THE THREATS TO COMPLIANCE WITH INTERNATIONAL HUMAN RIGHTS LAW

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In this project I investigate the factors shaping compliance with international human rights agreements and I provide a definition of compliance, which goes beyond “ratification.” I argue that compliance is a multistage process, built upon three different steps: ratification/accession, implementation, and what I call “compliant behavior.” As an alternative to the dominant structural and normative explanation of compliance, I suggest that the factors affecting compliance are not only endogenous to state characteristics, such as the democratic/non-democratic nature of governments, but also exogenous, such as the perceived level of threat to national security. I offer a twofold theory that looks at leaders’ behavior under conditions of stability and instability and I suggest that under certain circumstances that threaten and pressure government leaders, state compliance with international human rights law becomes more costly. I suggest that regardless of regime type, threats shape leaders’ behavior toward international law; states are faced with the choice to abide by international obligations, protecting specific human rights, and the choice to protect their national interests. I argue that when the costs associated with compliance increase, because leaders face threats to their power and government stability, threats become the predictor of non-compliant behavior regardless of the democratic or non-democratic nature of the regime.
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CHAPTER 1
REFRAMING COMPLIANCE STRUCTURE AND CAUSES

1.1 Introduction

At the beginning of the 21st century, international law in general and international human rights law in particular presented states with new challenges to demonstrate their compliance with supranational legal obligations. The international legal regime created after World War II and the establishment of new international legal standards for the protection of human rights has resulted in many binding instruments for states in terms of their behavior towards their citizens. Many states have declared their willingness to abide by rules that were not developed by their domestic constituencies; others have deliberately chosen to delegate powers to supranational institutions and enter agreements whose content clashed with their domestic legal provisions. The outcome of such a prolific time in states’ international legal cooperation has been the creation of universal standards of human rights protection, supranational institutional bodies, and the elimination of areas of impunities for individual criminals and for states’ illegal practices. The high hopes that the international community places in these international legal instruments are mirrored in the number of international treaties that are operating today. Hathaway (2007) reports that, “at the beginning of the twenty-first century, more than 50,000 international treaties “cover nearly every aspect of international relations and nearly every facet of state authority.” Among
all these international instruments the most significant are international human rights treaties for two very important reasons. First and foremost, the goal international human rights treaties have set – protecting individuals from persecutions and discriminations – is of pivotal importance for the establishment of a peaceful society. Scholars (Thoms and Ron, 2007) have shown that, although not alike for all human rights violations, specific abuses of physical integrity rights, discriminations, and high levels of inequality lead to the escalation of conflicts. Second, human rights treaties are important because they tend to regulate the relationship between leaders and citizens by specifically limiting the actions of those who hold the power within a society. In particular human rights treaties have changed the way leaders can treat their citizens—they have established a universal claim according to which it is no longer acceptable for a government to make sovereignty claims in “defense of egregious human rights abuses” (Simmons, 2009, p. 3).

Today, there are nine core international human rights treaties.1 Most of the international human rights treaties have also been followed by Optional Protocols

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1 International Convention on the Elimination of All Forms of Racial Discrimination. It entered into force in 1969 and it counts 174 states parties. Its monitoring institution is the Committee on the Elimination of All Forms of Racial Discrimination which receives countries’ reports and complaints about violations. 2) Convention on the Elimination of All Forms of Discrimination against Women. It entered into force in 1979 and it counts 186 members. Its monitoring institution, vested with the same duties as the monitoring institutions is the Committee on the Elimination of Discrimination against Women. 3) Convention on the Rights of the Child. It entered into force in 1990 and it counts 193 members (only two states have not ratified this Convention: Somalia and the United States). The monitoring institution of the Convention is the Committee on the Rights of the Child. 4) The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. It entered into force in 1990 and it counts only 44 parties. The monitoring institution is called the Committee on Migrant Workers. 5) The International Convention for the Protection of All Persons from Enforced Disappearance. It entered into force
aimed at filling the gaps and weakness of the instruments which came into light once the treaties entered into force. All these treaties have established monitoring institutions in order to guarantee the implementation and compliance of states parties. Most of the institutions supporting the furtherance of the treaties have similar duties. All monitoring institutions receive country reports about the status of human rights of states which are members to the treaties. These reports cover the specific situation of human rights that are protected by the treaties. Also, all institutions have the power to consider inter-state and individual complaints with regard to possible violations committed by a state party. Most importantly, these institutions communicate with all the states parties and with the U.N. General Assembly on the necessity of taking steps to protect human rights in specific situations.

The presence of so many international instruments aiming at protecting individuals and preventing the occurrence of human rights violations has not
been met by a consistent improvement in human rights standards. Indeed, a key puzzle faced by scholars from the international relations and international law fields has been the fact that in spite of an increasing proliferation of human rights treaties and in spite of a wide international support for those instruments, violations of the basic human rights of individuals have continued to be perpetrated by governments. Bayefsky (2001) reported that in spite of the major development of human rights treaties and the overwhelming majority of ratifying states, human rights violations remained rampant. Others (Hafner-Burton and Tsutsui, 2005) have pointed to a “decoupling effect” between the number of human rights treaties and the practices of governments, with human rights violations increasing as the number of human rights treaties ratified increases. These findings have left the international community with mixed perceptions about the effectiveness of international human rights agreements and have generated a prolific line of research investigating the factors that, in spite of international obligations, make human rights violations a persistent reality.

However, current research on the factors leading to human rights violations has not provided definite answers. I identify two major problems associated with the literature. First, I suggest that scholars (Henkin, 1979; Hathaway, 2002 and 2003; Poe and Tate, 1994; Mitchell and McCormick, 1988; Davenport, 1995; Fein, 1995; Dai, 2006) have been focusing mainly on state characteristics to explain human rights violations. This line of research has led to the conclusion that variation in human rights violations depends upon the
democratic or autocratic character of a specific regime. In this way, studies have consistently ignored that human rights violations do occur across regime types and that those violations depend upon factors others than regime type. In order to fill the gap identified by prior research, I suggest that human rights violations depend upon specific circumstances surrounding leaders’ decisions. Thus, I center my theoretical framework on the concept of threats. I suggest that given leaders’ main goal of remaining in power their willingness to comply with international obligations is greatly affected by the level of stability of their governmental position. When leaders face challenges to their governmental power they tend to see international agreements in general and international human rights agreements in particular as an additional burden and constraining instruments to their decision making powers. In approaching the study of compliance from this perspective, I am not selecting the specific realm within which violations occur (democracy and/or autocracy), but I am first looking at the violations and then at the circumstances surrounding them.

Second, I suggest that scholars (Henkin, 1995; Neumayer, 2005; Hathaway, 2002; Goodman, 2002; Wotipka and Tsutsui, 2008) have focused only on one aspect of leaders’ behavior toward international agreements – ratification – ignoring the fact that leaders have multiple occasions to manifest their compliance international obligations. In doing so scholars have not specified the meaning of “compliance with international agreements,” that is to say the behavior we need to observe in order to assess whether or not compliance takes
place. To this regard, I suggest that compliance with international obligations consists of a complex process. Specifically, I identify three stages of the overall compliance process. The initial stage of compliance is *ratification* through which leaders manifest formally their willingness to accept the rules of international agreements. The second stage is the *implementation* of international agreements through which treaties’ rules are translated into the national legislation. The third and final stage is *compliant behavior* which consists in the adaptation of leaders’ behavior to the international obligations.

By shifting the attention away from regime type in assessing the factors that lead to human rights violations and in looking at compliance as a complex process I make two important theoretical contributions to the field of compliance with international human rights law. First, by following prior human rights literature (Gurr, 1986; Poe and Tate, 1994) suggesting that threats “whether real or perceived” lead to repression, I suggest that compliance with international human rights obligations is affected by leaders’ reaction to the presence of challenges to their stability and power. Second, I suggest that while the factors that affect leaders’ decision at the stage of ratification, implementation, and compliant behavior may be similar, the costs that each and every stage imposes on leaders are different and thus threats may bear different effects on leaders’ behavior. Using the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment, I focus on how and if the presence of threats to leaders’ ability to remain in power affect their willingness to ratify, implement, and
behaviorally adapt to the obligations descending from the treaty or to do otherwise.

In the following paragraphs I describe in more detail these two theoretical contributions. I first discuss how I intend to assess compliance and then I analyze the three different stages of compliance through which leaders’ behavior is observed.

1.2 Moving away from Regime Type

As stated above, in assessing the factors leading to human rights violations, scholars have focused their attention on how differences between democracies and autocracies explain human rights violations, and how most of the violations witnessed are committed by the so called “rogue states” (Henkin, 1979; Hathaway, 2002 and 2003; Poe and Tate, 1994; Mitchell and McCormick, 1988; Davenport, 1995; Fein, 1995; Dai, 2006). Almost without exception scholars have suggested that states abide by the international obligations norms most of the times and that the degree of variation among compliance ratings are due to the domestic structure of regimes, with democracies being particularly compliant and autocracies being the violators of internationally held human rights standards. Thus the same scholars have concluded that the more democratic a country is the less it will violate citizens’ human rights.

However, a fundamental problem with this approach is that scholars often ignore the presence of human rights violations within certain regimes, while
focusing on the most obvious violations committed by the “usual suspects” – autocrats and tyrants. However, in spite of the developments in international instruments protecting human rights and in spite of an almost universal acceptance by states of many of these international treaties, reports of human rights violations occurring across regime types are extremely frequent. Violations have not stopped and it has become particularly evident that state compliance with international human rights law is shaped by factors other than regime type. Recent events of persecutions, physical integrity rights violations, and reports of torture by countries which do not belong to the category of “rogue states,” have made clear that state compliance with international human rights law is shaped by something other than regime type. The images of torture at the Abu Ghraib prison by the hands of U.S. officials, Belgium’s violations of the Convention against Torture as reported by Amnesty International and the Committee against Torture in 2003, and Spain’s 2007 images of police brutality have become sadly familiar to those studying international human rights.

These events suggest that it is of critical importance not to answer the question “what kinds of governments comply with international human rights law” but the question “why do violations of international human rights law occur in the first place?” By shifting the research question to the reasons behind violations of human rights it is possible to change the object of the study. That is, by moving away from analyzing states’ characteristics and how these affect compliance and by looking at instances of violations independently from states characteristics, we
are able to focus on why we observe compliance and on the reasons behind violations, which should be the main point of interest in studying the effects of international human rights treaties on state behavior.

Using only states characteristics as the explanatory factor of leaders’ behavior toward international human rights laws creates something close to an “optical illusion”; we believe to observe compliance by misreading leaders’ behavior. That is to say, if we choose to look simply at democracies’ and autocracies’ human rights ratings, the obvious conclusion, one that few would dare to discount, is that democracies are more compliant than autocracies. However, such approach to the study of compliance leads to ignoring the violations that are occurring. The important matter it is not which regime type has better compliance rates, but why human rights violations occur at any given time, regardless of the regime within which they occur.

It is in light of these considerations that I propose a theoretical framework that moves away from the dichotomous analysis of democracies and autocracies human rights ratings and examines leaders’ behavior toward international law both under “stable” and “unstable” conditions of government. I suggest the major factor associated with the persistence of human rights violations is the presence of threats to the leaders’ ability to remain in power.

I contend that analyzing the presence of threats as the main motivation behind leaders’ behavior towards international obligations provides two different insights in the study of compliance. On one side, we can better assess the weight
that international obligations have on leaders’ decisions. In fact, given the presence of incentives to violate human rights agreements leaders face two choices. They can either comply with their international obligations in spite of the incentives to violate or decide not to commit to new international obligations or violate existent obligations. In the first case, we can truly say that we are witnessing sincere compliance with international human rights. This is to say that compliance with international law can be best assessed under incentives to violate it. Suggesting that threats can alter leaders’ willingness to commit and comply with international obligations offers an innovative approach into the analysis of compliance with international human rights treaties. This is to say that, given the presence of threats and observing leaders committing and complying with international obligations could suggest that either leaders believe in the value of international agreements or that the support monitoring system to those agreements can have some constraining power on leaders’ behavior. This would solve one of the key puzzles in the international law field: do international obligations themselves have any weight in constraining leaders’ behavior. For example, suggesting that domestic characteristics predict compliance tells us very little about the actual impact of international treaties on state behavior. Domestic characteristics in these cases only work as confounding factors; compliance in this case is only the consequence of something unrelated with international obligations.
This approach also offers a better understanding of the so-called “selection effect.” Scholars (Simmons, 2009) have suggested that one of the difficulties in assessing compliance occurs because states pre-select what kind of treaties to ratify. In these cases, adherence to international obligations and the appearance of compliance may be related to the fact that states that do ratify and comply tend to already have a good record in terms of the behavior dictated by the international treaty. In reality, in the absence of a more specific causal link between leaders' behavior and international obligations, I argue that what we have mistaken as compliance, most of the times, is just governments preselecting the treaties to which to commit. I suggest that we can only understand the weight of international obligations if we can put them under test. Testing leaders' behavior toward international human rights laws when the rules dictated in the agreements have not needed to be summoned tells us nothing about leaders' behavior. Present incentives to violate those rules and, hence, given leaders' necessity to make a choice between commitment and non-commitment, compliance or non-compliance, gives us a more comprehensive view of the factors determining leaders' behavior toward international law.

Introducing threats as the central hypothesis in studying compliance with international human rights laws ultimately eliminates the main confounding factors affecting the understating of compliance. Shifting the attention to the analysis of leaders’ behavior under incentives to violate international obligations indirectly offers the causal link between leaders' behavior and international
obligations and gives us a better perspective of the constraining power, if any, of international legal instruments.

In looking at the factors affecting leaders’ behavior toward international human rights treaties and following prior literature on state repression (Poe and Tate, 1994), I build a theoretical model that begins with a general assumption; When making decisions about international or domestic politics, leaders’ main concern is that of retaining power. I then suggest that leaders may either have stable government conditions, in which their ability to retain power is mostly unchallenged or that they may experience challenges to their political survival and their regime. Under stable conditions of government the characteristics of more or less open political systems, their respect for the rule of law, and the rate at which citizens can influence leaders’ decision making (Putnam, 1988) have certain consequences in leaders’ willingness to comply. In these cases leaders need to strike a balance between the international obligations and the interest of a supporting constituency. On this point, I expand upon previous literature by suggesting that these factors affecting compliance vary along the three stages of compliance.

However, I suggest that most of the variation in states’ behavior toward international human rights law throughout the three stages of compliance can be explained by looking at these instances of threats to governments’ and leaders’ ability to maintain power. These types of challenges, which I call more generally “threats” – instances and events jeopardizing leaders’ ability to retain power -
may vary from simple domestic instability due to strikes or demonstrations, to more serious forms of protest and threats to the leaders’ ability to retain power. Violations of international human rights agreements or refusal to ratify international obligations are the consequences of leaders’ need to resort to some form of repression in order to save the status quo, their position in power. As suggested by scholars: “governments seem likely to repress political opposition when opponents pose a challenge to national peace and stability. Governments are likely to engage in various forms of coercive [behavior] if they want intelligence from individuals who are considered threats” (Simmons, 2009, p. 122). In these cases ratified international obligations or new international human rights treaties appear to leaders as an additional obstacle to their ability to maintain power. Specifically I am not building two different theoretical models, but I am looking at the life of a regime and investigate whether or not threats are present that may alter leaders’ behavior. In Figures 1.1 and 1.2 I illustrate the two possible scenarios that could affect leaders’ behavior toward international human rights agreements.

1.3 Threats and the Three Stages of Compliance

I develop the above theoretical framework through a redefined and detailed concept of compliance. I suggest that most of the gaps in the literature are determined by flaws in the kind of research questions scholars have investigated. In determining what kind of factors affect state behavior toward
international human rights agreements, international relations and international law scholars have focused their attention on specific questions, such as: “what kind of states commit to international obligations?” and “what are the costs and benefits associated with commitment?”

Their findings have been determined by the content of their questions. Most of the consistent claims are that states which share a particular affinity with the values and the rights protected by the international agreements are the most
likely to commit and comply. States also abide because they are offered with a relatively low cost opportunity to manifest their support to international cooperation, with some degree of variation due either to their domestic structure or to the system of incentives and enforcement provided by the treaties themselves (Henkin, 1979; Hathaway, 2002; Downs et al., 1996). However, there is major problem associated with the misspecification of the research question. In particular, I suggest that scholars have overlooked the need to specify what the meaning of compliance is and have mostly avoided answering the preliminary question of “what is compliance?” I find that addressing compliance with international human rights law by first addressing the question of “what is compliance” helps us define the research and leads to empirical findings that are different from those achieved by prior literature.

As I show throughout this study, compliance is a complex process in which states need to take various steps. In particular, I argue that compliance consists of three specific steps: ratification of international human rights treaties, the implementation of the rules dictated by the agreements, and lastly states’ behavioral conformity to the obligations descending from the international obligations.2

2 According to the Vienna Convention on the Law of Treaties, states manifest their intention to become members of a treaty by signing the drafted international agreements. The signature of an international treaty does not create any binding obligation for the signatories, but it indicates the intention of the state to examine and consider for ratification the international legal instrument. The first and initial stage of compliance, through which states become legally bound to the international obligations, is the ratification of the international agreement or accession to the treaty. While the effects of ratification and accession are the same (states become officially members of the international regime created by the treaty), the procedures through which the two
processes develop are different. In fact, while ratification is always preceded by the signature of the agreement, accession does not follow the agreement signature. It is common for states proceeding to the ratification or accession of international law to evaluate the discrepancies or commonalities between the international obligations and the domestic legal provisions and to begin a procedure that may assure compliance to the international treaty. The second stage of compliance is the implementation of the international agreement. Implementation is both a legal and political process: it requires 1) the willingness of governments to proceed to the adjustment of their domestic legal provisions to assure compliance with the obligations resulting from the agreement; and it requires 2) a legal understanding of the content of those obligations, in order for the domestic legislation to be compatible with the treaty provisions. The implementation process may vary according to the structure of the state’s legal system. Some systems have created constitutional provisions that declare the supremacy of ratified international legal provisions over incompatible domestic norms and their direct incorporation into the domestic system. Others have more complex processes that involve the analysis by specific commissions, inside parliaments or other political structures, of the content of the legal obligations. The third stage of compliance consists of compliant behavior. I define compliant behavior as leaders’ behavior causally determined by the international obligations – explained above.
These different moments in the compliance process entail for states different kinds of costs, benefits, and responsibilities. The kind of commitment requested by the international obligations at the ratification stage does not bear the same costs associated with the implementation stage and the behavioral commitment to the same obligations. Ultimately, compliance with international human rights law needs to be assessed at all three stages. Although ratification serves as the gate keeping stage prior to the other stages of compliance, we need to think at the process of compliance such as a layered cake (Figure 1.3); each layer corresponds to different types of costs, diverse benefits and different obligations in terms of which behavior states are supposed to adopt.

In this work I adapt the theoretical framework described in the previous paragraph to the three stages of compliance, highlighting the different costs and benefits associated with the three stages. Briefly, I anticipate that under absence of threats the costs resulting from the ratification of international agreements are mainly potential. States anticipate the costs of being held accountable for the violation of human rights standards to which they are legally bound by the ratification of the international treaty. Contrary to what is suggested by prior literature (Hathaway, 2003) I suggest that ratification bears some form of burden for states. Especially today it is particularly difficult to think that leaders can make international commitments and expect that they will not be held accountable for violations by the international community or international and domestic organizations. Additionally, this is especially true for autocratic regimes which, by
ratifying international agreements, attract the unwanted attention of monitoring institutions and human rights activists. There are also benefits associated with the ratification of international human rights treaties. Ratifying international agreements signals an initial state commitment to consider the application of international human rights standards as superior, and it creates for states a reputation as an international law supporter.

The second stage of compliance – implementation – consists of the incorporation of international legal obligations within the national legal system. The domestic legal systems of states incorporate international agreements in their domestic legal framework, whether by the passage of legislation or by the acceptance and incorporation of the international rules. The costs associated with the implementation of international human rights treaties increases because of the possible discrepancies between domestic legal setting and international legal obligations. The lesser the degree of changes states need to make to their legislation, the fewer the costs associated with the implementation of international legal obligations in terms of time and effort state officials will have to employ to adapt the domestic legal framework to the ratified international obligations.

Compliant behavior, the third stage of compliance, consists of actual adaptation of leaders’ behavior to the obligations of international agreements. In line with the theoretical framework above, I suggest that compliant or non-compliant behavior can be determined by two different sets of conditions. Under
stable conditions of government, leaders’ compliance with international law may be a function of the countries’ characteristics; for example, where a democracy is not engaging in the torture of its own citizens, therefore appearing compliant with the international agreement, may not be dependent upon the treaty, but upon the fact that, because of the domestic structure, it would not have tortured anyway. This suggests that there are countries which would abide by international legal obligations whether or not they ratify international humanitarian law. Leaders’ compliant behavior or non-compliant behavior may also be observed under conditions of instability. In this case we can say that we are in the presence of compliant behavior if leaders facing incentives to violate international obligations comply with the treaty’s terms. This also suggests that the costs associated with compliant behavior are different in nature from those associated with the ratification and implementation of international humanitarian law. If compliance with international human rights law is a function of the regime status quo, the costs associated with compliance will be relatively low. Leaders already abiding by the rule of law and facing incentives to violate international obligations have to make little effort or changes to their decision making path. Conversely, for leaders’ facing challenges to their government and power, complying with international obligations imposes relatively higher costs to adapt their behavior to the international obligations.

Ultimately, the costs of compliance throughout the three stages increase when leaders face challenges or “threats” to their power which create incentives
for them to violate the treaty. The consequences of the presence of threats are different at the three stages. At the first stage, given challenges to power, leaders may simply decide not to ratify the international agreement. At the implementation stage leaders will face obstacles to the incorporation of the agreement within the domestic criminal framework in order to avoid empowering domestic groups through the presence in the domestic system of protecting their rights. At the compliant behavior stages threats may cause violations of obligations due to the presence of leaders’ interests which have a trumping effect of compliance.

Dividing compliance into the above three stages is of pivotal importance to understanding what factors affect leaders’ behavior toward international obligations. Compliance with international law entails different phases that, on one side, if taken by leaders improve the effectiveness of international obligations and, on the other, constrain in different ways leaders’ behavior. This is also to say that, in analyzing under which circumstance leaders commit and comply with international obligations or vice versa, the same factors may bear a different weight whether states are asked to ratify, implement, or complying with the international treaty.

1.4 Policy Implications

In this work I seek to contribute to the field of international law and to offer a perspective on compliance that could ultimately improve leaders’ willingness to
ratify and then comply with international obligations. Understanding under which conditions compliance or non-compliance occurs is important from both a theoretical and a policy point of view. Understanding state compliance with international law and the conditions that work as obstacles to the effective functioning of international regimes in general and international human rights regimes in particular can improve the efficacy of international human rights regimes and ultimately improve the human rights conditions of individuals. If the presence of threats is indeed a factor affecting leaders’ compliance with international human rights obligations and causing violations, then threats can function as a warning sign alerting the international community and international human rights organizations on the possible escalation of violations of human rights. Furthermore, empirical research (Poe et al., 1994) has shown that most of the times leaders tend to escalate repression based on perceived more than real threats and that the misperception of threats is also the consequence of leaders’ capabilities in dealing with domestic economic and political problematic. This also suggests that policy makers must be particularly aware that, not only the escalation of civil and international wars could cause leaders’ reaction by violating international obligations, but also different levels of threats can cause humanitarian disasters.

Moreover, this study points to the fact that compliance is a “situation” based phenomenon. Among scholars there has been almost an “ideological bias” toward believing that the better human rights records of democracies compare to
those of autocracies almost equals to the absence of violations across democratic regimes. On the contrary, violations of physical integrity rights are not events confined to authoritarian regimes. Although at a lower level than autocracies, democracies also violate physical integrity rights. By shifting the attention on the incidents of violations and the circumstances surrounding them instead than looking at which countries have better human rights ratings, we are better able to improve our understanding of why violations occur in the first place. Ultimately, we are better able to address also those instances of violations often overlooked by scholars and practitioners because of the political context within which they occur.

