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Introduction

The opening lines of the preamble to the United Nations Charter (1945) established the mission and role of the new international organization, calling it to

> save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained . . .

With the recent and devastating memory of World Wars I and II fresh in their minds, international leaders sought cooperative means to protect global human rights and to maintain peace. They sought to eliminate the interstate tensions and humanitarian atrocities that ignited immense global wars. When meeting in San Francisco to create the United Nations Charter, states endeavored to establish a more peaceful and just international order through legal means. Their tools were charters, agreements, and treaties to establish norms of behavior on the international plane. Their bold goal was to bind states to uphold these peaceful ideals. Much has happened since the United Nations Charter was written almost seventy-five years ago. Covering twenty-nine issue areas and written in at least six languages, almost six hundred multilateral treaties have been deposited with the UN secretary-general.[1] UN multilateral treaties cover subjects ranging from nuclear weapons and torture to the standardization of international road signs and regulation of state activities on the moon. International treaties cover the many facets of state actions from the subnational to the celestial level.

The increase in treaties negotiated, created, and deposited with the United Nations represents a global commitment to the legalization of norms, standards, and ideas. Even states that are in violation or plan to

[1] "Multilateral Treaties Deposited with the Secretary General," available at https://treaties.un.org/.Pages/Content.aspx?path=DB/MTDSGStatus/pageIntro_en.xml

violate international law still commit to them, and states that oppose particular treaties are still generally involved with the treaty at some point. The United States infamously withdrew support for the Rome Statute of the International Criminal Court, yet it played a large role in treaty negotiations and still has overall cooperated with Court activities.[2] There is an expectation that international law, and in particular treaties, will be used to address important issues of transnational and international concern. While it is not necessarily surprising when liberal democracies readily commit to human rights treaties, nondemocratic states do so as well. Rights-hostile, nondemocratic regimes also identify a need or desire to engage with the international legal system. Democracies, dictatorships, and all states in between recognize how essential it is to participate in the international legal system. Much scholarship has studied how regime type matters for human rights practices, citing the importance of democracy for human rights recognition (Apodaca 2001; Bueno de Mesquita et al. 2005; Davenport 1995, 1999; Moravcsik 2000; Poe and Tate 1994; Poe, Tate, and Keith 1999). Several important works examine how regime type can matter for legal commitment, noting nondemocracies' participation in the international human rights regime either for strategic reasons (e.g., Conrad 2014; Vreeland 2008) or at the urging of other actors (e.g., Spar 1998). In fact, growing research points to authoritarian regimes, and their citizens, engaging more with human rights, democracy, and foreign policy than prior assumptions held (e.g., Brownlee 2007; Gandhi 2008; Gandhi and Lust-Okar 2009). All of these findings underscore the importance of human rights.

This book builds on a growing wave of scholarship that complicates the study of international law and compliance (Finnemore and Toope [2001, 754], e.g., argue for a process-based study of international law that takes variation of domestic politics into account). I draw on the literatures on the domestic/international legal nexus to address a gap in our understanding of how states legally commit to international treaty law (Hillebrecht 2012, 2014; Lupu 2013b; Mitchell and Powell 2011; Powell and Mitchell 2007; Powell and Staton 2009). I argue that the type of commitment states make toward international treaties matters for understanding (1) what, if any, changes they will make in their human rights behavior and (2) when changes are expected to happen. Depending on

[2] The United States did not veto, for example, a UN Security Council request that the International Criminal Court (ICC) investigate crimes in Darfur, Sudan.

the domestic and legal definitional contexts within which the commitment actions are made, states take differing approaches toward human rights practices following treaty commitments. Different commitment paths mean different things at different times for different states: though a potentially obvious statement to make, this is a new approach for studying international human rights law. Through a clear examination of types of treaty commitment and the domestic contexts within which commitment happens, I unpack when commitment is likely to signify important positive changes in human rights practices.

Treaties are a clear and public signal of support for international law. Dignitaries sign a treaty amid international fanfare and media coverage. Treaty commitment has been meticulously recorded and archived by international organizations, national governments, nongovernmental organizations (NGOs), and other groups for nearly one hundred years, and in many cases prior centuries, as well. But the treaty commitment signal is not as simple as many scholars present. Simmons, for instance, writes that treaties "set the stage" in international relations (2009, 5). However, states are setting different stages at different times based on *how* they commit to treaty law. The "how" of treaty commitment connects into a variety of domestic and international contexts that are imperative to understand when studying human rights behavior changes. Several noted pieces of scholarship criticize a ratification-dominated approach to understanding international law. For example, nearly two decades ago, Goodman and Jinks critiqued the use of treaty ratification as the "proxy for the formal acceptance of international human rights law" (2003, 173). However, little has been done within international relations to move research away from a ratification focus, and it remains the dominant assessment tool for international relations and legal scholars.

