

International human rights regimes in Latin America: the commitment and compliance gap

Alejandro Anaya-Muñoz

Has the international human rights regime made a difference in practice? This article offers a preliminary approach to this question, focusing on Latin America. In particular, the article highlights the tensions between commitment and compliance with international human rights norms in the region. The article demonstrates that Latin-American countries have shown a strong commitment with these norms and with the organs of the universal and Inter-American human rights regimes. The article stresses, however, that high commitment has not been followed by a meaningful improvement in human rights conditions on the ground; therefore showing a clear gap between rights “in principle” and rights “in practice” in the region. The article concludes with an exploratory discussion on the possible causes for this decoupling and suggests future lines of research.

Introduction

For the past seven decades, the international community has developed a dense network of international norms and organs for the promotion and protection of human rights. This institutional infrastructure conforms what the International Relations literature would call an “international regime”—a set of principles, norms, rules and decision-making procedures, established by states to regulate or constitute their interaction within a specific issue-area of international relations¹. During the past twenty-five years or so, social scientists have traced the emergence and development of this international regime, investigating whether and why states make formal, binding commitments with it and, particularly, whether the regime has made a difference in practice. In this latter respect, the key question is if the international human rights re-

¹ This is the “consensus definition”, originally developed by Stephen Krasner (1983). See also Hasenclever, Mayer and Rittberger 1997: 8-22; Donnelly 1986: 599-605. For a description of the international human rights regime see Sepúlveda et al. 2004; Martín, Rodríguez-Pinzón and Guevara 2004; Steiner, Alston and Goodman 2008.

gime has had an influence on the behavior of states—in other words, whether, after the adoption of binding commitments with international norms, states comply with them or with the decisions by the organs of the regime. This article offers a preliminary (mainly descriptive) approach to such questions, focusing the United Nations (UN) and Inter-American human rights regimes in the case of Latin American countries². Have these countries adopted binding commitments with the international human rights regime? Have these commitments been followed by compliance—that is, by an improved human rights behavior in practice? These are the main questions that this article addresses, in a preliminary and exploratory fashion.

Latin America has been a “case study” favored by the International Relations and Comparative Politics literature that focus on human rights (Brysk 1993 and 1994; Sikkink 1993; Keck and Sikkink 1998; Franklin 2007; Cardenas 2007; Burgerman 2011; Hawkins 2002; Anaya Muñoz 2009). In part for the support and reliance on international law in general by the region’s countries and for their contribution to the development of international human rights norms and institutions (Forysthe 1991; Macaulay 2010: 136). Also, as this article will show, because Latin American countries have expressed in different ways—notably through the swift and generalized ratification of international human rights treaties—a commitment with international human rights norms, which begs the questions of why they are so prone to make commitments in the first place and whether this has been followed by compliance. Furthermore, the region’s states are democratizing countries which during the past few decades have aspired to be accepted as members of the community of democratic and rights-respecting nations, which makes them “socially vulnerable” and therefore more likely to be persuaded or pressured to comply (Risse and Sikkink 2013, 20-22). So Latin America, as a region, might be considered as a “most likely” case in the study of the influence of the international human rights regime or in the difficult transition from commitment to compliance.

The article is organized as follows. The first section describes the main functions of the organs and procedures of the UN and Inter-American human rights regimes—the key tools they have to attempt to influence states’ behavior. The second traces the level of commitment of Latin American countries with the regime’s norms and organs. In the third section, the article looks at their record of compliance. On these bases, it identifies a clear gap between

² The article only looks at the 18 Latin American countries from the continental mainland—Argentina, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay and Venezuela.

commitment and compliance—while the countries of the Latin American region have been exemplary in terms of the ratification of human rights treaties and the recognition of the international human rights regime’s organs and bodies, they have continued to violate human rights in practice. The article concludes with an exploratory discussion on the possible causes for this gap and suggests future lines of research.

1. The Universal and Inter-American human rights regimes

As already mentioned, an international regime is comprised by a specific set of principles, norms, rules and decision making procedures or organs. The principles of the international human rights regime are established in the 1948 Universal Declaration of Human Rights (UDHR), the normative bedrock of the international human rights regime. The UDHR enshrines the principles of equality in rights and dignity of every human being, “without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” (UDHR, article 2). Furthermore, the 1993 Vienna Declaration and Program of Action stresses this principle of universality and adds those of indivisibility, interdependency and interrelatedness of human rights (Vienna Declaration and Program of Action, Paragraph 5). The UDHR and a large list of subsequent international human rights treaties and declarations contain the regime’s norms and rules—a broad catalogue of rights and obligations and prescriptions and proscriptions for action. Individuals and, sometimes, collective entities such as minorities and indigenous peoples, are the right holders, whereas obligations and prescriptions and proscriptions are assigned to states. This is of course a key difference between the international human rights regime and other international regimes, in which states are the rights holders and duty-bearers. The UN Charter, the Charter of the Organization of American States (OAS) and other international organizations (i.e. the Council of Europe and the African Union), together with a long list of human rights treaties establish the “decision making procedures” of the regimes—organs and procedures that monitor the implementation of norms and rules and that determine whether states have complied or not.

The international human rights regime is conformed by several particular or specific regimes—the “universal” (UN-based), the Inter-American, European and African regimes³. The principles of these regimes are the broadly

³ The universal, European, Inter-American and African human rights regimes are the existing

same, and the norms and rules are similar, with only some regional variation. However, each of these regimes has been established by different international organizations (and therefore is in force in respect to specific groups of states) and each relies on its own treaties and organs. As already mentioned, this article focuses on the regimes that are in force for Latin American states—the universal and Inter-American regimes. Table 1 shows the treaties and organs for these two regimes.

