international human rights regime and in single-issue regimes include major countries from the First, Second, and Third Worlds with good, mediocre and poor national human rights records alike. The very scope of all but the regional regimes undercuts the relative homogeneity that seems almost a necessary condition for moving beyond a promotional regime.

Finally, we must stress the importance of dominant power and hegemony, which, following Gramsci more than the "hegemonic stability" literature, should be kept analytically distinct.⁵⁶ Beyond mere dominant power, hegemonic leadership requires ideological hegemony, a crucial element in the acceptance of or at least acquiescence in the authority of the hegemon.

Consider the Americas. U.S. hegemonic leadership rested not only on economic, military, and political power but also on the ideological dominance of the idea of human rights, as we can see, for example, by the failure of very strenuous U.S. efforts to exercise hegemonic "power" over the definition of regional rules for the nationalization of foreign-owned property. The effective exercise of hegemonic power usually requires not merely dominating material and organizational resources but an ideological justification sufficiently powerful to win at least acquiescence from nonhegemonic powers.

56. For Gramsci's analysis of hegemony see Quintin Hoare and Geoffrey Nowell Smith, eds., *Selections from the Prison Notebooks of Antonio Gramsci* (New York: International Publishers, 1971), pp. 52–65, 76–84, 102–6, 169–85, 210, 228–29, and passim. On hegemonic stability, see note 43 above. Keohane, *After Hegemony*, does at least mention Gramsci, but this is clearly the exception in the hegemonic stability literature. And even Keohane gives relatively scant attention to the ideological or superstructural side of hegemony, which seems particularly important to explaining the maintenance of established regimes during the decline of a previously dominant state and the creation of regimes in the absence of dominant material power exercised by a single state. It may be that the very immateriality of the interdependence underlying human rights regimes is important to seeing this side of hegemony in an especially clear light.

Leaders require followers; regime makers need takers. The reasons for taking a regime may be largely accidental or external to the issue: for example, Arthur Stein argues that the Cobden-Chevalier Treaty, which ushered in the British-led “free-trade” regime of the 19th century, was concluded principally because of French political concerns entirely unrelated to trade. Sometimes, however, the reasons for taking a regime are connected with the ideological hegemony of the proposed project: John Ruggie’s 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.⁵⁷

The seemingly inescapable ideological appeal of human rights in the postwar world is an important element in the rise of international human rights regimes. This is not to deny the importance of power, in the sense that that term traditionally has had in the study of international politics but, rather, to stress that true hegemony often is based on ideological “power” as well. We might even argue that the ideological hegemony of concepts of human rights was at least as important as dominant material power and more important than the power of a single hegemon. Even weak regimes require the backing of major powers, but a hegemonic idea such as human rights may draw power to itself; power may coalesce around rather than create hegemonic ideas such as human rights and the regimes that emerge from them.⁵⁸

For example, the overriding ideological appeal of the idea of workers’ rights has been crucial to the success of the ILO. In Europe, the 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. In Africa, 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. And the emergence of the universal, UN-centered human rights regime cannot be understood without taking account of this impulse, discussed above in terms of perceived moral interdependence.

But hegemonic power does ultimately require material power, and even hegemonic ideas have a limited ability to attract such power. Hegemonic ideas can be expected to draw acquiescence in relatively weak regimes, but beyond promotional activities—that is, once significant sacrifices of sover-

57. Stein, “The Hegemon’s Dilemma,” pp. 364–66; John Gerard Ruggie, “International Regimes, Transactions and Change: Embedded Liberalism in the Postwar Economic Order,” *International Organization* 36 (Spring 1982), pp. 379–415.

58. Just what makes an idea hegemonic is an interesting and important issue, though one that obviously lies well beyond our scope here. Gramsci suggests that hegemony arises from the conjunction of the development of material forces of production and largely accidental and local factors of history and human action. In the case of human rights, we can perhaps see an analogous process of technologically induced interdependence and changing standards of national political legitimacy being crystallized by the shock of Hitler.

eignty are demanded of states—something more is needed. In other words, hegemony, too, points to the pattern of limited growth observed above.

Therefore, the evolution toward strong promotional procedures can be expected to continue. But once the regime reaches that stage we can expect states to resist further growth and efforts to cross over to implementation and enforcement activities. There seems to be no reason, in other words, to expect significant qualitative change in the short and medium run. The relatively easy phase of growth has largely passed, and the same factors that explain this growth suggest relative stagnation or only the slowest growth in the future. The analysis above provides little reason to expect that the 1995 column of Table 1 will show many changes from 1985.

7. The utility of regime analysis

At the outset, I indicated that in addition to reviewing the state of international human rights norms and procedures, I wanted to “test” the utility of regime analysis for noneconomic issues. Has my use of the concept of an international regime added anything essential to our understanding of international human rights? Is regime analysis, as Susan Strange suggests, merely “a passing fad,” just “another American academic fashion.”⁵⁹ or does it provide a new important analytic perspective on international order and organization?

My conclusion, based on the discussion above, is that there is significant, if relatively modest, value to regime analysis. Regime analysis can at minimum be useful in organizing what we know, expanding our perspective, and helping us to avoid some standard analytic traps and pitfalls.