My findings point to the notable differences in rights practices across commitment types to international human rights treaties: states that opted out of treaty negotiations had worse practices after acceding to human rights treaties than their counterparts who did negotiate; states with domestic ratification policies requiring legislative approval used signature as a means to communicate support of human rights treaties earlier than states allowing executive treaty ratification (for *Legislative Approval States*, signature – not ratification – marked the inflection point in rights practices); new states recommitting to treaties via succession improved their rights practices as they signaled to the international community their overall commitment to human rights ideas while confronting growing pressure from NGOs and the United Nations to

establish themselves as new, "Westernized" states through human rights norms and law adoption.

Whether legal commitment to international law has the potential to change state behavior is a driving question within international legal and international relations scholarship. Oona Hathaway (2002) famously asked, "Do Human Rights Treaties Make a Difference?" The question of whether international law changes or constrains state behavior has become an existential one for the study of international treaties. A driving critique from the legal community asks, "Is International Law Really Law?" (D'Amato 2010). For activists, practitioners, and politicians, the extent to which committing to international law has an impact on human rights change is an increasingly pressing question. If some legal commitment paths elicit more positive change than others, this is important information for the international community and rights-based groups. Mobilization strategies, campaigns, and media attention may shift accordingly to support any action that is associated with improved rights, and shaming campaigns may target actions used as hollow gestures of commitment to rights.

More broadly, the extent to which international law matters in international relations speaks to the merits of international cooperation within an anarchical system. Commitment to treaties alone demonstrates states' willingness to participate in the international bodies that seek to constrain them; changing behavior after commitment and complying with international laws demonstrates a willingness to sacrifice sovereignty for a greater good. As many scholars note, there is much gray area in between commitment and compliance, and much disagreement about what compliance entails. Without question, international norms, rules, and laws constrain states in new ways and chip away at the anarchical international system. Exploring the efficacy of international human rights law is an important endeavor that deserves more nuanced means to test international cooperation broadly and human rights treaties specifically.

Why International Treaty Law?

When asked to point to the beginning of the modern international system, students of international relations cite a specific year and connect it to a particular set of treaties. The noted Peace of Westphalia comprised two treaties signed a few months apart in 1648, bringing to a close conflicts between Spain and the Netherlands and between the Holy Roman Empire, Germany, France, and Sweden. The Treaty of

Westphalia established state sovereignty for the modern era and demonstrated the existing states' commitment to use treaty law as the language of interstate diplomacy, even with the political pains and delays that accompany treaty negotiation. Negotiating the peace treaties reportedly took five years, with the first six months focused on the order of diplomats' entry into the negotiating room and seating arrangements once entered (Sofer 2013, 29). The Treaty established states as the main actors in the international system and international law as a primary tool for them to conduct international relations.

The international system and international law have both changed since the 1600s. Two world wars shaped the global view on human rights and humanitarian practices. The Cold War shaped conflict and political dynamics in the context of a bipolar system and nuclear threats. Globalization processes and information dissemination have made for a quickly interconnected world. The rise of terrorism, both domestic and international, emphasized non-state actors' capabilities and significance. Despite these and other changes in the last four hundred years, state sovereignty remains a core tenet of international relations. International law continues to thrive.

International law is a broad entity covering many different areas and actions. It comprises thousands of agreements brought together by states, NGOs, businesses, and individuals. Article 2(1)(a) of the Vienna Convention on the Law of Treaties (VCLT) defines a treaty as "an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation." Some scholars debate the merits of international law and are skeptical about its use as a tool for changing state behavior or even reflecting all state preferences. Hans Morgenthau, for instance, wrote that states "are always anxious to shake off the restraining influence that international law might have upon their foreign policies, to use international law instead for the promotion of their national interests" (1985, 299).

However, international law does offer a codified set of rules against which we can measure the extent to which and conditions under which states alter their behavior. Examining international law is fruitful in assessing when, if ever, states respond to legal guidelines and how changing legal guidelines codify and reflect changing global norms. In this project, I limit the examination to treaty law. This is not to argue that other forms of international law – such as case law, customary international law, and general or natural principles of international law – are

trivial areas for study. In fact, important research is beginning to examine the use of international court decisions within domestic courts (e.g., Fikfak 2014; Roberts 2011) and the development of customary international law over time (e.g., Posner and Goldsmith 1999; Wood 2015). Rather, I focus on international treaty law for the following four reasons.