Lastly, this study aims at addressing how much of a constraining power international human rights treaties really have on leaders’ behavior and to understand how to improve international human rights instruments to make them more effective on leaders’ behavior. There are many among political leaders who suggest that “international law” is truly a non-existent-concept. As correctly said by Koh (1998) most observers are skeptical about the enforceability of human rights laws. That is because “human rights norms are vague and aspirational, because enforcement mechanisms are toothless, because treaty regimes are notoriously weak, and because national governments lack the economic self-interest or the political will to restrain their own human rights violations” (Koh, 1998, p. 1397). Thus when enforcement and compliance of international human rights is observed it is a voluntary leaders’ behavior. However no law is perfectly
enforced and complied with. Both international and domestic laws are consistently violated (Koh, 1998). Thus what is important to understand is how to better foster the conditions that can improve leaders’ voluntary behavior. The introduction of the concept of threats as factors that may be affecting compliance with international obligations helps to identify one of the obstacles to that voluntary compliance and better functioning of human rights regimes. Understanding exogenous factors as threats alter compliance gives us a better insight in the motives behind human rights violations, in the devising of the tools that could avoid them, and in detecting the circumstances that could trigger violations early in time.

1.5 Organization of the Project

In the following chapter of this project, I first address the burgeoning literature on state compliance with international human rights law. In particular I focus on the factors that prior scholars have examined as determinants of leaders’ compliance with international human rights laws.

Then, to better understand the relationship between state behavior and international human rights law I divide compliance with international law into three stages: ratification, implementation, and compliant behavior. I address the three stages of compliance in three different theoretical chapters. In Chapter 3, I offer a general theoretical framework of compliance and leaders’ expected behavior toward international obligations. In this chapter I use the term
“compliance” as the cumulative behavior of ratification, implementation, and compliant behavior. Then, in the following three chapters I address the three stages individually. I suggest that, with some degree of variation due to the type of commitment required by ratification, implementation, or compliant behavior, compliance is shaped by the extent of threat leaders face or perceive. I suggest that when leaders are or feel threatened by either domestic or international opposition they are much less likely to comply with international human rights laws by violating the human rights of individuals.

In the remaining chapter I investigate the relationship between leaders’ behavior and compliance with international human rights law examining leaders’ behavior toward the Convention against Torture. I use a time-series analysis which looks at ratification, implementation, and compliant behavior as my dependent variable. In doing so I am able to present a statistical analysis that indicates that threats are the main factor affecting leaders’ compliance across regime type.
CHAPTER 2
LITERATURE REVIEW

2.1 Introduction

While the literature on compliance with international human rights agreements has taken sizeable steps forward, in this work I argue that scholars have overlooked two important aspects of leaders' behavior toward international obligations. First, I contend that there has been very little research looking specifically at the effects that threats to leaders' political survival have on their behavior toward new or existent international human rights obligations. Second, I suggest that scholars have paid very little attention to the fact that compliance is a complex phenomenon, consisting of different stages.

With regard to the first point, scholars (Gurr, 1988; Poe, Tate, and Keith, 1999) have looked at links between threats and repression suggesting that leaders fearing for their political survival tend to persecute their citizens. However, most of the attention has been given to specific regimes, such as autocratic governments and specific forms of threats, such as civil or international wars. Little consideration has been given to the existence of international obligations and how threats shape leaders’ compliance with supranational agreements.

With regard to the second point, there are no studies that look at compliance as a multistage phenomenon, which necessitates the analysis of
leaders’ behavior at different phases of an international agreement. Consequently, at this stage we do not know if the factors affecting compliance play a different role whether ratification, implementation or compliant behavior is at stake. On the contrary scholars have looked at the factors shaping compliance as something “constant” across time from the moment leaders ponder the ratification of an international treaty to the moment they need to align their behavior to the rules of the agreement.

In this chapter I begin by giving a brief overview of the factors scholars have taken into consideration when studying compliance. Specifically, I contend that scholars have put forward different theories about the determinants of compliance, such as the costs associated with international obligations, their level of invasiveness, or the lack of enforcement and monitoring systems of the international treaties. However, all these factors have been explained within the “regime type” framework, suggesting that how and whether those factors determine compliance is due principally to the democratic or undemocratic character of governments, with democracies showing far better human rights ratings than autocracies. Yet, given the presence of human rights violations, even if at different rates, across both democratic and autocratic governments, I suggest that, focusing on regime type as the explanatory variable determining the perception of costs associated with international agreements leads to faulty conclusions. That is to say, if we decide to look simply at democracies’ and autocracies’ compliance ratings as something determined by government
characteristics, the obvious conclusion is that democracies are more compliant than autocracies. On the contrary, if we look at the specific instances of violations of compliance regardless of the regime type within which these events take place and the circumstances surrounding these violations, we can better assess why violations occur in the first place and what factors have led to them. Following the literature overview, I proceed by assessing some of the shortcomings of the literature which require further investigation into leaders’ behavior and compliance. Lastly, I address how this work tries to fill the gaps left open by previous studies.

2.2 Regime Type

As research has continued to expand in the field of state compliance with international human rights agreements, scholars have worked within one common theoretical framework suggesting that the democratic or autocratic character of the regime shapes leaders’ behavior toward international human rights law (e.g., Slaughter 1993; Slaughter 1995; Raustiala and Slaughter, 2002; Hathaway, 2007; Simmons, 2009; Abbott et al., 2000; Goldstein et al., 2000; Abbott and Snidal, 2000). According to this line of research democratic and autocratic governments possess specific characteristics that would make them more or less willing to commit and comply with international human rights obligations. Specifically when it comes to human rights violations scholars have found that democracies tend to commit fewer human rights violations than
autocracies (Poe and Tate, 1994; Davenport 1995; Fein, 1995; Poe, Tate, and Keith, 1999). These studies suggest that the higher the level of democracy, the less likely leaders are to use policies of repression and thus the higher the level of compliance with international human rights agreements. Other studies (Goodman, 2002; Von Stein, 2004 and 2005; Koh, 1998) have specifically looked at leaders’ commitment to international human rights regimes and reached the conclusion that democracies are more likely to accept international rules because they share domestically the same core values of human rights agreements.

Working within the regime type framework, the present line of research has identified two different types of incentives that affect leaders’ willingness to comply with international obligations. On one side there are scholars (Simmons, 2002; Chayes and Chayes, 1993; Putnam, 1988) who have focused on elements directly linked to state characteristics. Respect for the rule of law, the balance of power among domestic institutions, and the relationship between the different branches of government have all been examined as factors affecting state behavior toward international law. On the other side there are scholars (Hathaway, 2003; Downs et al., 1996) who have put forth a theory of characteristics of international agreements which affect leaders’ behavior. This second approach, although focusing on the costs descending from the character of international agreements, suggests that the democratic or autocratic character of the regime makes leaders evaluate differently the costs of the international treaties. In the following section I give a brief overview of these different
approaches, beginning with the analysis of the factors directly linked to regime type.

2.2.1 Rule of Law

Neoliberal scholars (Slaughter 1993; Slaughter 1995; Raustiala and Slaughter, 2002) have focused on the particular characteristics of liberal democracies and the role played by the “rule of law” to explain democratic commitment to international law. Some (e.g., Carothers 1998) have argued that high respect for the “rule of law” in domestic systems has become the answer to existing problems of cooperation in the international realm and to the lack of compliance with international agreements. Many have pointed out that what matters in international regimes are the reputational consequences ultimately associated with states’ domestic respect for the rule of law. Domestic adherence to the rule of law signals, at the international level, the ability of a state to respect international rules. It creates incentives for states to avoid breaches of international norms that would damage a reputation “for law governed behavior.” Simmons (2000, 820) and Kupchan and Kupchan (1991) have emphasized that states that are more willing to abide by the rule of law domestically are also more likely to ratify international agreements embedding high respect for basic human rights rules.

Other scholars (Chayes and Chayes, 1993) aligning with a normative approach to the understanding of state behavior and international law suggest
that high respect for the rule of law indicates the presence of norms within the domestic system respectful of the individuals’ human rights. These scholars contend that leaders will comply with international human rights agreements because the domestic legal system is already embedded with the norms dictated in the international treaty. In these cases the costs associated with compliance with international agreements are very little. Along the same lines, others (Milner, 1997; Downs et al., 1996) have also suggested that states will enter only treaties with which they can easily comply and that will require the least amount of effort in changing domestic policy and that domestic respect for the rule of law makes easier for states to comply with international rules. In these cases the rules of the international treaties function to reinforce the values governing already domestic society.

However, on this point scholars have shown contrasting results. Some have suggested that contrary to what some studies propose, regimes that are already embedded with the rules of international agreements would be less likely to at least ratify and implement international treaties (Hathaway, 2003; Simmons, 2000; Cole, 2005). This approach contends that for some states such as democracies, whose domestic legislations are already embedded with the international norms, the ratification of international human rights treaties produces few benefits, while imposing potentially considerable costs in terms of cooperation and promotion of new international regimes.
Other scholars (Koh, 1998; Finnemore, 1996) point out that international agreements do not have to be fully aligned with domestic values. As long as international rules offer nations alternative solutions to adapt their domestic system to the international obligations and as long as the international obligations are considered an improvement on the nation’s human rights values, leaders will be willing to comply. In supporting this argument, other scholars (Koh, 1998) have illustrated the process behind the interaction between the values set up in the international agreements and states’ domestic interests. A burgeoning literature explains that international human rights treaties activate a “vertical process” of norm cascade (Koh, 1998; Risse et al., 1999) in which states, with high respect for the rule of law, internalize the preferences set by the international agreements and foster interaction with other international actors. Thus, values and interests change over time; ultimately what fosters compliance with international agreements is the alignment of international and domestic values whether already present or created as a consequence of the internalization process. The entire procedure is made possible by a regime type willing to adjust to the interests of the international community and open to internalize supranational legal standards. Scholars (Raustiala, 2005; Abbott and Snidal, 2000) have shown that through various processes of incorporation and “legalization” international law becomes part of the national system. Thus, “so long as domestic actors understand legal agreements to be serious undertakings, they will modify their plans and actions in reliance of such
commitments, increasing the audience costs of violations” (Abbott and Snidal, 2000).

2.2.2 The Pressure of Domestic Audience

Another line of research has focused on the power that domestic audience plays on leaders’ decision to comply with international human rights obligations. Scholars (Morrow et al., 2008) have found that domestic audiences may generate different types of concerns for leaders evaluating compliance based on the regime type within which they operate. Scholars have written extensively about the presence of a salient domestic audience that makes the decision to comply with international human rights agreements a complex “two-level game.” The presence of an active citizenry is important for two different reasons. On one side, leaders taking action in the international arena, whether deciding to wage wars or negotiate treaties, “care about maintaining themselves in power” (Bueno de Mesquita, 1995, p. 842). Their main concern is that of guaranteeing their political reselection, and their primary goal is to maintain power within the domestic sphere (Krasner, 1999). On the other side and following this logic, studies have pointed out that in doing so leaders must take into account the interests and policy preferences of their key selectorate (Bueno de Mesquita, Morrow, Siverson, and Smith, 1999; Fearon, 1994). Domestic actors may hold governments accountable for not complying with international obligations that have been ratified.
The presence of a selectorate is not just something typical of democratic regimes. As cogently pointed out by Morrow et al. (2008) whatever a nation’s regime type, leaders need to respond to a more or less large selectorate, a group of people that take part in the choice of a leader.\(^3\) This implies that domestic audiences play a pivotal and critical role across regime types. However, the same scholars (Morrow et al., 2008) indicate that the role domestic audiences play in pressuring leaders to comply with international human rights obligations varies across regime type. In autocratic regimes the decision to commit and comply with international obligations could open the door for the empowerment of domestic organizations and the intervention of outsider observers, which would pressure autocratic leaders into backing down from international obligations. In democratic regimes the decision to commit to a treaty is taken particularly seriously by domestic audiences, which in turn may hold leaders accountable for violations of a law governed behavior. This would suggest that while democratic leaders may decide toward compliance fearing political accountability for non-compliance, autocratic leaders may shy away from commitment and compliance fearing that that would open the door to citizens’ demands.

However, on this point the literature has presented different and contrasting interpretations of the influence of domestic audiences. As scholars

\(^3\) Morrow et al. 2008, p. 393, “Democracies have large selectorates and large winning coalitions, although the exact size of each varies with the extent of suffrage and the precise rules by which leaders are elected. One-party autocracies have smaller winning coalitions than democracies; their selectorates may be large. Monarchies and military juntas have both small selectorates and small winning coalitions.”
have suggested (Hathaway, 2003; Alter, 2000) leaders who fear domestic political accountability and evaluate the ratification of a new international agreement could be less likely to ratify. Indeed, in these cases a salient domestic audience may work as “domestic enforcement mechanisms” toward compliance once ratification has taken place. In countries with a strong domestic audience and high respect for the rule of law, international commitments are taken particularly seriously; thus even small violations can cause problems for leaders’ political survival. On the contrary, autocratic leaders may use the commitment to international obligations as a cheap signal of cooperation to the international community and, lacking international human rights mechanisms of enforcement, at the same time limiting citizens’ human rights through various forms of repressions.

2.3 The Perception of Costs

The literature suggests that one of the strongest predictors of leaders’ compliance with international obligations is the costs associated with the obligations themselves (Simmons, 2000; Hathaway, 2003; Cole, 2005). Specifically it is argued that generally speaking with some degree of variation due to specific international obligations, democratic regimes perceive fewer costs associated with compliance while for non-democratic governments it is inherently more costly to comply. The arguments behind these assumptions are based on the fact that again regime characteristics, such as high respect for the rule of law,
create an easier environment for compliance due to the existence already of
domestic rules similar to those dictated by international agreements. Scholars
have focused on different types of costs that may alter leaders’ willingness to
comply with international obligations. However, the difference in perception of
these costs depends upon the democratic or autocratic character of government.
Specifically, the literature speaks of two different types of costs.

One category of costs depends upon the type of enforcement
mechanisms put in place by the international agreement. In particular, whether or
not international agreements are supported by monitoring institutions and the
degree of freedom of investigation these institutions have make a difference in
leaders’ assessments of the costs associated with compliance. On this point, one
of the most often heard claim is that international human rights agreements are
“toothless.” That is, international treaties have very weak enforcement
mechanisms and their monitoring institutions fail most of the times to prevent or
punish violations. Scholars (Hathaway, 2003) have indicated that this inability of
international agreements to impose costs in terms of enforcement on state
parties to the human rights treaties is particularly favorable to autocracies. When
it comes to autocracies the lack of enforcement mechanisms associated with the
implementation of human rights treaties increases the likelihood that non-
democratic states, whose human rights standards are often lacking, will join
human rights treaties as a form of “cheap talk.” Autocratic leaders are aware of
the absence of any enforcement tool in the hands of the international community
in order to implement the agreement. Scholars have noted that because human rights treaties are “toothless” when it comes to enforcement, states that do not share the same core values behind human rights treaties, would ratify facing little enforcement costs, while enjoying reputational benefits within the international community. On the other hand, there is evidence that autocratic leaders tend to shy away from showing any sign of compliance toward international human rights treaties that have a form of enforcement mechanism particularly strong.

The presence or lack of enforcement mechanisms could make little difference for democratic regimes. Simmons (2009) indicates that, since for democracies it is easier to comply, the presence of institutions monitoring leaders’ behavior or potential violations does not affect their decisions regarding compliance. Ultimately, when it comes to enforcement mechanisms, leaders’ main concern is that of assessing whether or not the costs associated with the behavior imposed by the international agreements are going to be realized because of international institutions monitoring state parties’ behavior, and whether the behavior required is more or less easy to implement.

A second category of costs associated with compliance with international agreements is due to their degree of intrusion into state sovereignty. Research has often put forth a general argument focusing on the fact that international human rights treaties tend to undermine leaders’ sovereignty to regulate governments’ relationship with their own citizenry. Further, research has suggested that the institutions supporting human rights treaties monitor states’
behavior through invasive enforcement mechanisms. At the same time, these treaties offer few tangible benefits, in particular for states that already possess norms and domestic regimes protecting human rights. A group of scholars (Chayes and Chayes, 1990, 1993, 1995) has observed that given these costs, states more likely to ratify international human rights agreements are those that share the same core values behind the treaties. That is to say, democracies will ratify, as long as they can comply by employing the least amount of effort.

Scholars associated with the sovereignty approach suggest that leaders are particularly protective of the exercise of their power on the national territory and towards their citizens. Human rights treaties aiming at regulating the way governments can treat their citizens are in direct contrast with and have represented a significant erosion of national sovereignty. As more aptly said by Louis Henkin, “how a state behaves toward its own citizens, in its own territory [is] a matter of domestic jurisdiction, i.e., not anyone else’s business and therefore not any business for the international law” (Henkin, 1979, p. 228). Scholars have also noted that the sovereignty costs of treaty ratification are quite high—“human rights treaty ratification (even if understood as ‘position taking’) at a minimum sharply delimits the way in which states may justify controversial practices […] The resultant constraints on legitimation strategies are […] sensibly understood as sovereignty costs by states” (Goodman and Jinks, p. 180).

However, also on this point the literature has presented contradictory theories. Some point out that sovereignty only plays a “selective role” in the
behavior of states toward international human rights agreements (Henkin, 1999; Krasner, 1999). As Henkin (1999, 5) writes, “sovereign states accept international human rights standards, if they wish to, when they wish to, to the extent they wish to. They submit to monitoring, to judgment of international human rights courts and commissions, if they wish, to the extent they wish.” And, as Krasner (1999) suggests, sovereignty becomes an “organized hypocrisy.”

Ultimately state behavior toward international law is not dictated by jealousy toward the ability of the state to organize governmental authority, but by the interest of the political elite which rules in the name of the state and whose primary concern is that of maintaining power within the domestic sphere. Moreover, states tend to limit the impact of human rights treaties in different ways. They enter a “conspiracy of silence” about human rights by reciprocally recognizing each nation’s jurisdiction to determine the rights of citizens and the duties of governments (Bull, 1977). This is why it has been observed (Cole, 2005) that states do not use reporting procedures of human rights violations offered by international conventions against other states, fearing that this could undermine the concept of state sovereignty altogether. Ultimately, states committing to human rights treaties have engaged over time in the practice of placing reservations and declarations upon ratification of the treaties, thus “limiting aspects of international agreements that contravene domestic interests the state seeks to protect” (Goodman, 2002, p. 536).
On a different note and with regard to sovereignty, scholars (Moravcsik, 2000) have also suggested that, because all states are jealous of their domestic sovereignty, the costs descending from the ratification of human rights treaties are fairly constant across nations. Thus, the different patterns of compliance do not depend upon the kind of costs attached to the treaty, but by the expected benefits states can gain from committing to an agreement. In the “republican liberal” theory offered by Moravcsik, countries accept limitations on their sovereign powers only to limit domestic instability in the event that other political leaders with opposing political views gain future power; “government authorities may thus seek to "lock in" favored policies in such a way, thereby insulating them from the actions of future governments” (Moravcsik, 2000, p. 228).

2.4 Analysis of the Literature

After having outlined the theoretical approaches scholars have adopted to assess state compliance with international obligations, in the following of this section I outline some of the problems associated with the extant studies and how this work addresses some of the gaps left open by the literature.

2.4.1 Assessing the Literature and its Shortcomings

From these preliminary observations, we see that scholars have come to divergent conclusions regarding what factors affect leaders’ behavior toward international obligations. We have theories suggesting that leaders' willingness to
comply with international human rights agreements is determined by regime type, but also indicating that due to some treaties or domestic characteristics compliance is somehow universal and cuts across regime type. Also we see that leaders’ willingness to comply with international human rights agreements is determined by the low cost opportunity to show some form of international commitment, but at the same time that, given some enforcement mechanisms, costs are relevant and leaders fear their realization thus shying away from compliance.

Additionally and more importantly the literature has left us without a clear understanding of the weight international human rights agreements have on leaders’ behavior. Scholars have indicated that generally speaking leaders tend to comply with those agreements that 1) more align with the core values of their domestic legal framework, that 2) impose the least amount of costs in terms of policies implementation, and that 3) limit the least their sovereign power, but have failed to recognize that under these conditions we cannot really say to be in the presence of compliance with international obligations. On the contrary, I suggest that what we see in these cases is simply a government affinity with the international treaty core values, which in turn lower the costs of ratification and commitment, but tell us very little about the importance of international human rights treaties. Furthermore, scholars have ignored the fact that alignment of values and interests between states and international obligations is not always sufficient. Empirical evidence shows that there are many states whose values
and interests potentially align with those of international agreements, but that fail to comply with them. Most of the democratic states have potentially similar guarantees for human rights protection as the international treaties they ratified, but fail to comply with their standards. For example in 1988 Israel appeared in front of the Committee against Torture for torturing Palestinians for security reasons. Much earlier in time, the French army used torture on Algerian combatants in attempt to secure information and disregarding any humanitarian law agreement they had signed.

As I elaborate in more detail in the following paragraphs, I contend that there are two main reasons why scholars have not been able to reach some agreement on the actual impact on leaders’ behavior of some of the factors analyzed. The first reason is due to the excessive attention to regime type and the lack of an in depth analysis of the circumstances surrounding leaders’ behavior. The second reason is due to the misunderstanding of “compliance” itself as a homogenous phenomenon.

2.4.2 Compliance as a “Situational” Phenomenon

As indicated above, scholars have focused extensively on regime characteristics as the “compliance or non-compliance” explanatory factor and have analyzed all the other elements that may play a role into leaders’ behavior within the same “regime type” framework. This approach has caused two faulty conclusions. It has confused leaders’ behavior as compliance or non-compliance
based on their regime type. In fact, scholars have noted (Simmons, 2009) that states choose what kind of treaties to which to commit and comply based on their preferences, thus making it hard to determine whether leaders’ behavior is really constrained by international obligations or it is a natural development of their government’s political orientation. In reality, compliance cannot be determined solely by adherence to obligations, but also by the fact that states that do comply tend to already have a good record in terms of the behavior dictated by the international treaty. Generally speaking what we observe most of the time in terms of compliance and what studies have mistaken as compliance is actually just democratic states being democratic and autocratic states being autocratic. Studies (Henkin, 1979) concluding that states comply with international law most of the time are biased in favor of compliance and suffer from endogeneity problems. Thus, scholars observing states complying with international rules in the absence of any enforcement mechanism have not considered that the behavior requested by the agreement is after all not divergent from the one that the state would have undertaken even in the absence of the international agreement. The same bias problem affects the studies by Hathaway about human rights treaties having a positive effect on democracies’ standards of human rights treaties. A democracy may well have the same human rights standards even in the absence of international obligations. The effectiveness of any regulatory agreement and in particular of international human rights law is
actually visible when, given incentives to violate the rules of the agreements, international law is able to constrain state behavior and state power.

On the other side, analyzing compliance within the “regime type” framework has distracted scholars from assessing compliance with international human rights agreements as “situational”—that is to say based on specific circumstances surrounding leaders’ behavior and in particular their political survival. The fact that we observe different kinds of behavior within the “democratic pool of leaders” as well as within the “autocratic pool of leaders” indicates that there is something more to the compliance phenomenon than simply their regime characteristics and that specific circumstances surrounding leaders’ behavior may account for that observed variation.

