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.* 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," ***Daedelus*** 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 ***Truil 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. Kramer, “Structural Causes and Regime Consequences: Regimes as Intervening Variables,” International Organization 36 (Spring 1982), p. 185. Compare Robert 0. 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 GerardRuggie, “International Responses to Technology: Concepts and Trends,” ***International Organization 29*** (Summer 1975), pp. 557-84, while Keohane and Nye, ***Power und Independence,*** 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.

term, 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."* "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. Kramer, "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 Butterlield 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 0. 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."

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 Independence,*** 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.

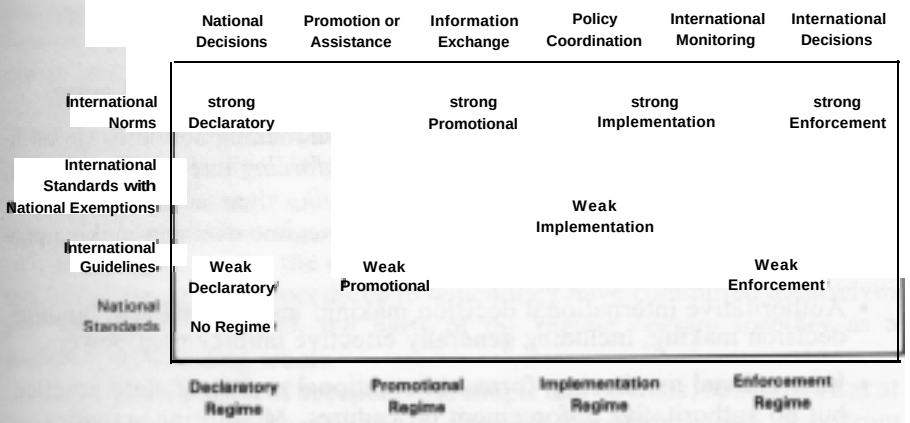

FIGURE 1. *Types of international regimes*

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" a 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 comer 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. 570-14.

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 comer (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.

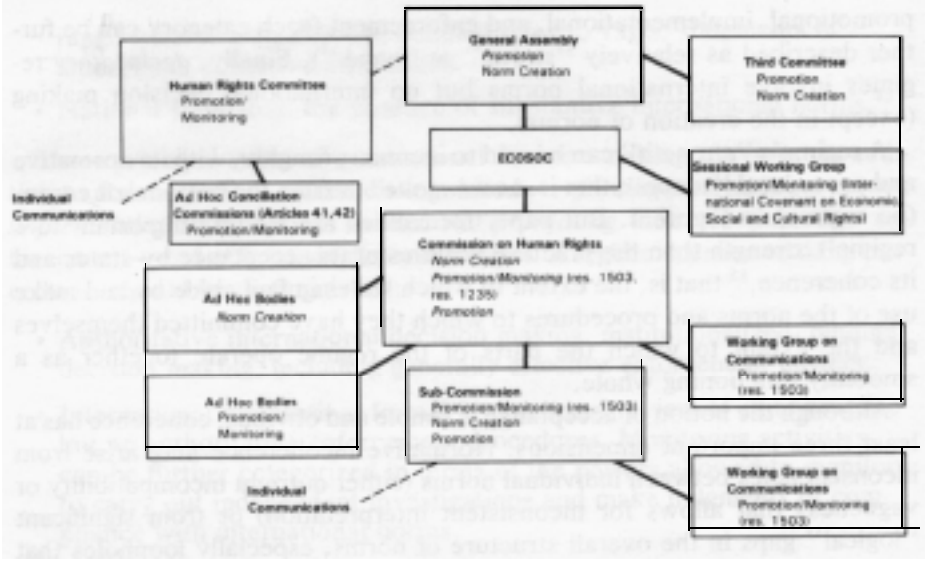

FIGURE 2. ***Major bodies in the international (UN) human rights regime***

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 Buergentahl, eds., ***Basic Documents on Znternational 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. 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?" ***Daedelus 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,"" 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

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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 [11). 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: [9] 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 Internatinal 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.*' 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."*' 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 annuaI 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 noncooperation, 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 Quarter/y 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 in 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 1'Homme/Human Rights Journal 5 (1972),* pp. 375-93; and Zuidwijk, *Petitioning the United Nations. 00. 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.*' 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 lO(XXXVI), 1984/109 and 1985/107 and E/l980/13, E/l984/14 and E/l985/22.

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 1985127, 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 0. 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: Christoohers. 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 nationa1 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 Alfonsin 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

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-

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 IL0 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 crystahzed 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 dragones," 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.