To oversimplify grossly, discussion of international human rights tends to fall into a few simple categories: globalist idealism, legalism (both idealist and realist), and realism. Even today, the bulk of the scholarly literature is legal, and the vast bulk of that legal literature either is descriptive or involves technical formal analysis of legal instruments, rules, and procedures.⁶⁰ Most of the remaining (nonlegal) literature can be roughly divided into “idealistic” claims of or pleas for international consensus on human

59. Strange, “Cave! hic dracones,” p. 480.

60. This is true even of most of the best and most recent legal literature, which almost entirely ignores politics. See, for example, Hannum, *Human Rights Practice*, and Meron, *International Law*, which are excellent volumes representing the work of the best American lawyers in the field but which almost never consider law in relation to politics. Even the world public order approach of McDougal and his associates, which is explicitly oriented toward policy, pays remarkably little attention to either national or international politics. See, for example, Myres McDougal, Harold Lasswell, and Lung-chu Chen, *Human Rights and World Public Order* (New Haven: Yale University Press, 1980), the magnum opus of this approach in its application to human rights.

rights norms, and “realistic” derisions of the fatally flawed moralism of the international “crusade” for human rights.

Each of these tendencies is not so much wrong as one-sided. International lawyers correctly stress that legal instruments have been at the heart of the genesis and operation of international human rights regimes. The development and operation of legal procedures, however, cannot be understood without attention to international politics; the integration of legal mechanisms into the broader political context is at least as important as the specifically legal features of those rules and procedures. Idealists correctly stress the remarkable degree of general normative consensus. They err, however, in ignoring the weakness of most decision-making procedures and the (often related) substantive disagreements in interpreting regime norms. Realists, by contrast, are correct to stress the place of power and sovereignty in the actual operation of the regime, but no less misguided to ignore the consensus on norms, which does in fact demonstrably alter state behavior in at least some cases; how a problem is conceptualized, and the norms governing conflict and cooperation, can significantly influence behavior.

By forcing us to consider norms, decision-making procedures, and their political context as parts of a more comprehensive structure, regime analysis is particularly conducive to capturing the insights of realism, idealism, and legalism, while avoiding their one-sidedness. Furthermore, it requires us to combine them into a single coherent package.

Critics, however, who say that a regime perspective probably will not tell us anything that we do not already know or cannot find out by other means and does not provide any genuinely new avenues of research are not exactly wrong. But such criticisms largely miss the point.

A regime perspective allows us to see what we “know” in a new light, from a more holistic perspective. As a result, we may often learn important things about even familiar material. A neorealist regime perspective keeps us sensitive to how agreed-upon rules and procedures can affect state behavior in an issue-area. It also provides a useful set of questions that push us toward a broad, integrative political analysis of conflict and cooperation.

Nonetheless, even neorealist regime analysis is only a very broad perspective, approach, or typology; it is an *approach* or style of analysis, not a *theory* in even a weak sense of that term. Regime analysis is more a set of questions than anything else: What, if any, are the norms governing cooperation and conflict in this issue-area? What decision-making procedures have been established to manage interdependence? What is the extent of compliance with such norms and procedures? Its main value, in other words, is more heuristic and organizational than explanatory.

This is clearly the way I have used regime “theory” above, and my analysis represents an implicit demonstration of its utility in the case of human rights, a demonstration that must ultimately speak for itself. But a

regime approach per se does not explain why regimes arise in particular issue-areas and not in others, or how and why they evolve. For that we would need a theory of regimes, or, more likely, multiple theories.

There are hints and fragments of such theories in the literature. Notions such as “complex interdependence” and “turbulent fields” specify,⁶¹ with some precision, the conditions under which regimes are most likely to arise. Many of the insights of neofunctional integration theory seem to have continuing value, particularly neofunctionalist discussions of the conditions under which states are likely to relinquish sovereignty to an international agency and the opportunities for incremental growth of established organizations. Concepts of hegemony also seem relevant, in ways already discussed. My analysis above has consciously, even shamelessly, drawn on such work.

But such theoretical fragments do not add up to a single coherent theory even for one issue-area. Furthermore, we would expect the theoretical mix to vary, perhaps dramatically, from issue to issue. Regime analysis therefore shows little promise of being a new “grand theory” of international politics.

But that is hardly a decisive, or even serious, criticism. If regime analysis provides only partial and at best quasi-theoretical understanding, it can nevertheless be of considerable analytic value. In fact, one way to read regime analysis is as a conscious, reasoned alternative to grand theories. Thus Strange’s claim that regime analysis is yet another futile attempt at grand theory is entirely off the mark;⁶² regime analysis—at least neorealist regime analysis of the type I have used here—rests on a rejection of grand theory in favor of a pragmatic, issue-specific theoretical eclecticism.

Why should analysts of international politics look at international regimes? The obvious answer is because they are real and do influence behavior and outcomes. Another, related, answer, however, would be that regimes reflect the increasingly fragmented, issue-specific character of contemporary international relations.

If the world in fact is increasingly one of multiple channels of interaction, eroding issue hierarchies, and the declining utility of force—a world in which states are being called on to grapple with an increasing number of problems, more and more of which require international cooperation and the application of new forms of knowledge—then international politics will continue to become more fragmented, and international cooperation will continue to take on a greater variety of forms, varying more and more from issue-area to issue-area as traditional mechanisms of bilateral diplomacy prove unable to address new issues and forms of interdependence. This fragmentation of international relations demands precisely the issue-specific and pragmatically eclectic approach of regime analysis.

61. See note 10 above.

62. Strange, “Cave! hic dragones,” p. 480.

Such relatively modest theoretical aspirations may not be exhilarating, but they do seem appropriate to the state of our knowledge and the scope and complexity of international relations. The regime approach is hardly the last word in the study of international relations; but even if we must ultimately go beyond regime analysis, it can provide a useful framework to guide deep and thorough political analyses of the state of international cooperation in particular issue-areas.