Table 1. *Main international legal instruments and organs of the UN and Inter-American human rights regimes*

Regime	International legal instruments	International organs
UN (or universal) regime	UN Charter	Human Rights Council (formerly Human Rights Commission)
	Universal Declaration of Human Rights	
	International Convention on the Elimination of All Forms of Racial Discrimination	Committee of the Elimination of Racial Discrimination (18 independent experts)
	International Covenant on Civil and Political Rights	Human Rights Committee (18 independent experts)
	International Covenant on Economic, Social and Cultural Rights	Committee on Economic, Social and Cultural Rights (18 independent experts)
	Convention on the Elimination of All Forms of Discrimination against Women	Committee on the Elimination of Discrimination Against Women (23 independent experts)
	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	Committee against Torture (10 independent experts)
	Optional Protocol to the Convention against Torture	Subcommittee on Prevention of Torture (25 independent experts)
	Convention on the Rights of the Child	Committee on the Rights of the Child (18 independent experts)
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	Committee on Migrant Workers (10 independent experts)	

regimes that have a higher level of institutional density or “legalization” (Abbott *et al.* 2000). There are, however, more recent and less developed attempts to create a framework of international human rights organs and norms by other regional organizations, such as the Middle East and Southeast of Asia, or even in cultural “spaces” such as the Islamic world.

Regime	International legal instruments	International organs
	Convention on the Rights of Persons with Disabilities	Committee on the Rights of Persons with Disabilities (18 independent experts)
	International Convention for the Protection of All Persons from Enforced Disappearance	Committee on Enforced Disappearances (10 independent experts)
Inter-American regime	OAS Charter American Declaration on the Rights and Duties of Man American Convention on Human Rights Inter-American Convention to Prevent and Punish Torture Protocol of San Salvador: Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights Convention of Belem do Pará: Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women Inter-American Convention on Forced Disappearance of Persons Inter-American Convention on the Elimination of All Forms of Discrimination against Person with Disabilities Inter-American Convention Against Racism, Racial Discrimination, and Related Forms of Intolerance Inter-American Convention Against All Forms of Discrimination and Intolerance Inter-American Convention on Protecting the Human Rights of Older Persons	Inter-American Commission of Human Rights Inter-American Court of Human Rights

Source: *Made by author.*

The universal regime gravitates around two types and sets of organs and therefore follows two different dynamics—charter-based organs and treaty bodies. That is, on the one hand, the regime rests on the UN Human Rights

Council (HR Council), which substituted the Human Rights Commission (HR Commission) in 2006 and, on the other, on the ten bodies or committees mentioned in Table 1⁴.

The HR Council is made-up of government representatives, which begets the problem of politicization—the national interest tends to interfere in the promotion and protection of human rights (Lauren 2007). This does not necessarily mean that the actual situation of violation of human rights in a country is irrelevant for the decision-making process of the HR Council. Research has demonstrated, for example, that even the highly politicized HR Commission did take into account the actual level of human rights violations when adopting critical resolutions against a country, particularly after the end of the Cold War (Lebovic and Voeten 2006: 861-888).

The HR Council has primarily a monitoring function—that is, it can follow and assess the human rights situation within countries. A fundamental mechanism for this are its “special procedures”—special rapporteurs, working groups and similar mandates, established to investigate and report on the human rights situation in specific countries or around particular human rights issues. These country or thematic mandates are entrusted to “independent experts” who, in principle, serve on their “personal capacity” and do not represent any government. Treaty bodies are also formed by independent experts. This suggests that treaty bodies and the HR Council’s special procedures can monitor compliance and protect human rights more objectively than the politicized, diplomat-run HR Council as such (cf. Lauren 2007; Anaya Muñoz 2014: 75-78). This intuition, however, has not been explored empirically in an explicit and systematic way by the literature.

In addition to its special procedures, the HR Council can monitor the compliance with human rights norms by countries through different mechanisms—the consideration of complaints on grave violations of human rights submitted through its confidential procedure; adopting critical resolutions on country situations, and most notably the recently established Universal Periodic Review (UPR). The UPR has the unique characteristic of monitoring the human rights situation in all UN Member states in a periodic fashion, as its own name suggests. In this way, it has responded to criticisms of selectivity and double standards that were addressed against its predecessor, the HR Commission. In any case, as a result of its monitoring activities, the HR Council can only issue recommendations and has no enforcement capacity—its decisions are not legally binding and it cannot establish sanctions, let alone

⁴ The Optional Protocol to the Convention Against Torture established the UN Subcommittee on the Prevention of Torture, which is also considered a treaty body.

use force to make states comply⁵. Monitoring, nevertheless, can unleash a process of “shaming” that, under certain conditions, can persuade countries into improving its compliance (Keck and Sikkink 1998; Risse, Ropp and Sikkink 1999 and 2013; Hafner-Burton 2008; Davis and Murdie 2012).

Treaty bodies can also attempt to induce compliance through monitoring—particularly through the revision of periodic reports by states and the elaboration of special in-depth investigations on specific situations of grave or severe violations of human rights⁶. In addition, treaty bodies have a quasi-jurisdictional function to receive and consider individual communications or complaints, in which they determine authoritatively whether the accused state has in fact violated specific dispositions of international human rights treaties⁷. Just as the HR Council and its special procedures, the treaties bodies can only make recommendations, which are non-binding to states; even in its decisions (“views”) on individual communications. Yet again, these organs do not have enforcement capacity and can only aspire to “shame” countries into complying.

The Inter-American Commission on Human Rights (IACHR) is made-up of seven independent experts that serve in their individual capacity, while the Inter-American Court of Human Rights (IACoHR) is conformed by the same number of judges, who also do not represent their countries (Anaya Muñoz 2014: 79-84). The central functions of the IACHR are to monitor the human rights situation in the Western Hemisphere through the elaboration of special reports. Like the treaty bodies of the UN, it also has a quasi-jurisdictional protection function, through the consideration of individual petitions or complaints. Again, the IACHR can only issue recommendations, even in the case of adopting decisions in specific cases. Only the IACoHR can adopt binding decisions through its sentences or rulings. States have the legal obligation to implement the remedies mandated in the Court’s rulings. Nevertheless, neither the IACHR nor the IACoHR have enforcement powers.

⁵ As the reader would recall, only the Security Council of the UN has coercive capacities, acting under Chapter VII of the organization’s Charter.

⁶ Treaty bodies can also adopt “general comments”, through which they clarify or develop the content of the human rights enshrined in each treaty. Likewise, most of them can receive state communications—complaint by one state regarding the violation of human rights by other state. This latter function, however, has not been used in practice.

