doi:10.1017/ajil.2016.16

Human Rights Experimentalism

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Abstract

Human rights in general and the international human rights system in particular have come under increasing attack in recent years. Quite apart from the domestic and global political events since 2016, including an apparent retreat from international institutions, the human rights system has in recent times come in for severe criticism from academic scholars. Amongst the various criticisms levelled have been: (1) the ineffectiveness and lack of impact of international human rights regimes, (2) the ambiguity and lack of specificity of human rights standards, (3) the weakness of international human rights enforcement mechanisms, and (4) the claim to universalism of human rights standards coupled with the hegemonic imposition of these standards on diverse parts of the world. This article responds to several of those criticisms by introducing the idea of experimentalist governance, interpreting key aspects of the functioning of certain international human rights treaties from the perspective of experimentalist governance theory, and surveying a body of recent scholarship on the effectiveness of such treaties. Contrary to the depiction of international human rights regimes as both ineffective and top-down, the article argues that they function at their best as dynamic, participatory, and iterative systems. Experimentalist governance offers a theory of the causal effectiveness of human rights treaties, brings to light a set of features and interactions that are routinely overlooked in many accounts, and suggests possible avenues for reform of other human rights treaty regimes with a view to making them more effective in practice.

I. Introduction

Human rights in general and international human rights law in particular have faced serious challenges in recent times. Geopolitical upheavals, including the Brexit vote in the United Kingdom, the election of Donald Trump in the United States, the global spread of illiberal democracy, and the withdrawal of several African states from the International Criminal

* Florence Ellinwood Allen Professor of Law, NYU Law School. A previous version of this article was given as a Max Weber Lecture at the European University Institute in April 2015, and at the Watson Institute, Brown University in November 2015. I am grateful to the four anonymous *AJIL* reviewers as well as to Philip Alston, Nehal Bhuta, Angelina Fisher, César Garavito, Turkuler Isiksel, Bob Keohane, Katerina Linos, Frédéric Mégret, Sally Merry, Kal Raustiala, Chuck Sabel, Adam Samaha, Joanne Scott, Elena Shih, Holger Spamann, Nina Tannenwald, and Katie Young for their comments and advice. I am also grateful to Nicholas Nestelbaum, Rahim Manji, and Anjali Manivannan for their research assistance, including for conducting the interviews listed in note 20 below. Funding for this research was provided by the Filomen D'Agostino and Max E. Greenberg Research Fund of NYU Law School. [Editor's Note: The Editors in Chief were recused from considering this manuscript, and the review process was conducted, and all decisions made, by Kal Raustiala.]

Court suggest an era of political retreat from liberal internationalism and international institutions, including from human rights courts and bodies.[1]

Yet the array of serious challenges to human rights has come not only from current political developments, but also from a growing range of prominent scholars, and even from "insiders" to the human rights system. A significant body of academic and policy literature in recent years has been harshly critical of the international human rights enterprise.[2] And although scholarly challenge to human rights discourse and institutions is not in itself a new phenomenon,[3] the extent and volume of the critique in recent years have notably increased. Indeed, it seems that as the international human rights domain has grown and continued to spread, the range of critical reactions in turn has spread and intensified.

Amongst the various scholarly and policy criticisms which have been put forward are a number which are particularly prominent and recurrent. These critiques concern: the ambiguity and lack of specificity of human rights standards; the weakness of international human rights enforcement mechanisms; and the ineffectiveness and lack of impact of human rights law. Another target for criticism is the universalist claim of human rights standards, and the accompanying hegemonic or top-down imposition of human rights standards on diverse parts of the world. In the face of these critiques, how can it be argued that the international human rights system is working?

[1] While prominent recent challenges have been directed at international economic institutions such as the World Trade Organization, investor-state dispute resolution mechanisms, and mega-regional trade agreements, there has also been a rise in challenges to regional and international human rights bodies. In 2016, the UK prime minister, Theresa May, initially called for UK withdrawal from the European Convention on Human Rights (ECHR), and subsequently for the repeal of the UK Human Rights Act, which incorporates the ECHR. Anushka Asthana & Rowena Mason, *UK Must Leave European Convention on Human Rights, Says Theresa May*, GUARDIAN (Apr. 25, 2016), *at* https://www.theguardian.com/politics/2016/apr/25/uk-must-leave-european-convention-on-human-rights-theresa-may-eu-referendum; Michael Wilkinson, *Human Rights Act Will Be Scrapped in Favour of British Bill of Rights, Liz Truss Pledges*, TELEGRAPH (Aug. 22, 2016), *at* http://www.telegraph.co.uk/news/2016/08/22/new-british-bill-of-rights-will-not-be-scrapped-insists-liz-trus. The Inter-American human rights system has been challenged and weakened in recent years by the withdrawal of Venezuela and vocal criticism from the government of Ecuador, amongst others, and reached a point of crisis in 2016 due to the inadequacy of its funding. *See, e.g.*, Press Release, OAS, Severe Financial Crisis of the IACHR Leads to Suspension of Hearings and Imminent Layoff of Nearly Half its Staff (May 23, 2016), *at* http://www.oas.org/en/iachr/media_center/PReleases/2016/069.asp; Par Engstrom, Paola Limón & Clara Sandoval, *CIDHenCrisis: Urgent Action Needed to Save the Regional Human Rights System in the Americas,* OPEN DEMOCRACY (May 27, 2016), *at* https://www.opendemocracy.net/democraciaabierta/par-engstrom-paola-lim-n-clara-sandoval/cidhencrisis-urgent-action-needed-to-save. For a reaction by the UN High Commissioner for Human Rights on the array of challenges to human rights in 2016, including to institutions such as the ICC and the Human Rights Council, see *As 2016 Draws to a Close, UN Rights Chief Outlines Enormity of Challenges to Human Rights*, UN NEWS CENTRE (Nov. 30, 2016), *at* http://www.un.org/apps/news/story.asp?NewsID=55686#.WE8W3-Zrjic.

[2] Prominent recent critics, as the titles of their works suggest, include: SAMUEL MOYN, THE LAST UTOPIA. HUMAN RIGHTS IN HISTORY (2012); ERIC POSNER, THE TWILIGHT OF HUMAN RIGHTS LAW (2014); and STEPHEN HOPGOOD, THE ENDTIMES OF HUMAN RIGHTS (2014).

[3] Some influential earlier critics include: David Kennedy, *The International Human Rights Movement: Part of the Problem?*, 15 HARV. HUM. RTS. J. 201 (2002); DAVID KENNEDY, THE DARK SIDES OF VIRTUE: REASSESSING INTERNATIONAL HUMANITARIANISM (2004); Martii Koskenniemi, *The Effect of Rights on Political Culture*, *in* THE EU AND HUMAN RIGHTS (Philip Alston, Mara Bustelo & James Heenan eds., 1999); Martii Koskenniemi, *Human Rights Mainstreaming as a Strategy for Institutional Power*, 1 HUMANITY: INT'L J. HUM. RTS., HUMANITARIANISM & DEV. 47 (2010); and MAKAU MUTUA, HUMAN RIGHTS: A POLITICAL AND CULTURAL CRITIQUE (2008). For an overview of earlier feminist critiques of human rights, see Karen Engle, *International Human Rights and Feminisms: When Discourses Meet*, 13 MICH. J. INT'L L. 517 (1992), and more recently SIOBHÁN MULLALLY, GENDER, CULTURE AND HUMAN RIGHTS. RECLAIMING UNIVERSALISM (2006).

https://doi.org/10.1017/ajil.2016.16 Published online by Cambridge University Press

This article focuses on one key part of the international human rights regime which has come in for particular criticism—the international human rights treaty system—and it argues that that the treaty system does indeed work. Drawing on experimentalist governance theory, the article suggests an account of how the human rights treaty system works in practice to make a difference, and in a way that rebuts several of the criticisms outlined above.

After introducing the idea of experimentalism as a theory of transnational governance, three important international human rights treaties are analyzed as transnational experimentalist governance regimes: the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); the Convention on the Rights of the Child (CRC); and the Convention on the Rights of Persons with Disabilities (CRPD). One effect of interpreting these treaty regimes through the lens of experimentalist governance is to highlight important features—particularly the iterative interaction between civil society actors, UN treaty bodies, and governmental actors—which are routinely neglected or underestimated in conventional descriptions and critiques of the human rights treaty system.

Having introduced experimentalist governance theory and its relevance to the international human rights treaty system, this article addresses the effectiveness critique set out above by surveying a range of empirically based studies of the international human rights treaty system in practice.[4] This survey indicates that a growing body of recent empirical scholarship identifies a positive correlation, under specific conditions, between the adoption of human rights treaties by states and an improvement in human rights standards within those states. Significantly, most of the studies, both quantitative and qualitative, suggest that the conditions under which human rights treaties are likely to contribute toward this positive impact include two key experimentalist features: a degree of political liberalization, and a reasonably active domestic civil society that is strongly engaged with the UN treaty reporting regime. A case study of children's rights in Albania is included to illustrate more closely the ways in which the experimentalist operation of treaty body system can promote positive human rights reform.

The experimentalist lens offers a plausible and cogent account of something which the scholarly literature to date (even the literature which shows a correlation between ratification of human rights treaties and improved respect for human rights) has struggled to explain: how international human rights treaties actually work in practice to improve human rights.[5] And the specific finding of most of the qualitative and quantitative studies surveyed below—essentially that there is a correlation between the existence of an active domestic civil society which is engaged with the UN treaty system and the positive domestic effects of an international

[4] While the international human rights regime overall consists of more than the international human rights treaty system, the latter is clearly one of its most important components. Arguably the two other most important elements are the Universal Periodic Review (UPR) of the Human Rights Council, and the array of international mechanisms created to respond to gross violations of human rights, and particularly commissions of inquiry. And while this article does not address the functioning of the UPR, there is interesting evidence emerging of its impact through reasonably deliberative and iterative processes involving civil society participation: see Karolina Milewicz & Robert E. Goodin, *Deliberative Capacity-Building Through International Organizations: The Case of the Universal Periodic Review*, 46 BRIT. J. POL. SCI. 1–21 (2016).

[5] *See* Adam S. Chilton, *Using Experiments to Test the Effectiveness of Human Rights Treaties* (University of Chicago Public Law and Legal Theory, Working Paper No. 533, 2015); *see also* Adam S. Chilton & Dustin Tingley, *Why the Study of International Law Needs Experiments*, 52 COLUM. J. TRANSNAT'L L. 173 (2013).

https://doi.org/10.1017/ajil.2016.16 Published online by Cambridge University Press

human rights treaty—bolsters the argument that it is the experimentalist functioning of these human rights treaty systems that helps to account for their positive impact.

Further, in addition to providing a more developed theoretical account of the mechanism by which international human rights treaties can work to produce progressive change, an experimentalist governance analysis also offers a response to the first and second critiques of the human rights treaty system outlined above, namely the apparent ambiguity in standards and the weakness of enforcement mechanisms. Understood from an experimentalist perspective, these features, far from being weaknesses, can be seen as important and necessary components of a properly functioning system. A more challenging criticism, however, may be that which denounces the universalist claim of international human rights law and its alleged hegemonic imposition of international standards on diverse parts of the world. Nevertheless, to the extent to which these human rights treaty systems do operate in the way suggested in this article, a more nuanced response to this fourth criticism can be offered:[6] that the open-endedness of human rights standards and the existence of an active domestic civil society within the treaty systems examined have the effect of facilitating genuinely two-way interaction and engagement between locally situated actors and institutions and internationally situated actors and institutions. Local actors are in a position to articulate their specific claims and concerns and to provide contextualized knowledge and feedback to the international actors and institutions which rely on such feedback, and on the other hand, they are in a position to adapt or vernacularize international standards within domestic and local contexts.[7]

Finally, understanding the operation of human rights treaties as a form of experimentalist governance may also have practical implications about where future research and resources might be directed in terms of strengthening the human rights system to improve the lives of people across the globe.

II. Experimentalism as a Theory of Transnational Governance

The disciplines of international law and international relations have long struggled with the difficulty of developing or even imagining a legitimate system of transnational governance which could provide a minimally satisfactory functional substitute for domestic political systems within states. On the one hand, it is widely acknowledged that however attractive the notion of sovereignty remains to states, they are in fact deeply interdependent, and the capacity of separate political communities to govern themselves is fundamentally affected by what other political communities do or do not do, as well as by flows of capital, commerce, persons,

[6] This is certainly not to say that there are no aspects of the international human rights regime that make strongly universalist claims or that operate in a hegemonic and top-down way. The invocation and use by international financial institutions and donors of international aid of human rights standards may well at times do so, and forcible humanitarian intervention in alleged defense of human rights may also do so. The focus of this article, however, is the functioning of the international human rights treaty system (focusing specifically on the CEDAW, CRC, and CRPD), which I argue in many respects can be understood as an experimentalist governance system that is neither hegemonic, top-down, nor strongly universalist in its claims.

[7] For elaboration of the ideas of localization and vernacularization, see Sally Engle Merry, Peggy Levitt, Mihaela Serban Rosen & Diana Yoon, *Law from Below: Women's Human Rights and Social Movements in New York City*, 44 L. & Soc'y Rev. 101 (2010); Peggy Levitt & Sally Merry, *Vernacularization on the Ground: Local Uses of Global Women's Rights in Peru, China, India and the United States*, 9 Glob. Networks 441 (2009); Sally Engle Merry & Rachel Stern, *The Female Inheritance Movement in Hong Kong: Theorising the Local/Global Interface*, 46 Current Anthropology 387 (2005).

https://doi.org/10.1017/ajil.2016.16 Published online by Cambridge University Press

and ideas. On the other hand, despite this deep and factual interconnectedness, no adequate system of transnational governing capable of meeting the challenges of interdependence has yet been developed. International institutions largely lack both the capacity and the democratic legitimacy of domestic political institutions, and even the deep experiment in transnational polity-making represented by the European Union has revealed all too starkly in recent times the difficulty of developing a democratically legitimate and accepted form of governance beyond the nation state.

One theory which has been articulated in recent years, and which offers some response to the dilemmas of transnational governing, is that of experimentalist governance, developed in the work of Charles Sabel and a series of others.[8] Inspired by Deweyan ideas of pragmatic learning from experience, experimentalist governance is in essence a theory of multilevel governance that proposes a way in which a broadly agreed set of framework goals can be elaborated and implemented in a multilevel setting, whether domestically,[9] within firms,[10] in federal systems,[11] or, according to more recent scholarship, transnationally.[12] In the words of Sabel and Zeitlin: "[E]xperimentalist governance is a recursive process of provisional goal-setting and revision based on learning from the comparison of alternative approaches to advancing them in different contexts."[13] They argue that an experimentalist approach "responds to the widely acknowledged failures of 'command-and-control' regulation in a turbulent, fast-moving world" and is

> particularly well-suited to transnational domains, where there is no overarching sovereign with authority to set common goals even in theory, and where the diversity of local conditions and practices makes adoption and enforcement of uniform fixed rules even less feasible than in domestic settings.[14]

Amongst the normatively attractive aspects of experimentalist governance theory are its vision of an iterative and participatory system in which policies are developed through the interaction of a series of situated stakeholders and actors in different locations and at different levels across a multilevel system, operating to implement a broadly shared framework agreement, albeit in quite distinct and separate settings.

With its central emphasis on the importance of adequate stakeholder participation and learning from local contexts in the implementation of a shared framework, experimentalist

[8] For an authoritative recent account, see Charles Sabel & Jonathan Zeitlin, *Experimentalist Governance*, *in* THE OXFORD HANDBOOK OF GOVERNANCE, ch. 12 (David Levi-Faur ed., 2011).

[9] *See, e.g.*, Charles F. Sabel & Michael Dorf, *A Constitution of Democratic Experimentalism*, 98 COLUM. L. REV. 267 (1998); Charles F. Sabel & William H. Simon, *Minimalism and Experimentalism in the Administrative State*, 100 GEO. L.J. 53 (2011).

[10] Gary Herrigel, *Experimentalist Systems in Manufacturing Multinationals* (Univ. Chicago, Draft, 2015), *available at* http://siepr.stanford.edu/system/files/Herrigel-CPSpaper-revised.pdf.