In order to address these gaps left open by the literature we need to put forth a more sophisticated model of leaders’ behavior toward international obligations. I intend to do so by aggregating factors that would predict leaders’ willingness to ratify international treaties that are not only related with the regime type. In particular, when looking at leaders’ willingness to comply with international agreements it is particularly important to weigh the impact that political instability and threats to leaders’ political survival can have on compliance. More specifically, threats to leaders’ governmental power change the way international obligations are evaluated. Generally speaking, as a burgeoning human rights literature (Davenport, 1995; Poe and Tate, 1994; Keith, 1999) has shown, leaders who face a considerable level of hostility domestically
or internationally tend to react by repressing citizens’ demands and violating basic human rights guarantees. Historical and societal circumstances, such as prior or present attacks to government stability, and specific threats to the leaders’ ability to retain power may be better indicators of the true intentions behind ratification of lack of it thereof. Like previous literature, I believe that regime type influences leaders’ decision to ratify international human rights agreements, but I treat regime type as an additional indicator to explain leaders’ willingness to ratify international treaties, but not isolated from social and historical circumstances. Recently, scholars (Brysk and Shafir, 2007) have observed that the protection of human rights in liberal democracies is the “first casualty” of the presence of instability and threats for both governments and citizens’ security. In this case other scholars (Wilson, 2005) have pointed out that nations tend to employ a “sliding scale of the rule of law” to adjust their standards of respect for the rule of law and international legal commitments to the magnitude and type of threat governments face.

This type of approach to the study of compliance allows me to specifically address some of the gaps left open by previous studies. It controls for some of those factors that are mistakenly confounded with compliance, such as the respect for the rule of law and other democratic values already existent in a given regime without the presence of international obligations. It also allows me to analyze leaders’ behavior under incentives to violate international obligations, thus also understanding if international human rights treaties have any
constraining power. We can only assess compliance when we can say that leaders’ behavior is caused and constrained by international obligations; that is only, democratic leaders can still be considered compliant when they face incentives to violate their obligations. Some attempts in this direction have been done by other part of the literature (Goodliffe and Hawkins, 2006), especially in the light of new evidence showing that when it comes to concrete compliance, democracies and non-democracies really do not behave that differently.

2.4.3 Compliance as a Multistage Process

The second problem in the literature resides in the fact that scholars have neglected to ask the question “what is compliance?” For the most part, scholars have ignored the complexity of compliance, focusing mainly on how the elements described above affect leaders’ willingness to ratify international agreements. In reality, commitment to a treaty and compliance with its obligations are two different aspects of the overall process of compliance. Ratification constitutes the point of entry into the compliance mechanism, but overall compliance can only be assessed by a full incorporation of the treaty in the legal setting of a given country and the implementation policies adopted by a given leader. Theoretical frameworks have combined commitment and compliance because of the misinterpretation of the legal and political meaning of the terms. In reality, as cogently pointed out by scholars (Downs, Rocke, and Barsoom, 1996; Goodman
and Jenkins, 2003), a state’s commitment with an international agreement tells nothing about the impact of the agreement on state compliant behavior.

There are two major shortcomings which the literature has incurred by neglecting to analyze the complexity of compliance. By focusing on ratification as a “proxy for the formal acceptance of international human rights law” (Goodman and Jenkins, 2003) the literature has suggested that democracies are respectful of human rights standards even when in reality they do not take the further steps of implementing or fully complying with the agreements. Scholars have also neglected the fact that leaders’ behavior toward international obligations may vary whether ratification, implementation, or compliant behavior is considered. Sovereignty costs, domestic pressures, and threats to leaders’ political power may weight on the decision to comply in different ways depending upon the stage of compliance at stake.

There have been previous studies that have looked at compliance as something more complex. In his work on compliance Young (1979) suggested “Compliance can be said to occur when the actual behavior of a given subject conforms to prescribed behavior, and non compliance or violation, when actual behavior departs significantly from prescribed behavior.” Others (Underdal, 1998) have suggested that compliance means to behave according to the obligations that have been accepted by signing the agreement. Others (Risse, Ropp, and Sikkink, 1999) have argued that compliance occurs when the costs of international norms have been reduced by the intermediary activity of networks
and activists and a change in behavior in the strategies of the elite can become feasible. In a more complex fashion, others (Jacobson and Weiss, 1995) have examined compliance as the intermediate stage between implementation and effectiveness. States will be considered compliant when they abide by the procedural and substantive international obligation regardless of the structure of their domestic legislation.

2.5 Conclusions

Despite the presence of numerous studies about compliance and the substantial evidence collected, there has yet to be a systematic study which looks at compliance and at the factors that affect leaders’ behavior toward international human rights treaties as something not strictly linked to regime type. Furthermore, there has not been any attention devoted to the complexity of compliance and to the three stages outlined in the introduction to this work. In particular, while ratification has received the greatest attention, followed by general studies on human rights violations, there is no research on the factors that might affect the implementation of international rules. Thus, in this work I begin my investigation by putting forth a theory which suggests that violation of international human rights obligations depends upon threats surrounding leaders’ ability to retain their political power and government stability. Given the account of compliance as a multistage process, which requires of leaders different types of commitments, I suggest that leaders fearing for their political survival will react
to the international obligations in different ways based upon the stage of compliance at stake. By proposing a more detailed theory about compliance it is possible to specifically frame the weight that international obligations themselves have on leaders’ behavior and to isolate factors that are causally linked to instances of compliance or non-compliance.
CHAPTER 3
GENERAL THEORETICAL FRAMEWORK

At the beginning of the twenty-first century, more than 50,000 international treaties cover nearly every aspect of international relations and nearly every facet of state authority

Anne Hathaway

3.1 What is Compliance and Which Factors Determine State Compliance with International Human Rights Obligations?

The dynamics behind states’ compliance with international human rights agreements have been the object of considerable attention from both international relations and international law scholarship. The international legal regime created after the end of World War II and the establishment of new international legal standards has presented states with new challenges to demonstrate their compliance with supranational legal obligations. Issues of security, international order, and human rights protection have raised concerns with regard to the adequacy of international law to be a tool of justice through which states can subject themselves to supranational order. Many states have declared their willingness to abide by rules that were not developed by their domestic constituencies; others have deliberately chosen to delegate powers to supranational institutions and enter agreements whose content clashed with their domestic legal provisions. As international legal regimes have proliferated, scholars have attempted to answer several questions. “What kind of states
commit to international obligations?" “What are the costs and benefits associated with commitment to international human rights obligations?” “What does commitment entail for states ratifying international treaties?” Some of the most consistent claims in the international relations/international law scholarship are that states comply with laws because they are offered a relatively low cost opportunity to manifest their support for international cooperation. Committing states share a particular affinity with the values and rights protected by international agreements. Lastly, scholars suggest that states abide by the norms of international agreements most of time, with some degree of variation due either to their domestic structure or to the incentives and enforcement tools provided by the treaties themselves (Henkin, 1979; Hathaway, 2002; Downs, Rocke, and Barsoom, 1996). Furthermore, the logic behind such studies would suggest that democratic states commit because of their relative affinity with the values protected by international human rights and that autocratic states will commit because of the relatively low costs associated with the commitment in terms of enforcement.

However, there are two major problems associated with these theoretical approaches. On one side scholars have not clearly determined the meaning of compliance. On the other side they have overlooked social circumstances which affect leaders’ behavior toward compliance regardless of regime type.
3.1.1 The Meaning of Compliance

First and foremost in examining state compliance with international human rights law, scholars have paid inadequate attention to the meaning of compliance. In order to understand the relationship between leaders' behavior and international human rights law we must first wonder "what is compliance?" "When can we say with a certain degree of certainty that states are complying with international obligations?" "When can we say that state behavior is the consequence of ratified international agreements?" This lack of specification has repercussions on the assessment of leaders' behavior toward international law. Specifically, it limits our understanding of the defining moment at which we can observe that states are abiding by international obligations. Can we actually say that states’ compliance with international law can be assessed at the ratification stage? Or shall we assume that compliance is something more complex?

The two alternatives present interesting consequences for understanding state commitment to international law. Looking at the rates and types of ratification of international human rights treaties may lead one to reach certain conclusions about states’ propensity to commit to international law: states do commit most of the time, regime type does not make too much of a difference, and it is relevant that human rights regimes are to a certain degree toothless when it comes to their specific enforcement mechanisms. However, if we assume that treaties carry more than a simple normative commitment, then compliance with international law assumes a different meaning. Today it is particularly
difficult to think that leaders can make decisions about commitment to international human rights believing that nobody cares about the consequences of that commitment; and that citizens, other states parties, or international organizations will not call attention to possible gaps between the law and governments’ practices. As a solution to this problem, I argue that compliance with international human rights agreements is actually a complex process. Compliance begins with the ratification of international human rights treaties, at which time states manifest their commitment to be bound by the supranational rules, and it is followed by the implementation of those agreements within the domestic legal framework. Lastly, compliance is also determined when we observe a tangible state behavior in which the ratifying state behaves by the treaty imposed standards.

3.1.2 Finding the Determinants of Leaders’ Behavior toward International Law

However, even by construing compliance as the complex process just described does not give us a thorough assessment of state commitment to international obligations; it only solves half of the issues faced by previous literature. It has been noted (Simmons, 2009) that states choose what kind of treaties to commit to and ratify based on their preferences, thus making it hard to exactly determine the causal link between state behavior and international obligations. That is, compliance cannot be determined solely by adherence to obligations, but also by the fact that states that do ratify tend to already have a
good record in terms of the behavior dictated by the international treaty. While scholars (Simmons, 2009) have to a certain extent been aware of this problem, few have tried to identify the causal link between state behavior and international human rights obligations. I argue that most of the problems with previous studies and their inability to find the causal link between state behavior and international human rights law arise because scholars have overlooked the impact that political and social circumstances have on the decision of leaders to commit to international agreements. I suggest that at each and every stage of compliance states face particular costs that are not only or necessarily associated with the type of treaty or state regime. Over time, leaders experience different challenges to their political survival and their regime. These types of challenges may vary from simple domestic instability due to strikes or demonstrations, to more serious forms of protest and threats to the leaders’ ability to retain power. I suggest that most of the variation in states’ behavior toward international human rights law throughout the three stages of compliance can be explained by looking at these instances of threats to governments and leaders’ ability to maintain power. I begin with the general assumption that leaders’ main concern is that of retaining power. This is the main incentive behind leaders’ decision making, and when dealing with international obligations leaders behave according to that basic interest. Given leaders’ preferences, I suggest that there are two different mechanisms behind leaders’ willingness to comply with international legal obligations. First, heavily relying on previous literature findings, I suggest that
regime type matters. The characteristics of more or less open political systems, their respect for the rule of law, and the rate at which citizens can influence leaders’ decision making has certain consequences in leaders’ willingness to comply. However, on this point, I expand upon previous literature by suggesting that these factors affecting compliance vary along all stages of compliance. Differences in compliance must be analyzed at each and every stage, since ratification, implementation, and “behavioral compliance” present states with different challenges. Second, I argue that regime type becomes less of a factor in determining leaders’ incentives to commit to international obligations once leaders are faced with some kind of threat to government stability and their ability to retain power. In these cases whether in democracies or autocracies, I expect that leaders facing some kind of threats deviate from compliant behavior because they consider international obligation an additional burden and threat to their power.

Observing leaders’ behavior under circumstances of threat allows me to find the causal link between state behavior and international obligations. In fact, given the presence of threats, leaders face incentives to violate international obligations. If leaders comply with their international obligations in spite of the threat then we can truly say that there is a causal link between state behavior and the commitment to international agreements. This is to say that compliance with international law can only be assessed under incentives to violate it.
In the following of this section I develop a theoretical argument that looks at the two mechanisms, as explained above in more details. Also, I offer a general explanation of the link between the presence of threats and leaders' reaction both toward threats and toward international obligations.

3.2 A General Theory of Compliance with International Human Rights Agreements

A leader’s decision to abide by international human rights laws throughout the three stages of compliance is a complex process that requires the analysis of two different sets of situations. As indicated above, I assume that leaders’ main concern is to retain power. Then, I analyze leaders’ behavior under different conditions: one in which leaders are in more or less stable and democratic governmental conditions, and the extent to which leaders face international or domestic threats to their power and government stability, which may encourage them to resort to measures of repression to retain control over the government.

Under the first set of conditions, I suggest that leaders, independently from the regime type in which they govern, when considering compliance with international agreements, must be ever so mindful of the interests of a specific selectorate. The selectorate is a specific group of people in society that is of critical importance for leaders wanting to maintain stable conditions of power. The international agreements leaders intend to ratify, implement, or with which they need to comply, must be in the best interests of this salient domestic audience.
Under the second set of conditions, I suggest that leaders facing some kind of threats to their power and governmental stability are unable to satisfy the interests of the selectorate and thus build a societal consensus that would allow them to remain in power. That is to say, the link among leaders, domestic audiences, and international obligations is altered by the conditions that threaten leaders’ power. Threats force leaders to assess potential of existent international obligations less in terms of the interests of domestic audiences, and more in accordance with their main priority of remaining in power which, under conditions of threat, is at odd with domestic or other international actors’ interests. As I elaborate in detail in the following chapters, the burgeoning human rights literature (Davenport, 1995; Poe and Tate, 1994; Keith, 1999) has shown that leaders who face a considerable amount of hostility domestically or internationally tend to react by repressing citizens’ demands and violating basic human rights guarantees.

I also suggest that under both sets of conditions the amount and type of pressure domestic audiences exert on leaders, and the likelihood that given the presence of threats, leaders will resort to repression and lower their rate of compliance vary across regime type. I contend that the level of threats is the primary determinant of state commitment to international human rights obligations, but we should also expect some variation across regime type in the way threats are perceived and addressed. Everything else being equal, we should expect democratic states to have a greater ability to deal with domestic
audiences’ pressures as well as with threats than non-democratic states. We should expect that, given the presence of threats, the level of repression should vary across regime type with democratic regimes exerting a lighter form of repression than non-democratic regimes. However, while democratic leaders will be less likely to repress and more likely to comply with existent or potential international obligations, the presence of threats will make the rates of compliance between democratic and autocratic regimes less different; ultimately democratic regimes faced with threats will deviate from their expected behavior of compliance. To this regard it is important to specify that I agree with the common understanding that generally speaking democratic regimes have better human rights ratings than autocracies. A claim that few would dare to challenge is that because of the openness of the political system and general respect for the rule of law, democratic leaders tend to be very respectful of individuals’ human rights, contrary to autocratic leaders. This is to say that, when comparing democratic and autocratic leaders facing threats, the starting point of the human rights respect will be better for democracies than autocracies. Briefly, everything else being equal, democracies respect human rights more than autocracies. However, I argue that when facing threats both democratic and autocratic leaders tend to deviate from compliance with international human rights obligations. I also suggest that the rate of deviation from compliance tends to be higher for autocratic leaders than for democratic leaders. The reason for this difference in the deviation rate resides in the fact that even under threats,
democratic leaders will still be affected by a large selectorate and a greater pressure by competing political institutions. Eventually, democracies deviate from compliance less than autocracies, but ultimately compliance ratings go down across regime type. In Figure 3.1 I illustrate the relationship described above.

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<th>Figure 3.1 Human Rights Ratings Behavior in the Presence of Threats</th>
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<td>Compliance Ratings</td>
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The vertical axis represents human rights ratings of both democracies and autocracies, with democracies expected to have better human rights ratings than autocracies. I suggest that at a given point regimes might experience some form of threats to their stability, thus resorting to repression and violation of international human rights obligations. I also suggest that the amount of deviation is less for democracies than autocracies.
3.3 Leaders’ Power, Domestic Pressure, and Compliance under Stable Conditions

3.3.1 Introduction

In the following section, I begin building my theoretical framework about state compliance with international human rights treaties. As specified above, I begin with the assumption that under both stable and unstable government conditions, leaders’ main concern is to retain power. In the immediate following paragraphs, I argue that, under stable conditions, both democratic and autocratic leaders face the pressure from larger or smaller selectorate\(^4\) that could retaliate against leaders for making poor foreign policies decisions. Whether leaders need to decide about ratification, implementation, or “behavioral compliance,” they must keep in mind these underlying interests. Then, I specify that there is variation across regime type with regard to the ability of domestic audiences to pressure leaders, as well as, variation in the level of pressure exerted on leaders throughout the three stages of compliance. Although, I provide a brief overview in the following sections of the type pressures audience may exert thorough the three stages, I briefly anticipate that the pressures exerted by domestic audiences assumes different facets throughout the three stages. In fact, on the one hand, obligations descending from international human rights agreements

\(^4\) The size of the selectorate is usually determined by the regime type. Bueno de Mesquita et al. (1999) suggest that all regime types have some kind of selectorate which can affect leaders’ foreign policy decisions. While in democracies the selectorate tend to be very large and so does the winning coalition supporting the leader power, in autocracies the selectorate may be both small and large, but the winning is usually small but can be harmful in the event of defection from offering support to the leader.
vary across the three stages of ratification, implementation, and compliant behavior. On the other hand, the costs and consequences of complying or not complying vary as well across the three stages. In turn, the variation in type and consequences of compliance at the three different stages may change the way leaders take into account domestic pressures and the way domestic audiences pressure leaders. For example, some may suggest (Neumayer, 2005) that ratification carries little normative commitment and that domestic audiences, being convinced of a lack of enforceability of international agreements, do not pressure leaders’ as much as they would if leaders were to change their behavior according to international obligations and against specific domestic interests. On the contrary, others may suggest that through ratification of international human rights treaties, citizens may feel empowered and consider it as an important legal commitment, thus pressuring leaders to strike the best possible agreements.

3.3.2 Leaders’ Power, Domestic Pressures, and Compliance with Human Rights Treaties

As scholars (Putnam, 1988; Schultz, 2001; Dai, 2006) have cogently pointed out, in deciding whether to comply with international agreements, leaders keep in mind two main factors. First of all, they “care about maintaining themselves in power” (Bueno de Mesquita, 1995, p. 842). Their main concern is that of guaranteeing their political reselection, and their primary goal is to maintain power within the domestic sphere (Krasner, 1999). Second, in order to achieve this goal, leaders must consider the interests and policy preferences of
their key selectorate (Bueno de Mesquita, Morrow, Siverson, and Smith, 1999; Fearon, 1994). As indicated above, I suggest that key selectorates are present across regime types. Small or large coalitions of supports of political leaders are extremely important for remaining in power in both democratic and autocratic regimes. In deciding whether to ratify, implement or follow the international obligations, leaders must make decisions that are in alignment or as close as possible to the interests of their key selectorate. That being said, leaders are particularly reluctant to comply with international obligations that could clash with domestic political interests.

3.3.3 Variation of Pressure across the Three Stages of Compliance

The way leaders decide with regard to the key selectorate, varies across the stages of compliance. At the ratification stage, as scholars (Putnam, 1988) have often written, leaders tend to be sophisticated negotiators in complex, two-level games. At the ratification stage, leaders must keep in mind two different types of domestic pressures. On the one hand, critically important domestic audiences may hold leaders accountable for ratifying agreements that are not in their best interests, which could produce only excessive costs to the nation and very few benefits. Some highly political sections of the audience may be particularly aware of the consequences ratification bears for national interests in terms of policy implementation or international cooperation. On the other hand, leaders must also bear in mind that critically important selectorates may find the
agreement extremely important and a serious normative commitment, thus holding leaders accountable for future violations of the same agreement. In this last case, leaders have all the incentives to ratify international agreements that are not only in the best interests of domestic audiences, but that leaders themselves will be able to uphold.

At the implementation stage domestic audiences become particularly aware that the incorporation of international legal standards within the domestic legal framework gives international laws the same power and enforceability of national laws. Although scholars have given little attention to the implementation stage, I suggest that the pressure domestic audiences may exert at this stage is particularly relevant for leaders. As I develop in greater details in the chapter on implementation, I suggest that ratified international agreements that do not fully meet the interests of relevant domestic audiences, may create a substantial burden for political leaders at the implementation stage. In order to maintain their chances of being reelected, in the case of democracies, or hold to the support of their small coalition, in the case of autocracies, leaders may decide to not proceed to the implementation of the agreement to demonstrate their cognizance of the concerns raised by these domestic interests. At the same time, we might conceive of the implementation stage as the moment in which leaders are still bargaining between relevant domestic interests and international actors, but with the added complication that the ratification of the agreement has made the
international obligations real and not potential, and has attracted the attention of international actors.

At the “behavioral compliant” stage the pressure from domestic audience is extremely important for leaders. This is the stage in which leaders are specifically asked to modify their behavior according to the obligations descending from international agreements. However, there are some considerations that need to be made with regard to this stage of compliance. I suggest that, under stable conditions domestic pressures to comply with international obligations may be irrelevant for some regime types. Democratic leaders may already follow policies and be behaviorally aligned with the requirements of international agreements. Strong, autocratic leaders, facing no challenges to their power, may not resent the pressure exerted by domestic audience to change their behavior. However, democratic leaders may be readily held accountable for violating international human rights obligations, unless the violation of such obligation is not portrayed in the best interest of domestic interests. It is for this reason that I suggest that the pressures from relevant domestic audience is of critical importance at this stage. In this regard, scholars (Brysk and Shafir, 2007) argue that in order to limit the pressure from below in their decision to comply, leaders tend to build violations of international obligations within the framework of superior national security interests, which could easily destroy citizens’ support for international human rights obligations and increase leaders’ political support and public approval.
3.4 Variation of Audience Costs across Regime Type

3.4.1 Audience Costs and Pressures from Below in Liberal Democracies

In addition to varying across the stages of compliance, audience costs vary across regime type. In the case of liberal regimes we should expect a regime which respects the rule of law and has stable political institutions to generally comply with international human rights treaties at all three stages. Democracies tend to ratify, implement, and align their behavior with international human rights laws because their political systems are already embedded with the rule of law and they value greatly a system of human rights. Thus, principally because of their normative and political commitment to international law, we should expect that the greater the level of democracy the greater the likelihood of compliance. Ratification should typically come easily for democratic regimes since they share a certain commonality of values with international human rights regimes, and democratic leaders tend to be participant to and supporter of the drafting process of international agreements. The implementation phase should also be relatively smooth since democracies possess the legislative institutions and processes able to create laws. Lastly, democratic leaders face little need of changing their behavior according to the international standards. Democracies are usually respectful of human rights without the need of changing their practices and policies. In summary, domestic interests and international obligations generally align throughout the three stages of compliance. Thus I suggest the following
Hypothesis 3.1: Democracies are more likely than autocracies and anocracies to comply with international agreements.

However, in this regard it is necessary to point out that some of the characteristics of liberal democracies may make them, at the same time, less likely to comply with international obligations at the stages of ratification and implementation. As I describe in more detail in the chapters devoted to these two stages, liberal democracies are regimes that already hold high standards of human rights and most likely have a legislative system which reinforces the protection of citizens’ human rights. This indicates that while we may observe strong support and participation by democratic leaders in the drafting and creation of international human rights, they will also shy away from committing to agreements that will not make any difference for the essence of their domestic system, while on the contrary imposing some costs in terms of participation and support of the agreement. This is to say that democracies, which already possess a strong legal framework when it comes to the protection of international human rights, might find the costs associated with the ratification and implementation requirements of international treaties an unnecessary burden.

Ratification of international agreements by governments usually entails an extended examination of the treaty, extensive discussions among different parties in government, and bargaining among the same political parties as to achieve the best outcome. Likewise, implementation entails lengthy legislative sessions in which leaders must address the requirements of the treaties. International treaties and the committees supervising their implementation are
particularly demanding when it comes to the definition of crimes, human rights, and measures of protection. To this regard, being a democracy with a system of human rights protections does not make governments immune from scrutiny and criticisms about their domestic framework. One example of this kind of scrutiny is the frequent comments of the Committee against Torture about the definition of torture by states parties. In one of the so called “General Comments” – documents addressing the members to convention altogether – the Committee wrote: “Serious discrepancies between the Convention’s definition and that incorporated into domestic law create actual or potential loopholes for impunity.”