⁷ This competence is not activated automatically after the ratification of the treaty. Its recognition is optional for the states party to each treaty. It is usually adopted through a special declaration or the ratification of a special protocol. In the case of the Committee of Migrant Workers Rights, the individual communication mechanism has not become effective, because it does not yet have the minimum number of declarations by states party to the Convention regarding the acceptance of this competence.

In sum through monitoring and the quasi-jurisdictional and jurisdictional adjudication of specific cases of human rights violations, the organs of the UN and Inter-American human rights regimes can authoritatively establish whether states comply or not. But as already stressed, they lack enforcement powers—they cannot force states to comply with norms and/or implement their decisions. These international regimes seem to be “teeth-less”. Their principal tool is to “name and shame”—through their critical evaluations and their recommendations and rulings, these organs can demonstrate and publicize the lack of compliance by states (Anaya Muñoz 2014: 63-97). If we assume that international human rights norms are highly demanding—that is, they are difficult to put in practice, particularly for states that have been used for a long time to recur to repression—then the outlook for compliance does not seem promising in the first place.

2. *Commitment with international human rights norms in Latin America*

The aggregated global level of ratification of most international human rights treaties is very high. This indicates an equally high level of commitment with international human rights norms. Table 2 shows that, with the exception of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (adopted since 1990) and the International Convention for the Protection of All Persons from Enforced Disappearance (adopted in 2010), the rest of the treaties have been ratified by a majority of states. If we trace long-term, aggregated ratification tendencies, we will find a consistently increasing number of treaties ratified by a growing number of states. Graph 1 suggests an expanding commitment with international human rights norms.

Graph 2 presents a very similar picture for Latin America—a consistently growing commitment with international human rights norms. This is also shown in Graph 3, which shows the number of treaties that each Latin American country has ratified up to 2017. As can be seen, with the exception of Belize (which has not assumed commitments with the Inter-American regime), most states of the region have ratified most of the human rights treaties that the region’s countries can ratify⁸.

Another way to observe the commitment with international human rights regimes is to explore up to what point states have recognized the competence or jurisdiction of international organs to consider and decide upon

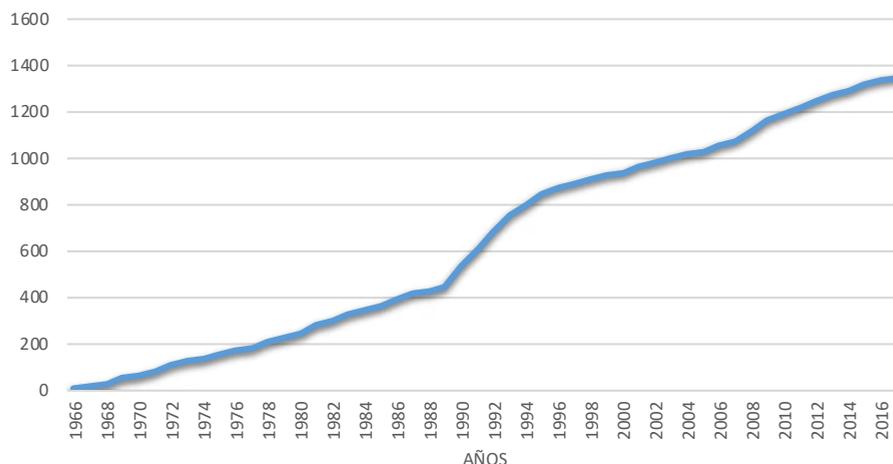
⁸ For the list of these treaties see Table 1, *supra*.

Table 2. *Human rights treaties adopted in the framework of the UN. Number of ratifications (Global)*

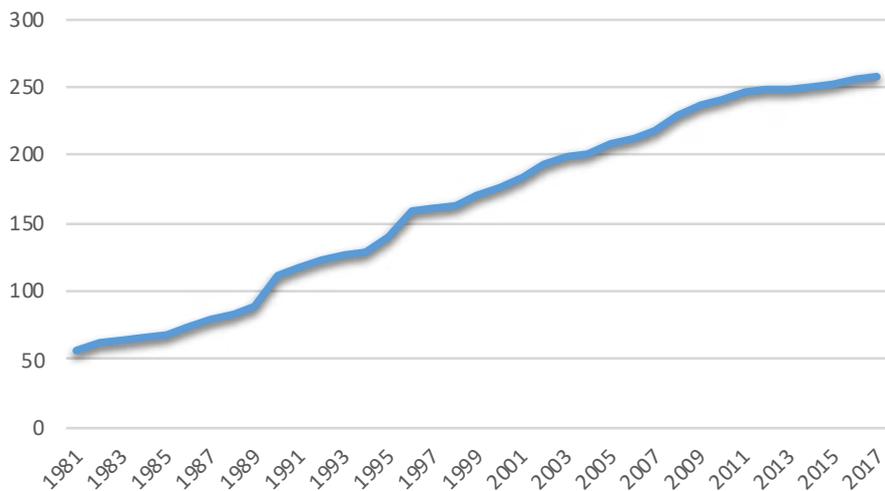
Treaty	Year of adoption	Number of ratifications
International Convention on the Elimination of All Forms of Racial Discrimination	1965	178
International Covenant on Civil and Political Rights	1966	169
International Covenant on Economic, Social and Cultural Rights	1966	165
Convention on the Elimination Of All Forms of Discrimination against Women	1979	189
Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	1984	161
Convention on the Rights of the Child	1989	196
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	1990	50
Convention on the Rights of Persons with Disabilities	2006	172
International Convention for the Protection of All Persons from Enforced Disappearance	2006	55