[11] Charles F. Sabel & William H. Simon, *Destabilization Rights: How Public Law litigation succeeds*, 117 HARV. L. REV. 1015 (2004); Sabel & Dorf, *supra* note 9.

[12] Gráinne de Búrca, Robert O. Keohane & Charles Sabel, *New Modes of Pluralist Global Governance*, 45 NYU J. INT'L L. & POL'Y 723 (2013); Gráinne de Búrca, Robert O. Keohane & Charles Sabel, *Global Experimentalist Governance*, 44(3) BRIT. J. POL. 477–86 (2014); Charles F. Sabel & Jonathan Zeitlin, *Experimentalism in Transnational Governance: Emergent Pathways and Diffusion Mechanisms*, GREEN (Global Reordering: Evolution Through European Networks, Working Paper No. 9, 2011).

[13] Sabel & Zeitlin, *supra* note 12, at 4.

[14] *Id.*

https://doi.org/10.1017/ajil.2016.16 Published online by Cambridge University Press

governance theory is premised on the belief that an effective and deliberative system of multilevel governing can evolve or be developed where a number of key features are present. The five key features, outlined in earlier scholarship,[15] are: (1) initial reflection and identification of a broadly shared perception of a common problem, one that is accepted across diverse participating units or states; (2) the articulation of a framework understanding with open-ended goals; (3) implementation of these broadly articulated goals by contextually situated or "lower level" actors, entailing the active participation of key stakeholders who have knowledge of local conditions and discretion to adapt the framework norms to these different contexts; (4) continuous provision of feedback to the "center" from local contexts and by relevant stakeholders, allowing for reporting and monitoring across a range of contexts, with outcomes subject to nonhierarchical or peer review; and (5) periodic and routine reevaluation (and, where appropriate, revision) of the original goals and the existing practices in light of the results of the ongoing review and in light of the shared purposes.

Experimentalist governance regimes sometimes also operate in the shadow of a background system or a threatened sanction, which can be called a "penalty default." A penalty default is an outcome which may serve to incentivize cooperation by sanctioning the failure to cooperate. In the context of the international human rights system, a penalty default might exist in the form of a state or states making delivery of aid conditional on compliance with human rights norms,[16] or consumer-organized boycotts of goods from countries that seriously violate human rights standards.[17] These kinds of penalties create incentives for states and others to comply with the human rights regimes to which they have agreed but are reluctant to implement.

A transnational governance system comprising the five elements outlined—general agreement on framework goals, broad participation through devolution of discretion in implementation to locally or contextually situated actors, with continuous feedback through monitoring and reporting to the center, and periodic revision of framework goals in the light of experience gathered through the reporting and monitoring process—can be considered an experimentalist governance system.

The hypothesis of experimentalist governance theory is that where all five of these features are present and operate together, they should foster a normatively desirable form of deliberative and participatory governance. Experimentalist governance theory thus addresses the conundrum of how to create an adequate and legitimate transnational governance system that takes seriously both the existence of common or collective problems shared by states and the deep diversity—of many kinds—of different political systems and communities. It recognizes that transnational governance requires shared agreement on broad goals, but simultaneously recognizes that the way these goals are fleshed out and implemented will vary—perhaps significantly—from context to context and from state to state. Experimentalist governance theory emphasizes the importance of stakeholder participation to an informed and effective policy, as well as the importance of ensuring accountability

[15] This synopsis is taken from: de Búrca, Keohane & Sabel, *Global Experimentalist Governance*, *supra* note 12.

[16] *See* Jerg Gutmann, Matthias Neuenkirch & Florian Neumeier, *Precision-Guided or Blunt? The Effects of US Economic Sanctions on Human Rights* (Universitat Trier, Research Papers in Economics No. 9/16, 2016) (using endogenous-treatment regression models to find no support for adverse effects of sanctions on human rights, and some evidence of a positive relationship in relation to women's' rights and "emancipatory rights").

[17] See for a study, Simone Dietrich & Amanda Murdie, *Human Rights Shaming Through INGOs and Foreign Aid Delivery*, REV. INT'L ORGS. (2016), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2641766.

https://doi.org/10.1017/ajil.2016.16 Published online by Cambridge University Press

through the regular provision of information and by means of an ongoing and transparent process of nonhierarchical review. Finally, the possibility of transnational learning from difference and experience is a major premise of experimentalist governance theory.[18]

Below, three of the UN human rights treaty systems—the CEDAW, CRC, and CRPD—will be examined and presented as instances of transnational experimentalist governance in practice. It is not the claim of this article that these treaty systems were consciously designed as experimentalist governance systems. Indeed, while the CRPD was deliberately drafted in a novel and more broadly participatory way to include features I have previously described as experimentalist,[19] the CRC and CEDAW were certainly not originally so designed. However, as described in this article, those two treaty systems over time have also come to develop many of these features, including in particular a much more substantial and active role for the relevant civil society groups, networks, and institutions at all levels of the treaty body system and its implementation.[20] While no attempt is made here to develop the argument in any detail, the suggestion is that this path of "stumbling into experimentalism" is one to which transnational human rights systems with a mechanism such as a court or a treaty body, in the presence of an active and engaged civil society with a clear interest in the effective implementation of the system, may be inclined to follow.[21]

[18] *See* Charles F. Sabel & Jonathan Zeitlin, *Learning from Difference: The New Architecture of Experimentalist Governance in the EU*, 14 EURO. L.J. 271 (2008).

[19] Gráinne de Búrca, *The EU in the Negotiation of the UN Disability Convention*, 35 EURO. L. REV. 174 (2010).

[20] In addition to a review of the secondary academic and policy literature, the information upon which this section draws is also based on interviews conducted with a range of civil society actors within the three human rights treaty regimes. For the CEDAW, those interviewed include: (1) Dorcas Coker-Appiah, Executive Director of the Gender Centre and former member of the CEDAW Committee; (2) Radhika Coomaraswamy, former UN Special Rapporteur on Violence Against Women; (3) Marsha Freeman, Director of International Women's Rights Action Watch (IWRAW) and Senior Fellow at the University of Minnesota Human Rights Center; (4) Rozana Isa, member of Sisters in Islam (SIS), an NGO working on the rights of Muslim women within the framework of Islam and formerly Senior Programme Officer on Building Capacity for Change at the International Women's Rights Action Watch Asia Pacific; (5) Ivy Josiah, Executive Director of Women's Aid Organisation (WAO) in Malaysia; (6) Younas Khalid, Chief Strategy and Policy Officer with Pakistan's primary women's NGO, The Aurat Foundation; (7) Audrey Lee, program manager for IWRAW-AP; (8) Justine Mbabazi, human rights advocate who presented the collective NGO Shadow Report for Rwanda at the 43rd CEDAW Committee session; (9) Caroline Schlecker, Social Affairs Officer, Women's Rights Section, Division for the Advancement of Women, at UN Women; and (10) Jakob Schneider, Human Rights Officer at the UN and secretary to the CEDAW Committee. For the CRC, those interviewed were: (1) Roisin Fegan, Child Rights Officer for Child Rights Connect; (2) Veronica Yates, Director of Child Rights International Network (CRIN); (3) Edel Quinn, Legal and Policy Officer at Children's Rights Alliance; (4) Mafalda Leal, Senior Policy Coordinator of Child Rights & Child Practices at Eurochild; (5) Johan Martens, Policy & Partnership Coordinator at Child Helpline International; (6) Francois-Xavier Souchet, Programme Officer for Legal Support, EPCAT (End Child Prostitution, Pornography and Sex Trafficking) International; and (7) Jennifer Philpot-Nissen, formerly senior adviser for human rights at World Vision International. For the CRPD, those interviewed were: (1) Janina Arsenjeva, European Disability Forum; (2) Regina Atalla, President of RIADIS, (the Latin-American network of organizations for persons with disabilities and their families); (3) Alexandre Cote, Capacity Building Program Officer, International Disability Alliance; (4) Amy Farkas, Disability Section, Programme Division, UNICEF; (5) An-Sofie Leenknecht, Human Rights Officer, European Disability Forum; (6) Ron McCallum, Chair of the CRPD Committee; (7) Amanda McRae, Disability Rights Researcher at Human Rights Watch; (8) Victoria Lee, Human Rights Officer responsible for UN Treaty Bodies at the International Disability Alliance; (9) Lauro Purcil, Philippine Coalition on the UN CRPD; (10) Ana Sastre Campo, CRPD Delegate, CERMI (DPO umbrella organization and independent monitoring mechanism in Spain); and (11) Marianne Schulze, Chairperson of the Austrian Independent Monitoring Committee.

[21] Gráinne de Búrca, *Stumbling into Experimentalism?: The EU Anti-discrimination Regime*, *in* EXPERIMENTALIST GOVERNANCE IN THE EU: TOWARDS A NEW ARCHITECTURE (Charles F. Sabel & Jonathan Zeitlin eds., 2010).

https://doi.org/10.1017/ajil.2016.16 Published online by Cambridge University Press

III. International Human Rights Treaties Through the Lens of Experimentalist Governance

The UN human rights treaty system originated with the adoption of the Universal Declaration of Human Rights and was followed by a series of core "implementing treaties" that were enacted in the decades since. There are by now around ten treaties (depending on how they are counted), the main two being the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. In addition to these are the Convention on the Elimination of Racial Discrimination, the Convention against Torture, the International Convention on the Rights of All Migrant Workers, the International Convention for the Protection of All Persons from Enforced Disappearances, as well as the CEDAW, CRC, and CRPD mentioned already above. The research upon which the argument of this article rests is based on the latter three treaties, which share a set of features common to experimentalist governance processes.[22] For present purposes, no claim is being made about the other treaty systems, although it seems likely that several others, including the Human Rights Council's Universal Periodic Review, share at least some relevant features and aspects of experimentalist governance systems.

Each UN human rights treaty generally encompasses an array of general norms which articulate a set of rights focused either on particular communities, such as women, children, persons with disabilities, or migrant workers; or on particular issues, whether a broad set of civil and political rights or economic and social rights, or a more specific set of issues such as race discrimination, torture, or disappearances. The treaties usually establish an organ known as a "treaty body." This body is a committee of independent experts who—unlike the members comprising the UN Human Rights Council—are not representatives of national governments, but are generally nominated and selected because they are believed to have relevant expertise on the issues raised by the rights in question and to be independent from any government or from political interference.[23] States are required under the treaties to make periodic reports to the treaty body on their progress in implementing the commitments undertaken in the conventions, and the treaty body is empowered to make recommendations and address observations to the states based on their consideration of the reports. Six of the treaty bodies have adopted formalized processes of "follow-up" where they monitor more closely certain of their recommendations that they consider urgent, and states are required

[22] Regional human rights treaty systems, such as the European Convention on Human Rights, the Inter-American Human Rights system, and the African Human Rights system, are also not included within the scope of the present article, although some of them share a number of features of experimentalist governance. For analyses of the ECHR that emphasize the open-endedness of standards and the lack of strictly hierarchical or top-down authority, see Nico Krisch, *The Open Architecture of European Human Rights Law*, 71 Mod. L. Rev. 183 (2008), and Oliver de Schutter & François Tulkens, *The European Court of Human Rights as a Pragmatic Institution*, *in* Conflicts Between Fundamental Rights 169 (Eva Brems ed., 2008).

[23] For overviews and analyses of the treaty system, see UN Human Rights Treaty Bodies: Law and Legitimacy (Helen Keller & Geir Ulfstein eds., 2015); Suzanne Egan, The UN Human Rights Treaty System: Law and Procedure (2011); New Challenges for the UN Human Rights Machinery: What Future for the Treaty Body System and the Human Rights Council Procedures (M. Cherif Bassiouni & William A. Schabas eds., 2011); The UN Human Rights Treaty System in the 21st Century (Anne F. Bayefsky ed., 2000); The Future of UN Human Rights Treaty Monitoring (Philip Alston & James Crawford eds., 2000).

https://doi.org/10.1017/ajil.2016.16 Published online by Cambridge University Press

to provide additional information on these in a follow-up report.[24] Treaty body members draw on multiple sources of information as part of this follow-up process, including information originating from other UN treaty bodies, special procedures, and the Universal Periodic Review.

There has been extensive criticism of many aspects of the human rights treaty body system over the years, emanating both from within and from outside the system, focusing on problems of delay—including late or nonreporting by states, understaffing, and inadequate committee time for consideration of reports However, recent years have seen a concerted effort on the part of states, NGOs, and the UN itself to reform and improve the functioning of the system.[25]

Human rights treaty systems feature the five core elements of experimentalist governance in the following ways: (1) they are premised on a declared (if superficial) consensus amongst the signatory states that it is important to guarantee protection for this set of human entitlements; (2) they articulate a set of rights in fairly broad, flexible, and general terms on which state signatories have been able to reach consensus; (3) they allow for significant discretion on the part of states and related actors regarding how to implement and realize these rights in practice; (4) they establish a system of periodic reporting, monitoring, and feedback under which states are obliged to report regularly on their compliance with the obligations undertaken in the treaty, which is followed by a nonhierarchical and formally nonbinding process of review in the form of the treaty body procedure. This procedure involves a specialist committee of experts receiving information, observing, reviewing, and making recommendations to states in response to reports made to them. The fifth feature of experimentalist governance systems, the iterative dimension which allows for periodic and reflexive reconsideration and (where appropriate) revision of goals, is initially less obvious in the context of international human rights treaty systems, but there are in fact important elements of iteration and reconsideration, as well as revision, within these too. This will be elaborated in more detail below in the descriptions of the functioning of the CEDAW, CRC, and CRPD. The other crucial experimentalist dimension which has developed in more recent decades and which was mostly absent from the design of the original human rights treaties—with the exception of the most recently drafted Convention on the Rights of Persons with Disabilities—is a key role for stakeholders in the process of monitoring and reporting to the treaty bodies, and increasingly also in national as well as international monitoring and implementation. The relevant stakeholders in the human rights context, include most importantly, civil society actors, NGOs, national human rights institutions, and other networks which represent or include the relevant individuals and communities whose rights are most implicated.

The absence until recently of this important dimension, namely a key role for civil society and other stakeholders in many aspects of the functioning of the treaty regime, is one of the

[24] UN Office of the High Commissioner for Human Rights, Follow-Up to Concluding Observations: What Is the Follow-Up Procedure?, *at* www.ohchr.org/EN/HRBodies/Pages/FollowUpProcedure.aspx. The CEDAW Committee is one of the six to have adopted a formal follow-up procedure, but not, as yet, the CRC or CRPD Committees.

[25] *See* UN High Commissioner for Human Rights, Strengthening the United Nations Human Rights Treaty Body System, UN Doc. A/66/860, at 44 (June 26, 2012); GA Res. 68/268 (April 21, 2014). For an overview, see Christen Broecker, *The Reform of the United Nations' Human Rights Treaty Bodies*, 18(16) ASIL INSIGHTS (Aug. 8, 2014), *at* https://www.asil.org/insights/volume/18/issue/16/reform-united-nations%E2%80%99-human-rights-treaty-bodies.

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main reasons why the international human rights system would not, until recently, have plausibly been seen as an experimentalist system.[26] The growing role of civil society actors, the emergence of national human rights institutions as part of the treaty body monitoring system, and the creation of transnational and regional networks of NGOs to support the treaty body system has been a fairly gradual development over time, and one which has evolved considerably since most of the regimes were first established. Indeed, while there is some evidence of a role for civil society being envisaged when the Children's Rights Convention was being drafted in the 1980s,[27] which was due in part to the unusually central involvement of NGOs in the drafting process[28] and in the inclusion of the very obliquely worded Article 45 of the Convention,[29] the same was not originally true for the CEDAW treaty. CEDAW was adopted a decade earlier when the drafting process was not formally open to civil society groups, and in part because of that fact, there is no provision of the CEDAW which envisages a role for NGOs.[30] The same is true for the two Covenants, the International Covenant for the protection of Civil and Political Rights and the International Covenant for the Protection of Economic, Social and Cultural Rights (which are not considered in detail in this article): no initial provision was made for any explicit role for civil society within those two treaty systems, although such a role has gradually developed in those contexts too.[31] By comparison, the Convention on the Rights of Persons with Disabilities, which is the most recent of the UN human rights treaties, notably and explicitly builds in a central and active role for civil society, and particularly for organizations of persons with disabilities and their representatives.[32] This growing role for civil society in various aspects of international lawmaking

[26] For an earlier critique of the human rights treaty body system calling for more active participation for NGOs within the treaty body system and calling for other related reforms, see Andrew Clapham, *UN Human Rights Reporting Procedures: An NGO Perspective*, *in* THE FUTURE OF UN HUMAN RIGHTS TREATY MONITORING, 175–98 (Philip Alston & James Crawford eds., 2000). While there is a large body of academic literature on the subject of reform of the treaty body system, there has been only a marginal emphasis on the role of civil society. *See, e.g.*, the single chapter (chapter 9) on civil society in a seventeen chapter book, Philip Lynch & Ben Schokman, *Taking Human Rights from the Grassroots to Geneva and Back: Strengthening the Relationship Between UN Treaty Bodies and NGOs*, *in* NEW CHALLENGES FOR THE UN HUMAN RIGHTS MACHINERY, *supra* note 23, at 173–92.