In some cases, although similar language may be used, its meaning may be qualified by domestic law or by judicial interpretation and thus the Committee calls upon each State party to ensure that all parts of its Government adhere to the definition set forth in the Convention for the purpose of defining the obligations of the State.”  5 Following this general consideration the Committee against Torture is usually very strict in considering the definition of torture by all states parties to the treaty. In 2010 France was reminded of the absence of a definition of torture in its Criminal Code strictly in line with the Convention requirement and French representatives were invited to submit a further report addressing this issue. 6 In 2005 both Switzerland and Finland received the same kind of comments about the definition of torture and have yet to respond to the

5 The Committee’s General Comment can be found at http://www2.ohchr.org/english/bodies/cat/comments.htm

6 The Committee’s report about France can be found at http://www2.ohchr.org/english/bodies/cat/docs/co/CAT-C-FRA-CO-4_6.pdf
Committee's demands. These examples show that once states become members to the treaties they become the object of scrutiny by international institutions supporting the implementation of the agreements regardless of their regime type. Under these circumstances, democratic leaders may believe that the scrutiny and the burden put on their system may be excessive and unreasonable especially considering the strict parameters to which they are asked to conform. In this regard, scholars have suggested that democratic leaders work under the assumption that human rights regimes are good, just not for themselves (Goldsmith and Posner, 2005). Thus I suggest the following:

Hypothesis 3.2: Democracies are less likely to ratify and implement international agreements than autocracies and anocracies

3.4.2 Audience Costs and Pressures from below in Autocratic Regimes

Prior literature (Hathaway, 2002) has suggested that mainly because of the lack of enforceability and the absence of audience costs, autocratic leaders would ratify and implement international human rights agreements. Autocratic leaders can, through such agreements, demonstrate in a relatively costless manner demonstrate “good behavior” to the international community. However, this theory is affected by two, critical but flawed assumptions. First, human rights agreements are not always “toothless.” As suggested above about the scrutiny under which states party to a treaty undergo, from the moment autocratic or anocratic leaders ratify international human rights agreements to the moment they decide to violate the obligations descending from the treaties, they attract
the unwanted attention of other states party to the agreement, the media, and international institutions created to support the international treaty. They are most likely going to fall under the microscope of the international community that is empowered to intervene in the state’s domestic affairs by its membership to the treaty. Thus, although we may expect that leaders would be less likely to comply with the pressure of the international community, they still may be affected by the costs associated with participation to the international agreement. Second, as Geddes (1999) has shown, domestic costs and domestic audiences are present across regime types and, thus, also in autocracies and anocracies. As I suggested above, autocratic leaders rely on the support of a small but powerful coalition and, as shown by scholars (Bueno de Mesquita et al., 1999), the presence of a large selectorate may become critically relevant if members of the winning coalition decide to forfeit their support for the leaders. Thus audience costs are present and very relevant in autocracies as well. The presence of these costs affects all three stages of compliance. Autocracies should be less likely to ratify international agreements because of leaders’ fear of drawing unwanted attention. Autocracies are even less likely to implement international agreements because of the leaders’ fear of empowering other domestic political actors and diminishing the ease with which they may utilize repression as a policy tool to crush the opposition. As I argue in the following chapters, implementation of international human rights laws heightens citizens’ awareness of international norms protecting human rights and, even more, the monitoring capacity of the
institutions created to support the implementation of human rights norms. Thus I suggest the following

Hypothesis 3.3: Autocracies and anocracies are less likely to comply with international human rights agreements than democracies

3.5 Leaders’ Power, Threat, and Compliance

In the following section I theorize that leaders’ ability to retain power does not depend upon the approval of a salient domestic audience, but by the presence of threats to their security and stability. The relationship between leaders and domestic audiences, whether in democratic regimes or autocratic systems, and the ability of leaders to maintain their position in government through consensus building or democratic processes may be jeopardized by the presence of some kind of domestic or international instability, or by particular societal and historical circumstances. Such circumstances, consisting of specific threats to government stability and leaders’ power, change the dynamics behind the relationship among leaders, domestic audiences and international actors. I suggest that, under conditions of instability, the approval by the domestic audience of the international obligations with which leaders decide to comply become less salient; leaders lacking domestic or international support or facing threats that may jeopardize the legitimate exercise of their governmental functions must resort to other expedience to retain power. I suggest that in this case leaders may look at international human rights treaties as an impediment to
their ability to retain power by interfering with their ability to implement policies at odds with international obligations. In the following section, I briefly describe what I mean by “threats” to leaders’ power. I then specify that the perception of threats and the way leaders react to them vary across regime type. However, contrary to the effects of audience costs which may vary across the three stages of compliance, the presence of threats lowers compliance levels at all three stages, limiting leaders’ willingness to ratify, implement, and behaviorally comply with international obligations.

3.5.1 Threats

The different types of threats governments face prompt leaders to implement policies which could limit their risk of losing power while at the same time keeping some part of support within society. That is to say, leaders tend to react to threats by trying to divert, reduce or eliminate the source of political opposition or instability while at the same time framing threats in a way that would gather them some consensus within the domestic sphere. Leaders facing violent domestic or international opposition tend to resort to the rhetoric of “national security” and to implement policies that seem to aim at the protection of the population. That being said, different types of threats call for different leadership strategies, which may result in the actual or potential repression of basic human rights guarantees. Scholars have identified different threats that make for poor human rights scores within a nation. Governments may face
internal or international threats. Leaders will view internal threats in the form of riots, revolutions, and civil unrest as a threat against the state and to their continuation in power. Under these circumstances leaders tend to direct their action against their own citizens and their ultimate goal is that of protecting their position in power against a domestic upheaval.

In contrast, international threats, such as international wars, prompt leaders to take measures to maintain domestic order during times of emergency (Gurr, 1986). In this case, national security is not necessarily identified with the ability of leaders to retain power, but rather with their ability to secure borders, protect citizens and restore peace in the global community. Recently, scholars (Brysk and Shafir, 2007) have observed that the division between internal and external threats has become blurred due to the presence of unconventional threats, such as terrorism. In this case leaders tend to direct their action both towards their own citizens and abroad. Scholars have also shown that national security and national interests are identified with the suspension of basic human rights guarantees in order to respond properly to unconventional attack to government stability.

3.5.2 Threats and the Factors Affecting their Perception

The general discussion about types of threats and leaders’ reactions calls for further considerations. In particular, how do leaders’ perceptions of threats shape their willingness to comply with international human rights agreements?
Generally speaking we have learned from a consistent body of literature (Alfooni and Allen, 1991; Poe and Tate, 1994, Davenport, 1995; Keith, 1999; Harrelson-Stephens and Callaway, 2003; Neumayer, 2005; Brysk and Shafir, 2007) that leaders tend to ignore international human rights commitments during times of public emergency which threaten both the life of the nation and the ability of leaders to retain power. Leaders tend to perceive these circumstances as serious threats to superior interests that may outweigh any kind of international commitment. Under these circumstances, political leaders arrogate to themselves the right to determine what is in the best interest of a nation, what is national security, and will, if they perceive it as politically necessary, arrogate to themselves the right to suspend basic democratic norms. Based on this assumption, I suggest that leaders who are in the process of evaluating the ratification, implementation, and compliance of international human rights treaties and face threats to their ability to retain power or maintain social control face an additional burden. Threats may trigger repression and human rights violations by leaders or may present leaders with the possibility of resorting to human rights violations given such threats. As anticipated above, in both cases leaders will be reluctant to comply with international human rights agreements which pose an additional threat to their ability to implement policies that would guarantee their position within the domestic sphere.

That being said, the way leaders perceive and address threats is in turn affected by different factors. Scholars (Davenport, 1996) suggest that differences
depend upon the system type (whether the regime is a democracy or non-democracy), the coercive capacity of the state, its economic development, and the level of dependency on other states. Poe (2004) argues that states evaluate threats against the strength of their regime. In this case the greater states’ perception of their strength, the lower should be the perceived threat from internal or international episodes of instability. On the contrary, when poor economic and social development, a history of political instability and high coercive capacity is met by mass political behavior directed against the state, leaders are more likely to perceive threats as more dangerous to their national interests and security.

Following this line of research, I contend that generally speaking under the presence of threats leaders envisage the possibility of having to resort to some form of political repression and violations of internationally held human rights standards. Whether threats are immediately followed by repressive policies or only potentially envisaged by leaders, their presence shapes the willingness of leaders to ratify international human rights agreements.

This also means that leaders tend to ignore international commitments to human rights conventions and are even more reluctant to commit to new international human rights agreements that may lower their ability to use repression as a form of protection of their status within the government. The human rights literature has looked at many of the reasons behind states decision to repress and the link with the perception of threats. Mainly the literature has
used threats as an independent variable to predict state repression (Poe and Tate, 1994; Davis and Ward, 1990). However, no prior research on threat has looked at the way it affects the likelihood that leaders decide to ratify international human rights treaties and compliance with international human rights law. How do threats to governments’ stability affect the likelihood that leaders will commit to international human rights treaties? Broadly speaking, under conditions of instability leaders may perceive international human rights treaties as an additional burden. Under these circumstances, generally speaking, leaders are very reluctant to commit themselves to further international obligations. By ratifying and implementing international human rights treaties regimes attract the attention of the international community. The presence of monitoring mechanisms creates additional obstacles to leaders’ behavior. Also as pointed out by scholars (Hafner-Burton and Tsutsui, 2007) the commitment to international human rights treaties empowers domestic human rights organizations, which in turn create sources of accountability for the government. Thus, I suggest that the relationship between leaders’ willingness to ratify international human rights treaties and the international commitments is heavily affected by the presence of threats challenging the ability of leaders to retain power. Under such circumstances, leaders perceive international human rights obligations as additional burdens and constraints, diminishing their willingness to follow international obligations and to commit to new ones.
3.5.3 Variation of Repression across Regime Type and the Effects on Compliance of International Human Rights Treaties

Following previous literature (Poe, 2004; Davenport, 1996) I suggest that the perception of threats and the way leaders react to threats vary across regime type. Democracies, autocracies and anocracies because of their state capacities, constraints, and institutions react to threats in different ways. Scholars (Henderson, 1991) indicate that when the level of democracy increases within a nation, the perception of threats is low and the likelihood of repression decreases. By contrast autocratic leaders by definition experience a constant perception of threat, feel that the power will be taken away from them and thus resort to constant repression. However, I contend that regime type is only relevant with regard to the way leaders respond to threats, but it has little impact on states’ compliance. In summary, I suggest that threats produce a deviation from the compliance ratings; specifically from leaders’ willingness to ratify, implement, and behaviorally adapt to the agreements’ obligations. Ceteris paribus, we should expect the compliance ratings of democracies to be higher than those of autocracies and anocracies. The presence of threats changes this situation. In this regard we may envisage two different situations. First, we may observe autocracies maintaining a fairly stable, although low level of compliance. Indeed, if we assume that autocratic leaders live a constant state of threat, it should also follow that their repressive behavior will be consistent over time. At the same time we may observe democracies leaders experiencing some kind of threats and thus lowering their compliance as needed. In this case, democracies
in the presence of threats will deviate from their expected behavior of commitment, bringing their obligations rate closer to those of autocratic regimes which are implementing their usual ratings of repression. Second, we may observe both democracies and autocracies experiencing some form of threats. In these cases, because of the presence of some constraints on democratic leaders, even given the presence of threats, the ratings of compliance of democracies will not get closer to that of autocracies, but both will deviate from their regular behavior and standard of commitment and compliance.

Based on these premises, I follow with some more details on threats’ perception and reaction across regime types.

3.5.4 Threats, Liberal Democracies, Autocracies, and Anocracies

As I have argued, even in liberal democracies the presence of a national insecurity sentiment, one in which both government leaders and the population feel threatened by internal or external threats, can very rapidly destroy the support for both the rule of law and international human rights standards. Compliance with international human rights standards becomes of little importance and the violation of international obligations a legitimate behavior to protect perceived superior interests. The protection of the rule of law and the importance of protecting individual rights of liberty become secondary issues. Not only may we observe leaders who violate human rights and neglect to commit to new agreements, but citizens may become accomplices, creating a situation in
which breaches of individual dignity become an accepted and legitimate policy. As suggested by Brysk and Shafir (2007) leaders and more generally governments that feel threatened resort to repression and citizens become easily susceptible to the false demagogy of leaders trying to gain support for their policy of repression among some sections of society. A sentiment of fear of personal security in addition to national security is usually instilled into the general populace. Suddenly the value of law governed behavior is not held in high esteem by citizens who think that extreme measures of repressions are necessary. Such circumstances generate two consequences for leaders. First, domestic audience costs become less salient either because they align with leaders’ preferences or because leaders’ preferences to maintain power and stability are so paramount that repression, and then lack of compliance of international human rights standards, become less relevant. Second, the presence of more or less real threats to national security generate what scholars (Campbell, 2007) have called “grey zones” of legal standards, in which what is perceived to be illegal becomes nonetheless legitimate. The outcome of such circumstances is that state policies legitimize human rights violations. In this case other scholars (Wilson, 2005) have pointed out that nations tend to employ a “sliding scale of the rule of law” to adjust their standards of respect for the rule of law and international legal commitments to the magnitude and type of threat governments face.

Therefore I suggest the following hypothesis:
Hypothesis 3.4: The greater the level of instability liberal democratic states face, the lower the likelihood the state will comply with international human rights treaties.

When it comes to autocratic and anocratic leaders the presence of threat seems to weigh differently than for liberal democracies on the likelihood of compliance. As suggested in the introduction to this section, autocratic or anocratic leaders live in a constant state of threat. It is well known that in spite of some form of ratification of some of the core international human rights treaties, autocratic leaders violate international human rights standards consistently. This would suggest that the presence of domestic threats and national insecurity is less of a factor in predicting state behavior toward international human rights treaties. However, what happens if autocratic leaders face extreme forms of threats, violent upheaval, and strong citizens’ opposition? Logic suggest that the occasional experiencing of forms of strong political opposition forces autocratic and anocratic leaders to increase considerably their repression ratings by crushing any form of political threat. In these cases compliance with international human rights agreements, which is already low, tend to become lower.

Thus I suggest the two following hypotheses:

Hypothesis 3.5: Autocratic states that experience high levels of threats to government stability will be less likely to comply with international human rights treaties.

Hypothesis 3.6: Anocracies that experience high levels of threats to government stability will be less likely to comply with international human rights treaties.
CHAPTER 4
RATIFICATION

4.1 Introduction

The dynamics behind states’ decision to sign and ratify international human rights treaties have received a considerable amount of attention in recent years. Scholars (Hathaway, 2003; Simmons, 2000; Cole, 2005) have focused their efforts on explaining ratification of international human rights treaties in view of the fact that they produce few benefits for states, while imposing potentially considerable costs. Research has often put forth a general argument focusing on the fact that international human rights treaties tend to undermine leaders’ sovereignty, to regulate governments’ relationship with their own citizenry, and to monitor states’ behavior through invasive enforcement mechanisms, while at the same time offering few tangible benefits. A group of scholars (Chayes and Chayes, 1990, 1993, 1995) has observed that given these costs, states more likely to ratify international human rights agreements are those that share the same core values behind the treaties. As research has increasingly expanded in this field (Goodman, 2002; Von Stein, 2004 and 2005; Koh, 1998) further

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7 The initial steps states undertake in committing to international human rights treaties are the signature and following ratification, or the accession to the agreements. A treaty is generally open for signature for a certain time following the conference which has adopted it. However, a signature is not binding on a State unless it has been followed by ratification. Thus ratification is the moment defining states’ obligations to follow the international rules. If the time limits for signing the treaty have elapsed, the treaty is no longer open for signature. However, the States which have not signed it may at any time accede or, in the appropriate circumstances, succeed to the treaty. Thus, with accession a state becomes party to a treaty without a prior signature.
analyses have indicated that regime type plays a pivotal role in explaining states’ ratification of international human rights agreements. According to this literature, democracies would be more likely to ratify because they share domestically the same core values of human rights agreements. Yet others, contrary to that suggested by previous scholars, have noticed that because human rights treaties have weak enforcement mechanisms, states that do not share the same core values behind human rights treaties would ratify facing little enforcement costs, while enjoying reputational benefits within the international community. Thus the existing international law and international relations literature would suggest that regime type and the lack of enforcement mechanisms lower the costs associated with ratification of international human rights agreements predicting that their ratification is analogous across regime types.

I identify one major problem that stems from scholars’ emphasis on state regime type and structural characteristics of human rights treaties. Indeed, absent from this large body of literature on ratification of human rights agreements is an attempt at a more empirical explanation of patterns of ratification which diverge from the general theoretical assumptions presented above. Research has more often tended to focus on theoretical development regarding characteristics of human rights treaties and the internal costs states would face through ratification based on regime type, while shying away from more empirical inquiries. This limits our understanding of states’ willingness to commit to international obligations and leads us to overlook other important
political, social, and historical circumstances affecting states' commitment. I argue that one major problem of the literature stems from a misspecification of the research question; instead of asking “what kind of states ratify human rights treaties?” or “do treaties' enforcement mechanisms make a difference in states' willingness to ratify them?” a question that could shed more light on state behavior is “what are the domestic and international political challenges states are facing when a treaty comes up for ratification?”. I suggest that this shift in the research question is of critical importance to explain deviations from the expected behavior by some states that are otherwise supporters of international human rights treaties. Following the general theory of state behavior toward international human rights treaties outlined in the prior chapter, I argue that given leaders’ main interest in gaining and retaining power, governments' willingness to ratify international human rights treaties will be determined by the challenge to their power that leaders face, both domestically and internationally. Under particular conditions of threats leaders may immediately or potentially feel the need to resort to more or less heavy repression. Governments' histories of threats to their stability or the presence of threats during the proposed ratification of international human rights treaties lowers considerably leaders' willingness to ratify these international agreements. Indeed, contrary to what prior literature suggests, ratification of international human rights bears some form of costs; monitoring institutions, other state parties, and human rights organizations assume that, after ratification, they gain a legitimate power to control and
interfere with state domestic behavior. Thus, I argue that specific political conditions of instability, which affect the way states’ leaders respond to historical, social and political circumstances shape leaders’ willingness to commit to international human rights agreements at a certain point and time. I seek to build upon previous literature by suggesting that anomalous patterns of ratification are not only affected by the internal costs and benefits descending from the treaties themselves, but mainly by leaders’ perceptions of present or potential threats to their power under specific historical circumstances. After all, the linkage between state ratification of human rights treaties, regime type, and enforcement mechanism does not hold under empirical scrutiny. In fact, it is quite puzzling that states whose international record and domestic democratic principles are highly regarded decide not to ratify or delay the ratification of certain treaties while embracing others. Consider, for example some ratification patterns of the Convention against Torture (CAT). Belgium, a liberal democratic nation by many standards, ratified CAT in 1999, 12 years after the entry into force of the Convention and 14 years after its signature. It is in light of such considerations that we need to assess the value of prior work on ratification; in the above illustrative examples prior research would predict that Belgium, the United Kingdom, and the United States, should ratify international human rights and humanitarian treaties, being liberal democracies and sharing the same core values behind international agreements. By contrast empirical evidence
contradicts this prediction and leaves us wondering what kind of factors are scholars overlooking.

Given these anomalies, this chapter examines what other characteristics of a nation are important in explaining patterns of ratification of international human rights treaties. Is ratification of international human rights agreements explained by regime type? Or should the fact that non ratification is observed among traditional supporters of international law prompt a deeper assessment of states’ willingness to ratify international agreements? In particular, why do states whose legal values, respect for the rule of law, and respect for democratic principles are quite good, sometimes not ratify or take longer to ratify international agreements than states whose legal and democratic values are poor? The willingness to ratify international human rights agreements may ultimately be the consequence of a more complex set of elements which do not reside entirely within the regime type of a nation, but go further into the particular political conditions which affect the way states respond to historical, social and political circumstances. Domestic instability, ranging from continuous strikes to more violent riots and demonstrations; and international threats, ranging from political disputes to international wars, constitute pressures and threats to leaders’ power and inform their behavior toward international human rights agreements and practices.

This chapter is organized in the following manner. First, I identify a series of shortcomings with the literature on ratification of human rights agreements
which this work tries to address. Second, following prior work on domestic policy, domestic audience, and international politics I develop a general theoretical model of states’ policies toward the ratification of international agreements that helps explain what kind of pressures leaders face when considering the ratification of these treaties. Third, heavily relying on prior works on state repression, I expand the theoretical framework explaining why leaders facing particular domestic or international threats may be more reluctant to sign and ratify international agreements. Fourth, I develop a series of testable hypotheses derived from the theoretical approach.

4.2 General Theories of Ratification

Prior investigations regarding the factors affecting states’ willingness to ratify international human right agreements can be categorized within two different lines of research. There are scholars who have focused on endogenous elements to state characteristics. Regime type, the balance of power among domestic institutions, and the relationship between the different branches of government have all been examined as factors affecting state behavior toward international law. Then there are other scholars who have put forth a theory of exogenous elements affecting leaders’ behavior such as the characteristics of international agreements and the benefits and costs directly descending from international treaties. Each approach presents different shortcomings that leave unexplained some of the states’ behavior behind ratification of international
human rights agreements. Mostly the approaches below contradict empirical evidence that indicates that the mechanisms behind ratification of international agreements are more sophisticated.

4.2.1 The Normative Approach

The current normative approach to state behavior and ratification of international human rights treaties contends that states are willing to join human rights treaties because their domestic normative values already conform to the normative values of the international agreements. Scholars (Chayes and Chayes, 1993) have pointed to the fact that leaders enter agreements with a clear idea of their national interests and how the treaty can serve those interests. This approach expressly suggests that when states’ interests align with the core values served and protected by the international treaty, then it is more likely that states will be supportive and become members of these conventions. Other scholars (Koh, 1998; Finnemore, 1996) provide a more sophisticated understanding of the normative approach by suggesting that national and international interests do not have to be necessarily fully aligned and compatible at the moment of ratification. Leaders may adjust states’ interests to meet international standards as long as the alignment improves society’s interest and improves a nation’s standing within the international community. In this regard, scholars indicate that international agreements present states not with a set of predetermined and unchangeable options, but with alternatives, which can
influence state behavior in changing the content of their domestic interests. In supporting this argument, other scholars have illustrated the process behind the interaction between the values set up in the international agreements and states' domestic interests. A burgeoning literature explains that international human rights treaties activate a "vertical process" of norm cascade (Koh, 1998; Risse et al., 1999) in which states internalize the preferences set by the international agreements and foster interaction with other international actors. Thus, values and interests change over time; ultimately what fosters the ratification of international agreements is the alignment of international and domestic values whether already present or created as a consequence of the internalization process. The entire process is made possible by a regime type willing to adjust to the interests of the international community and open to internalizing supranational legal standards. However, if we go on to say that alignment of values and interests is a sufficient condition that would predict state willingness to ratify international human right treaties then we are still left with a puzzling reality. Why do so many states whose values align with those of international human rights agreements not ratify or delay the ratification of treaties? In order to address this contradiction between what theory suggests and what reality indicates, we need to incorporate into the theoretical model a more sophisticated understanding of what kind of values leaders are willing to align with the international agreements and what kind of interests they are willing to sacrifice in order to foster international standards of human rights. As suggested above,
leaders seek to remain in power and leaders take into account social and political circumstances that threaten their power. While these threats may or may not impel an immediate violation of international agreements, leaders look at the international obligations as an additional burden and threat to their political power and thus move away from the “ratification table.” I concur that regime type has some form of influence on leaders’ decision to ratify international human rights agreements, but I differ by treating regime type as an additional indicator to explain leaders’ willingness to ratify international treaties, but not isolated from social and historical circumstances. This is to say that, although democratic leaders facing threats may not immediately resort to repression or violations of international agreements, their willingness to ratify international agreements under such circumstances is still informed by those conditions of threats. In fact, there have been over time many democracies that faced by the new challenges to fight terrorism and some domestic political upheaval have conformed to a policy of repression in clear violation of international human rights standards. The bottom line is that deviant behavior, although with a different magnitude, is present in both democracies and non-democracies under particular threats, which make regime type less of a predicting factor of state behavior toward international human rights agreements than argued by prior literature.