Source: *Made by author. Updated until November 2017.*

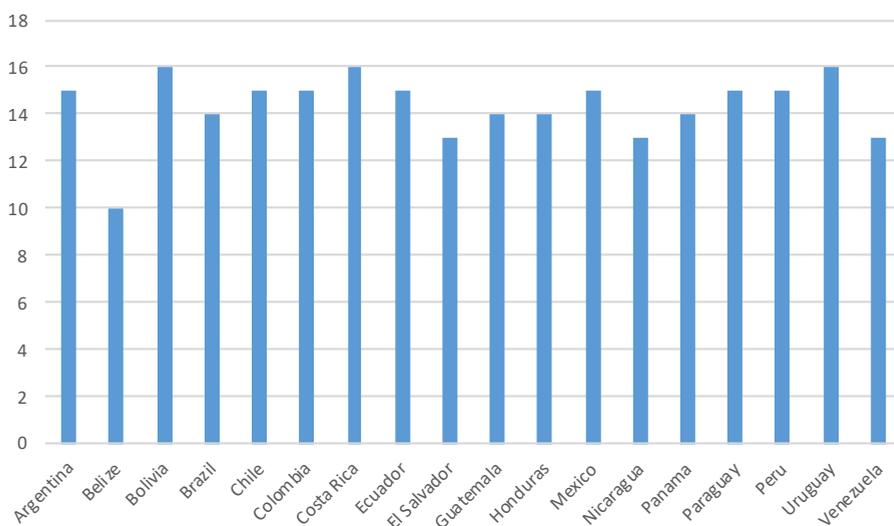
Graph 1. *Aggregated number of ratifications (Global)*



Source: *Made by author. Updated up to November 2017.*

Graph 2. *Aggregated number of ratifications (Latin America)*

Source: *made by the author. Updated until November 2017.*

Graph 3. *Number of human rights treaties ratified by Latin American countries*

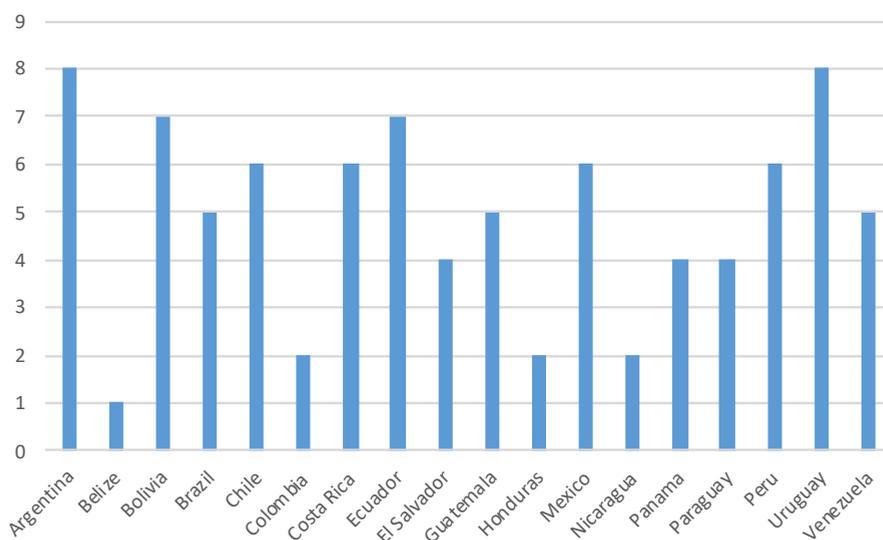
Source: *made by the author. Updated until November 2017.*

Note: Venezuela ratified the Inter-American Convention on Human Rights in 1977, however, it denounced this treaty on September 10, 2012 (this became effective a year later).

specific complaints of the violation of human rights. The acceptance of the competence of the UN treaty bodies to receive individual communications or petitions and the jurisdiction of the IACoHR is optional for states that had ratified the UN or OAS human rights treaties. If we consider this faculty as highly intrusive, in the sense that it implies an authoritative and (in the case of the IACoHR) binding determination on the violation of norms in specific cases, then states that have accepted this faculty demonstrate an even higher commitment with international human rights regimes.

Graph 4 shows the acceptance by the region's countries of the competence of UN treaty bodies to receive individual communications. The variation between countries is important, but the overall regional level of commitment remains moderately high.

Graph 4. *Recognition of the competence of the UN treaty bodies to receive individual communications*



Source: *Made by author. Updated until November 2017.*

All the Latin American continental states (again, with the exception of Belize) have recognized the jurisdiction of the IACoHR, although in very different moments in time—some states did so since the early 1980s, while others did so twenty years later (See Table 3). Beyond this time variations, Table 3 also shows a strong commitment of Latin American states with the regional human rights regime.

Table 3. *Recognition of the jurisdiction of the IACoHR*

Argentina	1984
Belize	
Bolivia	1993
Brazil	1998
Chile	1990
Colombia	1985
Costa Rica	1980
Ecuador	1984
El Salvador	1995
Guatemala	1987
Honduras	1981
Mexico	1998
Nicaragua	1991
Panama	1990
Paraguay	1993
Peru	1981
Uruguay	1985
Venezuela	1981*

Source: *Made by the author.*

*Note: Venezuela denounced the American Convention on Human Rights on September 10, 2012 (this became effective a year later).

Venezuela recently denounced the ACHR, therefore eliminating the jurisdiction of the IACoHR. This shows a decline in Venezuela's commitment to the regime's norms and organs. Similarly, several South American states, notably Ecuador, recently showed strong disapproval of the IACHR and promoted a process of diplomatic discussion within the OAS, which aimed at reducing the powers of the Commission. This attempt to undermine the Commission was thwarted, to a large degree due to the defense of the IACHR by other members of the OAS, such as Mexico and Colombia⁹. More recently, the IACHR faced a severe budget crisis and even otherwise highly supportive partners, such as Mexico, had important misgivings regarding the IACHR and its work. These tensions between states and the organs of the Inter-Amer-

⁹ See the different contributions in the Journal *Pensamiento Propio*, No. 38, 2013.

ican human rights regime suggest the possible erosion of the commitment to the regime in the region. However, most Latin American states continue to be party to a majority of human rights treaties and to accept the competence or jurisdiction of many international human rights organs¹⁰. By and large, the commitment with international norms and organs remains significantly strong in the region¹¹. This begs the question, however, of whether this strong commitment has led to greater compliance.