First, treaty law has emerged in the post–World War II period as the dominant form of international law. Thousands of treaties have been created both within and outside of the UN treaty system, in contrast to international case law, which while growing has yet to reach the same volume or frequency. The International Court of Justice, for example, heard 134 cases between 1947 and 2014, while bilateral investment treaties alone totaled 2,181 between 1990 and 2002, according to the United Nations. The narrower area of multilateral treaties deposited with the Secretary-General of the United Nations also out-totaled case law. According to the United Nations, more than six hundred multilateral treaties were deposited between 1948 and 2017.

Second, treaty law requires some involvement of the domestic level to approve law at the international level. This contrasts with customary international law, which through its definition is not based on formal, legal commitment but rather "international custom, as evidence of a general practice accepted as law."[3] Customary international law increasingly functions as a source of international law, but variation in state integration of customary international law results in a lack of uniform commitment standards and timing across states. For example, in defining and exploring customary international law, Lepard (2010) downplays state practices as criteria demonstrating customary international law, and authors D'Amato (1971, 5) and Koskenniemi (2010, 361–362) critique the conceptual use of customary international law based on its inconsistency of rules, applications, and theories. The same broadly applicable yet often less-legalized character of customary international law that makes it appealing to states also makes it more difficult to substantively study, measure, and assess. Given these aspects of customary international law, treaty law offers a more structured type of law for analyzing state behavior and domestic legal involvement.

Third, formalizing the treaty-making process makes for precise records of participation. The United Nations houses hundreds of multilateral treaties deposited with the UN Secretary-General and keeps records of which states committed to what treaties, when, and how. Unlike less-formalized

[3] Article 38(1) (b) Statute of the International Court of Justice.

customary international law, which does not have precise points of rights emergence, treaty law offers more concrete times for legal emergence and commitment for study. The UN Office of Legal Affairs Treaty Section provides real-time updates of participatory actions, disseminates this information to member states, and makes it public on their website. Participation in UN multilateral treaties is formal, legalized, and transparent.

Fourth, multilateral treaties by definition involve more than two states, thus enabling us to engage with broader treaty commitment. Even though customary international is conceptually applicable to every state, it becomes more difficult to pinpoint times of emergence and change as well as which states participate, when, and to what extent. Bilateral treaties are legally precise in terms of who participates, when, and how but are limited to two states. A state may make separate bilateral trade agreements with different states. These actions may demonstrate one state's legal preferences but not necessarily reflect the system's preferences overall. International court cases also involve fewer state participants. Often court rulings apply to those states that are members of a certain court. The European Court of Human Rights decisions, for example, would have limited-to-no legal basis for application within the United States or Nigeria. The International Court of Justice takes on cases and rulings between two states and administers advisory opinions. Posner and de Figueiredo (2005) find statistical evidence supporting the charges that International Court of Justice (ICJ) judges are biased in rulings, based on similarities between judges and state participant judicial systems, which states appoint them, wealth, and cultural similarities. The ICC has been criticized for targeting African leaders, in particular, introducing the possibility of regional biases in participation (Kaye 2011; Shamsi 2016). Treaty commitment, alternatively, is voluntary and open to any UN member state, broadening the total number of possible involved states to almost two hundred.

While this book focuses on a specific "home" for international law – the UN treaty framework – elements of these mechanisms are translatable and generalizable across agreements within other international organizations and across other forms of international law. First, although the four commitment types analyzed in this book – ratification, signature, accession, and succession – have precise definitions and requirements within the UN treaty framework, several are used within other international organizational settings. For example, the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms (1950) recognizes the four types of commitment. Treaties are used within the International Monetary Fund (IMF) as a formal system of

legal agreement. However, within core agreements at the IMF, commitment takes the effect of a definitive signature, a variety of signature that is binding and not subject to ratification (see Article XXXI, section 2 (g) and (4), of the IMF Articles of Agreement). Similarly, the Articles of Agreement of the International Bank for Reconstruction and Development, establishing the World Bank, uses definitive signature as the authoritative commitment form. This legal practice distinguishes these types of agreements from UN agreements, which entail a period of nonbinding commitment. In that respect, the book's findings and arguments differ from the particularities of these legal frameworks. However, although the terminology differs among the international organizations, context and processes do extend across organizations. In the IMF and World Bank, international agreements operate with a period leading up to entry into force (EIF), offering a nonbinding time within which to consider state compliance. Similarly, agreements in these other international organization settings are negotiated by membership.

Second, less-formalized agreements may not seek binding status at all. The nonbinding nature of international agreements, declarations, and conventions aligns with the book's argument that nonbinding signature paves the path toward compliance. The World Medical Association's Declaration of Helsinki is widely considered a successful and nonbinding declaration on public health, subjects, and consent (Bodansky 2015, 162). Within the UN framework, declarations provide important nonbinding agreements reasserting state commitment to issues covering human rights (1948), combating human trafficking (2017), and forming nonbinding foundations to future hard law (e.g., the 1959 Declaration on the Rights of the Child and the 1961 Declaration on the Prohibition of the Use of Nuclear and Thermonuclear Weapons both led to treaties).