4.2.2 The Rationalist Approach

The prevalent rationalist approach, while still focused on the domestic
interests of states like the normative approach, shifts the attention to more material interests than states’ political and normative interests. Scholars (Milner, 1997; Downs et al., 1996) suggest that states will enter only treaties with which they can easily comply and that will require the least amount of effort in changing domestic policy. This section of the literature contends that a great part of the costs associated with the ratification of international human rights agreements is connected with two main factors: 1) the policy changes that leaders would have to implement following ratification, and 2) the enforcement mechanisms that conventions put forth to support the application of international rules, such as monitoring committees. This approach would predict that states which have to change their domestic legal settings to abide by the treaty will be less likely to ratify international agreements. It would also predict that the weaker the enforcement mechanisms supporting the treaty the greater the likelihood of states committing to international agreements. States ratify only those treaties that do not require “deep cooperation” due to the absence of enforcement mechanism.

The rationalist approach overlooks a salient aspect affecting the probability that leaders will ratify human rights treaties; as cogently pointed out by scholars whatever a nation’s regime type, leaders need to respond to a more or less large selectorate, a group of people that take part in the choice of a leader.  

8 Morrow et al. 2008, p. 393, “Democracies have large selectorates and large winning coalitions, although the exact size of each varies with the extent of suffrage and the precise rules by which leaders are elected. One-party autocracies have smaller winning coalitions than democracies;
Often, the enforcement mechanisms feared by leaders do not come from human
rights treaties, but from the presence of domestic audiences. Although there may
be some difference in the way domestic audience costs are generated, both
democracies and autocracies can be pressured by salient domestic actors. In
this regard, as scholars have pointed out (Fearon, 1994; Leeds, 1999) in more
open political systems leaders may be held accountable on two different
grounds. Leaders could be held accountable for choosing foreign policy
decisions that are at odds with specific domestic interests or for modifying their
foreign policy decision after having publicly committed to the specific
supranational obligations. The implications of this system of leaders' accountabilily are that leaders will most likely resist entering international
agreements in the first place given the possibility of being held accountable for violations of supranational obligations. However, domestic audiences' costs are
not only typical of open political systems. Even without democratic institutions,
autocratic leaders depend on the support of domestic groups to survive in office.
(Geddes, 2003; Weeks, 2008) Furthermore, in autocratic regimes the signature
and ratification of human rights agreements could open the door for the empowerment of domestic organizations and the intervention of outsider
observers, which would pressure autocratic leaders into backing down from international obligations. Based on these premises, I challenge the assumptions
presented by the rationalist approach on two different grounds. First, if we begin

their selectorates may be large. Monarchies and military juntas have both small selectorates and small winning coalitions."

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by saying that the greater the degree of change states need to make at the
domestic level, the lower the likelihood that they will ratify international
agreements, we should again observe a certain pattern in ratification. States
more respectful of human rights, more tolerant of political opposition, and more
open to changes should ratify international treaties almost universally. Similarly,
and secondly, we should expect almost universal ratification of international
human rights treaties given the notorious absence of enforcement mechanisms
which prevents the international community from retaliating against states that do
not comply with ratified obligations. Both assumptions are, again, not supported
by the empirical evidence. There is no such a thing as a universal ratification of
human rights treaties and those states that ratify international agreements
usually go through lengthy reservations and declarations to limit the potential
applicability of some of the treaties’ obligations. This indicates that leaders do not
necessarily fear enforcement mechanisms “from above,” descending from the
agreements themselves, but consider that, once ratified, additional forces
prompting compliance may constrain their behavior. Ignoring these additional
forces affecting leaders’ willingness to ratify international treaties limits
considerably the rationalist approach. It prevents rationalists from taking into
consideration that changing circumstances in government stability may increase
the likelihood that leaders will be held accountable by citizens unhappy with
governments’ policies. It gives a myopic understanding of leaders’ decision.
Patterns of government actions over time and patterns of instability within a
domestic system may enter the equation of the costs and benefits associated with ratification.

4.2.3 The Sovereignty Approach

Lastly, I also challenge the sovereignty approach to the ratification of human rights treaties. This approach suggests that leaders are particularly protective of the exercise of their power on the national territory and towards their citizens. On this point, human rights treaties are especially invasive of state sovereignty: they aim specifically at regulating how governments treat their citizens and thus threaten the political and governmental independence of states. Those scholars adopting the sovereignty view have justified state ratification of human rights treaties based on different principles. Some (Krasner, 1999; Sikkink, 1993) have identified the concept with the ability of governments to organize their public authority within a certain territory and over a certain population. Within this scope states are not subject to any other state or supranational organizations. Consequently, human rights treaties aiming at regulating the way governments can treat their citizens are in direct contrast with and have represented a significant erosion of national sovereignty. As more aptly said by Louis Henkin, “how a state behaves toward its own citizens, in its own territory [is] a matter of domestic jurisdiction, i.e., not anyone else’s business and therefore not any business for the international law” (Henkin, 1979, p. 228). Scholars have also noted that the sovereignty costs of treaty ratification are quite
high--“human rights treaty ratification (even if understood as ‘position taking’) at a minimum sharply delimits the way in which states may justify controversial practices […] The resultant constraints on legitimation strategies are […] sensibly understood as sovereignty costs by states” (Goodman and Jinks, p. 180). However, the sovereignty approach to state commitment to human rights treaties is at times ill-founded and other times it overemphasize the role that sovereignty plays in states’ decisions to ratify international human rights obligations. First and foremost, I claim, along the same line of authoritative scholars (Henkin, 1999; Krasner, 1999) that sovereignty only plays a “selective role” in the behavior of states toward international human rights agreements. As Henkin (1999, 5) writes, sovereign states accept international human rights standards, if they wish to, when they wish to, to the extent they wish to. They submit to monitoring, to judgment of international human rights courts and commissions, if they wish, to the extent they wish.” And, as Krasner (1999) suggests, sovereignty becomes an “organized hypocrisy.” Ultimately state behavior toward international law is not dictated by jealousies toward the ability of the state to organize governmental authority, but by the interest of the political elite which rules in the name of the state and whose primary concern is that of maintaining power within the domestic sphere.

Secondly, the impact that state sovereignty has on state ratification behavior has been overemphasized. States tend to limit the impact of human rights treaties in different ways. They enter a “conspiracy of silence” about
human rights by reciprocally recognizing each nation’s jurisdiction to determine
the rights of citizens and the duties of governments (Bull, 1977). This is why it
has been observed (Cole, 2005) that states do not use report procedures of
human rights violations offered by international conventions against other states,
fearing that this could undermine the concept of state sovereignty altogether.
Additionally, states committing to human rights treaties protect their sovereignty
by placing reservations, thus “limiting aspects of international agreements that
contravene domestic interests the state seeks to protect” (Goodman, 2002, p. 536).

On a different note and with regard to sovereignty, Moravcsik (2000) has
also suggested that, because all states are jealous of their domestic sovereignty,
the costs descending from the ratification of human rights treaties are fairly
constant across nations. Thus, the different patterns of treaty ratification do not
depend upon the kind of costs attached with ratification, but by the expected
benefits states can gain from committing to an agreement. In the “republican
liberal” theory offered by Moravcsik, countries accept limitations on their
sovereign powers only to limit domestic instability in the event that other political
leaders with opposing political views gain future power; “government authorities
may thus seek to "lock in" favored policies in such a way, thereby insulating them
from the actions of future governments” (Moravcsik, 2000, p. 228). However, I
claim that the presence of domestic instability as envisaged by this line of
research, instead of favoring limitations of sovereign powers and the acceptance
of human rights obligations, could create the opposite effect. Leaders faced with domestic instability, whether real or potential, hardly prefer to rely on international legal instruments to protect themselves from future reciprocation from other leaders. As Krasner (1999) suggested, they try to stay in power by adopting a policy of resistance or repression of political opposition. Basically, what the sovereign approach neglects to consider is that, the impact that state sovereignty has on state ratification behavior is nothing more than the leaders’ evaluation of how the international obligations will impact their ability to retain power vis-à-vis the domestic level of support and stability. Domestic conditions of stability/instability are the key to understanding state behavior toward human rights treaties. The burgeoning literature on state repression (Dixon and Moon, 1986; Davenport, 1995 and 1996; Poe and Tate, 1994; Keith, 1999) indicates that amid political opposition and domestic instability, leaders resort to repression of human rights more than asking for their protections and accepting limitations of their sovereignty.

4.3 A Theory of State Ratification of International Human Rights Treaties

The process by which leaders reach the decision to ratify international human rights agreements involves different sets of considerations. I begin with the assumption that leaders’ main concern is to retain power. I suggest that, whatever the regime type is, leaders have a specific selectorate whose interests they seek to address. In doing so, first, leaders must strike agreements that are
in the best interests of a salient domestic audience and, avoid signing agreements that might result in a citizenry mobilized and empowered by the treaty which then undermines their leadership position.

Then, I develop a set of considerations regarding the possibility that leaders face some kind of threats that change their ability to build a societal consensus in order to remain in power. I argue that leaders are chiefly concerned with specific threats to government stability and their power, which in turn change the dynamics behind the relationship among leaders, domestic audiences and international actors. Threats to leaders’ governmental power change the way international obligations are evaluated. Generally speaking, as a burgeoning human rights literature (Davenport, 1995; Poe and Tate, 1994; Keith, 1999) has shown, leaders who face a considerable level of hostility domestically or internationally tend to react by repressing citizens’ demands and violating basic human rights guarantees. Although I develop the argument in more detail later in this chapter, I briefly anticipate that, in both sets of considerations, the amount of pressure domestic audiences exert on leaders and the likelihood that, present some form of threats, leaders will resort to repression, varies across regime type. I contend that the level of threats is the primary determinant of state commitment to international human rights obligations, but we should also expect some variation across regime type in the way threats are perceived and addressed. Everything else being equal, we should expect democratic states to have a greater ability to deal with domestic audiences’ pressures as well as with threats
than non-democratic states. We should expect that, given the presence of threats, the level of repression should vary across regime type with democratic regimes exerting a lighter form of repression than non-democratic regimes. However, as per the behavior of interest in the present study – ratification of international agreements – threats produce delays in the ratification of international obligations. Briefly this indicates that, while regime type may be the key predictor in anticipating which leaders given threats will decide to resort to repression, the presence of threats is by itself the key predictor of the likelihood that leaders will ratify international human rights obligations.

4.4 Unpacking the Willingness to Ratify

In the following section, I begin building my theoretical framework about state ratification of international human rights treaties. I assume that under both stable and unstable government types of regime, leaders’ main concern is to retain power. Furthermore, the presence of threats to leaders’ power changes the dynamic through which leaders evaluate international human rights agreements. First, by heavily relying on the “domestic audience” literature, I illustrate the different kinds of pressures leaders face when operating at the international level under conditions of stability. I theorize that under stable government conditions the willingness of leaders to sign and ratify international human rights treaties is greatly affected by the presence of an aware domestic audience that can reciprocate by removing them from power for poor foreign
policy decisions. Since the main concern of leaders is to remain in power, ratification or non-ratification of international treaties would be mostly dictated by these underlying interests. Then, I follow by building a theoretical framework which analyzes situations in which leaders face threats to their power. Under these circumstances, the presence of a domestic audience approving the international obligations leaders undertake becomes less salient; leaders lacking domestic support to retain their power must resort to other expedients. In this case, their willingness to sign and ratify international obligations is dictated by the likelihood that human rights obligation will limit the policies necessary to be implemented for retaining power.

4.4.1 Leaders’ Power, Domestic Pressures, and the Ratification of Human Rights Treaties

Seeking to explain how leaders decide which international treaties to ratify, scholars (Putnam, 1988; Schultz, 2001; Dai, 2006) have focused especially on two critical factors. First and foremost, leaders taking action in the international arena, whether deciding to wage wars or negotiate treaties, “care about maintaining themselves in power” (Bueno de Mesquita, 1995, p. 842). Their main concern is that of guaranteeing their political reselection and their primary goal is to maintain power within the domestic sphere (Krasner, 1999). Second and following this logic, scholars have pointed out that in doing so leaders must take into account the interests and policy preferences of their key selectorate (Bueno de Mesquita, Morrow, Siverson, and Smith, 1999; Fearon,
1994). I suggest that key selectorates are present across regime types. In open political systems leaders need to bear in mind the main views and values of a politically relevant domestic audience that can retaliate against them by choosing to elect different leaders. In autocratic regimes, leaders must be mindful of a political elite or small group of supporters that can remove incumbents given the right incentives to do so. Being ever so mindful of these political influences, leaders sign and ratify international agreements that are as close as possible to the preferred policy outcome of key domestic audiences. Consequently, leaders will be particularly reluctant to ratify international treaties which impose numerous policy changes and that deviate from domestic political interest of actors whose consensus is necessary for the ability of leaders to retain power.

Scholars have written extensively about the presence of a salient, domestic audience that makes the decision to ratify international human rights agreements a complex "two-level game." The presence of an active citizenry is important for two different reasons. Domestic actors may hold governments accountable for not complying with international obligations that have been ratified. Scholars (Raustiala, 2005; Abbott and Snidal, 2000) have shown that through various processes of incorporation and "legalization" international law becomes part of the national system. Thus, "so long as domestic actors understand legal agreements to be serious undertakings, they will modify their plans and actions in reliance of such commitments, increasing the audience costs of violations" (Abbott and Snidal, 2000). Under these circumstances if
government leaders violate ratified international obligations they may face opposition from politically active domestic audiences. Additionally, domestic actors may also be particularly aware of the political consequences produced by international agreements and their effects on the implementation of particular policies necessary to bring into harmony domestic and international legislation. In situations where the core interests behind international agreements may be at variance with those of relevant domestic audiences, leaders must be particularly careful in negotiating the terms of their obligations and, when necessary, shied away from ratification itself.

4.4.2 Variation of Audience Costs across Regime Type

4.4.2.1 Audience Costs and Pressures from Below in Liberal Democracies

Audience costs vary across regime type. In the case of liberal regimes and their ratification behavior two main considerations come into play. First and foremost, we would expect a regime that respects the rule of law and has stable political institutions to ratify international human rights treaties. Democracies tend to ratify international human rights laws because their political systems are already embedded with the rule of law and they value greatly a system of human rights. Thus, principally because of their normative and political commitment to international law, we should expect that the greater the level of democracy the greater the likelihood of ratification. Democratic regimes share a certain commonality of values with international human rights regimes. They tend to
support the drafting of international agreements and promote universal ratification within the international community. Furthermore the presence of strong, domestic, legal institutions created to negotiate the terms of international obligations allows for a greater willingness to ratify. Ultimately, all these factors lower the costs states may face in ratifying international human rights obligations; they have probably promoted the international treaty in the first place and invested in the creation of an international human rights regime. Thus, I suggest that

Hypothesis 4.1: Democracies are more likely to ratify human rights agreements than autocracies and anocracies.

However, there is also a second different mechanism behind the decision to ratify international agreements. On one side, scholars have suggested (Moravcsik, 2000) that, since democracies hold high standards of human rights and good democratic institutions, they tend to “support rhetorical declarations in favor of human rights regimes.” This seems to imply that, while democracies strongly maintain the importance of ratifying international human rights treaties, at the same time, they work upon the assumption that their domestic legal framework is sufficiently protective of their citizens’ human rights. On the other side, scholars (Goodman, 2002; Meernik and Aloisi, 2009) have also shown that while assessing whether to become parties to international treaties leaders tend to be particularly aware of the interests of various groups of political actors and particular political pressures which could undermine the support for ratified international obligations and thus political support for governments’ actions.
Scholars (Putnam, 1988) have suggested that when states operate at the international level they must negotiate with two sets of actors: other states and domestic actors whose interests may be affected by international obligations. In terms of ratification, it is particularly important for leaders to make sure that the international obligations do not conflict with pivotal domestic interests. Thus, the presence of provisions in international treaties that greatly depart from the interests of a salient domestic audience diminishes the willingness of leaders to ratify international obligations. The necessity of adapting domestic policies to the provisions of a treaty may impose considerable costs on domestic political actors whose preferences are at variance with the international treaty. In this case the ratification of a treaty may result in leaders losing part of political support of those domestic actors. Thus, leaders may decide against ratification or linger on ratifying international agreements acknowledging the relevance of specific salient domestic interests.

This theoretical approach presupposes that the constituencies have significant leverage on governmental officials and can affect their chances of staying in power. This implies that leaders’ decision about international treaty ratification is more constrained the greater the ability of relevant political groups to manifest their discontent regarding leaders’ foreign policy preferences.

To this regard, scholars (Slaughter, 1995; Gaubatz, 1996) have pointed out that regime type is essential to the understanding of commitment to international law. More open political systems that need to pay attention to the
key selectorate present in society are characterized by free forms of elections, opportunities of contestation of leaders’ decisions. In this regard, democratic leaders tend to suffer the consequences of poor foreign policy decision more than autocratic leaders. This makes democratic leaders “sophisticated negotiators,” (Simmons, 2002), in the sense that democratic leaders will only “negotiate in the range of the agreements that they know can be accepted by their domestic constituency” (Leeds, 1999, p. 998). In summary, this suggests that cross national variation in ratification rates of international treaties depends mostly from the ability that domestic audiences have to affect the likelihood of leaders to remain in power. Thus, when observing patterns of ratification it is particularly important to consider that non-ratification by democratic nations may be the consequence of this pressure from below which would reciprocate against leaders for poor foreign policy decisions, or held them accountable for the violation of ratified international obligations. This is usually the case for democratic governments that allow for frequent, free and fair elections and have a system of check and balances among the different branches of governments.

I also suggest that whether or not leaders decide to ratify an international treaty is greatly affected by the amount of freedom they have from other political elites in present government which participate in the decision making process. In this case, the level of constraints over leaders’ decision making power is particularly relevant. If political actors, members of major political groups, and advisors can exercise a strong form of control over leaders, then the decision
about ratification does not depend upon the personal political preferences of a single leader. Political groups, searching for greater power and participation in the decision making process, may consider the ratification of international treaties as the opportunity for making decisions that would empower their participation. In particular, political groups whose members have roles in the legislative process, may seize the opportunity to promote the ratification of international treaties knowing that a following legislative process of implementation will give them some power in governmental decisions. Therefore, I suggest that states with weaker executive powers which are subjected to other political elites in government looking to controlling the decision making process that could give them more power will be more likely to ratify international agreements.

Ultimately, this is to say, that legislative branches of governments and members of the majority political groups given the chance to ratify international treaties will seize the opportunity to promote a pro-ratification process, which in the future will see them involved in the domestic implementation of the obligations and in the control leaders’ behaviors under domestic laws.

Therefore, I suggest the following hypotheses:

Hypothesis 4.2: States with more open electoral systems are less likely to ratify international treaties whose provisions diverge from the interests of salient domestic constituencies.

Hypothesis 4.3: States with weaker executives are more likely to ratify international human rights treaties.
4.4.2.2 Audience Costs and Pressures from Below in Autocratic Regimes

However, as others have shown (Geddes, 2003), the theory that democracies produce audience costs that are not present in autocracies is flawed. Generally speaking, non democratic leaders do not respond to domestic audiences as well as democratic leaders and tend to ratify international human rights treaties as pure “window dressing,” since these nations heavily discount international legal obligations. However, contrary to what prior literature has suggested, ratification of international human rights treaties bears significant costs across regimes types and even more for autocratic regimes. There is strong evidence that once ratification is undertaken by autocratic countries, international organizations, other states parties to the treaty and the media tend to focus their attention on the domestic standing of human rights of those countries. International actors, such as monitoring agencies are given the legitimacy to intervene, monitor, and report human rights violations, ultimately increasing the costs associated with ratification. Furthermore, given the absence of democratic institutions leaders of less open political systems, such as autocracies and anocracies, depend upon the support of small organized groups and political elite. Although their selectorate may be smaller than the one present in democracies, autocratic leaders rely on a very small and strong coalition to remain in power and leaders are very mindful of this coalition’s interests. Scholars (Weeks, 2008) have shown that there is considerable variation across the so called “non-democracies” in leaders’ abilities to repress, political elites’
coordination, and citizens’ ability to punish leaders. Thus, I suggest the following hypothesis

Hypothesis 4.4: Autocracies and Anocracies are less likely to ratify international human rights treaties than democracies.

4.5 The Threats to Government Stability, Repression, and Ratification of International Human Rights Treaties

Arguing that cross national variation in treaties’ ratification greatly depends on leaders’ interest in remaining in power and a key selectorate’s ability to affect this outcome offers grounds for further theoretical developments. Indeed, the relationship between leaders and domestic audiences, whether in democratic regimes or autocratic systems, and the ability of leaders to maintain their position in government through a consensus building or democratic processes may be jeopardized by the presence of domestic or international instability, particular societal and historical circumstances. I theorize that such circumstances, consisting of specific threats to government stability and leaders’ power, change the dynamics behind the relationship among leaders, domestic audiences and international actors. I contend that, given the presence of such threats, leaders tend to behave according to different concerns. Given the general assumption that leaders’ chief concern is that of retaining their power, I suggest that challenges to this ability alter the way leaders govern, their policy choices, and their willingness to commit to international obligations. Under the presence of
threats leaders can select different options; they can either decide to resort to repression or decide to respect supranational obligations.

4.5.1 Variation of Repression across Regime Type and the Effects on Ratification of International Human Rights Treaties

As described above, leaders perceive threats based on some characteristics of the domestic system. Thus, logic suggests that leaders’ reaction to threats is not homogenous, but varies across regime types. Scholars (Henderson, 1991) indicate that when the level of democracy increases within a nation state the perception of threats is low and the likelihood of repression decreases. By contrast autocratic leaders by definition experience a constant perception of threat. Under normal circumstances many, if not most non democratic leaders must be on constant guard against opposition that could undermine their power—the presence of any kind of opposition is considered a threat to the regime’s stability. Thus, autocratic leaders confronted with mild or strong political opposition tend to use extreme forms of repression against dissidents. However, I contend that regime type is only relevant with regard to the way leaders respond to threats, but it bears little impact on states’ ratifying behavior. Generally speaking we should expect autocratic leaders facing violent opposition to resort to extreme violence and human rights violation, while at same time ignoring the possible ratification of human rights treaties. Democracies are less likely to react to threats with repression or violation of basic human rights. However, the presence of threats affects negatively
democratic leaders’ decisions to ratify international human rights. In fact, although democratic leaders may not resort to immediate repression and violations of international obligations, the presence of threats represent for them as well as for autocratic leaders a challenge to their power. In summary, my account suggests that, while democratic leaders will be less likely to repress and more likely to ratify than autocratic leaders – a claim that has been proved by prior studies – the presence of threats makes the patterns of ratification within regime types less different. Ultimately democracies, given the presence of threats, will deviate from their expected behavior of commitment, bringing their obligations rates closer to those of autocratic regimes.

4.5.1.1 Threats and Liberal Democracies

In liberal democracies the presence of a national insecurity sentiment, one in which both government leaders and the population feel threatened by internal or external threats, can very rapidly destroy the support for both the rule of law and international human rights standards. Recently, scholars (Brysk and Shafir, 2007) have observed that the protection of human rights in liberal democracies is the “first casualty” of the presence of instability and threats for both governments and citizens’ security. In this case, it is not only governments that refrain from signing and ratifying human rights instruments that could somehow limit governments’ ability in vigorously and perhaps violently addressing threats, but citizens may also abandon trust in and support for international law and
democratic values. As correctly stated by some scholars (Falk, 2007; Forsythe, 2007) under conditions of national insecurity even liberal democracies stop supporting the rule of law and, in doing so, they violate both democratic legal standards and international human rights standards. States quite often appeal to a “state of exception” (Brysk and Shafir, 2007) to justify their behavior; rule of law and international commitments become of secondary importance and “individual rights to liberty are trumped by the collective right to security” with the full support of domestic constituencies (Brysk and Shafir, 2007, p. 15). States facing violent challenges tend to modify their willingness to commit to rules restraining their behavior.

In these cases there is a specific difference between liberal democratic states and non-democracies. Leaders of non-democracies and dictatorships constantly perceive threats to their stability and do not have a specific commitment to international or even domestic legal standards; in authoritarian regimes and dictatorship the very act of opposition to the regimes may be considered a threat to the government and elites’ security.