3. Compliance with international human rights norms in Latin America

An important problem in the development of a research agenda on the compliance with international human rights norms is the lack of comprehensive, comparable and reliable data (Sinyuan 2013: 85-102). However, different measuring efforts offer proxy indicators that have allowed a growing number of researchers to address the compliance question from a quantitative perspective¹². One of the most widely used data are those produced by the *Cingranelli and Richards Human Rights Data Project* (CIRI) (Cingranelli, Richards, & Clay, 2014)¹³. Following a well-designed and systematic codification of the information contained in the annual human rights reports by the US State Department and Amnesty International, the CIRI indicators and indexes depict, in an ordinal scale, levels of respect/violation of different human rights, in a country/year format (from 1981 to 2011). Looking at CIRI's indexes on physical integrity rights (the prohibition of extrajudicial executions, torture, enforced disappearances and political imprisonment) and empowerment rights (freedom of domestic and foreign movement, freedom of association, freedom of speech, freedom of assembly and association, freedom of religion, workers' rights and electoral self-determination), we can have an initial empirical look

¹⁰ Trinidad and Tobago was the first OAS member to denounce the ACHR, in 1998. The same year, it also denounced the First Optional Protocol to the International Covenant on Civil and Political Rights, which enables the Human Rights Committee to consider individual communications (complaints) regarding specific cases of the violation of human rights. This was after Jamaica had denounced the First Optional Protocol, in 1997. Guyana also denounced the Protocol in 1998. Both Guyana and Trinidad and Tobago re-acceded to the First Optional Protocol, but including a reservation precluding the consideration by the Human Rights Committee of cases related to the imposition of the death penalty. See Amnesty International, "Unacceptably Limiting Human Rights Protection", AMR 05/01/99, March 1999.

¹¹ This commitment is not as strong in other regions of the world. See Landman 2005: 67-70.

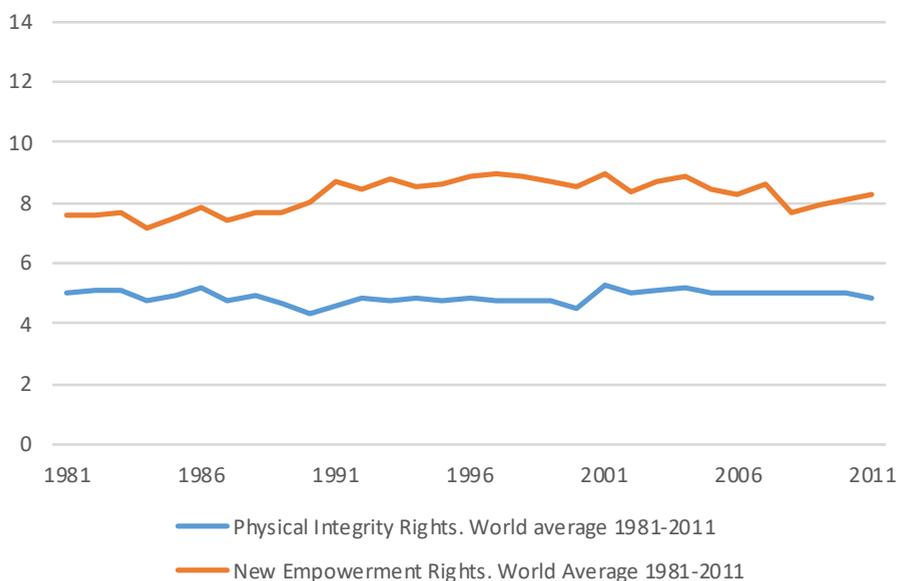
¹² This literature is very large. For reviews see Dai 2013.

¹³ Unfortunately, this project of generating indicators has been recently canceled. Data is available until 2011. Other options are: *The Political Terror Scale* and *Freedom House*.

at the compliance question in Latin America. The physical integrity rights index ranges from 0 to 8 points—0 reflecting the highest level of violation and 8 the highest level of respect for these rights—and the empowerment rights index from 0 to 14—again, 0 representing the highest level of violations and 14 the highest level of respect¹⁴.

In Graph 5 we can observe that the average global indexes of physical integrity rights and empowerment rights has only varied marginally from 1981 to 2011. This could suggest that, after intense ratification, or in other words after enthusiastic and growing commitment, compliance has not changed in practice at the global, aggregated level.

Graph 5. *CIRI Physical integrity rights and empowerment rights indexes (Global. 1981 to 2011)*



Source: *Made by author with data from Cingranelli, Richards and Clay 2014.*

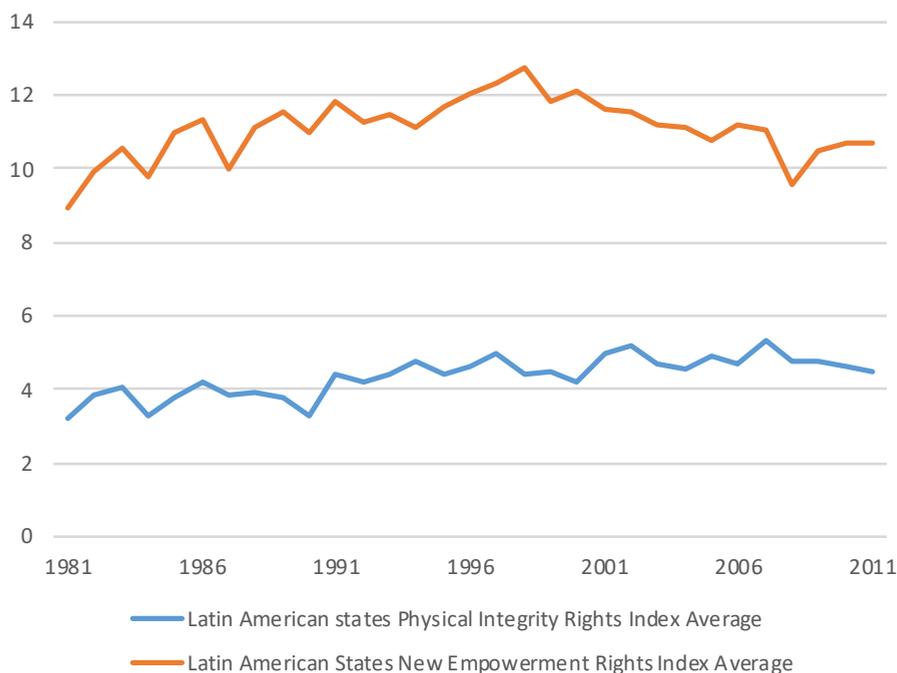
Note: Data available only until 2011.