[27] Cynthia Price Cohen, *The Role of Nongovernmental Organizations in the Drafting of the Convention on the Rights of the Child*, 12 HUM. RTS. Q. 137–47 (1990); Joan Fitzpatrick, *United Nations Convention on the Rights of the Child: Toward Adoption of the United Nations Convention on the Rights of the Child: A Policy-Oriented Overview*, 83 ASIL PROC. 155–57 (1989).

[28] In 1983, several years into the drafting process, a number of NGOs aligned to form the NGO Ad Hoc Group on the Drafting of the Convention of the Rights of the Child: Stuart N. Hart, *Non-governmental Efforts Supporting U.S. Ratification of the Convention on the Rights of the Child*, 4 LOY. POVERTY L.J. 141, 145 (1998).

[29] Article 45 of the CRC provides that the committee "may invite the specialized agencies, [UNICEF] and *other competent bodies* . . . to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates" (emphasis added).

[30] The provision corresponding to Article 45 of the CRC is Article 22, which provides only that: "The [UN] specialized agencies shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their activities. The Committee may invite the specialized agencies to submit reports on the implementation of the Convention in areas falling within the scope of their activities" and makes no reference to "other competent bodies."

[31] *See* Clapham, *supra* note 26; Rachel Brett, *The Role and Limits of Human Rights NGOs at the United Nations*, XLIII POL. STUD. 96 (1995),

[32] *See, e.g.*, de Búrca, *The EU in the Negotiation of the UN Disability Convention*, *supra* note 19; Tara J. Melish, *The UN Disability Convention: Historic Process, Strong Prospects, and Why the U.S. Should Ratify*, 14 HUM. RTS. BRIEF. 37 (2007); Frédéric Mégret, *The Disabilities Convention: Towards a Holistic Conception of Rights*, 12(2) INT'L J. HUM. RTS. 261 (2008); THE UN CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES: EUROPEAN AND SCANDINAVIAN PERSPECTIVES (Oddný Mjöll Arnardóttir & Gerard Quinn eds., 2009).

https://doi.org/10.1017/ajil.2016.16 Published online by Cambridge University Press

and implementation is not limited to the field of human rights, but is increasingly evident in many others as well.[33]

The argument presented here that UN human rights treaties can be seen as examples of transnational experimentalist governance is based on information gathered on the operation of three particular human rights treaty systems, namely the CRPD, CRC and CEDAW.[34] Comparable research has not yet been undertaken in relation to the other UN human rights treaty systems, including the two Covenants, although it seems probable that a similar hypothesis about the growing role of civil society in the functioning of these regimes could also be advanced.

A comprehensive analysis of the experimentalist features of the CRPD regime has already been provided elsewhere,[35] and reference will be made for the purposes of this article to that analysis when discussing the CRPD. The discussion below will therefore concentrate the more detailed description of experimentalist features here mainly on the CEDAW and CRC regimes. Recall that the five key features are: initial identification of a shared perception of a common problem; general agreement on framework goals; continuous feedback through monitoring and reporting to the center; and periodic revision of practice and ultimately of goals in the light of experience gathered through the reporting and monitoring process.

Experimentalist Features of the UN Human Rights Treaty Systems

The first two elements are fairly readily visible in the case of most human rights treaties, and certainly in relation to each of the three human rights treaties under consideration here. In terms of recognizing a shared problem, states come together in an intergovernmental conference or under the auspices of the UN because a significant number of them believe it is necessary to provide more specific international legal protection for certain vulnerable groups or constituencies, such as women, children, or persons with disabilities. In other words, there is a broad, albeit thin, consensus regarding the existence of a common problem where a group of states will commit themselves to a strategy for addressing the problem pursuant to international law. Obviously, there may be significant variation in the degree of commitment on the part of different states (and in particular the governments that choose to sign the treaties) to the aims of the treaties, and some, if not many, states may take the view at the time of signing that either they do not need or do not intend to make any domestic changes to comply with the terms of the treaty. Nevertheless, even states which have little interest in the substantive aims of a human rights treaty regularly commit to the terms of such treaties and to the compliance mechanisms which accompany them, even if primarily for reasons such as external signaling and club membership. And regardless of the strength of commitment or belief, this agreement to be bound to the goals of the treaty suffices for the purposes of the first feature of an experimentalist system.

[33] *See, e.g.*, Kal Raustiala, *The Role of NGOs in International Treaty-Making*, *in* THE OXFORD GUIDE TO TREATIES, 150–72 (Duncan Hollis ed., 2012); Barbara Gemmill & Abimbola Bamidele-Izu, *The Role of NGOs and Civil Society in Global Environmental Governance*, *in* GLOBAL ENVIRONMENTAL GOVERNANCE: OPTIONS AND OPPORTUNITIES, 77–100 (Daniel C. Esty & Maria H. Ivanova eds., 2002); Steve Charnovitz, *Nongovernmental Organizations and International Law*, 100 AJIL 348 (2006).

[34] *See supra* note 20.

[35] *See* de Búrca, Keohane & Sabel, *New Modes of Pluralist Global Governance*, *supra* note 12, pt. III; de Búrca, *The EU in the Negotiation of the UN Disability Convention*, *supra* note 19.

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In terms of the second feature, human rights treaties such as the CEDAW, CRC, and CRPD are quintessentially broad agreements on framework goals. The rights set out in these treaties may be considered fundamental, but they are expressed in broad and open-ended terms that call for extensive interpretation and elaboration in order to be implemented in practice. The key provision of the CEDAW, for example, prohibits discrimination against women and defines the concept of discrimination in Article 1 very broadly,[36] and does not actually define the core concept of gender equality on which the Convention is based. Similarly, the Convention on the Rights of the Child, after setting out a general obligation on states in Article 4 to "undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention" goes on to stipulate the substantive rights in the very broad and flexible terms characteristic of human rights treaties. Thus, for example, to take two key provisions, Article 6 provides that "every child has the inherent right to life" and Article 12(1) provides that "states parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child." In the case of the CPRD, core terms such as "disability," "discrimination," and "reasonable accommodation" were deliberately defined in broad and open-ended ways.[37]

The third and fourth features of an experimentalist system are the devolution of discretion in implementation to locally or contextually situated actors, with continuous feedback being provided through a process of monitoring and reporting to the center. Each of these elements is fairly evident in the human rights treaty system, since states are left largely to their own devices in terms of the specific ways in which they choose to comply with their commitments and obligations under the Conventions, and are given broad discretion as to who will be responsible for the implementation of which obligations. The provision of feedback to the center is evident in the institution of the treaty body system and the requirement of periodic reporting, which generally results in a form of dialogue between states and the committee members. However, the crucial development which has imbued these third and fourth elements—which could otherwise remain a limited, formalistic, and bureaucratic exercise—with a distinctly experimentalist flavor is the growing participatory dimension. Even if the CEDAW and CRC treaties, unlike the CRPD, made no mention of civil society in their express terms and appear to leave the task of implementation, monitoring, and reporting entirely in the hands of the signatory states, the reality has become something quite different over time.

The Growing Participatory Dimension of UN Human Rights Treaty Systems

Given the importance of this growing participatory dimension of the human rights treaty system to the emergence of an experimentalist regime, the development will be outlined in

[36] Article 1 provides that "the term 'discrimination against women' shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field." For a detailed discussion of the drafting of the CEDAW, see Susanne Zwingel, *How Do International Women's Rights Become Effective in Domestic Contexts? An Analysis of the Convention on the Elimination of All Forms of Discrimination Against Women* (PhD thesis, Bochum, 2005).

[37] For a discussion see *supra* note 19.

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greater detail here, before returning to explain how the experimentalist account of the treaty system provides a response to several of the critiques of the human rights system outlined above.

There is by now a wide variety of actors involved in various ways within each of the three human rights treaty systems under consideration, the CEDAW, CRC, and CRPD, other than the states parties to the treaty and the committee of experts that comprise the treaty body. Four in particular will be mentioned here. First, there are nongovernmental organizations or NGOs—local, national, and international. Second, there are transnational coalitions of NGOs, or regional international networks, which coordinate the engagement of members and others with the treaty body systems.[38] Third, there are national human rights institutions or bodies,[39] and in the CEDAW context there are specific gender-related national bodies referred to as National Women's Machineries.[40] Fourth, there are international intergovernmental organizations with specific mandates to promote the rights of women and children that work closely with the human rights treaty systems. These are UNICEF, in the case of children's rights and the CRC,[41] and UN Women[42]—particularly the Commission on the Status of Women[43]—in the case of the CEDAW. There is as yet no real analogue in the newer regime of the CRDP, although UN Enable, run by the secretariat of the CRPD, is a kind of embryonic support organization for this regime.[44]

There are several key ways in which this array of nonstate actors, perhaps most importantly (1) the nongovernmental organizations, and (2) transnational networks, contribute to the experimentalist functioning of the human rights treaty system.

Nongovernmental organizations

Four particular roles played by NGOs in operationalizing the three human rights treaties under consideration will be outlined here:

(1) The first and most obvious is the practice of NGOs providing information to the treaty bodies during the reporting process. While formally speaking it is the states that are required to produce and submit reports regarding their performance in terms of compliance with the commitments made under the treaties, NGOs have over time become an important additional source of information for the treaty bodies.[45] NGOs increasingly submit what are

[38] In the CEDAW context, the most prominent of these is IWRAW (International Women's Rights Action Watch, www.iwraw.net), in the CRC context it is CRIN (Child Rights International Network, www.crin.org), and in the CRPD context it is the IDA (International Disability Alliance, www.internationaldisabilityalliance.org).

[39] See the Office of the High Commission for Human Rights, National Human Rights Institutions (NHRIs) Interaction with the UN Treaty Body System, OHCHR Information Note 2011/411 (2011), and the sources cited *supra* at note 24.

[40] These were an outcome of the Beijing World Conference on Women, 1995. UN Women, Beijing and Its Follow-Up, *at* http://www.un.org/womenwatch/daw/beijing.

[41] UNICEF, *at* http://www.unicef.org/crc.

[42] UN Women, *at* http://www.unwomen.org.

[43] UN Women, Commission on the Status of Women, *at* http://www.unwomen.org/en/csw.

[44] UN Division for Social Policy and Development Disability, *at* http://www.un.org/disabilities.

[45] For critical analysis of the role of NGOs and others in the construction of indicators, which are increasingly used to monitor and assess the performance of states under human rights treaties including the International Covenant on Economic, Social and Cultural Rights, see Margaret Satterthwaite & Ann-Jannette Rosga, The *Trust in Indicators: Measuring Human Rights*, 27 BERK. J. INT'L L. 253 (2009). *See also* Sally Engle Merry,

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termed "shadow" reports to the committees, providing alternative sources of information to those of the official government reports about problem issues and areas. Additionally, within those states whose governments are willing to work with NGOs, specialized NGOs supply information and feedback to the government in the preparation of their official reports.[46] Further, the treaty bodies (the committees of experts) increasingly hold meetings with civil society actors, including private meetings in advance of the hearings they hold with states during the reporting process, as well as public meetings. More informal meetings and discussions also take place between committee members and NGOs. Such meetings and interactions are significant because NGOs are not allowed to make statements during the hearings held by the committees with states. The role of NGOs in bringing information from the ground to the monitoring committee is key from an experimentalist perspective, and it appears that they play a more active role than merely supplying information or identifying issues for the committee, by proposing steps that the committee could recommend governments should take to fulfill their obligations.[47]

(2) A second role which NGOs have come to play within the three treaty systems is that of following up on the committees' "concluding observations," which represent the outcome of the treaty body reporting process.[48] Following the dialogic process during which states submit reports (alongside the NGO shadow reports) on their performance of their treaty obligations, the treaty bodies issue so-called concluding observations that deliver the committee's assessment of the state's performance as well as recommendations for improvement in relation to implementation of the rights in question. NGOs then mobilize to pressure governments to carry out the steps indicated in the committee's concluding observations, and organize advocacy and other forms of pressure to encourage governments to abide by them. This regularly includes advocacy for legislative reform, using the media to generate publicity and pressure, but also bringing strategic litigation seeking rights enforcement, and more generally facilitating cooperation between various civic forces that seek to implement the committee's recommendations and observations.[49] It also includes bringing further complaints or reports to

Measuring the World: Indicators, Human Rights, and Global Governance, 52 CURRENT ANTHROPOLOGY 583 (2011); Sally Engle Merry, *Human Rights Monitoring and the Question of Indicators*, *in* HUMAN RIGHTS AT THE CROSSROADS, 140–52 (M. Goodale ed., 2013).

[46] In the UK and Ireland, for example, the Children Rights Alliance NGO plays this role. According to one interviewee: "The Children's Rights Alliance is a coalition of participating NGOs which began mainly as a body dedicated to gathering expertise and engaging in shadow reporting, has since grown into an organization of NGOs that provide expertise and information to states parties in the process of reporting to the Committee and working to comply with the 'concluding observations' of the committee. Working for over one hundred national NGOs in Ireland, the coalition has grown well beyond its shadow reporting duties and now uses legal expertise to help direct NGOs that provide services on the ground, which in turn provide the coalition with information on the gaps in the legislative regime and where the state party must be pressured to make reforms." (Interview notes on file with author.).

[47] See, for example, Susanne Zwingel's discussion of the influence of the International Women's Rights Action Watch, (IRWAW) and IRWAW-Asia on the CEDAW committee, in Zwingel, *supra* note 36, ch. 8. On the ways in which, and the extent to which, NGOs influence the output of the committee on the Rights of the Child, see Gamze Erdem Turkelli & Wouter Vandenhole, *The Convention on the Rights of the Child: Repertoires of NGO Participation,* 12 HUM. RTS. L. REV. 33, 46 (2012).

[48] *See* Michael O'Flaherty, *The Concluding Observations of United Nations Human Rights Treaty Bodies*, 6 HUM. RTS. L. REV. 27 (2006).

[49] See the study conducted by the NGO group For the Rights of the Child, *The Use of Concluding Observations for Monitoring the Implementation of the Convention on the Rights of the Child The Experiences of NGO Coalitions in Nine Country Case Studies* (CRIN-NGO Group Joint Working Paper No. 2, 2005), *at* http://www.childrights-connect.org/wp-content/uploads/2013/10/WPConcludingObs.pdf. The nine country case studies were from Bangladesh, Canada, Georgia, Germany, India, Jamaica, the Netherlands, New Zealand, and Pakistan. *See also*

international bodies and processes such as the Universal Periodic Review, which has become a perhaps surprisingly effective and high-profile political forum in which problems or abuses highlighted by the other human rights treaty body processes are aired.[50]

(3) A third role carried out by some NGOs, which has been prominent in the context of certain provisions of the CEDAW and the CRC, is that of two-way cultural translation.[51] For example, in the case of Islamic states or states with a significant Muslim population, the role undertaken by NGOs includes translating the norms and provisions of human rights treaties into terms that resonate domestically and have a better chance of cultural acceptance and internalization. NGOs can play a crucial mediating role in between domestic social groups and international norms and bodies, including by enabling international actors and bodies to understand the specificities of the domestic context. On the one hand, the CEDAW, CRC, and CRPD provisions may require appropriate cultural translation to render them useful in protecting and promoting the interests of women, children, and disabled persons in particular geographic and sociopolitical contexts. On the other hand, NGOs also regularly provide translation in the other direction, by informing and advising the committee and supplying it with the relevant information and language with which to counter arguments made by states who seek to rely on local practice, law, or custom to justify noncompliance with the Convention.[52] This kind of role has been described by anthropologist Sally Engle Merry as a process of vernacularization of international human rights law, which she exemplifies by examining the successful use of international human rights law and language by indigenous women to challenge female inheritance laws in Hong Kong where the traditional property and family norms of indigenous communities barred female inheritance.[53]

Eva Clarhäll, *Monitoring Implementation of the UN Convention on the Rights of the Child: A Review of Concluding Observations by the UN CRC Committee Regarding General Measures of Implementation*, SAVE THE CHILDREN (2011), *at* http://resourcecentre.savethechildren.se/sites/default/files/documents/5194.pdf.