Leaders of liberal democratic nations face threats under sporadic circumstances. When liberal democratic states face violent challenges, there is likely to be a more evident departure from the respect of the rule of law and international human rights standards. Campbell (2007) writes about a departure from a rational behavior and of the fall of the ideological commitment to the rule of law and, although the scale of repression is very likely to be higher in
autocracy or dictatorship, “grey zones” of legal standards will also be present in liberal democracies.

The outcome of such circumstances is that state policies are a legitimized use of human rights violations. In this case other scholars (Wilson, 2005) have pointed out that nations tend to employ a “sliding scale of the rule of law” to adjust their standards of respect for the rule of law and international legal commitments to the magnitude and type of threat governments face.

If liberal democratic states tend to refrain from law governed behavior and international legal standards because of the presence of some kind of instability, we should also expect that the same states would be reluctant to commit to international legal obligations which could constrain leaders enforcement of some rules at the presence of some kind of threats. In this regard it is also more likely that states which have a good record of following their international commitments would be more likely to avoid further commitment to international treaties to which they are unsure to be able to abide given present circumstances. Campbell (2007) notes for example that the UK ratified the Optional Protocol I to the Geneva Conventions only after several cease fires with IRA took place. This suggests that states take into serious consideration the possibility of avoiding the creation of international obligations that they know they will not be able to follow, especially if these nations are somehow expected to comply with their obligations.
I also argue that leaders of liberal democratic states do have, as the normative approach suggests, a realistic perception of their government’s stability and of citizens’ support for their decisions. Thus, they move toward the ratification of international human rights agreements with an overall idea of the consequences ratification entails for the government. Under specific circumstances of threat to the national security, states’ leaders believe that citizens’ preferences would be that of not jeopardizing their security because of limiting international legal standards; as Forsythe (2007) indicates “there is a dark side to a free society: the public is preoccupied with individual things” and their reaction to government leaders’ actions toward international humanitarian or human rights law is non-existent or is accomplice of state deviant behavior.

Therefore I suggest the following hypothesis:

Hypothesis 4.5: The greater the level of instability liberal democratic states face, the lower the likelihood the state will ratify international human rights treaties

4.5.1.2 Threats and Non-Democracies

The presence of domestic threats and national insecurity is less of a factor in predicting state behavior toward the ratification of international treaties for authoritarian regimes than it is for liberal democracies. Yet, there are some considerations that must be taken into account when it comes to autocratic political systems of dictatorships.
Government leaders from non democratic political systems do not value the rule of law and do not have an ideological commitment to follow their international legal obligations. This implies that whether or not non democratic states have ratified international human rights agreements should not make any difference in leaders’ decisions to violate human rights or persecute those that are, at times, identified as the enemy of the states. Thus it follows, that it does not matter for non-democratic states whether or not the country is experiencing some kind of instability that may impose on governments the necessity to create “states of exception,” the suspension of the rule of law and the consequent derogation to international commitments.

However, on this point it is necessary to make some specifications. Under normal circumstances many, if not most non democratic leaders live in a constant state of threat; the presence of any opposition is considered a threat to government’s stability. Thus, this kind of situation does affect autocratic nations’ willingness to ratify international human rights agreements. Under these circumstances, as prior studies have suggested, autocracies may ratify international agreements as a form of “cheap talk” and to lower the international attention on the domestic status of the citizens’ human rights. Yet, weak autocratic nations may experience at times strong opposition from sections of the citizenry and political opposition which is out of the ordinary and which closely resemble the same kind of threats democratic political leaders may experience, but for different reasons. Under these circumstances autocratic leaders’
willingness to ratify international obligations is very low. First, during periods of governmental instability in autocratic regimes the international community tends to pay particular attention to the behavior of state leaders, their response to protests, and their treatment of opposing political factions. Second, some non-democratic states fear that even weak monitoring and/or enforcement mechanisms created by the international community in support of the implementation of the obligations descending from human rights treaties may further unveil state sponsored torture and citizens’ persecutions. Thus, this would suggest as scholars have already shown (Hathaway, 2003) that autocratic leaders do ratify international human rights under “normal” circumstances.

However, it is important to make another consideration. As suggested above, non-democratic leaders live in a constant state of fear. They perceive any form of political opposition or international condemnation as a danger for the stability of their government. It follows that, as suggested in the prior hypothesis non democratic leaders do not really worry about international commitments under normal levels of political threats. By contrast, non-democracies may experience periodically increasing forms of political opposition or international condemnation of their regime, which may escalate into political revolution or international war. Under these circumstances the level of threats perceived by non-democratic leaders increases considerably and so does the level of repressive behavior necessary to maintain the society under control. In these cases, leaders have no time to deal with international agreements; their
preoccupation is in maintaining order within the domestic realm. Additionally, while as scholars have many times point out, non-democracies ratify international human agreements to gain some reputational benefits and deflect the international attentions, this would change under conditions of instability and violent conflict. Given the presence of violence non democratic countries inevitably attract the attention of monitoring mechanisms and international organizations.

The above theoretical framework works for anocratic systems as well. In such systems in which elections are only held to maintain some form of apparent legitimacy of leadership, the consensus of the supporting political elite is even more important than in autocratic systems. Scholars (Fein, 1995; Reagan and Henderson, 2002) have suggested that these regime types, which occupy a space between democratic and autocratic political systems, are most likely to violate human rights when faced with particular threats. Because the source of power of anocratic political elites is particularly fragile, anocracies may lack the ability to resist political opposition and thus resort to human rights violations to prevent a further degeneration of their leaders’ position. One of the characteristics that make anocracies particularly unable to address threats and thus resort to political violence is the fact that they are “caught in the middle” (Vreeland, 2008). If this the way anocratic leaders react to threats, it follows that as well as autocracies, under conditions of threats, anocracies are unlikely to ratify international human rights treaties. As well as for autocracies, anocratic
leaders know that repression would follow threats and that the ratification of human rights obligations may empower domestic opposition and attract the attention of the international community.

Thus I suggest the two following hypotheses:

Hypothesis 4.6: Autocratic states that experience high levels of threats to government stability will be less likely to ratify international human rights treaties.

Hypothesis 4.7: Anocracies that experience high levels of threats to government stability will be less likely to ratify international human rights treaties.
CHAPTER 5

THE IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS LAW

5.1 Introduction

One of the critical moments in states’ behavior toward international human rights law is the implementation in states’ domestic legal systems of the norms set in international agreements. As scholars (Slaughter, 1995; Koh, 1998) have recognized, international human rights obligations lack mechanisms of enforcement that are typical of domestic laws, where police, prosecution, and penalties constitute the support system for the potential respect of domestic rules. Furthermore, the same scholars have recognized that through their enforcement mechanisms domestic laws become socially accepted over time; obeying the laws becomes a standard behavior not needing enforcement. This seems to suggest that in order to strengthen states’ international obligations one of the critical steps would be that of providing international rules with the same support system domestic rules possess. In order for this change to occur, international law must be brought into the domestic legal system and its rules treated as any other domestic law. While there is some evidence showing that the implementation of international human rights agreements increases their effectiveness in terms of states’ compliance (Heyns and Viljoen, 2002) my concern focuses on the factors that foster states’ willingness to make international human rights obligations part of the domestic legal framework and
therefore enhance their mechanisms of compliance. Specifically, how do states’
domestic characteristics affect their willingness to modify their legal framework by
incorporating international legal obligations? Why do some nations implement
international agreements giving them the same power as national law and others
do not?

These are extremely important questions that scholars should address. For quite some time international lawyers and international relations scholars
have been observing the increasing proliferation and ratification of international
treaties among states. States have been particularly active in “internationalizing”
several issues and areas previously relegated to domestic legal affairs. This has
been the result of an increase in the number of times states interact among
themselves, which has considerably expanded the integration of states into the
international community and the consequent necessity of operating within a
much larger international space. Nonetheless, it has also been observed that in
spite of the proliferation of international agreements and increasing commitment
to their legal obligations, states have been reluctant to change domestic judicial
procedures and laws that would align their domestic legal framework to the rules
present in the agreements. Thus, the proliferation of international norms and the
ratification of these agreements by states have not been followed by a domestic
legal incorporation and judicial application of the international rules.

Rarely do judges and domestic legal institutions refer to international
norms in solving domestic disputes and this circumstance seems to be the
consequence of state opposing changes that are necessary to balance the disparity between international rules and domestic norms. This behavior has been the object of several criticisms by those supporting international legal instruments who suggest that the incorporation of international rules and the adaptation of the domestic legal system are particularly important for the promotion of a binding and effective international legal regime. This situation has led the international community to create, on more than one occasion, monitoring systems that support the implementation of the international agreements in terms of states taking action to adapt their domestic legal framework to the international rules. It has become particularly common, during the crafting of international agreements, for states to arrange for some kind monitoring institution that not only examines the steps undertaken by the domestic legislations of ratifying states to adapt their legal standards to those of international agreements but also requests constant reporting by states party to an agreement with the regard to the status of their implementation process.

These events are a clear indication that not only the implementation of international agreements is valued by international operators, but also that it is perceived as a step in the overall compliance behavior that could impact the quality and effectiveness of the international regimes. With the increasing attention devoted to the implementation of international agreements scholars have started to analyze the numerous factors affecting states’ willingness to modify their legal systems to accommodate international agreements. This
research has mainly been focusing on the legal and constitutional characteristics of states (Vereshchetin, 1996; Wilson, 1964). The presence of legal rules that assure an automatic incorporation of international agreements facilitates implementation. As well, the presence of a specific legislative committee assigned to the formulation of implementing legislation increases the chances of international rules becoming national norms. I try to build upon this line of research by focusing in particular on the political characteristics of states, on their type of government, and on the presence of specific threats (as defined in the introductory chapter to this work) which can modify, independently from the government type, states’ propensity to implement international obligations. Ultimately, I develop a theoretical model that highlights the critical role politics plays in states’ compliance with international human rights law.

The chapter is organized as follow. First, I give a brief definition of the term “implementation” and the different terms that are used within the scholarly literature. Next, I present some arguments to justify the importance of analyzing implementation in states’ compliance behavior. Then, I give an overview of the mechanisms through which implementation takes place, in particular by giving attention to the way regime type may affect the implementation mechanisms. Hence, in the next section, I give a brief overview of the implementation requirements and the monitoring system in place for the Convention against Torture. Lastly, I develop a theoretical framework which analyzes the factors affecting states’ behavior in implementing international norms.
5.2 What Implementation Is and Why It Is Important for States’ Compliance

Before delving into the implementation mechanisms adopted by states and into the theoretical aspects of the incentives behind states’ behavior in implementing international rules, it is of critical importance to correctly define implementation for the purpose of the present study and to highlight why it is important to analyze implementation in the overall compliance mechanism, that is to say why implementation is relevant for compliance. I define implementation as the process through which the

Domestic legal system of states nation incorporates international agreements in their domestic legal framework, whether by the passage of legislation or by the acceptance and incorporation of the international rules. The choice of the term “implementation” and the above definition follows a legal standard according to which implementation is the placement of the international norms into the domestic legal system regardless of the fact that the international treaty is “directly applied” in its entirety into the domestic system or the domestic system is altered/modified to create norms in line with the international obligations.

The necessity to dedicate a section of this study to the definition of implementation stems from the fact that scholars tend to debate this process and the correct term to use based on the extent of transformation of the domestic legal system following the ratification of an international agreement. Most of the times scholars have referred to the same stage with different terms considering
that various legal systems have at their disposal diverse procedures for the implementation of international rules. For example to indicate the same concept, scholars (see Jackson, 1992) and practitioners also use terms such as “incorporation,” “reception,” “adoption” and “publication.” All these terms in reality only point to the different procedures followed by states given the status of their domestic legislation vis-à-vis the international rules and/or the particular procedures states proscribed in internalizing international rules. But, they do not differ in the end result; the presence of the international rule in the domestic legal framework with the same binding character of any other domestic rule.

5.3 The Importance of Implementing International Agreements

Regardless of the mechanisms through which international agreements become internalized, scholars studying states’ compliance with international human rights law have overlooked the implementation of international agreements into the domestic legal system, assuming that implementation does not necessarily influence the effectiveness of international norms and state behavior toward supranational rules. Some studies (Conforti, 1993; Bayefsky, 2001; Koh, 1998) indicate that the effectiveness and relevance of international law resides primarily in the domestic legal and political realm of nation states, in the sense that the non-binding character of international rules and the absence of

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9 For example publication refer to the process through which some states assign binding character to passed legislation only after a period of publication of the legislation in governmental bulletin available to all citizens.
international enforcement mechanisms calls necessarily for the internalization of supranational rules where enforcement mechanisms are present. Nonetheless, there is still much to be analyzed about the relationship between international and national law. In particular, it is very evident that, in spite of the fact that national governments recognize the superior hierarchical status of international law over national law, by claiming to apply the international rules over any domestic legislation at odds with the international obligations, states still tend to show a rhetorical respect for international norms. Most of the time the acceptance and the incorporation of international rules in the domestic legal framework is disregarded by domestic legal operators and this, in turn, weakens considerably the effectiveness of ratified international obligations. Through the implementation of international agreements, states tend to give international obligations a certain status and signal a specific understanding of the position of international norms vis-à-vis national laws. In fact, as some part of the literature has argued (Koh, 1998) international agreements are toothless and weak, and only by “transforming” them into domestic law, through implementation procedures, can international obligations acquire some weight in the compliance mechanism. As the same scholars have cogently recognized, this is not to say that implementation will solve the problems of compliance and that international rules and obligations will never be violated. After all this is not even true for domestic laws, which are as well “not perfectly enforced,” in the sense that violations of domestic laws occur in spite of their binding character. However, the
internalization of international obligations provides further instruments to nation states to reinforce their compliance with international obligations.

These factors indicate that the incorporation of international norms in the domestic legal framework of states ratifying international agreements is of critical importance. While the process of implementation can be highly diverse due to legal and domestic political processes of various governments, the implementation of international norms in general and human rights treaties in particular is of critical importance in understanding states’ compliance behavior. As many scholars have already recognized (Scheinin, 2000; Conforti, 1993; Iwasawa, 2000; Donnelly, 1996 and 2003) the incorporation of international norms by domestic courts and other domestic legal operators, is the foundation of international law for two basic reasons. First, judges and “domestic legal operators” ¹⁰ (Conforti, 1993, p. 8) can apply these international norms in their domestic legal system increasing the strength and the binding character of international rules. Second, the implementation of international law and in particular human rights law is ultimately a national issue, because human rights violations occur within states and are committed by domestic political actors.

With regard to the first point, evidence shows that the international system of human rights protection “has had its greatest impact when treaty norms have been made part of domestic law more or less spontaneously (for example as part

¹⁰ According to Conforti (1993) “Domestic legal operators are those charged by the State community to apply and enforce law and include judges, first and foremost.” (p. 8)
of constitutional and legislative reform)" (Heyns and Viljoen, 2002, p. 5). From an operational point of view the incorporation of a human rights treaty into the formal body of a domestic legal system is the result of a constant interaction between international institutions and domestic actors. Scholars (Koh, 1998; Slaughter, 2001) have indicated that one of the most important aspects in the internalization process of international human rights law is the vertical relationship between international entrepreneurs and national operators. Bayefsky (2001) writes of a “cycle of engagement” in which the most critical moment is the periodic dialogue between national legal operators and international institutions supporting human rights treaties discussing domestic laws and policies and checking them against international obligations. The attention devoted to this process of engagement clearly shows that both scholars and practitioners are aware of the importance of the implementation of international agreements. Indeed, the result is that the internalization of international treaties allows and facilitates judges and domestic courts to apply their provisions when they are invoked by individuals. This is to say that the goals that international human rights laws tend to pursue can be achieved by the internal legal system of governments; international obligations transformed into national laws can use the same tools of support that domestic legislation use.

11 Leonard (2005) indicates that for example Europe’s power, when it comes to enforcing international law, stands on its ability to contribute to the democratization process of countries, which present their candidacy to the Community, and to make them “swallow all 80,000 pages of European laws and adapt their own legislation to accommodate them.”(p.45) The adaptation of their legislation, although within some margins of allowed domestic discretionality, is a condicio sine qua non for their entrance into the European Community.
In fact, as indicated above, the absence of enforcement mechanisms at the international level weakens the binding character of international norms. In many cases, international institutions can only play a secondary role due to the lack of resources of international organizations as well as the lack of a deep understanding of domestic mechanisms of justice; even more as cogently pointed out by scholars (Cassese, 1990; Conforti, 1993) “the international community does not have at its disposal the legal means to enforce international treaties effectively and impartially” (Conforti, 1993, p. 10). It is true that several human rights treaties have created international organs and institutions for individuals’ complaints, but it is also true that most of these international institutions can only intervene once all the domestic mechanisms of individuals’ rights protection have been exhausted. Thus, it has been recognized that the “central procedural principle of the contemporary human rights regimes is the national jurisdiction over human rights violations” (Donnelly, 1996, p. 608).

Scholars (Koh, 1998) call this process as one in which “the international law is brought home.” One of the steps through which international law is enforced domestically is through the domestic legal enactment of global norms which give national actors the opportunity to directly interact with international rules and organizations thus pressuring leaders to shift “their policy of violation into one of compliance” (Koh, 1998, p. 1412). According to Koh the enactment of international law evolves in different steps and all of them lead to a domestic
acceptance and enforceability of rules that would otherwise remain domestically powerless.

The above argument indicates that, instead of fighting the idea that international law is powerless when it comes to enforcing international human rights standards, we should understand that this is not something that has no solution whatsoever but that there domestic mechanisms, political actors, and institutions that need to support international law. The link between international institutions and domestic operators allows for the internalization of international laws. Given these circumstances, the implementation step of compliance becomes even more important. Indeed, scholars suggest that there is a very small window of opportunity for international law to be successful at the domestic level and this opportunity seems to reside in the 1) willingness of states to make international laws and obligations part of the national legal or political order (the so called “domestication of international law”) and 2) the willingness of states to respect and observe their national law (whether constitutions or ordinary laws) that are consistent with their international legal obligations. With regard to the first points, we can definitely say that in many countries, especially those with a strong democratic tradition and respect for the rule of law, we find more or less specific forms of domestic constitutional and legislative commitment to international law. That is to say, that some legal systems establish the implementation process of international obligations “on paper” through constitutional norms or other forms of legislative mechanisms. However, this step
is mainly important because once rules that regulate how norms are implemented are written, international rules acquire additional strength only when “domestic legal operators” use the mechanisms provided to them to actually shape the national legislation; Generally, states have shown over time a tendency to use the international instruments to create domestic legislation in line with supranational obligations. In certain issue areas, such as human rights, the creation of domestic legislation has been largely influenced by international norms and domestic norm creation has been internationalized to create a legitimate jurisdictional response to human rights violations. As I argued above, the implementation process has been one that has seen a consistent interaction between domestic norms and international legal standards. The presence of these norms, to which judges and courts can directly appeal to protect individuals’ claims most certainly facilitates and could improve the level of states’ compliance with international treaties. The occurrence of breaches of norms set by international agreements can only be counterbalanced by the adoption of measures that could bring the domestic legal system up to the international standards. It is only the presence of a legal system mirroring international obligations that can provide an effective check on the compliance of political actors. Thus, national courts and/or domestic arbitration courts are somehow

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12 There are several examples of government legislatures following international standards imposed by the Convention against Torture. After ratification of CAT, Canada amended its Criminal Code and redefined the criminal offense of torture. Strangely enough, Iran Constitution has been reported, from an implementation standpoint, as including the most important norms on human rights according to the international standards. Russia has been gone through an extensive amendment of its criminal code after the ratification of CAT.
empowered by the inclusions of human rights instruments into the domestic system, which in turn facilitates the overall compliance with international norms.

The second reason why the incorporation of international human rights norms by domestic courts and other domestic legal operators is of critical importance is because the foundation of international law resides in the nature and loci of human rights violations. I earlier argued that the implementation of international law is important because it facilitates the application of international obligations by judges and courts. However, there is another very important reason why implementation would help states’ compliance with international law and facilitate the monitoring of compliance; the incorporation of international rules empowers individuals who can rely on norms existent within their legal system. This is to say that citizens are better able, in cases of human rights violations to discuss and redress their rights in a forum that is familiar to them, rather than in front of foreign supervisory committees or international courts. It is always essential to remember that human rights violations “do not occur in high seas, or in the outer space outside the jurisdiction of any one state” (Steiner et al., 2008). The enjoyment of human rights protections must come from within the state. This is the main reason why, today the nature of human rights treaties has changed dramatically; international law is not relegated to the administration of issues between sovereign states. International human rights treaties have penetrated domestic sovereignty in regulating the relationship between governments and individuals. States are identified as the principal violators of human rights and,
thus, they are the focus of attention by human rights treaties. International regimes have become increasingly oriented toward the regulation of the treatment of citizens by their own government. Studies have shown that international human rights treaties tend to regulate and address issues and threats that arise from within states (Slaughter and Burke-White, 2006). Thus, more often than not these circumstances creating violations of international obligations can only be addressed by the domestic actors that have a legislative and jurisdictional power to modify them. Ultimately the relationship between international law and national law must be seen as one in which, international law seeks to shape the domestic legislation, the political institutions, and the government actions of states, and in which the national legislation is the true depositary of the instruments to promote the furtherance of international rules.

5.4 The Different Implementing Mechanism and the Importance of Regime Type

This section of the chapter analyzes the different mechanisms that states use to implement international law into domestic systems. Regime type is one of the main factors affecting states’ behavior toward international human rights law in the theoretical framework of this work. Thus in this section, I highlight certain characteristics of regime types that are usually paired with specific mechanisms that could facilitate or aggravate the process through which international law becomes domestic legislation. Additionally, analyzing the mechanisms that states use to implement international law is important because they are indicators of the
standing of states toward international agreements and the institutions that support them. In fact, we can say that nation states that show implementing procedures that facilitate the introduction of international obligations at the national level tend to show a higher commitment to those obligations than states that lack the same kind of mechanisms.

The passage of implementing legislation for international treaties is not always a necessary step for states to undertake in order to incorporate international law into their domestic structure. Some agreements, especially those of a constitutional nature, are self-executing. Other times states may have constitutional provisions that give international agreements automatic access into the domestic system without any further legislative or political procedures. However, although such instances are present under certain circumstances, most of the time states need to either remove some kind of domestic obstacle to the full implementation of international obligations or start a legislative, executive, or judicial action to incorporate international norms.

As suggested above, states vary in the mechanisms they set up to implement international law and the variation is mostly the consequence of differences in regime type which affects the constitutional and political process through which domestic decisions are taken. Generally speaking we should expect states that have a very strong constitutional tradition, a high respect of the rule of law, and well-designed institutional arrangements to possess
implementing procedures that facilitate the incorporation of international rules into the domestic system.

In assessing the procedures through which states implement international laws, international law scholars tend to synthesize the different stances taken by states towards international law as falling under the “monist” or “dualist” paradigms. According to this division, monists tend to see international law and national law as part of a single legal order. In these jurisdictions there is no need for any domestic implementing legislation and international law is considered superior to national law. Usually, regime types that possess well established legislative processes in which, for example, there are legislative subcommittees or legal operators adept at examining legislation in different issue areas and providing an evaluation of norms to be implemented tend to have a “monist” setting. In this case, states tend to automatically introduce the ratified international norms without special procedures but only the evaluations of legal operators. In this case, international law scholars tend to categorize these states as constitutional regimes that have a lengthy tradition of respect for the rule of law and that tend to recognize the superiority of ratified international treaties by modifying contrary international legislation. However, within the “monist” vision, even when states abide by the direct application principle of international law, problems may rise due to the possible unforeseen clash between international and national norms. Under these circumstances the principle of direct application would suggest that the treaty norms should prevail. Nonetheless, quite often this
solution does not meet the favor of national legislators and, what is called the “trumping effect” of international treaties, becomes a reason for state legislators to modify the constitutional processes of international treaty acceptance. It is quite common to observe this kind of behavior when domestic institutions face a certain amount of pressure from different sectors of society, either domestic constituencies or other institutions that perceive the international treaty as contrary to their interests. In this case it is quite common that a state makes a transition from a monist view of the relationship between international and domestic law to a dualist view. This circumstance has been observed by many influential scholars, who point out that (Heyns and Viljoen, 2002; Conforti 1993) “even convinced monists must recognized the reluctance of domestic legal operators to implement an international agreement without a general or specific internal rule explicitly or tacitly directing them to do so” (Conforti, 1993, p. 26). One case in point is Mexico, which in spite of the monist approach to international law, applies only international treaties that have been formally incorporated by the domestic legislation or that have caused the modification of national norms already existent at the time of the treaty ratification.