As shown in Graph 6, the aggregated picture for Latin America is very similar to the global image shown in Graph 5. The situation of physical integ-

¹⁴ See <http://humanrightsdata.com/p/data-documentation.html>. The CIRI data base offers two indexes of empowerment rights: the “old empowerment rights index” and the “new empowerment rights index”. This article uses the second one.

riety and empowerment rights has improved marginally in the region during the past 30 years. If we compare the trends shown in both graphs we can observe clearly a commitment-compliance gap, both globally and in Latin America—states have adopted growing commitments with international human rights norms but only marginally improved their behavior.

Graph 6. *CIRI Physical integrity rights and empowerment rights indexes. (Latin-America. 1981 to 2011)*



Source: *Made by author with data from Cingranelli, Richards and Clay 2014.*

Note: Data available only until 2011.

Beyond this simplistic descriptive approach, using ever more sophisticated statistical techniques, an increasing number of scholars have explored the covariation between the adoption of normative commitments (through the ratification of treaties) and the levels of violation or respect of, particularly, physical integrity rights¹⁵. A first set of studies did not find a positive correlation

¹⁵ It is not clear why most of the authors have not been interested in exploring empowerment rights.

between treaty ratification and human rights behavior, as measured by indicators such as those of CIRI, the Political Terror Scale (PTS)¹⁶ or Freedom House¹⁷. Even worse, these early studies found a negative correlation—states seemed to violate more some human rights after ratifying international treaties. A pioneer author explained this odd and discouraging finding as strategic behavior by states—ratification implies low sovereignty costs (because, as already stressed here, international human rights regimes do not have coercive powers) and it generates important legitimacy benefits. In this way, ratification could be seen as a highly attractive strategy, particularly for repressive governments that have no intention of changing their behavior in practice (Hathway 2002: 1835-2042). Other, more optimistic, authors talked of “the paradox of empty promises”—even if ratification in itself does not correlate with an improved human rights behavior by states, it increased the normative tools available for domestic advocates to try to protect human rights against their repressive governments (Hafner-Burton and Tsutsui 2005: 1373-1411). As we will see, this effect of empowering domestic actors seems to be the key contribution of international human rights regimes.

Other studies did find a positive, even if moderate, positive impact of ratification on human rights practices; particularly in the case of democratic states with a strong judiciary (Landman 2005). Other authors have found that the scope conditions for this positive impact are, in addition to having a democratic form of government, the presence of a transnationalized civil society in the country. Whereas, on the contrary, the ratification would have no effect (or even negative effects) in autocratic countries that do not have a strong civil society with international connections (Neumeyer 2005: 925-953). Finally, in what probably is the most sophisticated and convincing study on the matter, Beth Simmons corroborated that treaty ratification does have a positive influence on human rights behavior by states, particularly in the case of democratizing countries (or democracies “in flux”) that have a strong civil society that mobilizes and litigates in favor of human rights (Simmons 2009; Hafner-Burton and Tsutsui 2005: 1373-1411; Neumeyer 2005: 925-933). In this kind of democracies, advocates from civil society have both the incentives and the political space to mobilize and litigate in favor of the protection of human rights and their chances of success improve precisely because of the impact of ratification over domestic politics (Simmons 2009). In such contexts, the critical monitoring of the human rights behavior of states by the organs of the UN and Inter-American human rights regimes and the “shaming” effect they have

¹⁶ See www.politicalterroryscale.org

¹⁷ See <https://freedomhouse.org/>

turns particularly useful for those empowered local actors that seek to influence the behavior of their own governments. Most Latin-American countries are democracies in flux, in which we observe these processes of internal mobilization and litigation in favor of human rights. In this sense, Latin-America should be a region in which commitment should be more likely to evolve into compliance. As suggested here, however, this has not been the case.

Another way of evaluating compliance with international human rights norms is to observe the implementation of recommendations or binding remedies adopted by the organs of international human rights regimes. As already stressed above, the regimes' organs critically monitor the general situation of countries (their compliance with the norms and rules enshrined in international human rights legal instruments) and adjudicate on specific cases of alleged violations of human rights. The outcome of these monitoring and protection functions is the elaboration recommendations or the adoption of (in theory, legally binding) reparation measures or remedies. Through these recommendations and reparations, the organs of international human rights regimes recommend or require states to take a set of concrete actions. To what extent do states implement or put into practice these recommendations or remedies? In other words, to what extent do states follow the decisions taken by the very international organs the have committed with?

The literature that has explored this type of questions is not as abundant as the one that traces correlations between treaty ratification and human rights behavior. However, existing studies show that the implementation of the decisions of the organs of international human rights regimes is very limited (Open Society Initiative 2010; Basch et al. 2010: 9-35; Huneeus 2011: 102-155). In the terms of one of these studies, "an implementation crisis currently afflicts the regional and international legal bodies charged with protecting human rights" (Open Society Initiative 2010: 11).

In the case of the organs of the Inter-American human rights regime, the level of implementation of the recommendations of the IACHR and the reparations ordered by the IACoHR is very poor¹⁸. One of these studies found that until 2008, only 12.5% of the IACHR's recommendations had been completely implemented, while 69.5% of them had been partially implemented, and 18% had not been implemented at all. Until 2010, only 6% of the 126 rulings adopted by the IACoHR had been completely implemented; 61% had been implemented partially and the rest had not been implemented at all (Open Society Initiative: 2010). It's not surprising, on the other hand, that

¹⁸ For a discussion on the differences between implementation and compliance see OPEN SOCIETY INITIATIVE 2010: 13.

states comply more with certain types of measures—i.e. those related to the payment of monetary compensation—while they do not comply with others—i.e. those that establish legal reforms or the investigation, prosecution and punishment of those responsible for the violation of rights (Open Society Initiative 2010: 65-70). Similarly, Alexandra Huneus finds that compliance is higher in the case of recommendations and remedies addressed at the executive branch, and close to zero in those directed at judicial authorities (Huneus 2011: 102-155). This is a very important caveat that helps us understand better the compliance challenge—federal executive branches are directly and intensively exposed to the interaction with the organs of international human rights regimes and other actors that exert human rights pressure “from above” (Brysk 1994). Subnational governments and judicial and legislative branches are not exposed to these dynamics, and if we grant that very often human rights violations take place far away from national capitals, this is a clear challenge for the organs of the international human rights regime and other advocates if they seek to advance compliance more efficiently.