[50] See for an example the case of Albania *infra* notes 119–20 and accompanying text.

[51] *See* Sally Engle Merry, *Transnational Human Rights and Local Activism: Mapping the Middle*,108 AM. ANTHROPOLOGIST 38 (2006); Levitt & Merry, s*upra* note 7. For criticism of the CEDAW Committee for its failure to include the involvement of customary law elites in its recommendations, in order to facilitate the process of domestic reception and adaption of international norms, see Angela Banks, *CEDAW, Compliance and Custom: Human Rights Enforcement in Sub-Saharan Africa*, 32 FORDHAM INT'L L.J. 781 (2008–09). *See also* Meghan Campbell & Geoffrey Swenson, *Legal Pluralism and Women's Rights After Conflict: The Role of CEDAW*, 48 COLUM. HUM. RTS. L. REV. 112 (2016).

[52] To quote from an interview with a spokesperson for the NGO Sisters in Islam: "Where we come in is particularly in relation to Article 16 (concerning family life, marriage, etc.). Much of the challenge for reporting Muslim countries concerns Article 16, given the influence of Sharia law and the Qu'ran. What we want to do here is to say is that this should not give reason to the CEDAW Committee to stop questioning. Sometimes when the Committee is presented with words of this kind (God, Sharia, religion) the Committee does not have any response. We want to give the Committee the language to challenge governments when these arguments are put forward. We want to expand the arguments they can deploy. What we want to do is to say that, because Islam is being used to inform public policy, we will point out the diversity of Islamic jurisprudence on these issues . . . and the heterogeneity of Islamic culture." (Interview notes on files with author.). For examples of this kind of cultural resistance by states, see Sally Engle Merry, *Human Rights Monitoring, State Compliance, and the Problem of Information*, *in* THE NEW LEGAL REALISM, VOL. II: STUDYING LAW GLOBALLY, 32–52 (Heinz Klug & Sally Engle Merry eds., 2016).

[53] *See, e.g.*, Salle Engle Merry, *Transnational Human Rights and Local Activism: Mapping the Middle*, 108 AM. ANTHROPOLOGIST 42 (2005). ("Human rights intermediaries put global human rights ideas into familiar symbolic terms and use stories of local indignities and violations to give life and power to global movements. They hold a double consciousness, combining both transnational human rights concepts and local ways of thinking about grievances. They may be local activists, human rights lawyers, feminist NGO leaders, academics, or a host of other people who have one foot in the transnational community and one at home. They are constrained by the human rights discourse and by the cultural meanings of the situation where they are working.").

(4) A fourth role carried out by NGOs in certain contexts includes the provision of direct services to women, children, and disabled persons, seeking where they have the necessary capacity and resources to fill the gaps identified through the treaty body mechanism.[54] This is particularly the case in the "least developed" countries,[55] although not only there.[56]

A 2010 study on the role of NGOs in relation to the Convention on the Rights of the Child noted that:

> [The] role and focus of NGOs varies from country to country. In some countries, civil society is mostly involved with law reform, in others with monitoring and research, and in still others with awareness raising and capacity building. However, in most countries, NGOs are active in more than one of the general measures and sometimes in all.[57]

Transnational Networks

A further important and often complementary set of actors which has emerged alongside individual NGOs within international human rights treaty systems are transnational coalitions and networks.[58] The functions performed by transnational networks such as the International Women's Rights Action Watch network (IWRAW), Child Rights International Network (CRIN), and International Disability Alliance (IDA)[59] include the sharing of information and expertise, the provision of information and training on the treaty body system and on how to articulate concerns and prepare shadow reports, mobilizing litigation and other implementation strategies, and bringing relevant groups and people in contact with one another. The role of these networks is particularly significant for states where civil society is weak and there is a lack of access to adequate information.

CRIN, for example, regularly refers wronged parties who contact them claiming that a government has violated their rights under the Convention to local organizations that deal with the particular issues being raised.[60] CRIN is a network which links over 2,100 organizations in 150 countries as well as the NGO Group for the Convention on the Rights of the Child, which is a

[54] The extent to which civil society bodies are providing services directly to children, arguably stepping in to fulfill the role of the state under the Convention, led the Committee on the Rights of the Child to organize a discussion day on the theme of "the private sector as service provider and its role in implementing child rights," and recommended the establishment of a code of conduct for nonstate actors. *See* Committee on the Rights of the Child, The Private Sector as Service Provider and its Role in Implementing Child Rights, excerpted from CRC/C/121, 31st Sess. (Sept. 20, 2002), *at* http://www.ohchr.org/Documents/HRBodies/CRC/Discussions/Recommendations/Recommendations2002.pdf.

[55] See the report of Defence for Children International, *National Impact* 33 (2013), on their work promoting the implementation of the Convention on the Rights of the Child in Angola and Cameroon, and also in middle income countries like Colombia.

[56] Interview with Children's Rights Alliance in relation to the implementation of the Convention of the Rights of the Child in Ireland and the UK. (Interview notes on file with author.).

[57] Nevena Vučković Šahović, *The Role of Civil Society in Implementing the General Measures of the Convention on the Rights of the Child*, 23–24 (Innocenti Working Paper, UNICEF Florence, 2010).

[58] Margaret E. Keck and Kathryn Sikkink were amongst the first to draw attention to the important role of these networks in their book ACTIVISTS BEYOND BORDERS: ADVOCACY NETWORKS IN INTERNATIONAL POLITICS (1998). *See also* THE POWER OF HUMAN RIGHTS: INTERNATIONAL NORMS AND DOMESTIC CHANGE (Thomas Risse, Stephen C. Ropp & Kathryn Sikkink eds., 1999)

[59] *See supra* note 38.

[60] Anna Volz, *Advocacy Strategies Training Manual: General Comment No. 10: Children's Rights in Juvenile Justice*, DEFENCE FOR CHILDREN INT'L 3 (2009).

https://doi.org/10.1017/ajil.2016.16 Published online by Cambridge University Press

network of eighty national and international organizations that works to facilitate CRC implementation. CRIN provides information to individuals and NGOs on the various states parties' requirements for lodging complaints, and brings different national NGOs together to exchange information and experience regarding monitoring the treaty within a particular state. It has created general guidelines on how to respond to complaints arising within specific states and has attempted to identify which issues are most problematic for particular states. It also maintains a legal database of lawyers who are willing to offer their services free of charge and that summarizes how the Convention on the Rights of the Child has been treated by national judiciaries as a resource for domestic groups and individuals. This information has also been used by CRIN to shape suggestions and recommendations made to the committee.

IWRAW, which was created in 1985 following the Third World Conference on Women with a view to publicizing and monitoring the implementation of the CEDAW, similarly functions as a resource and communications center to serve activists, NGOs and researchers internationally. IRWAW presents its role as building and supporting capacity amongst NGOs, and within the treaty bodies to promote accountability for women's rights. The organization participates in meetings of the treaty bodies, and tries to develop relationships between international NGOs that are concerned with the human rights treaty-monitoring process and other forms of monitoring. There are regional and national branches of IWRAW, some of which, according to personnel interviewed, see themselves as seeking to influence and shape the output of the CEDAW Committee from below, while others—particularly within states which lack resources—see themselves as primarily concerned with receiving ("downloading") the output of the committee, and lobbying for its domestic implementation.

Iteration and Revision Within UN Human Rights Treaty Systems

In addition to the crucial dimension of stakeholder involvement in the translation of international norms to local contexts and provision of information from the local to the international level, the fifth feature of experimentalist systems mentioned above is the existence of an adequate feedback loop such that the framework goals and the processes for achieving them are kept open to reconsideration and revision light of the information gained and lessons learned in the process of implementation. This iterative dimension of experimentalist systems is one of the features that distinguishes them from the simpler, one-directional notion of vernacularization or localization of standards discussed above. What is crucial on an experimentalist account of the functioning of the human rights treaty system is the way in which arguments and claims arise out of the actual experience of localized individuals and groups and are then articulated through intermediary actors, such as local activists and NGOs, that are sometimes informed or working with transnational networks or international NGOs, and ultimately transmitted to the international level on the occasion of the treaty body review and related processes. The output of the treaty body, in the form of concluding observations and recommendations, are then in turn the subject of domestic follow-up and advocacy, resulting in local adaptation and vernacularization, and the cycle continues over the next period of treaty body reporting and follow-up.

While this reflexive dimension may not initially seem to be a prominent feature of the international human rights regime, there are certain iterative dimensions within the system. In the first place, there is an element of reflexivity in the way in which the CEDAW, CRC, and

CRPD committees operate, in that civil society actors bring new claims and information to the committee, and regularly bring new issues to the attention of the committee and the international community. In the second place, there is within the CEDAW a broader mechanism of sorts for reflecting on and updating the goals expressed in the text of the Convention. One of the ways this has been done was through the four major International Conferences on Women, which took place in Mexico, Copenhagen, Nairobi, and Beijing, respectively.[61] Another way has been through the use of "general comments" or recommendations by the treaty bodies.[62] A key example of this is the issue of violence against women. At the time the CEDAW Convention was being prepared, violence against women was not prominent on the international agenda.[63] However, following a long grassroots campaign led by an array of women's organizations in different jurisdictions,[64] the CEDAW Committee later effectively incorporated the issue through the use of general recommendations.[65] Further, the committee has issued at least twenty-eight general recommendations on issues not specifically covered in the Convention, such as: condemning female circumcision;[66] calling for equal remuneration for work of equal value;[67] condemning discrimination based on AIDS;[68] promoting the rights of women in marriage and the family;[69] incorporating issues of maternal health including family planning into Article 12 of the Convention;[70] and dealing with states' obligations

[61] *See* World Conferences on Women, UN WOMEN, *at* http://www.unwomen.org/en/how-we-work/intergovernmental-support/world-conferences-on-women.

[62] *See* Dinah Shelton, *The Legal Status of Normative Pronouncements of Human Rights Treaty Bodies*, *in* COEXISTENCE, COOPERATION AND SOLIDARITY 553 (Holger P. Hestermeyer, Doris König, Nele Matz-Lück, Volker Röben, Anja Seibert-Fohr, Peter-Tobias Stoll & Silja Vöneky eds., 2011).

[63] Sally Engle Marry, *Constructing a Global Law-Violence Against Women and the Human Rights System*, 18 L. & SOC. INQUIRY 941, 952 (2003).

[64] For a detailed account of the way in which women's NGOs and other concerned organizations mobilized from the 1970s onward to bring the issue of gender violence to international prominence, and gradually to the attention of a range of prominent UN bodies including the CEDAW Committee, see Jutta Joachim, *Framing Issues and Seizing Opportunities: The UN, NGOs, and Women's Rights*, 47 INT'L STUD. Q. 247, 254–60 (2003). For other accounts of these achievements, see Susana T. Fried, *Violence Against Women*, 6 HEALTH & HUM. RTS. 88–111 (2003), and Charlotte Bunch, *Foreword: Feminist Quandaries on Gender and Violence: Agency, Universality, and Human Security*, *in* VIOLENCE AND GENDER IN THE GLOBALIZED WORLD: THE INTIMATE AND THE EXTIMATE (Sanja Bahun & V.G. Julie Rajan eds., 2d ed. 2015), and Manuel Calvo-García, *The Role of Social Movements in the Recognition of Gender Violence as a Violation of Human Rights: From Legal Reform to the Language of Rights*, 6 AGE OF HUM. RTS. J. 60 (2016)

[65] *See* Comm. on the Elimination of Discrimination Against Women (CEDAW), General Recommendations Made by the Committee on the Elimination of Discrimination against Women, n. 12, 19, *at* http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm.

[66] Comm. on the Elimination of Discrimination Against Women, CEDAW General Recommendation No. 14, UN Doc. A/45/38 and Corrigendum (1990), *available at* http://www.refworld.org/docid/453882a30.html.

[67] Comm. on the Elimination of Discrimination Against Women, CEDAW General Recommendation No. 13: Equal Remuneration for Work of Equal Value, UN Doc. A/44/38 (1989), *available at* http://www.refworld.org/docid/453882aa10.html.

[68] Comm. on the Elimination of Discrimination Against Women, CEDAW General Recommendation No. 15: Avoidance of Discrimination Against Women in Nation Strategies for the Prevention and Control of Acquired Immunodeficiency Syndrome (AIDS), UN Doc. A/45/38 (1990), *available at* http://www.refworld.org/docid/453882a311.html.

[69] Comm. on the Elimination of Discrimination Against Women, CEDAW General Recommendation No. 21: Equality in Marriage and Family Relations, UN Doc. A/49/38 (1994), *available at* http://www.refworld.org/docid/48abd52c0.html.

[70] Committee on the Elimination of Discrimination Against Women, CEDAW General Recommendation No. 24: Article 12 of the Convention (Women and Health), UN Doc. A/54/38//Rev.1 (1999), *available at* http://www.refworld.org/docid/453882a73.html.

to migrant women workers.[71] The impetus for this kind of revision and updating has come from a variety of sources with significant input from NGOs and international bodies.

For the committee on the Rights of the Child, the practice of organizing discussion days[72] and issuing General Comments[73] has also been an opportunity to update and integrate new or more specialized issues which have been brought to the committee's attention even if they were not contemplated at the time the CRC was drafted. Another way of responding to new issues arising, and bringing them onto the international agenda, is through the provision in Article 45(c) of the Convention that permits the committee to recommend that the UN General Assembly request that the secretary-general undertake a study into a particular issue on its behalf. Such a request was notably made in the case of violence against children.[74] It led to the appointment of an expert to conduct a study for the secretary-general,[75] which led in turn to the creation of a full-time senior UN post, the Special Representative on Violence Against Children.[76] This was also done in relation to the subject of children in armed conflict, where the CRC Committee invoked Article 45(c) and drew in the UN secretary-general,[77] a process which resulted ultimately in the creation of a similar UN role focused on children in armed conflict.[78]

And as far as the Convention on the Rights of Persons with Disabilities is concerned, some kind of periodic review and reconsideration is facilitated by the provision in Article 40 which provides that "the States Parties shall meet regularly in a Conference of States Parties in order to consider any matter with regard to the implementation of the present Convention." While most other international human rights treaties in practice hold a regular conference of the parties without explicit provision for such in the treaty itself, this is generally done for purely formal reasons, mainly to elect the members of the monitoring committee and other minor housekeeping matters, and substantive matters relating to the treaty are not discussed. By comparison, it seems that the annual conference of the Convention on the Rights of Persons with Disabilities does entail discussion of substantive questions and is actively attended by NGOs and civil society groups. Further, like the Committee on the Rights of

[71] Comm. on the Elimination of Discrimination Against Women, General Recommendation No. 26 on Women Migrant Workers, UN Doc. CEDAW/C/2009/WP.1/R (2008), *available at* http://www.refworld.org/docid/4a54bc33d.html.

[72] UN Office of the High Commissioner for Human Rights, Committee on the Rights of a Child, *at* http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx.

[73] For a collection of the CRC's General Comments see, UN Office of the High Commissioner for Human Rights, Library Collections, *at* http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&DocTypeID=11.

[74] The issue of violence against children is mentioned in Article 19 of the Convention, but mainly in the context of parental violence, sexual abuse, and neglect.

[75] UN GAOR, 61st Sess., Report of the Independent Expert for the United Nations Study on Violence Against Children, UN Doc. A/61/299 (Aug. 29, 2006), *at* https://www.unicef.org/violencestudy/reports/SG_violencestudy_en.pdf.

[76] Special Representative of the Secretary-General on Violence Against Children, *at* http://srsg.violenceagainstchildren.org.