Dualists see international and national law as two separate legal orders. In these cases for international law to be valid in the domestic system, it must be implemented through a domestic legislative process, which is aimed at transforming the international norm in a national rule. In certain jurisdictions, regardless of the constitutional nature of some treaties, states condition the
implementation of international human rights law into their domestic legal system to the passage of implementing legislation which follows the domestic rules for the creation of specific legal obligations. These states choose to examine the treaty content, condition some of its rules to particular considerations or declarations, or decide to exclude the direct effect of some of the treaty rules. Such actions signal a very different understanding of the relationship between international law and national legislation. In these cases, most of the times, political officials and legislators have a very low degree of trust in international institutions and in the international legislation process; they fear that the direct implementation of an international treaty could result in the empowerment of opposing political forces or would weaken governmental power. The introduction and incorporation of some treaties can create a general awareness of the relevance and power of international law for some groups in society and to the pressures, from the same groups, for the incorporation of other treaties. Other states condition the ratification of a treaty to the adoption of a domestic law that is already implementing the international obligations. In adopting the dualist view other states tend to exclude altogether the domestic applicability of international human rights norms to a traditional core of rights, which can have a long standing tradition, both legally and judicially.
5.5 The Implementation Requirements and Monitoring System of CAT

5.5.1 Introduction

As stated in the introduction to this chapter, there has been an increasing proliferation of mechanisms created by states that are parties to human rights treaties to monitor states’ behavior toward international law. In particular, international agreements have been increasingly supported by international institutions that would monitor the efforts made by nation states to adapt their national legislation as well as their actual behavior regarding international obligations.

In this section of the chapter I analyze the monitoring mechanism and institution set in place to supervise states’ implementing obligations of the Convention against Torture. This step is necessary for two main reasons. First and foremost it gives us a better understanding of the implementation mechanisms associated with CAT and the difficulties associated with the same mechanisms. Second, the Committee against Torture (the institution set to monitor states' behavior toward CAT) and its reporting system are the main source of information to evaluate the implementation status of CAT by ratifying states. This second point is particularly important because I illustrate the mechanisms the Committee uses to collect information which in turn become the data I use in testing my theoretical framework.
5.5.2 The Implementation Requirements

States that are party to the Convention against Torture are required to implement the terms of the Convention through their own legal systems. Article 2 of CAT defines the type of obligations which states incur after the ratification of the international treaty. There are different components regarding states’ obligations under article 2. Article 2 indicates what kind of measures states need to take to implement the Convention, which refers to the tools states possess to generally implement international legislation (legislative, administrative, judicial tools). Article 2 also indicates the extent of states’ responsibilities in preventing torture. States cannot invoke particular justifications for the occurrence of torture and should prevent such acts from happening, as well as punish violations of the convention.

Article 2 reads:

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

3. An order from a superior office or a public authority may not be invoked as a justification of torture.13

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13 The words of article 2 in defining states’ obligations have come under heavy criticism because of the vagueness of the description of states’ responsibility, which inevitably leads states to have more discretional power in applying the rules that have been ratified. The way the mechanisms of implementation have been listed in the Convention seems to suggest that states have certain margin of appreciation on what kind of measures are more appropriate in the implementation of the agreement. The Convention against Torture and article 2 in particular do not specifically require states to implement the international obligations in a specific manner. Boulesbaa (1990) suggests that the words of article 2 are somehow permissive on different levels. On one side, it is
For the purpose of the present chapter it is particularly important to analyze whether states have taken the legislative, administrative, and judicial steps to prevent acts of torture, which would make the national legal system closer to the international legal obligations dictated by CAT. On this point, it seems by the interpretation of article 2 that the Convention establishes two specific implementing requirements. First, the conformity of the law with the requirements of the Convention must be followed by the administrative and judicial domestic application of those norms. Second, states party to the Convention cannot fail to adopt legal standards of the treaty after ratification citing "irreconcilable differences" between the international and national rules, whether they are constitutional or ordinary national norms. Thus, we could conclude that states are obliged after the ratification of the Convention against Torture, at least, to incorporate into their legal systems the basic legal and administrative requirements that could, in the first place, prevent torture from occurring and, in the second place, condemn instances of breaches of the Convention, by redressing human rights violations.

not clear from the letter of the norm to what extent states are responsible for the occurrence of torture on their territory. In fact, while the norm uses the words “take measures to prevent acts of torture”, it does not imposes on states a greater burden of “ensuring” that acts of torture will never happen or the prohibition of committing torture themselves. Although, this would have been better solutions signaling the importance of the Convention to a greater extent, worries about the reluctance of states to sign and ratify international treaties, which impose these kinds of burdens, has made the states participating to the preparatory stages of the Convention to use a more flexible language. On the other side, it becomes extremely difficult to understand from article 2 if states have a precise time frame within which they need to modify their legislative and administrative setting after the ratification of the treaty. The use of the words "shall take" leaves a great amount of space to governments and domestic legal operators to ensure the conformity of national law with the international obligations.
5.5.3 The Committee against Torture and the Reporting Procedures

The Convention against Torture does not provide states with specific implementing guidelines. Thus, in understanding and examining whether states do implement the convention’s requirements the monitoring process followed by the Committee against Torture\textsuperscript{14} is especially important. The Committee against Torture and its reports become an important source of information about states’ implementation procedures and violations of implementation obligations. The presence of an international institution interacting with national legal actors generates the periodic pressure over ratifying states to gather information about the status of human rights in their country, to illustrate political solutions, and demonstrate some commitment over time.

Generally speaking, human rights conventions have increasingly set up committees to monitor the implementation mechanisms by the contracting parties. These committees are considered to be international organizations in all their capacities and most of the time they perform functions of a legal character by discharging recommendations and communications to the state parties to the agreements. As scholars (Meron, 1982; Bayefsky, 2001) have pointed out, the creation of supervisory bodies that would monitor implementation and compliance mechanisms of state parties to the treaties has become one of the

\textsuperscript{14} According to the Office of the United Nations High Commissioner for Human Rights “The Committee Against Torture (CAT) is the body of 10 independent experts that monitors the implementation [of CAT] by its states. States parties are obliged to submit regular reports to the Committee on how the rights are being implemented.”

http://www2.ohchr.org/english/bodies/cat/index.htm
major factors in the proliferation of international human rights treaties. Like most other human rights treaties, CAT has created the Committee, and gives to its members specific mandates for the analysis of the implementation process by state parties.

Before analyzing the problems faced by the Committee against Torture in serving its mandate, I give a brief description of its organization. According to the definition given by the Convention, the Committee against Torture is a body established to monitor the implementation of CAT, the compliance with the Convention in terms of absence of violations of human rights, and to receive complaints with regard to the occurrence of violations.\textsuperscript{15} The Committee consists

\textsuperscript{15} While the monitoring of the legislative implementation of the treaty provisions is made possible by the “reporting procedures” imposed by the Convention on the States and by a more feasible analysis of the domestic legislations by the expert members of the Committee against Torture, the monitoring of the effective compliance in terms of absence of instances of torture is a little more difficult. Many international law practitioners lament the fact that the Committee has not been accorded the possibility of periodic inspection visits without prior notification to the party members to the Convention. In 2001 was reported that the Committee had only performed one visitation. Under Article 20(3) the members of the Committee against Torture, nominated according to Article 17, can only make an inquiry to a State Party, including the request to gain permission to visit its territory, only following the communication of other States Party or individuals that a government is violating the terms of the Convention. The absence of an element of surprise to the possible visitation of the territory of a State Party and the fact that States can declare not to recognize the competence of the Committee to receive communications circa possible violations, de facto deprives the Committee of the power of monitoring states’ effective compliance with the international obligations and/or with the domestic laws incorporated into the national legal system. To put a remedy to the shortcomings of the Committee’s monitoring powers, in 2002, the General Assembly of the United Nations adopted the “Optional Protocol to the Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment”. The Optional Protocol, which entered into force in June 2006, on the 30th day after the deposit of the 20th instrument of ratification, established a Subcommittee on Prevention to which is granted unrestricted access to the territory of the State that ratify the Optional Protocol. This new instrument, attached to the Convention against Torture, offers a novel opportunity to scholars to understand the nature of State commitment to the Convention against Torture. Generally speaking states party to human rights treaties do not deal well with amendments to the original framework of obligations, especially with amendments aiming at improving the monitoring system of human rights implementation and compliance (Bayefsky, 2001). This consideration is currently proven by the fact that of the 148 members to CAT, only 74 have signed the Optional Protocol and of those 74, only 56 have ratified it, thus recognizing the competence of the
of ten experts who are elected by state parties and are nationals of state members to the Convention. Their mandate is to act, not in the capacity of national representatives, but in their personal capacity as experts.

A state party is required to submit its first report to the Committee against Torture within one year of the ratification of the Convention and then submit one report every four years. These reports are intended to communicate to the Committee the measure that states have taken to give effect to their obligations under CAT. These reports are then considered by the Committee against Torture, which, at the end of its evaluations, communicates conclusions and recommendations to the governments of the state parties.¹⁶

Subcommittee. Many factors can cause states to avoid the ratification of the Optional Protocol. First and foremost, the Optional Protocol is an additional burden on states’ sovereignty that could not have been possibly anticipated at the time of the ratification of CAT. Second, the domestic awareness of the existence of the Protocol, by NGOs, media, and practitioners seems to have been quite sporadic. Since 2007, the Subcommittee has only been able to visit 10 countries and undertake one follow-up visit in Paraguay whose report has yet to be released. As the membership to the Optional Protocol would hopefully increase, it would be particularly interesting to examine the criteria leading the Subcommittee to initiate a visitation. According to Article 2(3) of the Optional Protocol the Subcommittee “shall be guided by the principles of […] impartiality, non-selectivity, universality and objectivity.” However, states have in different degrees complain of various problems with the monitoring bodies; common complaints have included lack of objectivity of the monitoring body due to the presence among its experts of individuals from geographic regions or countries hostile to another region or country; bias toward a specific requirements of human rights standards for a specific region of the world; and so on.

¹⁶The presence of monitoring systems of state behavior has inevitably created major problems in terms of the relationship between international organs and domestic political actors. Generally, the difficulties that all monitoring organs - set up by human rights treaties - have encountered relate to the coordination between these international organizations and national political actors; problems of overlapping jurisdictions, conflicts related to the legislative decision making, and complaints about the competence of the supervisory bodies have been extremely frequent. As all the other human rights monitoring bodies, the Committee against Torture faces widespread reluctance on the part of state parties to cooperate (Bank, 2000). However, the reporting procedure has also encountered various problems due to the Committee’s efficiency. Scholars (Ingelse, 2001) point out to the lack of impartiality in evaluating reports by the members of the Committee, as well as lengthy sessions that have overtime delayed the reporting system. Also, the Committee against Torture has, from time to time, shown very little understanding of some of the domestic legal systems of the states to which recommendations were sent as well as,
The greatest obstacles to the effective functioning of the monitoring procedures by the Committee come from the state parties themselves. Members to the Convention have hardly ever submitted their reports on time\(^\text{17}\) and when reports have been submitted, there has been a widespread refusal by states to provide legislative remedies. In its 2006 annual report the Committee against Torture reported that 62% of the state parties had overdue reports\(^\text{18}\) and that most of the same states had not responded to solicitations to comply with the reporting procedures by the members of the Committee. In many cases, states ignore the Committee recommendations by either not responding to the request for follow up reports or by dismissing the request of implementation procedures.\(^\text{19}\)

\(^\text{17}\) This trend of overdue reports is not something peculiar to the state parties to CAT. It has been reported that (Bayefsky, 2001) an average of 70% of the state parties to every treaty has overdue reports and that 25% of them have initial overdue reports. In response to this low level of compliance the international community has proposed to allow the monitoring bodies of human rights treaties to initiate discussions and send recommendations about the implementation to countries even in the absence of their reports, however, it seems that the general trend is to only consider countries after they submit their reports.

\(^\text{18}\) The report can be found at [http://www2.ohchr.org/english/bodies/cat/reports.htm](http://www2.ohchr.org/english/bodies/cat/reports.htm), the data are reported on page 135.

\(^\text{19}\) Jamaica has for example consistently ignored the request of the Committee against Torture to change its criminal procedural norms to establish that military and police officials accused of serious violations be tried by civilians rather than military court.
In attempting to answer the question as to why there are so many overdue reports and very slow implementation procedures, scholars consider a wide array of factors. Studies show that states ranking low in economic and social development have the greatest number of overdue reports and that many are situated in Africa (Bayefsky, 2001). By analyzing the list of countries provided by the Annual Reports of the Committee that have overdue reports, it seems evident that most of these countries have political and social conditions (such as autocratic governments or high level of poverty) that negatively affect the willingness of political leaders to work on reports on modifying the domestic legislation. In fact, reports tend to be, particularly for under-developed nations, a difficult and onerous process to undertake. They require the consultation and compilation of comprehensive information and the collaboration of multiple domestic political actors. Especially because of the necessity of cooperation among different domestic institutions, late reporting is usually ascribed to states that are going through a process of political transformation (e.g. democratic transitions), which implies the presence of not well-established domestic institutions in the legislative and administrative realm. Additionally, countries that are going through periods of political instability, experiencing the collapse of traditional institutions, and the presence of violent protest tend to have overdue reports. Lastly, some of the countries that comply less often with the reporting procedures lack the presence of an independent judiciary or the presence of domestic human rights organizations, which obstruct certainly the impact of
human rights treaties in general and their monitoring ability in particular. These are also the same countries that incur in the failure to implement the international rules set by CAT into the domestic system.

This brief overview of the reporting procedures provides a broad background of the mechanisms behind the implementation of CAT. In the following of this work I use states’ report to the Committee against Torture and the recommendations of the Committee to the states to evaluate the status of states’ implementation of their obligations.

5.6 Understanding States’ Willingness to Implement International Human Rights Treaties

5.6.1 Introduction

As argued in the introduction to this chapter, for a long time, scholars (Wilson, 1964; Vereshchetin, 1996) have observed that “the continuing practice of making reference to international law in national constitutions has not produced any one form of wording that has found general adoption” (Wilson, 1964, p. 432). The increased reference to international law standards and a rhetorical recognition of its superiority have not produced a harmonization of international law and national legislation. The reasons behind this contradictory situation of increasing “internationalization” of domestic legislation and, at the same time, states’ difficulties in accepting verbatim the rules of international legal instruments, resides in the fact that the implementation of international law is both a legal and political process. States that have ratified international human
rights treaties and do not adapt their domestic legislation do so because they may not possess the willingness or the capacity to change their domestic legal systems, and because they may fear the consequences of implementing human rights treaties while facing some kind of threats. Typically states that do not implement human rights obligations do so because of one of the following reasons.

First, there may be costs associated with the internalization of international obligations. Implementing international agreements can be a time consuming process and result in the limitation of state sovereignty on the control of the domestic legislation. These costs are usually processed differently accordingly to whether the state is a democracy, an anocracy, or an autocracy, and depend upon different factors. One reason affecting the costs may be the amount of changes that states must make to their domestic legal framework to implement the international obligations. Certain states may need to only make small changes to their domestic legislation. Most of the times democracies, which are traditionally more respectful of the rule of law are also more likely to possess a system of human rights protection in place, while anocracies and autocracies may need to make substantial additions or changes to their legislations. However, on this point scholars (Moravcsik, 2000) have also recognized that democracies are better suited at harmonizing preexisting human rights guarantees than creating guarantees that are non-existent. This is because, since democracies already possess a system of human rights guarantees, the
implementation of international human rights standards will benefit their legal system very little, while imposing some amount of costs.

Additionally, the different regimes may have political elites that cope with the pressure of international obligations in different ways and thus may be more or less inclined to accept the international norm and/or promote its inclusion. For example, on one hand political elites in anocracies and autocracies tend to enjoy a certain freedom from accountability and fear costly consequences in implementing ratified human rights obligations. Democratic elites on the other hand may feel the pressure of the domestic constituency and other political actors competing over the control of government, and evaluate the desirability of implementation based on the interests and preferred political outcome of these actors in society.

Second, as I argued earlier the implementation of international human rights laws empowers citizens, judges, and prosecutors. As a consequence, these domestic actors may pressure and hold accountable states into following international human rights standards at all times, even when national interests are threatened. States, however, may be reluctant to implement ratified agreements in the face of threats jeopardizing national security. In these cases states prefer to retain an unchecked monopoly on coercion, recognizing that there is a trade-off between human rights standards and the protection of the national security. As scholars have recognized “political leaders […] arrogate the
right to determine national interest and security threats, undermining democratic check and balance and creating a politics of fear” (Brysk and Shafir, 2007, p. 1).

Both reasons above indicate that the implementation phase of compliance with international human rights law is not any different from the other two phases. Factors affecting the willingness of states to implement international obligation are not only legal or political, but also determined by threats undermining national security. Indeed, if only the legal and political characteristics of a state affected implementation, we would observe a certain consistency in the overall implementation trend by states. That is to say, generally speaking we would expect regime types that possess a very well established legislative process, a fair system of political competition, and tradition of stable political institutions to implement international human rights norms to a greater extent than states that do not possess the same kind of legislative process. On the contrary, sometimes the implementation of international legal standards has been frequent in countries that have weak and unstable political institutions. While other times, long standing constitutional democracies, in spite of being strong supporters of international human rights treaties, have been reluctant to modify constitutional provisions or create new norms to make international human rights standard part of their domestic legal system. These considerations indicate that the decision of countries to implement international legal norms and in particular international

20 Vereshchetin (1996) indicates that, for example, many of the constitutions of countries of the East-European region, previously members of the Soviet Empire have as common feature openness toward international law. This may be the consequence of the expectation that the incorporation of international legal standards could prevent atrocities from occurring again.
human rights norms is far more complex than the facto recognition that international law is important. Domestic political settings greatly affect the decision of governments to change their domestic legal provisions to pay respect to supranational rules; they affect the way states process the costs attached to implementing human rights laws. However, the costs associated with the internalization of human rights laws are also determined by the perception of threat, which regardless of the regime type and the institutional settings, may determine whether or not states implement human rights laws. Following the scheme of this work, I develop a theoretical perspective on the implementation process that examines the calculations of these costs and benefits according to the regime type of states and tries to investigate the conditions under which countries tend to adopt a behavior that is contrary to their international obligations. Indeed, as for all the other stages of compliance, we should expect that everything else being equal, countries that respect the rule of law, that have an open polity, and respect the freedom of their constituency should be more willing to implement international human rights standards than those that do not have the above characteristics. However, when circumstances threatening national security raise the factors determining the amount of costs and benefits is not the regime type but the way states process and respond to threats.

5.6.2 Regime Type, Costs, Benefits, and Implementation

Regime type affects the willingness to implement international human
rights obligations because of the costs and benefits associate with the process of transforming the domestic legal system. These costs may of two different types; there are costs associated with amount of changes that must be made to the domestic legislation to accommodate international norms. Then, there are costs that are associated with the absence of institutions able to work on domestic legislation.

As I argued earlier, we would expect a regime which respects the rule of law and has stable political institutions to implement international human rights treaties expeditiously for various reasons. If it is true that these regimes tend to ratify international human rights laws because their political systems are already embedded with the rule of law and value greatly a system of human rights, it is true that they need to change very little of their domestic legal framework. The familiarity that such regimes, usually democratic states, have with the values and norms of the type included in the international agreement enables them to incorporate international human rights laws more easily. Therefore, principally because of their normative and political commitment to international law, we should expect that the greater the level of democracy the greater the likelihood that human rights regimes would be implemented quickly. Scholars indicate (Moravcsik, 2000) that the success of implementation procedures in liberal democracies is mostly due to the convergence of domestic norms and international norms; liberal democratic states abiding by their own set of rules simply tend to proximate their domestic norms to international rules. Additionally,
democracies are traditional supporters and actors in the making of international law, and thus most of them already possess mechanisms that automatically help the incorporation of international agreements into their domestic structures. To this regard, international relations scholars (Bayefsky, 2001) discussing the impact of international human rights norms at the domestic level have suggested that human rights norms presuppose robust domestic legal institutions. In particular, the presence of traditional legislative processes and well established forms of communication and cooperation among the different legislative and administrative domestic organs, allows for a more efficient coordination of the domestic legislation with the international organs assigned to monitor the implementation process. Furthermore, as discussed at great length above, domestic institutions are the source that can further domestically international legal objectives. As pointed out by Slaughter and Burke-White (2006) strong and independent institutions, well established constitutional frameworks, uncorrupt political processes, and a system of check and balances with an independent judiciary, should create a domestic environment conducive to smooth implementation of international rules. Ultimately, all these factors lower the costs states may face to implement international human rights obligations; they have probably a set of rules protecting human rights already in place, institution adept to create laws, and a strong legal tradition.

Hypothesis 5.1: Democracies are more likely to implement human rights agreements than autocracies and anocracies.
However, some have suggested (Moravcsik, 2000) that, since democracies hold high standards of human rights and good democratic institutions, they tend to “support rhetorical declarations in favor of human rights and regimes.” This seems to imply that, while democracies strongly maintain the importance of incorporating international human rights standards into domestic legal systems, at the same time, as I anticipated above, they are aware that the implementation process of those standards in their legal framework would benefit their systems very little, while imposing, on the contrary some costs. This is even truer for states that have a strong domestic legal system that tends to resist the implementation of international rules based on the assumption that the domestic legal framework is sufficiently robust. In these cases there are strong evidences that countries with a long legal tradition tend to guard their legal system jealously, by resisting any type of action that may hinder their sovereign control over domestic norms and, thus, resisting recommendations or communications from international organizations supporting international human rights treaties. Thus, on one hand, democracies have already legalized standards of human rights protection which do not need international norms to be improved. On the other hand, the implementation process always requires some kind of legal and political commitment on the side of the government, which involves time consuming procedures and creates a legitimate ground for the interference of international monitoring institutions.
This may entail that, when democracies need to make considerable changes to their domestic legal framework in order to implement international human rights laws, they may refrain from doing so. Scholars (Goldsmith and Posner, 1999) have described this phenomenon as the democratic double standard to indicate that democracies are more likely to ratify agreements that enforce some kind of standards on others’ regimes. As Henkin (1994) wrote about the United States, many democracies share “a common view [...] that international human rights are good but not for [them].” Furthermore, the reluctance of democracies to move to the full implementation of human rights treaties departing from domestic legal provisions is detectable already at the ratification stage. Scholars noted that (Goodman, 2002), democracies tend to submit reservations and declarations to either limit or clarify the international obligations by which they considered to be bound. In this case it is indeed the regime type that affects the perception of the costs and benefits associated with the implementation process. That is to say, regimes that have a very strong rule of law and a domestic system of protection of human rights tend to see the implementation of new international rules, which require some form of domestic legal modification, as an unnecessary burden. As well, democratic regimes usually provide judicial and administrative solutions to the same issues the international agreement tries to solve. In summary the result, in this case is both the consequence of the nature of the regime and the type of implementation that the international agreement requires.
Hypothesis 5.2: Democracies are less likely to implement human rights agreements than autocracies and anocracies.

The evaluation of regime type affecting the perception of costs in implementing international agreements is particular important with regard to anocracies and autocracies. First of all, it is very likely that these regime types do not have traditional human rights legal standards into their domestic legislations, thus implementing international human rights laws could change their legal setting built around rules that tend to restrict and constrain citizens’ rights. It is also likely that these regimes lack a set of institutions that are allowed to work independently from political oppression, on legislations enhancing citizens’ rights. This is particularly true for anocracies which, as scholars (Gurr, 1974, p.1487) have recognized, “ha[ve] minimal functions, an uninstitutionalized pattern of political competition, and executive leaders constantly imperiled by rival leaders.”