Final remarks. A possible route for compliance?

This article focuses on the international human rights regimes in force in Latin America. Beyond describing some of the key features of the regimes, the article describes the levels of commitment, contrasting them with those of compliance in the region. The international normative and institutional structure for human rights is highly dense and legitimate in the region. However, such a highly institutionalized setting does not result in an evident improvement in human rights practices. States have created, developed and committed to human rights norms and institutions. However, they continue their business as usual, exercising power recurring to the violation of human rights. Of course, this article does not offer an analysis that can lead to the identification of causal relationships between the poor compliance record in the region and different possible independent variables. Nevertheless, the expanding International Relations and Comparative Politics literature on human rights suggests several possibilities. As already mentioned, the literature argues that the dynamics generated by the adoption of international human rights commitments are more likely to have influence over democracies “in flux”. It also stresses the importance of the existence of a strong civil society, with active and intense transnational links. At first glance, this does not seem to be at the heart of the compliance problem in Latin America—all the countries continue to struggle to develop strong, consolidated democracies and in

most if not all of them civil society organizations have a long history of activism and significant transnational ties. Why is it, then, that the countries from Latin America do not improve their human rights behavior, even under such propitious conditions? The literature has identified three factors that negatively affect human rights—armed conflict, the existence of “pro-violation constituencies” and limited state capacities, all of which seem to be endemic to the region. The correlation between armed conflict and human rights violations is strong (Cardenas 2007; Shor 2008: 803-826). It is not hard to imagine why this is the case. In itself, the logic of war—be it international or domestic—or armed conflict, in general, is inherently detrimental to human rights, particularly physical integrity rights. Executions, torture and disappearances are prone to proliferate in the midst of armed conflict. The history of internal armed conflicts in the region from the 1970s to the 1990s is well known, as is the more recent “drug war”, currently affecting Mexico and Central America in a particularly devastating way. Armed conflict and armed violence in general seem to be a key element affecting human rights outcomes in the region and therefore preventing compliance to move forward. On the other hand, long-standing economic and political interests and public security crisis (linked of course to armed conflicts and drug wars) give rise to pro-violation constituencies—powerful domestic groups that demand that their privileges are sustained, if necessary through the use of repression, or large sectors of society that demand security “at any costs”. Under such a scenario, “*mano dura*” (strong fist) policies are prone to emerge (Cavallaro and Mohamedeu 2005: 139-165). If the organs of the international human rights regime and domestic and transnational advocates demand the respect of human rights, these powerful and influential groups demand the opposite. Hence, another highly likely factor that is precluding compliance in the region. Governments thus face opposing demands. Ideologically inspired domestic armed conflicts are no longer present in the region; but drug wars and militarized responses to security crisis have taken their place. Interest groups are not likely to renounce their privileges easily (most likely they will try to expand them) and people will tend to have a strong preference for security in the context of high criminality, even if that affects the rights of “somebody else”. The panorama for the future of human rights is therefore bleak for Latin America.

Institutional capacity, to conclude, has recently emerged as a key variable within the scholarly discussions on human rights compliance (Risse and Ropp 2013; Börzel and Risse 2013; Krasner and Risse 2014; Englehart 2009; Zhou 2012). Central authorities that might want to pursue a human rights agenda will have a hard time changing entrenched practices or affecting powerful interests if they cannot count on strong institutions, particularly in the justice

sector. This is important, even if one considers that often political elites in Latin America are not willing to pursue human rights change.

In sum, armed conflict, pro-violation constituencies and feeble state institutions might be at the heart of the compliance deficit in Latin America; together with the predominance of political elites that do not have a strong interest or preference for human rights in the first place. Future research will have to take these variables into account, when attempting to explain the compliance gap in the region.

References

- UDHR, adopted by the General Assembly of the UN on December 10, 1948.
Vienna Declaration and Program of Action, adopted by the World Conference on Human Rights in Vienna on 25 June 1993.
- Abbott K.W., Keohane R.O., Moravcsick A., Slaughter A.-M. and Snidal D. (2000), *The concept of legalization*, in «International Organization», 54(3): 401-419.
- Anaya Muñoz A. (2009), *Transnational and domestic processes in the definition of human rights policies in Mexico*, in «Human Rights Quarterly», 31(1): 35-58.
- Anaya Muñoz A. (2014), *Los derechos humanos en y desde las Relaciones Internacionales*, Centro de Investigación y Docencia Económicas (CIDE), Mexico City.
- Börzel T.A. and Risse T. (2013), *Human Rights in Areas of Limited Statehood: The New Agenda*, in «The Persistent Power of Human Rights: From Commitment to Compliance», by Risse T. Ropp S.C., Sikkink K., Cambridge University Press, Cambridge, 63-84.
- Basch F. (2010), *La Efectividad del Sistema Interamericano de Protección de Derechos Humanos: Un Enfoque Cuantitativo sobre su Funcionamiento y sobre el Cumplimiento de sus Decisiones*, in «Sur Revista Internacional de Derechos Humanos», 7(12): 9-35.
- Brysk A. (1993), *From above and below. Social movements, international system and human rights in Argentina*, in «Comparative Political Studies», 26(3): 259-285.
- Brysk A. (1994), *The Politics of Human Rights in Argentina*, in «Protest, Change and Democratization», Stanford University Press, Stanford.
- Burgerman S. (2001), *Moral Victories: How Activists Provoke Multilateral Action*, Cornell University Press, Ithaca.
- Cardenas S. (2007), *Conflict and Compliance. State Responses to International Human Rights Pressure*, University of Pennsylvania Press, Philadelphia.
- Cavallaro J.L. and Mohamedeu M.-M.O. (2005), *Public Enemy Number Two? Rising Crime and Human Rights Advocacy in Transnational Societies*, in «Harvard Human Rights Journal», 18: 139-165.
- Cingranelli D., Richards D. and Clay C. (2014), *Human Rights Data Project (CIRI)*, Accessed February 22, 2017, available at <http://www.humanrightsdata.com>.
- Davis D.R., and Murdie A. (2012), *Shaming and blaming: using events data to assess the impact of human right INGOs*, in «International Studies Quarterly», 56(1): 1-16.