[77] See the conclusions and recommendations adopted by the Committee on the Rights of the Child at its 20th Session: Comm. on the Rights of the Child, Compilation of the Conclusions and Recommendations Adopted by the Committee on the Rights of the Child, UN Doc. CRC/C/19/Rev9 (1998), *available at* http://repository.un.org/handle/11176/384006.

[78] Office of the Special Representative of the Secretary-General for Children and Armed Conflict, *at* http://childrenandarmedconflict.un.org.

https://doi.org/10.1017/ajil.2016.16 Published online by Cambridge University Press

the Child, the CRPD committee has begun to hold days of general discussion on specific issues, for example, this was done recently regarding the right to education, as a consequence of the information brought to the committee through the national reporting process.[79]

Most of the iteration and review which has taken place in the context of international human rights treaties, as is evident from the discussion above, has entailed broadening the remit of those protected or the understanding of the right or issue in question, rather than narrowing or confining the original framework goal. To some extent, the understanding by states and stakeholder groups of the original "common goal" or problem which gave rise to the treaty—specifically the need to provide a legal framework for the protection of certain groups or individuals and in certain contexts—is closely linked to their articulation of the framework goals in the shape of human rights. Both the problem (the need to provide legal protection for certain rights and certain groups), and the articulation of the way of addressing the problem in the form of international human rights treaties, are closely related. Hence as long as the original shared understanding of the problem continues, the kind of learning and revision likely to take place will be that which has so far been seen: broadening or elaborating on the framework goals (such as gender equality, or freedom from discrimination), rather than narrowing or reducing them. In other words, until now we have mainly seen revision and expansion in the understanding and formulation of the framework goals rather than a decision that those goals themselves were misconceived, or that they should be eliminated, narrowed, or fundamentally changed. Nevertheless, it does not seem improbable that in a changed global political environment, if governments increasingly seek to rescind their earlier commitments to protect and promote human rights, they may begin to press for narrower interpretations of the rights in question, if not for formal revision of or withdrawal from the original treaties.[80] For the moment, however, the interaction of other stakeholders within the human rights treaty system, including the array of civil society actors described above, as well as treaty body members and other international actors, has been mainly to strengthen and expand the body of international human rights law over time, rather than to limit or curtail it.

As far as learning from difference is concerned, there is a range of ways in which this takes place in the context of the human rights treaty system. In the first place, the transnational networks described in the previous section not only assemble and connect a wide range of local NGOs and civil society actors, but they provide fora in which information is pooled and experiences with participation in treaty monitoring and advocacy are shared across countries and regions. They act as resources and information centers, maintaining databases of relevant information and drafting guidelines to help respond to particular kinds of complaints, and identifying issues which arise repeatedly or in particular stages. They also publish training materials based on the information gathered, and organize learning workshops and conferences at which experiences can be shared. In this way NGOs and others who are monitoring or advocating for rights protection in different jurisdictions can learn about the

[79] *See* UN Office of the High Commissioner on Human Rights, Committee on the Rights of Persons with Disabilities, *at* www.ohchr.org/EN/HRBodies/CRPD/Pages/DGDontherighttoeducationforpersonswithdisabilities.aspx.

[80] *See* Andrew T. Guzman & Katerina Linos, *Human Rights Backsliding*, 102 CALIF. L. REV. 603 (2014) (arguing that international human rights standards are already sometimes used within domestic political debates to cut back on existing rights and standards rather than to promote new protections).

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experiences of others and get a sense of the practices that have been more or less successful in other contexts.

A second way in which learning can spread and lessons diffuse is by the interaction between the various treaty bodies which conduct the review and which over time gain greater expertise and understanding of the range of issues arising under particular treaties, and other international actors and organizations. Some of the treaty bodies in their "follow-up procedures" have recourse to the information drawn from multiple other distinct treaty bodies dealing with related issues under other human rights treaties or procedures,[81] and examples of information sharing across different treaty body sites have been cited.[82] Thirdly, the treaty bodies themselves are a kind of focal point and forum to which multiple actors from a wide variety of states come to raise issues and hold their governments to account. Over time, they become a repository of information and knowledge about human rights violations and problems, as well as the means adopted to address them, in many parts of the world, and their experiences with particular states are likely to influence their approach to others. Apart from diffusion and learning across international networks and through the engagement of treaty bodies and international actors with one another, other scholars have discussed the conditions under which lessons learned or policy reforms enacted within one state might come to be adopted in other democratic states through governmental action prompted by popular domestic support.[83]

To recap, the five important elements of experimentalist governance systems are reflected in the UN human rights treaty system, and specifically in the three human rights treaty systems examined here (the CEDAW, CRC, and CRPD). Most significantly, the participatory dimension of stakeholder participation has developed prominently in recent decades and has transformed the way in which those systems function.[84]

Hence the claim outlined above is that these three human rights treaty systems operate in an experimentalist and participatory way, providing regular nonhierarchical review of state practice, and facilitating information generation and sharing. But even if this claim is accepted, it does not tell us whether such human rights treaties are effective in practice in achieving their goals, or if they are, how this experimentalist functioning contributes to their effectiveness. The following section addresses the question of the effectiveness of human rights treaties by surveying a series of recent quantitative and qualitative studies which find a correlation, under certain conditions, between human rights treaty ratification and improved human rights outcomes. It points further to some of the more specific findings of these quantitative and qualitative studies about the precise conditions under which ratification of human rights treaties correlate with improvements in human rights, and notes how these specific findings support the argument that it is the experimentalist functioning of these human rights treaty systems that helps to account for these improvements. Finally, a case study of children's rights in Albania is used by way of example to demonstrate in closer detail how the human rights treaty system—in this case the Convention on the Rights of the Child—operates in an experimentalist way to promote gradual change across a range of issues pertaining to children's rights.

[81] See *supra* note 24 and accompanying text.

[82] See *infra* note 105.

[83] *See* KATERINA LINOS, THE DEMOCRATIC FOUNDATIONS OF POLICY DIFFUSION (2013).

[84] For a richly comprehensive account of the functioning of the CEDAW regime effectively supporting the argument that that treaty system operates in an experimentalist way, see Zwingel, *supra* note 36.

https://doi.org/10.1017/ajil.2016.16 Published online by Cambridge University Press

IV. The Impact and Effectiveness of Human Rights Treaties

The Findings of Quantitative Studies

An array of empirical studies has been carried out in recent years on a range of human rights treaties with a view to evaluating their impact in practice, using a selection of different measurements and methods. One prominent recent critic of the international human rights treaty system has argued that these studies do not reveal any consistent results, and that even those showing positive results are cautious in their findings such that there can be "little confidence that the treaties have improved people's lives."[85] However, a reading of the various studies indicates that they do not actually differ much, if at all, about the circumstances in which, and the conditions under which, human rights treaty ratification correlates with an improvement in human rights standards.[86] It is certainly true that some of the earlier studies, including those carried out by Linda Keith in 1999,[87] Oona Hathaway in 2002,[88] and Emilie Hafner Burton and Kiyoteru Tsutsui in 2007[89] appeared to suggest that treaty ratification does not lead to an improvement in human rights performance by states and may even be associated with a disimprovement in standards. However, several scholars have pointed to the various limitations of these studies, suggesting that their findings need to be qualified.[90] More specifically, the implication that there is a correlation between ratification of human rights treaties by states and a disimprovement in human rights standards has been repeatedly challenged and confronted with contrary evidence.[91]

Beth Simmons argues that the earlier studies adopt a homogenous approach to treaty ratification without specifying any of the conditions under which states ratified them and with-

[85] Posner, *supra* note 2, at 78.

[86] The argument advanced by Emilie Hafner Burton & James Ron, *Seeing Double: Human Rights Impact Through Qualitative and Quantitative Eyes*, 61 World Pol. 360 (2009) to the effect that qualitative studies tend to suggest a more optimistic and positive impact of human rights treaties while the results of quantitative studies are more skeptical—perhaps implying selection bias on the part of those conducting qualitative studies—has been rebutted by Beth A. Simmons, *From Ratification to Compliance: Quantitative Evidence of the Spiral Model*, *in* The Persistent Power of Human Rights: From Commitment to Compliance 43–60 (Thomas Risse, Stephen Ropp & Kathryn Sikkink eds., 2013), and Xinyuan Dai, *The "Compliance Gap" and the Efficacy of International Human Rights Institutions*, *in* The Persistent Power of Human Rights: From Commitment to Compliance, *id.*, 85–102, as not being borne out by the various studies cited. Simmons found no relevant difference between the findings of the different kind of studies, while Dai pointed to the negative findings of some qualitative studies and the positive findings of some quantitative studies.

[87] Linda Keith, *The United Nations International Covenant on Civil and Political Rights: Does It Make a Difference in Human Rights Behavior?*, 36 J. Peace Res. 95 (1999).

[88] Oona A. Hathaway, *Do Human Rights Treaties Make a Difference?*, 111 Yale L.J. 1935 (2002).

[89] Emilie Hafner Burton & Kiyoteru Tsutsui, *Justice Lost! The Failure of International Human Rights Law to Matter Where Needed Most*, 44 J. Peace Res. 407 (2007).

[90] For a critique of the methodology, theoretical framework and policy prescriptions of the Hathaway study see Ryan Goodman & Derek Jinks, *Measuring the Effects of Human Rights Treaties*, 14 Eur. J. Int'l L. 171 (2003). Yonatan Lupu, in *The Informative Power of Treaty Commitment: Using the Spatial Model to Address Selection Effects*, 57 Am. J. Pol. Sci. 912 (2013), discusses the findings of scholars, including Hathaway, Hafner-Burton, and Tsutsui, that the human rights practices of some states worsened after ratification of the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture, suggesting that these findings may have been due to insufficient accounting for selection effects.

[91] *See* Christopher Fariss, *The Changing Standard of Accountability and the Positive Relationship Between Human Rights Treaty Ratification and Compliance*, Brit. J. Pol. Sci. (forthcoming 2017); Lupu, *supra* note 90.

https://doi.org/10.1017/ajil.2016.16 Published online by Cambridge University Press

out differentiating between the types of regime in the states in question.[92] Xinyuan Dai points out that the findings drawn from the studies suffer from various conceptual and methodological problems, including the limitations of the sources used by the authors to measure compliance with rights, the failure to distinguish between different kinds of treaty obligations, and differences in the indicators used.[93] Dai also makes a critique similar to that of Simmons, specifically the failure of these earlier studies to specify the conditions under which treaty ratification does or does not have an impact.[94] Of the apparently different results yielded by a range of different empirical studies, she comments that "the optimists do not believe naively that international human rights law is a magic bullet, but they seek to understand the factors and contexts that enable law's varying effect. Likewise, the pessimists know that international human rights law works some times, though not as much as they believe it should." She suggests that "rather than debating over the extent to which international human rights law matters, what is more urgent is to first understand why and how and under what conditions should it matter."[95]

A range of more recent empirical studies that appear to have followed this advice point to a clear correlation between human rights treaty ratification and improvement in human rights standards where there is a reasonably active civil society within the states in question. Eric Neumayer in a 2005 study found that ratification of human rights treaties—including a range of regional as well as international human rights treaties—did correlate with an improvement in human rights, conditional on the strength of civil society and the existence of democratic regimes in the states in question.[96] In a wide-ranging and rigorous book-length study published in 2009, Beth Simmons found that one of the crucial ways in which international human rights treaties improved human rights standard—particularly in transitional democracies—was their mobilization of domestic constituencies with an interest in invoking and enforcing the obligations contained in the treaties.[97]

These findings have been further bolstered by other quantitative and qualitative studies concerning specific human rights treaties and specific regions.[98] In a time series cross-sectional analysis of the CEDAW (which is presented as a least likely case, given the massive social

[92] Simmons, *supra* note 86.

[93] Xinyuan Dai, *The Conditional Effects of International Human Rights Institutions*, 36 HUM. RTS. Q. 569 (2014). Eric Neumayer, *Do International Human Rights Treaties Improve Respect for Human Rights*, 49 J. CONFLICT RESOL. 925 (2005) similarly criticizes the mismatch between the treaties whose ratification was selected for examination in these studies and the substantive rights whose protection the studies were seeking to assess.

[94] Dai, *The Compliance Gap and the Efficacy of International Human Rights Institutions*, *supra* note 86,

[95] Dai, *The Conditional Effects of International Human Rights Institutions*, *supra* note 93.

[96] *Supra* note 93.

[97] BETH SIMMONS, MOBILIZING FOR HUMAN RIGHTS 371–78 (2009) ("One of the lessons that follows from the research in this book is the crucial role that domestic actors play in their own human rights fate. Rights stakeholders around the world have actively made decisions about when and how to employ the norms contained in human rights treaties to influence practices on the ground in their countries. Sometimes they have done this with outside help, but the locals are the ones who carry the ball and take the risks. They also make decisions about what is culturally appropriate in their society and how best to deploy limited resources in order to realize the greatest benefits from the promises of the human rights treaties their governments have signed. . . . The most important policy advice that comes from this study . . . is domestic ownership. Human rights treaties matter where local groups have taken up the torch for themselves.").

[98] *See, e.g.*, Daniel Hill, *Estimating the Effects of Human Rights Treaties on State Behaviour*, 72 J. POL. 1161 (2010) (finding considerable variance between the results found in relation to the Convention Against Torture on the one hand and CEDAW on the other and suggesting that more treaty-specific theorizing may be needed).

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and institutional changes mandated by the treaty without the provision of any resources or incentives beyond those of other human rights treaties), Neil Englehart and Melissa Miller argue that it is the domestic dynamics set in motion by the process of treaty ratification that account for the effectiveness of the treaty in bringing about social change, particularly in relation to women's political and social rights.[99] Similarly Xinyuan Dai, in a study of the impact of the Helsinki Final Act on the transformation of state behavior and social change within the former Soviet bloc finds that the crucial factor was the way in which the international agreement strengthened the leverage and information of domestic constituencies and activists. Other qualitative studies which reinforce the conclusion that the interaction between domestic constituencies and civil society is crucial in explaining the positive effect of human rights treaties include Susanne Zwingel's comprehensive study of the operation of the CEDAW,[100] and Jasper Krommendijk's study of the impact of ratification of a range of human rights treaties in a selected group of democratic states.[101]

The Findings of Qualitative Studies

In addition to the large-n statistical studies discussed above, a number of qualitative studies have also been carried out, which rely on closer examination of a specific number of countries and a specific set of regimes. In a 2012 study of the implementation of the Convention on the Rights of the Child in twelve OECD countries based on both a literature review and in-depth country analyses, and looking, inter alia, at a number of reporting cycles to the Committee on the Rights of the Child, the authors identified a correlation between improved levels of implementation of the Convention and three key drivers.[102] Improved levels of implementation was measured by a range of indicators such as the legal status given to the Convention within the domestic system and the establishment of effective systems to support, monitor, and

[99] Neil A. Englehart & Melissa K. Miller, *The CEDAW Effect: International Law's Impact on Women's Rights*, 13 J. HUM. RTS. 22 (2014). They find less evidence of positive impact in the case of women's economic rights. See also the study carried out by Seo Young Cho, *International Women's Convention, Democracy and Gender Equality,* 95 SOC. SCI. Q. 719 (2014), suggesting that the interaction of democracy with the Convention is significant in advancing women's social rights.

[100] Zwingel, *supra* note 36, and more recently, Susanne Zwingel, *How Do Norms Travel? Theorizing International Women's Rights in Transnational Perspective*, 56 INT'L STUD. Q. 115 (2012). See also the study by Sally Engle Merry of the impact of the CEDAW, looked at in particular through the lens of the state reporting system, as well as at the issues on which states resist the impact of the treaty: Sally Engle Merry, *Gender Justice and CEDAW: The Convention on the Elimination of All Forms of Discrimination Against Women*, 9 J. WOMEN MIDDLE EAST & ISLAMIC WORLD 49 (2011); and Salle Engle Merry, *Human Rights Monitoring, State Compliance, and the Problem of Information*, *in* THE NEW LEGAL REALISM, VOL. II: STUDYING LAW GLOBALLY 32–52 (Heinz Klug & Sally Engle Merry eds., 2016). See also the study done by Andrew Byrnes & Marsha Freeman, *The Impact of the CEDAW Convention: Paths to Equality. A Study for the World Bank* (World Development Report: Gender and Development, 2011).