Additionally, the domestic processes discussed here – arriving at binding commitment, the power of participating in agreement negotiations, and the role of regime transitions and international legitimation on compliance – are illuminating elements of international commitment and follow-through. These dynamics speak to and extend beyond international treaty law.

Why Human Rights?

International treaty law covers many issue areas, ranging from high-politics topics of nuclear weapons to low-politics topics covering road creation. Each of these areas offers the aforementioned benefits to study

by having many participants, clear participation times, and treaties as a frequently used form of international law. This book limits its scope to human rights treaty law. Within this limited scope, the United Nations has created sixteen treaties and eleven Optional Protocols since 1945. A focus on the human rights issue area is of interest for both scholarly and policy reasons.

In the academic context, focusing on human rights offers several distinct advantages. First, the analysis of human rights behavior has vastly expanded in the last twenty years. Projects such as those of Risse, Ropp, and Sikkink (1999) offer extensive case-study analysis through which the authors explore the relationship between international human rights norms and domestic practices. Quantitative analyses such as those conducted by Hathaway (2002), von Stein (2005), Neumayer (2005), Hafner-Burton and Tsutsui (2005), and Zhou (2014) provide a host of statistical tests modeling the linkages between legal commitment and compliance and human rights treaties. Researching in this area allows for comparison across previous findings and for improving understanding by building upon prior findings.

In the policy context, human rights violations continue to be a problem of heightened importance. The plight of refugees, political imprisonment, forced disappearances, and discrimination against vulnerable populations fill the headlines. The Universal Declaration of Human Rights, created in 1948, maintains the world's record for most translated document, translated into more than five hundred languages in the past seventy years (UN 2016). This extensive dissemination of the United Nation's first legal agreement on human rights demonstrates the importance with which human rights are viewed globally. The United Nations and its member states perpetually seek to provide resources for victims of human rights violations, improve on violating states' poor practices, and understand the ways in which global human rights can be improved. The United Nations recognizes the weaknesses in the current treaty body system, acknowledging that only 16 percent of state parties submit reports to treaty bodies on time (Pillay 2012, 8). The United Nations also identifies when noncompliance problems exist, shining light on state violations.

The generalizability of human rights law findings to other issue areas has been a contested topic within academic research. Depending on whom you ask, research on human rights laws can or cannot speak to international law more generally. Legal texts caution about generalizing human rights law to other issue areas (e.g., Dunoff, Ratner, and Wippman 2010). On the one

hand, some argue that human rights laws are "window dressing" and that states have no intention of following through with their commitments. On the other hand, human rights as an issue area is arguably a "hard case" to test. Human rights laws are the international community directing states on how to treat their citizens. Subnational groups opposed to treaty ratification frequently rally around the argument that an international organization such as the United Nations has no authority to dictate life in the country. The United States is a prime example, wherein the state is generally compliant with a treaty while confronting domestic opposition to ratification. The UN Convention on the Rights of Persons with Disabilities (CRPD) was based largely on the Americans with Disabilities Act. Domestic groups opposed ratification on the principle of protecting domestic sovereignty against an overbearing United Nations. Nevertheless, the US State Department writes that it "promotes international implementation of the Convention on the Rights of Persons with Disabilities ... linking US experience and technical assistance to interested governments ... [and to be] inclusive of disability rights in key [US] foreign policy areas" (US Department of State, 2017).

Noting conceptual and substantive differences among international treaty areas, some legal scholars argue that legal behavior differs in the area of human rights. For example, reservations may be overrepresented and objections underrepresented. Dunoff, Ratner, and Wippman (2010) suggest that reservations to human rights treaties are frequent, while "most multilateral treaties are ratified with few or no reservations" (436). Scholars explain this pattern through a historic desire to encourage increased participation in human rights treaties by allowing for more reservations. When considering reservations to the Genocide Convention, the ICJ Advisory Opinion wrote that human rights and humanitarian treaties were special issue areas "adopted for a purely humanitarian and civilizing purpose." As such, the ICJ desired that "as many States as possible should participate."[4] Swain highlights Judge Rosalyn Higgins's argument that states care about their own ability to make reservations but care little about other states' reservations when it comes to human rights treaties: "The basic intuition is that states care more about preserving their right to make reservations than they do about their right to object" (2006, 327). While in other treaty areas,

[4] Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, 1951 I. C. J. 15, 24 and discussed in Dunoff, Ratner, and Wippman (2010, 436) and Alston and Goodman (2013, 1081).