- Donnelly J. (1986), *International Human Rights: A Regime Analysis*, in «International Organization», 40(3): 599-642.
- Englehart N.A. (2009), *State Capacity, State Failure, and Human Rights*, in «Journal of Peace Research», 46(2): 163-180.
- Forysthe D. (1991), *Human rights, the United States and the Organization of American States*, in «Human Rights Quarterly», 13(1): 66-98.
- Franklin J. (2007), *Shame on you: The impact of human rights criticism on political repression in Latin America*, in «International Studies Quarterly», 52(1): 187-212.
- Hafner-Burton E.M. and Tsutsui K. (2005), *Human Rights in a Globalizing World: The Paradox of Empty Promises*, in «American Journal of Sociology», 110(5): 1373-1411.
- Hafner-Burton E. (2008), *Sticks and stones: Naming and shaming the human rights enforcement problem*, in «International Organization», 62(4): 689-716.
- Hasenclever A., Mayer P. and Rittberger V. (1997), *Theories of International Regimes*, Cambridge University Press, Cambridge.
- Hathway, O.A. (2002), *Do human rights treaties make a difference?*, in «The Yale Law Journal», 11(8): 1835-2042.
- Hawkins D. (2002), *Human rights norms and networks in authoritarian Chile*, in «Restructuring World Politics: Transnational Social Movements, Networks, and Norms», by Khagram S., Riker J.V. and Sikkink K., University of Minnesota Press, Minneapolis, 47-70
- Huneec A. (2011), *Courts resisting courts: Lessons from the Inter-American Court's Struggle to Enforce Human Rights*, in «Cornell International Law Journal», 44(3): 102-155.
- Keck M.E. and Sikkink K. (1998), *Activist Beyond Borders: Advocacy Networks in International Politics*, Cornell University Press, Ithaca.
- Krasner S. (1983), *International Regimes*, Cambridge University Press, Cambridge.
- Krasner S. and Risse T. (2014), *External Actors, State Building and Service Provision in Areas of Limited Statehood: Introduction*, in «Governance», 27(4): 545-576.
- Landman T. (2005), *Protecting Human Rights: A Comparative Study*, Georgetown University Press, Washington DC.
- Lauren P.G. (2007), *To Preserve and Build on its Achievements and to Redress its Shortcomings: The Journey from the Commission*, in «Human Rights to the Human Rights Council, Human Rights Quarterly», 29(2): 307-345.
- Lebovic J. and Voeten E. (2006), *The Politics of Shame: The Condemnation of Country Human Rights Practices in the UNHCHR*, in «International Studies Quarterly», 50(4): 861-888.
- Macaulay F. (2010), *Human rights in context: Brazil*, in «Human Rights Regimes in the Americas», edited by Serrano M. and Vasselin P., United Nations University Press, Tokyo, 133-155
- Martín C., Rodríguez-Pinzón D. and Guevara J.A. (2004), *Derecho Internacional de los Derechos Humanos*, Universidad Iberoamericana, Academia de Derechos Humanos y Derecho Internacional Humanitario del Washington College of Law y Fontamara, Mexico City.
- Neumeyer E. (2005), *Do international human rights treaties improve respect for human rights?*, in «Journal of Conflict Resolution», 49(9): 925-953.

- Open Society Initiative (2010), *From Judgement to Justice: Implementing International and Regional Human Rights Decisions*, Open Society Foundations, New York.
- Risse T. and Sikkink K. (2013), *Conclusions*, in «The Persistent Power of Human Rights: From Commitment to Compliance», by Risse T., Ropp S.C. and Sikkink K., Cambridge University Press, Cambridge, 275-295.
- Risse T. and Ropp S.C. (2013), *Introduction and overview*, in «The Persistent Power of Human Rights: From Commitment to Compliance», by Risse T., Ropp S.C. and Sikkink K., Cambridge University Press, Cambridge, 3-25.
- Risse T., Ropp S.C. and Sikkink K. (1999), *The Power of Human Rights: International Norms and Domestic Change*, Cambridge University Press, Cambridge.
- Sepúlveda M., van Banning T., Gudmundsdóttir G.D., Chamoun C. and van Genugten W. (2004), *Human Rights Reference Handbook*, Universidad de la Paz, San José.
- Shor E. (2008), *Conflict, Terrorism, and the Socialization of Human Rights Norms: The Spiral Model Revisited*, in «Sociological Perspectives», 51(4): 803-826.
- Sikkink K. (1993), *Human rights, principled issue networks, and sovereignty in Latin America*, in «International Organization», 47(3): 411-441.
- Simmons B. (1999), *From ratification to compliance: quantitative evidence on the spiral model*, in «The Persistent Power of Human Rights», by Risse T., Ropp S.C. and Sikkink K., Cambridge University Press, Cambridge, 43-59.
- Simmons B. (2009), *Mobilizing for Human Rights. International Law in Domestic Politics*, Cambridge University Press, Cambridge
- Dai, X. (2013), *The compliance gap and the efficacy of international human rights institutions*, in «The Persistent Power of Human Rights», by Risse T., Ropp S.C. and Sikkink K., Cambridge University Press, Cambridge, 85-101.
- Steiner H.J., Alston P. and Goodman R. (2008), *International Human Rights in Context. Law, Politics, Morals*, Oxford University Press: Oxford.
- Zhou, M. (2012), *Participation in international human rights NGOs: The effect of democracy and state capacity*, in «Social Science Research», 41: 1254-1274.