[101] JASPER KROMMENDIJK, THE DOMESTIC IMPACT AND EFFECTIVENESS OF STATE REPORTING UNDER UN HUMAN RIGHTS TREATIES IN THE NETHERLANDS, NEW ZEALAND AND FINLAND: PAPER-PUSHING OR POLICY PROMPTING? (2014). In his chapter on the CEDAW, the author finds that the effectiveness of the "concluding observations" of the human rights treaty bodies are not the result of a compliance pull from the committee or treaty body itself, but rather are attributable to the mobilization and lobbying of NGOs and the attention given in domestic parliaments to the concluding observations. *Id.* at 198. Similarly, with regard to his findings on the CRC and its impact in the Netherlands, he states in his concluding chapter that the effectiveness of the concluding observations of the committee regarding the CRC is to be "attributed to the crucial role of domestic NGOs who organized themselves in the Dutch Children's Rights Coalition." *Id.* at 252.

[102] LAURA LUNDY, URSULA KILKELLY, BRONAGH BYRNE & JASON KANG, THE U.N. CONVENTION ON THE RIGHTS OF THE CHILD: A STUDY OF LEGAL IMPLEMENTATION IN 12 COUNTRIES 8 (2012)

https://doi.org/10.1017/ajil.2016.16 Published online by Cambridge University Press

enforce the implementation, such as regularly revised national plans for children, continuous collection of comprehensive data, impact assessment, cross-sectoral coordination, and support for child participation in decision-making. Notably, the three key drivers of improved implementation identified across all twelve states were: (1) the presence of a strong civil society sector promoting advocacy, legal, and policy reform; (2) the presence of key advocates or supporters in government and public office; and (3) active engagement with the committee reporting process over time. These findings support the experimentalist premise that the effective impact of the Children's Rights Convention results in part from the iterative interaction between civil society and governmental actors engaged with the human rights treaty body, in the context of a broadly receptive political system.

In a study of more than four hundred reports submitted to the Committee on the Rights of the Child between 2007 and 2009, the author noted the "strong partnership" that has grown up between NGOs and the committee, pointing out that the Committee's Recommendations and General Comments frequently highlight and sometimes commend the role of NGOs in implementing the Convention, as well as calling on states to involve civil society in policy formulation.[103] The study describes separate and independent reports of NGOs as the "strongest source of information" the committee receives about the implementation of the Convention.[104] It suggests that civil society involvement has had significant impact in a range of contexts, including: on the issue of state budgeting for children in countries including India, Bangladesh, and South Africa; in the building of indicators on specific issues such as children in care, in data collection on sexual exploitation in Mauritania; and in forming domestic networks to monitor implementation in a range of other countries. The analysis concludes that the most visible improvements in the realization of children's rights have resulted from a synergy of effort between a range of stakeholders, in particular governments and civil society, including children, and their engagement with the Committee on the Rights of the Child.

In a 2012 study for the World Bank of the impact of the CEDAW, Andrew Byrnes and Marsha Freeman point to a number of reforms brought about by the combined work of the CEDAW Committee and civil society mobilization, in particular by pressuring governments to remove reservations they had entered to key provisions of the Convention.[105] They point to the effective interaction between the CEDAW system and civil society groups in advocacy and action in relation to various aspects of family law reform in Fiji and Morocco, on transmission of citizenship or nationality in Bangladesh and Morocco, and the introduction of gender impact analysis and legislation concerning family violence in Kyrgyzstan. They present a number of key findings in the conclusion to their report. The first is the gradual and iterative nature of change that in many cases takes place only over a number of reporting cycles to the CEDAW Committee; second, that the role of civil society appears essential to the impact of the CEDAW regime, through constructive engagement with both the committee and with governments, as well as through advocacy, mobilization, reporting, and on-the-

[103] Nevena Vučković Šahović, *The Role of Civil Society in Implementing the General Measures of the Convention on the Rights of the Child* 6 (UNICEF, Innocenti Working Paper, IWP 2010–18, June 2010).

[104] *Id.* at 17.

[105] Andrew Byrnes & Marsha Freeman, *The Impact of the CEDAW Convention: Paths to Equality* (World Bank World Development Report, 2012), *available at* http://www.gsdrc.org/document-library/the-impact-of-the-cedaw-convention-paths-to-equality.

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ground work; thirdly that the reporting process appears to provide an important moment of reflection and accountability for states; and finally that the CEDAW regime itself interacts with other international human rights treaty bodies and peer review mechanisms when similar issues are raised in these different forums, thus pointing to instances of information-sharing across different sites.[106]

What this set of qualitative surveys of the impact of the CRC and CEDAW have in common is that they draw attention to the presence of several key factors in contexts where the Conventions have had a significant impact: the presence of an active civil society working closely and in a repeated way over a period of time with the treaty bodies and with relevant governmental actors in the states in question. And while the Convention on the Rights of Persons with Disabilities has not been in effect for long enough for such a survey to be conducted, it seems clear that civil society (and disabled persons organizations in particular), which have been uniquely centrally involved in the drafting, adoption, and monitoring of the CRPD, were expressly intended to and have already begun to play a key role in the implementation of the treaty in practice.[107]

Conclusions on the Survey of Literature on the Effectiveness of Human Rights Treaties

Before concluding this survey of the empirical literature, the reservations of a range of scholars about the growing emphasis on statistical measurement in the social sciences as an obsession with measurement,[108] and the various limitations of the quantitative studies on the impact of human rights treaty ratification, should be mentioned. Christopher Fariss, for example, argues that the results of several quantitative studies are skewed by the failure to take into account the gradual ratcheting up of the standards to which states are being held by the operation of the treaty body system.[109] Thomas Risse, Stephen Ropp, and Kathryn Sikkink point out that statistical surveys of the human rights compliance of states leave out changes in the behavior of important nonstate actors, like large corporations,[110] which are important both as violators and as potential promoters of human rights.[111]

Further challenging some of the empirical scholarship on the subject, Adam Chilton and Eric Posner have argued that much of the literature on the question whether ratification of

[106] *Id.* at 51–52.

[107] *See, e.g.*, International Disability Alliance, *Effective Use of International Human Rights Monitoring Mechanisms to Protect the Rights of Persons with Disabilities* (May 2010), *at* http://www.edan-wcc.org/index.php/resources/publications/item/57-effective-use-of-international-human-rights-monitoring-mechanisms-to-protect-the-rights-of-persons-with-disabilities; Disability Council International, *Shadow Reporting to the UN Committee on the Rights of Persons with Disabilities*, *at* http://disabilitycouncilinternational.org/documents/DisabCouncilNGOsPracticalGuide.pdf.

[108] *See* Debra Liebowitz & Susanne Zwingel, *Gender Equality Oversimplified: Using CEDAW to Counter the Measurement Obsession*, 16 INT'L STUD. REV. 362 (2014). They argue in particular that the long slow dialogic nature of the change that took place in Chile in relation to reproductive rights on account of would be missed out by many of the statistical surveys. More generally, for a critique of the increasing emphasis on quantification in the field of human rights, see SALLY ENGLE MERRY, THE SEDUCTIONS OF QUANTIFICATION: MEASURING HUMAN RIGHTS, GENDER VIOLENCE AND SEX TRAFFICKING (2016).

[109] Fariss, *supra* note 91.

[110] For an example of human rights training and compliance brought about by other kinds of nonstate actor, see the work of the International Rescue Committee in refugee camps: Yvonne Hutchinson, *The Transference of Gender-Based Norms in the Law Reform Process,* QUERELLES: JAHRBUCH FÜR FRAUEN UND GESCHLECHTERVORSCHUNG (2013), *at* http://www.querelles.de/index.php/qjb/article/view/6/17.

[111] THE PERSISTENT POWER OF HUMAN RIGHTS, *supra* note 86.

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human rights treaties has a positive impact on human rights is inadequately attentive to historical trends and overlooks other possible causes of improvement in human rights outcomes.[112] They argue that their studies on the Convention against Torture and the CEDAW suggest that some improvements in human rights are attributable to factors that predate the signature and ratification of the relevant human rights treaties. Nevertheless, even while arguing that the empirical literature is inadequately attentive to the possibility that other long-running trends have an impact on human rights conditions throughout the world, Chilton and Posner do not claim to demonstrate that human rights treaties have no impact, nor do they rule out the hypothesis that human rights treaties have improved human rights outcomes. Instead they argue for further research to take into account other long-running trends that may have an impact on improved human rights outcomes.[113] Similarly, in a recent paper on the impact of the CEDAW on improvements in the condition of women worldwide, Martha Nussbaum suggests that arguments about the impact of international human right treaties should not be overstated but should be considered alongside the various other factors which are likely to account for "the success of the women's movement," including development and affluence.[114] She concludes that "although international human rights law is only a small aspect of the women's movement, it has enabled the movement to grow and prosper."[115]

To reiterate, this article does not aim to prove the impact of ratification of international human treaties, nor to argue that all or most improvements in the human rights of women, children, or persons with disabilities in a given jurisdiction are due solely or mainly to the ratification of such treaties. It is clear that the ratification of human rights treaties by states and their activation through processes such as civil society mobilization, lobbying, litigation, capacity building, and treaty body review generally takes place in the context of many other domestic and international processes of political pressure, change, and development. Nevertheless, the claim advanced here builds on the assumptions and interpretation of the findings of the empirical literature discussed above that the human rights treaty system under certain conditions can play a significant role in furthering improvements in human rights. But what the experimentalist interpretation of the human rights treaty system aims specifically to do is to offer a more detailed theoretical account of the likely mechanism by which human rights treaties have effect, in suggesting how they can contribute to bringing about domestic change through the interaction of local NGOs with international treaty bodies and state actors in an ongoing iterative cycle of reporting and review.

To summarize: there is a growing body of empirical evidence, both quantitative and qualitative, that points to the fact that the signing and ratification of international human rights

[112] Adam Chilton & Eric Posner, *Respect for Human Rights: Law and History* (University of Chicago Coase-Sandor Institute for Law and Economics, Working Paper No. 770, 2016).

[113] Chilton has separately argued that the methodological difficulty most studies face in showing any kind of causality in the relation between ratification of human rights treaties and improved human rights outcomes is that states are not randomly assigned commitments to human rights treaties, but instead select agreements based on their expected behavior, and that most major human rights treaties are in any case almost universally ratified. He argues for greater use of experimental methods to overcome some of these methodological limitations: Chilton, *Using Experiments to Test the Effectiveness of Human Rights Treaties*, *supra* note 5; Chilton & Tingley, *Why the Study of International Law Needs Experiments*, *supra* note 5.

[114] Martha C. Nussbaum, *Women's Progress and Women's Human Rights*, 38 HUM. RTS. Q. 589–91 (2016).

[115] *Id.* at 593.

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treaties by states, which are politically liberalized or in transition toward political liberalization, and have a reasonably active civil society, is associated with an improvement in human rights standards in those states.[116] More recent studies argue that this also may be true even in repressive states.[117] Despite the methodological difficulties of precisely proving causation, this large and methodologically varied body of literature provides a persuasive response to the criticism that the human rights treaty system is ineffective, and strongly suggests that in circumstances in which there is some degree of political liberalization, the presence of an active civil society, and regular engagement by such civil society and by governmental actors in the treaty monitoring processes, the decision to ratify and operationalize human rights treaties can help to improve life conditions and human rights standards in the ratifying states. More specifically, the evidence of these studies that the ongoing and iterative engagement of civil society actors and governments with the treaty monitoring bodies is a fairly constant factor in those states in which a positive correlation between the adoption of the treaties and improvements in human rights practices have been identified, supports the argument that the effectiveness of these human rights treaty systems is linked to their experimentalist functioning.

The following case study on the operation of the Convention on the Rights of the Child in relation to Albania aims to illustrate in more detail how the treaty body process, in the context of an active domestic civil society, can contribute to bringing about change in domestic human rights conditions.

A Case Study of Children's Rights in Albania

Albania ratified the Convention on the Rights of the Child, which had been adopted by the UN General Assembly in 1989, in 1992, at a time when the country had recently emerged from a long period of authoritarian rule.

First report to the Committee on the Rights of the Child (2005)

Albania's first report under the Convention, which covered the twelve-year period from the time of the coming into force of the Treaty in Albania and (due to delay and lack of resources) combined three cycles of reporting, was considered by the Committee on the Rights of the Child in 2005. During that first review, no shadow NGO reports were submitted to the CRC, although the government's official report declared that it had been prepared with the cooperation of a number of domestic NGOs. The weight of the committee's concluding observations in 2005 was devoted to systemic issues such as the need to adopt legislation to implement the Convention domestically, capacity building and training, appropriate revision of the national strategy on children, adequate data collection, and integration of the best

[116] *See also* Courtenay Conrad & Emily Hencken Ritter, *Treaties, Tenure, and Torture: The Conflicting Domestic Effects of International Law*, 75 J. POL. 397 (2013).

[117] On how to take account of changes in the repressive nature of a state for the purposes of measuring human rights compliance, see Keith Schnakenberg & Christopher Fariss, *Domestic Patterns of Human Rights Practices*, 2 POL. SCI. RES. & METHODS 1 (2014). See also the argument of Heather Smith-Cannoy, based on both quantitative and qualitative analysis, that even within insincere and somewhat repressive states such as Tajikistan, Kyrgystan, and Hungary, the presence of active domestic groups and their use of complaints systems set up under UN human rights treaties can lead to important change: HEATHER M. SMITH-CANNOY, INSINCERE COMMITMENTS: HUMAN RIGHTS TREATIES, ABUSIVE STATES AND CITIZEN ACTIVISM (2012).

https://doi.org/10.1017/ajil.2016.16 Published online by Cambridge University Press

interests of the child, along with a number of more specific issues such as discrimination, exclusion, trafficking, economic exploitation, health, and education.

Second report to the Committee on the Rights of the Child, including shadow reports (2012)

In the years which followed, a significant number of Albanian NGOs working in the field of child rights began to actively gather information and to report on a wide array of serious problems affecting children in Albania. A large coalition of these organizations, which called itself the Children's Alliance and included over 150 Albanian civil society organizations, submitted a substantial "shadow report" to the committee of the Rights of the Child in relation to the next reporting period.[118] Three other shadow reports were submitted to the committee at this time, one by the Children's Human Rights Center of Albania, a second shorter and more focused report by a group of twenty-six children ("United for Childcare Protection Coalition Children's Report") supported by a group of domestic and international NGOs and representing over 14,000 children from a range of towns and regions in Albania,[119] and a third by an international umbrella NGO, the International Disability Alliance, which specifically addressed issues relevant to children with disabilities.

The lengthy and substantial shadow report by the Children's Alliance, based apparently on years of research, including interviews with and input from dozens of grassroots organizations, outlined in detail a range of serious issues affecting children and the need for specific state responses, as well as making recommendations in relation to each. The report cites numerous factual examples of the general issues it raises which are drawn from the experience of particular organizations and individuals. Both the issues highlighted and the recommendations contained in the report are described as arising directly from the information gathered. Amongst the key problems listed is the culture of violence against children, including at school, in the home, and at the hands of the police and other officials. The shadow report explains that violence of varying degrees of severity is seen as an appropriate form of discipline in Albania and has been widely tolerated. Another key issue on which the shadow report focuses is the abandonment of children, often for economic reasons, and the consequently high degree of institutionalization of children. Other significant consequences of severe poverty identified by the report are the incidence of child labor, particularly children being forced by their families to beg to support them. Issues facing Roma children and Egyptian children are identified as being particularly severe, including bullying, marginalization, and lack of education. The problems faced by children with disabilities and the lack of adequate data is a problem repeatedly noted, as is the quality of juvenile justice, and the need for proper budgetary allowance for children.[120]

[118] For all of the documents submitted to the Committee on the Rights of the Child, including the various NGO shadow reports as well as the government's report and the Committee's list of issues and concluding observations: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=368&Lang=en.

[119] The introduction declares that: "In order to draft this report we have conducted talks, interviews, questionnaires, workshops, trainings, and meetings with children of various ages and adults, which resulted in the following findings." United for Child Care and Protection, *Report on Children's Rights in Albania to the UN CRC Committee* (2011).

[120] An updated 2012 summary report submitted to the CRC by the Albanian Children's Alliance (drawn from their earlier longer report) focused on ten core issues: (1) child exploitation and child labor (begging, etc.); (2) violence against children (and abuse/neglect); (3) juvenile justice; (4) institutionalized children; (5) children of

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Of the three other shadow reports submitted to the CRC for the 2012 session, only one—from the International Disability Alliance—was not the product of domestic civil society actors. While the report prepared directly by a group of children (United for Childcare Protection Coalition) was assisted by a number of domestic as well as international NGOs, the issues identified in this short report focus primarily on a subset of the longer list of issues contained in the earlier NGO report that were of most concern to those children, including violence and neglect at school, and early arranged marriages for girls.[121] Far from being the script of an international elite, or the imposition of norms or solutions from above, therefore, the information and the issues brought to the Committee on the Rights of the Child in the context of the treaty body review in 2012 was largely domestically generated and reflected the issues and concerns of those working on the ground on a range of different issues affecting children, as well as the concerns of children themselves.

In its extensive state report to the committee, the Albanian government outlined various laws, programs, and policies concerning children and drew attention to any measures it had adopted and changes which had taken place in relation to recommendations made to it by the committee under the previous cycle. Then, following discussions with the NGOs and dialogue with the state party, the committee drew up its "list of issues," which included among its eighteen issues fifteen of those that had been specifically highlighted in the NGO shadow reports. Finally, following the exchange of views between the government and the treaty body, the committee issued its Concluding Observations, which mark the culmination of the formal treaty body review and identify the issues on which the CRC recommends the government should concentrate, as well as what steps they should take.

Concluding observations of the Committee on the Rights of the Child 2012

The committee in its concluding observations focused on five main clusters of issues: (1) discrimination against specific categories of children (including Roma and Egyptian children); (2) abuse and neglect of children; (3) children who are institutionalized or otherwise without family care; (4) juvenile justice; and (5) children with disabilities.[122] The specific recommendations made by the committee mirrored a great many of those proposed in the NGO shadow reports, including recommendations regarding, inter alia: juvenile justice; registration of children's births; corporal punishment and violence at school and at home; establishing a multisectoral child protection system; ratifying the Convention on the Rights of Persons with Disabilities; blood feuds; acting against early and forced marriages; reducing institutionalization; improving education for Roma children; ensuring that alimony decisions can be enforced after separation and divorce; revising restrictive adoption rules; ensuring

divorced parents; (6) children with disabilities; (7) children of minorities (Roma, in particular); (8) education, especially early childhood; (9) budgeting for children and children's rights standards; and (10) establishing a functional child protection system.

[121] The eight issues emphasized in the United for Child Protection children's report were: (1) child poverty, resulting in begging, social exclusion, and discrimination; (2) children from minorities (particularly Roma and Egyptian minorities); (3) violence against children in families and schools; (4) children without parental care/institutionalized children; (5) corrupt teachers/poor education; (6) children with disabilities; (7) general lack of knowledge of teachers and officials of CRC or children's rights; and (8) lack of information about how much money government has budgeted for children.

[122] *See supra* note 118.

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adequate support for the People's Advocate office (a kind of Ombudsman for children); providing proper training for officials working with children; and ensuring transparent and participatory budgeting and data collection.

Universal Periodic Review of Albania (2014)

Following the CRC process, Albania in 2014 became due for review in the context of the Universal Periodic Review, the state-led political review of human rights progress which takes place under the auspices of the UN Human Rights Council.[123] Several of the same NGOs that had submitted shadow reports to the CRC process in 2012 also submitted follow-up interventions to the Universal Periodic Review (UPR), including the group of children United for Child Care Protection Coalition and the Children's Human Rights Center of Albania.[124] These submissions drew attention to many of the issues which had been contained in the shadow reports to the earlier CRC Committee review. Other groups reporting included the Albania National Council of Disabled People and the Albania Coalition Against Child Trafficking, along with other domestic NGOs focusing on issues other than children's rights, as well as UN agencies and international NGOs.

At the end of the UPR process, the conclusions and recommendations made by the Human Rights Council and its working group on Albania focused on: the plight of street children; the need to counter abuse and violence against children, both in domestic settings and in institutional care, including corporal punishment; combatting the worst forms of child labor and begging; improving juvenile justice; introducing educational reform; and focusing on the particular problems of Roma children and disabled children. Hence, many of the issues raised and recommendations made by the NGOs in their shadow reports both to the CRC committee and to the UPR were picked up and addressed by the Human Rights Council. In its response to the Human Rights Council, Albania publicly agreed that it would introduce reforms in relation to child labor and child trafficking, address discrimination against Roma and Egyptian children, implement stronger prohibitions against corporal punishment and violence against children, as well as clarifying the definition of child for the purposes of implementing the provisions of the Convention on the Rights of the Child.

Response of Albania to the CRC recommendations and UPR pressure

What was the response of Albania to this series of processes involving human rights review by international organs and with the extensive participation of domestic and transnational civil society actors?

A summary of the various actions adopted by the Albanian government may be found in a 2015 NGO report which evaluates the state of protection for children's rights following the review by the Committee on the Rights of the Child in 2012.[125] Despite being extremely

[123] For an overview of the UPR: UN Office of the High Commissioner for Human Rights, Universal Periodic Review, *at* http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx. For all of the reports and documents relevant to the 2014 UPR review of Albania: UN Office of the High Commissioner for Human Rights, Universal Periodic Review - Albania, *at* http://www.ohchr.org/EN/HRBodies/UPR/Pages/ALIndex.aspx.

[124] In preparation for the UPR, a number of these children worked with several international NGOs to prepare a report and attended the UPR, presenting their evidence orally to a working session of the UPR.

[125] Christopher Cuninghame & Elda Hallkaj, *Child Rights Situation Analysis 2012–2015*, SAVE THE CHILDREN (2015)

https://doi.org/10.1017/ajil.2016.16 Published online by Cambridge University Press

critical of many continuing problems affecting children's rights, the report indicates that several of the specific recommendations made by the committee, which built on the reports and recommendations of the NGOs, had been followed and implemented by the government. These include: the introduction of pilot child-budgeting initiatives; the adoption of new legislation on child protection and on education; and the introduction of new social inclusion policies. The report indicates that Albania adopted a new law on disability in 2014, and had taken steps to improve the child protection system through a range of specific procedures and measures which had been the subject of consultation and evaluation. It notes that

> [a] significant amount of work is being done to align child protection standards in Albania with international ones. Recent [2013] Criminal Code amendments, "in the highest interest of the child" prohibit domestic violence in a child's presence and introduce harsher punishment for child trafficking, forced marriage, forced child labour, child prostitution and other offences against children.[126]

The report also notes improvements introduced by the Albanian government to the juvenile justice system following the CRC review, including a program to support rehabilitation, a focus on children's empowerment and capacity development of the prison service, the provision of education in detention centers, and the creation of a section within the Probation Service with responsibility for minors. Other improvements mentioned in the report that responded specifically to the recommendations of the Committee on the Rights of the Child included a ministerial directive in 2014 on the enrollment of Roma children in free preschool education, measures to improve teaching standards, and a range of other innovations in education based on children's competencies and designed to provide an enabling and inclusive educational environment and reduce dropout. A range of reforms to enable more effective inclusion and participation of children in the governance of education and schools had also been introduced by the government after 2013, and child-focused civil society representatives were included on an inter-ministerial agency with responsibility for the protection of children's rights.

Conclusions on the experimentalist functioning of the reporting system in the Albania child rights case

This brief account of Albania's engagement with the Convention on the Rights of the Child treaty body system indicates clearly that the treaty body process functions neither as the top-down imposition of an international script on a state by elites, nor as ineffectual finger-wagging by a distant and powerless committee in Geneva against an unaccountable state. On the contrary, what is evident from a close analysis of the operation of the system and the follow-up actions adopted by the Albanian government is the human rights treaty body system here functioned as a process initiated and largely driven by an active and informed domestic civil society, sometimes helped or advised by international organizations, such as UNICEF, or international NGOs, such as Save the Children and World Vision, engaging the state within an international forum provided by the Committee on the Rights of the Child (and, importantly, the follow-up Universal Periodic Review process) to pressure the state to respond and address the issues identified and the complaints made. The changes ultimately

[126] *Id.* at 20.

https://doi.org/10.1017/ajil.2016.16 Published online by Cambridge University Press

made by the state are clearly responsive to the pressure imposed by the combined activity of the treaty body and civil society groups, many of whom continue to invoke and mobilize around the recommendations and conclusions of the CRC committee, and will be involved in the next cycle of reporting to the CRC and to other international bodies and processes. Indeed, quite apart from the list of specific actions adopted by the Albanian government in response to the CRC recommendations—that in turn were based on many of the NGO reports and suggestions—the very fact of civil society mobilization is itself, in many cases, a positive consequence of the operation of the treaty body system. NGOs and other alliances were established, came together, and worked to lobby for change and to involve themselves in reform in relation to children's rights. This in itself has many positive consequences in terms of community building and capacity building.

In sum, the case study of Albania's engagement with the CRC illustrates elements of the experimentalist functioning of this human rights treaty body system and helps to explain how it is that the ratification and operationalization of human rights treaties may come to have a positive impact on human rights standards within states. It demonstrates how the process is neither wholly domestic nor wholly international, and how it depends on the interaction of a series of different actors and institutions over time. And while this is only one case study of a specific state and one set of human rights issues, it provides a fairly typical example of the experimentalist operation of these treaty body processes: the way in which human rights claims and issues emerge through a process of domestic identification and mobilization are filtered up to the treaty body system involving a process of engagement with state actors and the treaty body members, and often other international fora too, which are then reflected in a set of recommendations and follow-up actions contributing ultimately through ongoing pressure to domestic change.

V. Conclusion: The Implications of an Experimentalist Governance Perspective on the International Human Rights Treaty Regime

What are the relevant implications of this experimentalist perspective on these international human rights treaty systems? Three important implications, both theoretical and practical, will be outlined here.

(1) The first is that an experimentalist perspective on treaty systems such as the CEDAW, CRC, and CRPD widens the lens through which these human rights treaty systems are viewed. It focuses attention beyond the two main official sets of actors which are normally the object of scrutiny—state governments and treaty bodies—and beyond the formal engagement of the state with the expert committee, to include the growing array of local, national, and international nongovernmental actors and institutions and the way they inform, implement, and give shape to the regime and the treaty in practice. Without overlooking the crucial interactions of state actors with the treaty bodies, the experimentalist governance perspective focuses additional attention on the significance of other actors and their activities—including their engagement with states—to the implementation and realization of the norms contained in the treaties. It highlights the way in which, by providing alternative sources of information, ensuring closer understanding of problems on the ground, supplying localized knowledge of particular issues and challenges in different areas and regions, suggesting alternative discourses

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and ways of supplementing or challenging state reporting, connecting local actors and entities with transnational networks, building capacity, providing training, mobilizing advocacy and proposing practices and strategies to activate change, and proposing, or even in some cases supplying, solutions by providing direct services, the rise and integration of many non-state actors has changed the bilateral and formal nature of the interstate monitoring regime in significant ways.

Viewed from an experimentalist perspective, the human rights treaty body system resembles less the critical depiction of a distant bureaucratic regime peopled by underfunded and ineffectual committees, and can be seen as a dynamic regime involving multiple actors and bodies at different levels—local, national, regional, and transnational—engaged in tackling a wide range of human rights issues, placing neglected issues on the agenda, and devising, proposing, and sometimes implementing solutions. Through their awareness raising, information sharing, advocacy, service delivery, vernacularization, and two-way translation, NGOs, civil society actors, national human rights institutions, state actors, and others activate UN human rights treaty systems such as the CEDAW, CRC, and CRPD and are instrumental in transforming them into more participatory and accountable experimentalist governance systems. Further, the mobilization, empowerment of often marginalized actors, and community-building effects that result from engagement of local civil society and other actors in the treaty body process constitute an important positive effect of the treaty body system, quite apart from other substantive outcomes on human rights.

Although there is a rich political science literature—including theories of the "boomerang" effect, and analyses of the impact of transnational networks[127]—that draws attention to the role of domestic civil society and transnational actors in mobilizing for human rights, experimentalist governance theory supplements and builds on these to emphasize the crucially iterative, ongoing, and mutually dependent relationship between global human rights norms and their local contextualization. It is not just that human rights treaties become effective because international NGOs can supply pressure from outside to prod resistant domestic governments, or because local actors can invoke international norms in demanding or advocating for change. Rather, the crucial dimension is the ongoing interaction between global and local levels in which each is reliant on the other for the development of the norm and its realization in practice over time and in different contexts. It is not that international norms are gradually sharpened and imposed upon the state and the population "below," or that local actors make whatever they want of international norms in specific settings. Instead, experimentalism posits that open-ended but important global norms only take shape through their implementation in different local contexts by a varied array of actors, governmental as well as nongovernmental; and that locally situated actors benefit from both the impetus and the focal point supplied, as well as the opportunity for exchange offered, by the periodic engagement with the treaty body and its output. Apart from the Albania study included above, other suggestive examples of this iterative engagement over time are provided in the literature,[128] such

[127] THE PERSISTENT POWER OF HUMAN RIGHTS, *supra* note 86; KECK & SIKKINK, *supra* note 58.

[128] Interestingly, the positive impact of iterative deliberation involving civil society participation in the context of the human rights peer review system of the Universal Periodic Review has also been demonstrated in a recent study by Karolina Milewicz & Robert E Goodin, *Deliberative Capacity-Building Through International Organizations: The Case of the Universal Periodic Review*, 46 BRIT. J. POL. SCI. (2016), which suggests that such processes are also taking place outside of the human rights treaty body system.

as the gradual evolution in relation to reproductive rights in Chile through various cycles of the CEDAW Committee process,[129] the acceptance of children's participation in school decision-making in the UK through various cycles of the Children's rights committee process,[130] and the revision of discriminatory nationality law in Morocco after over a decade involving various iterations of the CEDAW reporting cycle.[131]

An experimentalist perspective on the functioning of UN human rights treaty systems provides a theory to account for the findings of the empirical studies surveyed above, namely that ratification of human rights treaties is associated with a positive impact on human rights standards within states in which there is a reasonably active civil society engaging both with governments and with the treaty reporting process. Experimentalism provides some response to the question what it is about the existence of an active civil society that makes it more likely that a treaty signed by a state will have a positive human rights effect. It suggests that an important way in which a transnationally or internationally established set of standards can be effectively implemented is by the interaction of locally situated, adequately incentivized, resourced, and informed actors with an independent center or focal point such as a treaty body, via an iterative two-way process of reporting, monitoring, and feedback that leads to change through the practice of those actors and through their engagement with governmental and other actors, and the sharing of that information across other relevant sites of human rights practice.

(2) The second relevant implication of an experimentalist perspective on international human rights treaty systems is that it offers a robust response to several of the critiques outlined at the outset. Those criticisms concerned the ambiguity and lack of specificity of human rights standards and the weakness of international human rights enforcement mechanisms,[132] as well as the claim that international human rights law entails the top-down imposition of one-size-fits-all standards on diverse parts of the world.[133]

Take first ambiguity. While critics have decried the open-endedness and lack of specificity of the standards set out in human rights treaties, such open-endedness is an essential component for the effective operation of experimentalist governance. Experimentalist premises require the original agreement on framework norms to leave sufficient room for local discretion and flexibility in application and adaptation to circumstance. If norms are too prescriptive or too narrow, they are likely to thwart the possibility of adjustment to different circumstances and unlikely to give relevant stakeholders the necessary room to adapt norms to varying contexts and report back on their results.

Take secondly the weakness of enforcement mechanisms. The weakness of human rights treaty mechanisms is said to lie in the fact that they provide only a system of self-reporting by states, with a soft form of naming/shaming using nonbinding treaty body observations

[129] Liebowitz & Zwingel, *supra* note 108.

[130] Laura Lundy, *Children's Rights and Educational Policy in Europe: The Implementation of the United Nations Convention on the Rights of the Child*, 38 OXFORD REV. ED. 393, 407–08 (2012).

[131] *See* Byrnes & Freeman, *The Impact of the CEDAW Convention: Paths to Equality*, *supra* note 105.

[132] *See* POSNER, *supra* note 2, at 104 ("The reason human rights law has failed to improve respect for human rights is that the law is weak—the treaties are vague and inconsistent, and the institutions are balkanised, starved of resources, and unequipped with legal authority.").

[133] *Id.* at 142 ("International human rights law . . . reflects the same basic civilizing ideology combined with a top down mode of implementation. . . . It fails . . . to grapple with the huge variation among states and their extreme complexity.").

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and recommendations which are often carefully and diplomatically phrased.[134] Calls have been made by human rights activists, by members of treaty bodies, by UN special rapporteurs, and others to acknowledge or confer binding authority on the interpretative statements of the UN human rights treaty bodies,[135] and to establish a world court of human rights.[136] It has been argued that international human rights norms, unlike domestic constitutional norms, are ineffectual without a court which is empowered to resolve ambiguities and sharpen authoritative interpretations.[137]

From an experimentalist governance perspective, however, the existence of a court whose function is to hand down authoritative and binding rulings on the meaning of specific terms is not a necessary element of an effective governance system and indeed at times could even thwart it. While courts are certainly compatible with experimentalist governance systems and often important actors within them, their role is not necessarily to close off all ambiguity or to authoritatively resolve issues of interpretation in a single final direction. Instead, the function of a court within an experimentalist governance system can be understood as a catalyst for reform,[138] or a destabilizer of dysfunctional arrangements.[139] Hence the absence of an authoritative court or body, such as a treaty body, which could close off the possibility for differential interpretation and application in different local contexts of the meaning of a single human rights norm is quite compatible with and even required by the tenets of experimentalism.

Yet the lack of such binding, hierarchical enforcement in the human rights domain has encountered significant criticism and the nonbinding, discursive nature of the treaty body system has been the object of complaint.[140] Human rights NGOs, scholars, and others have often been highly skeptical of the suggestion that a human rights system may not need or be best served by binding hierarchical enforcement.[141] What is there, they reasonably ask, to constrain states from adopting whatever meaning they like, avoiding any real influence or impact of the obligations they have undertaken to protect and promote human rights, and choosing to interpret them in a self-serving way which avoids the need for any change? The

[134] See, for example, the argument made by Sherilyn Baxter that the Convention on the Rights of the Child is ineffective because it does not provide for effective enforcement of individual complaints: *The Suggestions on the Rights of the Child: Why the UN Convention on the Rights of the Child is a Twenty-Five year Failure*, 2(1) J. GLOB. JUST. & POL'Y 89 (2015).

[135] See, for example, on the ICCPR, the arguments of MANFRED NOWAK, UN COVENANT ON CIVIL AND POLITICAL RIGHTS: CCPR COMMENTARY 668 (2d ed. 2005); and Martin Scheinin, *The Work of the Human Rights Committee Under the ICCPR and Its Optional Protocol*, *in* LEADING CASES OF THE HUMAN RIGHTS COMMITTEE 22 (Raija Hanski & Martin Scheinin eds., 1st ed. 2003).

[136] Martin Scheinin, *Towards a World Court for Human Rights: Research Report Within the Framework of the Swiss Initiative to Commemorate the 60th Anniversary of the Universal Declaration of Human Rights* (Apr. 30, 2009), *available at* http://www.eui.eu/Documents/DepartmentsCentres/Law/Professors/Scheinin/WorldCourtReport30April2009.pdf (and forthcoming). For a response, see Philip Alston, *Against a World Court for Human Rights*, 28 ETHICS & INT'L AFF. 197 (2014).

[137] POSNER, *supra* note 2. For a more nuanced analysis, see Geir Ulfstein, *The Human Rights Treaty Bodies and Legitimacy Challenges*, *in* LEGITIMACY AND INTERNATIONAL COURTS (Nienke Grossman, Harlan Grant Cohen, Andreas Follesdal & Geir Ulfstein eds., forthcoming in 2017), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2808013.

[138] Joanne Scott & Susan Sturm, *Courts as Catalysts: Re-thinking the Judicial Role in New Governance*, 13 COLUM. J. EURO. L. 565 (2006).

[139] Sabel & Simon, *Destabilization Rights: How Public Law litigation succeeds*, *supra* note 11.

[140] *See supra* notes 136 and 137.

[141] However, see Alston, *supra* note 136.

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answer of experimentalist governance theory is that it is the presence of an active, engaged array of stakeholders with a strong interest in shaping and enforcing the human rights norm, combined with the obligation of regular state reporting alongside stakeholder monitoring and reporting that provides a reasonably robust safeguard against self-interested interpretation of human rights norms by states that seek to avoid action and accountability. What prevents states from ignoring their commitments or hiding their noncompliance is the obligation of periodic and regular reporting, accompanied by NGO shadow-reporting to an external body that conducts a form of transparent, nonhierarchical review, and often in cooperation or engagement with other international bodies and peer review systems.[142] As demonstrated by the Albania study above, the treaty bodies engage in dialogue with states, informed by the reports and prior participation of NGOs in preparing for the dialogue. They issue recommendations and observations on the responses of the states, and these observations and recommendations themselves become part of the iterative process by being taken up at the domestic level by actors who then use them to push for and promote change.[143]

Take thirdly the criticism that the international human rights treaty system involves the top-down imposition by human rights systems of a uniform standards on diverse parts of the world.[144] Critics allege that treaty-based human rights norms are imposed in a uniform way by elites without regard to the diversity of different parts of the globe or to the varying needs and wishes of local populations.[145] While there is undoubtedly force in this criticism as far as certain parts of the international human rights regime are concerned, in particular the imposition of human rights through external coercion or force, it is much less apt in relation to the experimentalist functioning of some of the UN human rights treaty systems. Stephen Hopgood in particular contrasts what he calls the "Human Rights" regime (the international institutions and actors), at which most of his critique is targeted, with the "human rights" practices at grassroots level, which he views as a more effective and legitimate enterprise.[146] As outlined in this article, however, an experimentalist account of the international human rights treaty system rejects such a separation between the practices of top-down international institutions and bottom-up grassroots or local actors and argues that the effective operation of

[142] For examples of the horizontal interaction between treaty body processes and other international and regional processes and mechanisms, see Byrnes & Freeman, *The Impact of the CEDAW Convention: Paths to Equality*, *supra* note 105.

[143] See however the argument of Guzman & Linos, *Human Rights Backsliding*, *supra* note 80. They argue that in advanced democracies with substantial domestic protection for human rights, governments sometimes cite the "minimum standards" set by international human rights courts as an argument to support their move to reduce some unpopular benefit (e.g. parental leave in Sweden), or to bolster their decision to change a particular rule of evidence (the nonadmissibility of purely hearsay evidence in the UK). See also Jason Mazzone, using the same example of hearsay evidence in *The Rise and Fall of Human Rights*, 3 CAMBRIDGE J. INT'L & COMP. L. 929 (2014).

[144] *See supra* note 1.

[145] For an interesting challenge to the widely help assumption that the promotion of LGBT rights in African countries amounts to the top down imposition of a transnational set of values or to a form of international hegemony, see Abadir M. Ibrahim, *LGBT Rights in Africa and the Discursive Role of International Human Rights Law*, 15 AFR. HUM. RTS. L.J. 263–81 (2015), who argues that political repression of gay rights and widespread homophobia in a range of African countries is largely a product of colonialism, and that many prior indigenous practices were in fact open to a variety of nonheterosexual or heternormative sexual preferences and practices.

[146] *See supra* note 2. Compare the alternative account of César Rodriguez Garavito, who argues for an understanding of the human rights field as a complex and diverse ecosystem: *The Future of Human Rights: From Gatekeeping to Symbiosis*, 11 SUR: INT'L J. HUM. RTS. 499 (2014).

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the human rights treaty system is precisely in the interaction between these various levels. Experimentalism takes top-down governance to be undesirable in principle and unworkable in practice, understanding each level or layer in a multilevel system to be reliant on the other for the functioning of the system as a whole, and for common goals to be effectively pursued. The "center" (in this case the conference of states which enacted the treaty and the treaty body or committee which is charged with monitoring its enforcement) relies significantly on the local or contextually situated actors to adapt, interpret, enact, implement, and report back on the operation of the norms in particular sites and contexts. At the same time, the local and intermediate levels rely on the center to ensure ongoing scrutiny of and reflection on the results achieved in light of information drawn from different contexts and sources, and more generally to promote the transparency and accountability of the system as a whole. The very open-endedness of the framework norms which is criticized by some as hopelessly ambiguous is important to prevent a centralized top-down approach and to leave adequate room for adaption to circumstance.

(3) The third and final practical implication of an experimentalist perspective on human rights treaty systems is that it points to possible avenues for reform of existing human rights treaty systems with a view to making them more effective in practice. Specifically, it is clear that an international human rights treaty system requires the integral involvement of locally situated domestic actors, NGOs, and intermediaries such as national human rights institutions, as well as the support of transnational networks and international bodies to provide information and advice, particularly where domestic civil society is weak and lacks access to information. Adequate channels of communication and exchange between the international review body and the array of state and nonstate actors are necessary.

In light of the central importance of an active and engaged civil society for the effective functioning of international human rights treaties, the current international political environment and the increasing tendency of many states to resist external monitoring of their human rights practices and to impede or prevent the involvement of civil society in such processes seems deeply ominous. Human rights NGOs, both domestic and foreign, have been under attack in a range of states around the world, and not only in states which have been historically most repressive toward civil society, but increasingly in many others in Europe and elsewhere.[147] Second, as noted above, the current global political climate has become one of reduced cooperation with or retreat from international institutions including human rights mechanisms. Further, in negotiations leading up to the adoption of the UN sustainable development goals in 2015, a range of states were strongly resistant to allowing participation from civil society,[148] and in particular resisted civil society involvement in any proposed review and monitoring mechanisms, and insisted on domestic governmental control over the sources and

[147] Harriet Sherwood, *Human Rights Groups Face Global Crackdown "Not Seen in a Generation,"* GUARDIAN (Aug. 26, 2015), *at* http://www.theguardian.com/law/2015/aug/26/ngos-face-restrictions-laws-human-rights-generation?CMP=share_btn_wa. See also the annual and regional reports on the space for civil society action published by CIVICUS (Oct. 26, 2016), *at* http://www.civicus.org/index.php/media-resources/reports-publications/2630-civic-space-in-europe-survey-report and http://www.civicus.org/images/CIVICUSMonitorFindingsReportOctober2016.pdf.

[148] See, for example, the June 16, 2014 open letter written by "representatives of the major groups and stakeholders of civil society" who had been registered to participate in the UN "Open Working Group" on the SDGs, *available at* https://sustainabledevelopment.un.org/content/documents/10404openletter.pdf.

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nature of data provided to the review body established.[149] And while the sustainable development goals (SDGs) as eventually adopted scrupulously avoid using the language of human rights, the commitments undertaken by states in the SDGs to which they have agreed overlap significantly with many of their existing human rights commitments.[150]

These trends may appear bleak for the prospects of a robust international human rights system, and seem to presage the likely future marginalization of nonstate actors and civil society groups in the international human rights regime. On the other hand, the resistance to international human rights monitoring and the crackdown on civil society worldwide is also a reflection precisely of the effectiveness of civil society involvement in human rights treaty implementation and monitoring, and a recognition of their power to hold governments publicly to account. In that sense, the rejection by many states of the proposal for a mechanism like the Universal Periodic Review being created for review of the Sustainable Development Goals is likely to have been based on their recognition of the relatively robust nature of the UPR accountability mechanism to date.[151] And while the current transnational political climate may be highly repressive, the history and record of civil society groups such as human rights NGOs suggest that they are resilient and adaptive, and that indeed injustice and repression are often conditions for their emergence and mobilization, and a condition for the emergence of human rights struggles in the first place. It seems more likely that NGOs will find alternative ways of organizing and operating within states that enact repressive laws until such time as the political climate becomes less hostile again, and that, just as in the case of the CEDAW and CRC, which did not initially provide any role for NGOs or other non-state actors in the human rights regime, civil society groups will continue to find ways of strategizing and engaging with international human rights systems and overlapping regimes such as the Sustainable Development Agenda.[152] Indeed, the signs are that civil society groups and human rights NGOs have begun to create just such a role for themselves in the future implementation of this ambitious global and universally adopted agenda.[153]

Finally, while it is evident that the category of civil society more generally, and human rights NGOs in particular, comprises an eclectic and vastly diverse array of actors devoted

[149] *See* Sustainable Development: Knowledge Platform, High-Level Political Forum (July 2017), *at* https://sustainabledevelopment.un.org/hlpf/2015. For analysis of the resistance of states to an effective SDG accountability mechanism, see Kate Donald & Sally-Anne Way, *Accountability for the Sustainable Development Goals: A Lost Opportunity?*, 30 (2) ETHICS & INT'L AFF. 201–13 (2016).

[150] See, for example, the Danish Institute for Human Rights' mapping of the Sustainable Development Goals onto existing international human rights commitments: The Human Rights Guide to the Sustainable Development Goals, *at* http://sdg.humanrights.dk.

[151] *See* Donald & Way, *supra* note 149.

[152] See UN, Sustainable Development Goals, *at* http://www.un.org/sustainabledevelopment/sustainable-development-goals. For a fuller account see, Sustainable Development 2015, *at* http://www.sustainabledevelopment2015.org.

[153] For some of the numerous recent moves to facilitate a role for civil society in this respect, see Sustainable Development 2015, Helping Stakeholders Shape New Global Goals for Humanity's Future (November 2015), *at* https://sustainabledevelopment.un.org/content/documents/9486ANilo%20Civil%20Society%20&%20Other%20Stakeholders.pdf. *See also* European Economic and Social Committee, *Making Civil Society a Driving Force in the Implementation of the UN 2030 Agenda for Sustainable Development* (Position Paper, Sept. 2015), *at* http://www.eesc.europa.eu/?i=portal.en.publications.36851; African Civil Society Circle, *The Roles of Civil Society in Localising the Sustainable Development Goals* (Position Paper, Mar. 2016), *available at* http://www.gppi.net/fileadmin/user_upload/media/pub/2016/KAS_CSO_2016_Localizing_SDGs.pdf; Action for Sustainable Development, *Learning by Doing: Civil Society Engagement in the High Level Political Forum's National Review Process* (July 2016), *available at* http://www.civicus.org/images/CivilSociety.HLPF.NationalReviewProcess.pdf.

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to very different goals and agendas,[154] the sheer diversity and range of domestic and international NGOs active in the field of human rights arguably strengthens the prospects for an open, active and diverse transnational sphere capable of helping to promote novel forms of transnational democracy. Indeed, the argument of this article is that the effectiveness of international agreements in helping to improve human rights standards domestically depends significantly on the integration and activity of such diverse stakeholders within a participatory and iterative system of the kind described in detail here.

To conclude, the core argument of this article is that the three international human rights treaties studied here, the CEDAW, CRC, and CRPD, can best be understood and analyzed as experimentalist governance regimes. This experimentalist understanding of the international human rights treaty system yields three distinct advantages. First, in addition to presenting a more comprehensive, dynamic and nuanced picture of the actual operation of the UN human rights treaties than conventional depictions provide, the experimentalist account suggests a different causal theory of their effectiveness than many existing accounts. Second, an experimentalist analysis provides a robust response to some of the key critiques of the human rights treaty system introduced at the outset of this article. Finally, an experimentalist reading of the international human rights treaty system suggests lessons for the design and reform of these and other existing human rights treaty systems with a view to making them more effective in practice in advancing the goal of strengthening human rights standards across the globe.

[154] For some recent critical reflections on NGO activity in the field of human rights, see Gaetan Cliquennois & Brice Champetier, *The Economic, Judicial and Political Influence Exerted by Private Foundations on Cases Taken by NGOs to the European Court of Human Rights: Inklings of a New Cold War?*, 22 EURO. L.J. 92–128 (2016), and Christopher McCrudden, *Transnational Culture Wars*, 13 INT'L J. CONST. L. 434–62 (2015). In relation to the Convention on the Rights of Persons with Disabilities in particular, see Stephen Meyers "*NGO-ization and Human Rights Law: The CRPD's Civil Society Mandate*," 5 LAWS 21 (2016), *available at* http://www.mdpi.com/2075-471X/5/2/21.

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