Secondly, these regimes lack any respect for the rule of law, any form of constitutional mechanism that could ease the implementation of international laws, and offer very little support in their deference for human rights and civil liberties. Thus, these regimes, that ratify human rights treaties because they anticipate very little costs in terms of enforcement mechanisms, might find such treaties extremely costly, in terms of political effort needed to step further with the implementation. Ultimately, both the legal and institutional domestic settings that would favor the rapid implementation of human rights treaties in democratic political systems are non-existent in autocracies. Non democracies have no mechanisms that would suggest that the international norms can be directly
applied. Moreover, non-democracies do not have a tradition of a domestic human rights culture. Thus, in order for human rights treaties to be internalized an enabling domestic environment is necessary. Non democracies generally are unwilling to face domestic confrontation and tend to respond to political demands with oppression. This makes them very reluctant to incorporate into their domestic legal systems norms that may improve citizens’ awareness of international norms protecting human rights and, even more, the monitoring capacity of the institutions created to support the implementation of human rights norms.

Hypothesis 5.3: Autocracies and Anocracies are less likely to implement human rights agreements than democracies.

5.6.3 Regime Type, Political Elites, and Implementation

States acting in the international realm cannot be considered isolated actors. They are greatly influenced by domestic constraints. Putnam (1988) suggests that when states operate at the international level they must negotiate with two sets of actors: other states and domestic actors whose interests may be affected by international obligations. This implies that the similarity between international human rights policies and domestic legal interests is important for a full implementation of international obligations in a democratic setting. Thus, where some parts of these provisions deviate from the preferred policy outcome of important, domestic, political interests whose support is crucial for the implementation of the treaty, states may choose to not proceed to the
implementation of the agreement to demonstrate their cognizance of the concerns raised by these domestic interests. According to the framework presented by Putnam, we need to think of the implementation process as a stage in which governments are still attempting to bargain between contrasting interests. On the one hand, there are very strong domestic interests that need to be protected vis-à-vis the content of international norms. On the other hand, democratic governments due to their long-standing tradition of respect for international norms. This theoretical approach presupposes that the constituencies have significant leverage on governmental officials and can affect their chances of staying in power. This is usually the case for democratic governments that allow for frequent, free and fair elections and have a system of check and balances among the different branches of governments. Moreover, domestic political actors caught in between national and international contrasting interests are even more reluctant to implement international human rights treaties that have been amended over time to include novel and unforeseen obligations at the moment of ratification.

Lastly, the implementation of international norms may create some sort of conflict within the domestic system. It is not infrequent that the legislative process of one country requires the passage and vote of many political actors that represent different interests. Some legislators may desire to interpret an international norm in a certain fashion to protect a particular set of interests. The legislative process of one country requires the passage and vote of many political actors that represent different interests. Some legislators may desire to interpret an international norm in a certain fashion to protect a particular set of interests. The legislative process of one country requires the passage and vote of many political actors that represent different interests. Some legislators may desire to interpret an international norm in a certain fashion to protect a particular set of interests. The legislative process of one country requires the passage and vote of many political actors that represent different interests. Some legislators may desire to interpret an international norm in a certain fashion to protect a particular set of interests. The legislative process of one country requires the passage and vote of many political actors that represent different interests. Some legislators may desire to interpret an international norm in a certain fashion to protect a particular set of interests. The legislative process of one country requires the passage and vote of many political actors that represent different interests. Some legislators may desire to interpret an international norm in a certain fashion to protect a particular set of interests. The legislative process of one country requires the passage and vote of many political actors that represent different interests. Some legislators may desire to interpret an international norm in a certain fashion to protect a particular set of interests. The legislative process of one country requires the passage and vote of many political actors that represent different interests. Some legislators may desire to interpret an international norm in a certain fashion to protect a particular set of interests. The legislative process of one country requires the passage and vote of many political actors that represent different interests. Some legislators may desire to interpret an international norm in a certain fashion to protect a particular set of interests. The legislative process of one country requires the passage and vote of many political actors that represent different interests. Some legislators may desire to interpret an international norm in a certain fashion to protect a particular set of interests. The legislative process of one country requires the passage and vote of many political actors that represent different interests. Some legislators may desire to interpret an international norm in a certain fashion to protect a particular set of interests. The legislative process of one country requires the passage and vote of many political actors that represent different interests. Some legislators may desire to interpret an international norm in a certain fashion to protect a particular set of interests. The legislative process of one country requires the passage and vote of many political actors that represent different interests. Some legislators may desire to interpret an international norm in a certain fashion to protect a particular set of interests. The legislative process of one country requires the passage and vote of many political actors that represent different interests. Some legislators may desire to interpret an international norm in a certain fashion to protect a particular set of interests. The legislative process of one country requires
to its constituency. This is also more frequent when the international norm to implement is particularly ambiguous and leaves some room for interpretation. It is also quite often the case that the implementation of an international norm touches issues such as the identification or creation of a domestic authority in connection with the furtherance of international obligations which may initiate a power struggle used by certain governmental institutions to gain some leverage on other governmental entities. If states and institutions are particularly strong to counterbalance these kinds of problems the implementation of international human rights treaties can actually become a tool to better coordinate domestic political action on certain international issues. However, when government institutions tend to have weaker political coordination, institutions tend to lack the willingness to sacrifice their position within the government vis-à-vis other domestic institutions, thus obstructing the implementation of these international norms. Ultimately, conflict among legislators within a country and the raising of tension among domestic institutions may seem a cost too high to pay for introduction of norms that are by principle usually respected by democratic countries.

However, as per the ratification model a further consideration must be introduced. Once leaders ratify international treaties the further steps of implementation entail the involvement of other political actors which would need to take action in the implementation process. Legislative branches of governments, members of majority political groups, and civil society
organizations may pressure governments into abiding by the implementing
criteria set by the ratified international obligations. In this case the difference
between high and low levels of implementation policies is mostly dictated by the
extent of institutionalized constraints over the executive. When a form of check
and balances framework operates within a political system, leaders’ preferences
may become secondary and other political groups take charge of their role in
government by initiating process of implementation of their competence. Thus I
suggest the following hypothesis

Therefore, I suggest the following hypotheses:

Hypothesis 5.4: The greater the difference between domestic interests and international provisions, the lower the likelihood that states will implement international human rights laws.

Hypothesis 5.5: States with higher level of political constraints over executive are more likely to implement human rights treaties.

5.7 Threats and Implementation

It is my central contention that regime type becomes less of a factor affecting states’ behavior toward international law when states are faced by some kind of threats to their security that make them deviating from the expected behavior. As said in the introduction to this work, we should expect that everything else being equal, democracies should comply with international human rights law more than autocracies. Thus, we should also expect that democracies will move forward to implement ratified international agreements more than autocracies. However, as stated elsewhere, when the costs
associated with compliance increase, because governments face threats to their security and stability, threats become the predictor of non-compliant behavior regardless of the democratic or non-democratic nature of the regime. These threats, although weighing more in the final phase of compliance, play a critical role in the implementation phase as well. As I argued earlier, implementation is particularly importantly in states’ compliance with international obligations because it limits states discretionary use of force and empowers social and political actors with enforceable legislative tools. However, it has been recognized that states and political elites tend to monopolized the use of force and ignore limitations to their defense power when they face threats both from domestic or international actors. Scholars, (Brysk and Shafir, 2007) have pointed out that the presence of threats to national security, whether in the form of terrorist attacks, civil or international war, or political instability destroys democratic values, including the respect for the rule of law, and increases the chances that states, including democracies will deviate from the expected behavior.

Regimes that face domestic or international threats tend to revert to extraordinary measures in order to maintain control over security policy. When regimes are incapable of controlling external and internal threats, it is very likely that states will use “unconventional methods” to manage instability, such as the policies adopted by the United States in dealing with terrorists. Unfortunately, the United States represents only one example of such type of behavior. Generally speaking threats create the political opportunity for states to resort to extreme
measures of either unlawful treatment of those considered challengers or of political opponents.

The presence of ratified international obligations waiting to be implemented during times of instability lowers the chances that states will set in place implementing procedures. On this point it is necessary to indicate that whether anocracies and autocracies may feel constantly threatened because of their domestic political settings, democracies face threats only in specific circumstances. Thus, while non-democracies may present more of a constant behavior when it comes to implementation, democracies’ deviation from the expected behavior is more visible.

Hypothesis 5.6: The greater the level of threats, the lower the likelihood that states will implement international human rights agreements.
CHAPTER 6

COMPLIANT BEHAVIOR

6.1 Compliant Behavior – What It Is and When We Observe It

How do we establish whether states’ behavior is causally determined by the international obligations they undertake and thus establish with a certain degree of confidence that states comply with international obligations? One of the major problems facing scholars studying compliance with international law resides in finding the causal link between commitment with international obligations and state behavior. This is because variation in ratings of observed compliance across regime type is greatly affected by endogenous factors. States usually commit to international treaties based on their preexisting preferences; Committing states share a relatively high affinity with the values and rights protected by the international human rights treaties they sign and ratify, and their domestic human rights standards are not at variance with the international standards. In these cases, it is very likely that states’ behavior is not causally determined by their commitment to the international agreement but by their predetermined set of preferences. Simmons (2009) suggests that states choose what kind of treaties to commit to and ratify based on their preferences, thus making hard to exactly determine the causal link between state behavior and international obligations. It is also likely that, what scholars and the international
community identify as compliance is the normal behavior that states would maintain even in the absence of international commitments. I suggest that in this case, we do not observe compliant behavior. Rather, compliant behavior, government policies and leaders’ decisions that are directly influenced by the international agreement, occurs when those policies and decisions are enforced by deference to international norms.

While scholars (Simmons, 2009) have to a certain extent been aware of this problem, few have tried to identify the causal link between state behavior and international human rights obligations. As I argued in the general theoretical introduction to my study in order to identify the causal link between state behavior and international law it is necessary to examine states’ behavior under incentives to violate their commitments. In examining this final stage of compliance, as per the other stages, I begin with the assumption that leaders’ responses to international obligations are determined primarily by their main concern for remaining in power. This is the main incentive behind leaders’ decision making, and when dealing with international obligations leaders behave according to that basic interest. Treaties may challenge leaders’ ability to remain in power in different ways. As per the other stages of compliance, I argue that leaders’ behavior is not solely associated with the type of treaty they have ratified and implemented, or by regime type, but by the presence of instability or threat to leaders’ ability to maintain secure conditions of governance. These threats or unstable conditions are particularly relevant for the stage of compliant behavior.
because they represent particular incentives for leaders to defect from international obligations. These incentives to defect represent the causal link between leaders’ behavior and their commitment to international obligations and they do not relate to the type of treaty or the regime type. Over time, leaders experience different challenges to their political survival and their regime. These types of challenges may vary from simple domestic instability due to strikes or demonstrations, to more serious forms of protest and threats to the leaders’ ability to retain power. These factors determine most of the variation in states’ behavior toward international human rights law even for the stage of compliant behavior.

In summary, even for compliant behavior, I argue that given leaders’ preferences, there are two different mechanisms behind their willingness to comply with international legal obligations. First, as previously suggested by the literature, I suggest that regime type matters. The characteristics of more or less open political systems, their respect for the rule of law, and the rate at which citizens can influence leaders’ decision making has certain consequences in leaders’ willingness to comply. Also, the ability of citizens to hold accountable leaders for the violations of international obligations makes a difference regarding whether leaders pressured by some kind of threat will defect from the international obligations they have undertaken. Second, I argue that regime type becomes less of a factor in determining leaders’ incentives to comply with international obligations once leaders are faced with some kind of threat to
government stability and their ability to retain power. In these cases, whether in democracies or autocracies, I expect that leaders facing some kind of threats will deviate from compliant behavior because they consider the behavioral constraints imposed upon them by international obligations an additional burden and threat to their ability to retain power.

Observing leaders’ behavior under circumstances of threat allows me to find the causal link between state behavior and international obligations. In fact, given the presence of threats, leaders face incentives to violate international obligations. If leaders comply with their international obligations in spite of the threat then we can truly say that there is a causal link between state behavior and the commitment to international agreements. This is to say that compliance with international law can only be assessed under incentives to violate it.

6.2 Compliant Behavior and International Human Rights Treaties

A leader’s decision to adapt his behavior by international human rights laws is a complex process that requires the analysis of two different sets of situations. As indicated above, I assume that leaders’ main concern is to retain power. Then, I analyze leaders’ behavior under different conditions: one in which leaders, both democratic and autocratic are in more or less stable conditions of government; and one in which leaders face international or domestic threats to their power and government stability, which may encourage them to resort to measures of repression to retain control over the government.
Under the first set of conditions, I suggest that leaders, independently from the regime type in which they govern, when considering compliance with international agreements, must be ever so mindful of the interests of a specific selectorate. The selectorate is a specific group of people in society that is of critical importance for leaders wanting to maintain stable conditions of power. The international agreements, with which leaders intend to align their behavior, must be in the best interests of this salient domestic audience.

Under the second set of conditions, I suggest that leaders facing some kind of threats to their power and governmental stability are sometimes unable to satisfy the interests of the selectorate and citizens. That is to say, the link among leaders, domestic audiences, and international obligations is altered by the conditions that threaten leaders’ power. Threats force leaders to assess the international obligations they have undertaken less in terms of the interests of domestic audiences, and more in accordance with their main priority of remaining in power which, under conditions of threat, is at odds with domestic or other international actors’ interests. As the burgeoning human rights literature (Davenport, 1995; Poe and Tate, 1994; Keith, 1999) has shown, leaders who face a considerable amount of hostility domestically or internationally tend to react by repressing citizens’ demands and violating basic human rights guarantees. These factors affect the way leaders perceive their international obligations. While under normal conditions of stability leaders may appear to be complying with the international obligations, the presence of hostility becomes
the factor that immediately or only potentially could motivate leaders to resort to measure of repression in order to remain in power or maintain stable conditions within their government.

I also suggest that under both sets of conditions the amount and type of pressure domestic audiences exert on leaders, and the likelihood that given the presence of threats leaders will resort to repression and lower their rate of compliance vary across regime type. I also contend that the level of threats is the primary determinant of state commitment to international human rights obligations, but we should also expect some variation across regime type in the way threats are perceived and addressed. Everything else being equal, we should expect democratic states to have a greater ability to deal with domestic audiences’ pressures as well as with threats than non-democratic states. We should expect that, given the presence of threats, the level of repression should vary across regime type with democratic regimes exerting a lighter form of repression than non-democratic regimes. However, while democratic leaders will be less likely to repress and more likely to comply with existent or potential international obligations, the presence of threats will make the rates of compliance between democratic and autocratic regimes less different; ultimately democratic regimes given the presence of threats will deviate from their expected behavior of compliance.

In addressing the specific aspects of compliant behavior, a series of preliminary considerations must be made with regard to the variation across
regime type in compliant behavior. First and foremost, the compliance ratings for democracies, autocracies, and anocracies under “stable conditions”\textsuperscript{21} are different. In examining the basic human rights condition of citizens living under one or the other regime type, few would deny that citizens living in democracies enjoy better human rights guarantees than citizens living within autocracies and anocracies. Second, I suggest that given the presence of instability democracies, autocracies, and anocracies will deviate from the obligations descending from international human rights treaties at different rates. Even under conditions of threats democratic leaders face pressures from citizens and other government elites that constrain their behavior to a larger extent than autocratic or anocratic leaders. Given the amount of pressure that government elites and selectorates can exert, as well as the preexisting level of openness which give access to media and the international community to the activity of leaders, democratic leaders will deviate from international obligations at a lower rate than autocracies and anocracies, which do not have systems of checks and balances in place. On the contrary, we should expect autocratic and anocratic leaders to embark upon more repression of their citizens and opposing factions given threats to retain their power since they face less of the normal constraints typical of democratic leaders.

\textsuperscript{21} It is important to underline that the “stable conditions” term assumes different meanings for the different regime types. Democratic leaders usually govern in a relatively stable environment; their power is contested through regular elections and institutional channels are present to address government failures. Autocracies and anocracies’ “stable conditions” indicate only that the leaders hold power uncontested, either because they are able to retain control of society through threats of potential repression (thus citizens and other elites do not rebel) or because they are supported by a relatively small but powerful selectorate, which exercise a certain control over society.
systems. Thus, I suggest that democracies, autocracies, and anocracies deviate from international standards at different levels. Given the presence of threats the level of compliance of democracies will drop from their standard behavior less than autocracies and anocracies. However, the overall compliance ratings of the different regimes will all diminish under conditions of instability and threat.

In summary, the objective of the present study is not to contest theories of human rights protections within democracies. Given that it is agreed upon that democracies have better human rights standards than other regime types, the observation of compliance ratings under conditions of instability is intended to eliminate problems of endogeneity that have characterized prior studies investigating compliance. I argue that to understand whether the higher rates of compliance with human rights standards we normally observe among democracies is caused by democracies’ endogenous factors, we must assess whether altering those characteristics of democratic regimes allows us to capture the nuances behind states’ behavior toward international human rights laws especially at the compliant behavior stage.

6.3 Leaders’ Power, Domestic Pressure, and Compliant Behavior under Stable Conditions

6.3.1 Introduction

In the following section, I build the theoretical framework for understanding complaint behavior. As for the other stages of compliance, I begin with the assumption that under both stable and unstable government conditions, leaders’
The main concern is to retain power. In the following paragraphs I argue that, under stable conditions, both democratic and autocratic leaders face pressure from larger or smaller selectorates\(^{22}\) that could retaliate against leaders for violating international obligations. Again, as for the other stages of compliance, even compliant behavior varies across regime types as a function of the ability of domestic audiences to pressure leaders. Furthermore, I specify that the level of pressure exerted on leaders at this stage of compliance varies from the stages of ratification and implementation. The obligations to comply with international human rights agreements carry costs and consequences that are more salient than the other stages. Violations of human obligations at the compliant behavior stage usually mean violations of citizens’ basic human rights. While citizens may feel less compelled to pressure leaders at the ratification stage or at the highly bureaucratic implementation phase, they may feel significantly compelled for their own sake to exert forms of pressures on leaders to translate into practice their commitments.

6.3.2 Pressures from Below

As is true for the other stages of compliance, in deciding whether or not to adapt their behavior to the obligations descending from international treaties

\(^{22}\) The size of the selectorate is usually determined by the regime type. Bueno de Mesquita et al. (1999) suggest that all regime types have some kind of selectorate which can affect leaders’ foreign policy decisions. While in democracies the selectorate tend to be very large and so does the winning coalition supporting the leader power, in autocracies the selectorate may be both small and large, but the winning is usually small but can be harmful in the event of defection from offering support to the leader.
leaders keep in mind two main factors. First and foremost they want to remain in power, guaranteeing their political reselection, and maintain a stable governmental control (Bueno de Mesquita, 1995; Krasner, 1999). Second, in order to achieve this goal, leaders must consider the interests and policy preferences of their key selectorate (Bueno de Mesquita, Morrow, Siverson, and Smith, 1999; Fearon, 1994). As indicated above, I suggest that key selectorates are present across regime types. Small or large coalitions of supporters of political leaders are extremely important for remaining in power in both democratic and autocratic regimes. In deciding whether to follow international obligations, leaders must make decisions that are aligned or as close as possible to the interests of their key selectorate and the interests of a more or less salient constituency. At the “behavioral compliant” stage the pressure from domestic audience is extremely important for leaders. This is the stage in which leaders are specifically asked to modify their behavior according to the obligations descending from international agreements.

However, there are some considerations that need to be made with regard to this stage of compliance. If we define compliant behavior as the alignment of leaders’ behavior to the international obligations under incentives to violate them, stable conditions in democratic regimes tell us little regarding whether their behavior is causally linked to the international obligations and domestic pressures from citizens or other political elites. Thus, under stable conditions domestic pressures to comply with international obligations are irrelevant.
Democratic leaders already follow policies and are behaviorally aligned with the requirements of international agreements.

Hypothesis 6.1: Democracies are more likely, than autocracies and anocracies, to comply with international agreements, ceteris paribus.

In the case of autocratic and anocratic states it is necessary to make some specifications when it comes to compliant behavior. As I argued earlier, when comparing human rights ratings across regime type, autocracies and anocracies have ratings of compliance that are lower than democracies. Even under normal “stable conditions,” autocracies and anocracies do not generally fully comply with international human rights obligations. To this regard it is important to reiterate what I already specified in the general theoretical framework with regard to domestic audience in autocracies and anocracies. Domestic audiences are present across regime types and, thus, also in autocracies and anocracies. Autocratic leaders rely on the support of a small but powerful coalition and, as shown by scholars (Bueno de Mesquita et al., 1999), but a large selectorate may become critically relevant if members of the winning coalition decide to forfeit their support for the leaders. In order to maintain this kind of stability autocratic and anocratic leaders seek primarily to maintain strictly sufficient support for them to remain in power, while otherwise repressing human rights to instill fear in the population that will, in turn, acquiesce to the situation.

That being said I suggest the following the hypothesis
Hypothesis 6.2: Autocracies and anocracies are less likely than autocracies and anocracies, to comply with international human rights agreements.

6.4 Leaders' Power, Threat, and Compliant Behavior

In the following section I develop the theoretical framework about compliant behavior under conditions of instability which threaten leaders' ability to retain power. The relationship between leaders and domestic audiences, whether in democratic regimes or autocratic systems, and the ability of leaders to maintain their position in government through consensus building, democratic processes, or usual forms of repressions may be jeopardized by the presence of some kind of domestic or international threat to regime power. As per the other stages of compliance, I theorize that such circumstances, consisting of specific threats to government stability and leaders' power, change the dynamics behind the relationship among leaders, domestic audiences and international actors. I contend that, under conditions of instability, the approval by the domestic audience of the international obligations with which leaders decide to comply become less salient; leaders lacking domestic or international support or facing threats that may jeopardize the legitimate exercise of their governmental functions must resort to other expedients to retain power. I suggest that in this case leaders tend to violate international human rights commitments in order to retain control over society. At the compliant behavior stage ratified international commitments are an additional impediment to the leaders’ ability to maintain their
position. The rules set in international human rights treaties and the institutions created to encourage compliance by domestic leaders are at odds with leaders’ interests. Given the definition of threats provided in the general theoretical framework, in the following section I proceed by specifying that the perception of threats and the way leaders react to them vary across regime type.

6.4.1 Threats and the Factors Affecting their Perception

How do leaders’ perceptions of threats shape their willingness to comply with international human rights agreements? As suggested in prior chapters, we learned (Alfooni and Allen, 1991; Poe and Tate, 1994, Davenport, 1995; Keith, 1999; Harrelson-Stephens and Callaway, 2003; Neumayer, 2005; Brysk and Shafir, 2007) that leaders tend to ignore international human rights commitments during times of public emergency which threaten both the life of the nation and the ability of leaders to retain power. Leaders tend to perceive these circumstances as serious threats to superior interests that may outweigh any kind of international commitment. Under these circumstances, political leaders arrogate to themselves the right to determine what is in the best interest of a nation, what is national security, and will, if they perceive it as politically necessary, assign to themselves the right to suspend basic democratic norms. Based on this assumption, I argue that leaders who have ratified and implemented international human rights will deviate from the obligations descending from those treaties. Ultimately, threats encourage leaders to
implement policies that would allow them to retain control over society. The deviation from international obligations may assume different forms and varies across regime types. Although I develop this concept in the following paragraph, I briefly anticipate that there are two different types of variation across regime types regarding compliant behavior. There is a variation in the way violations of human rights standards are publicized and variation in the way violations are perpetrated. These forms of variations are mostly due to the difference in regimes and the relationship between leaders, constituencies, political elites, and the international community.

6.4.2 Violations of Human Rights and National Propaganda across Regime Types

As I suggested in prior chapters, democratic leaders face, even under conditions of instability, a higher level of domestic scrutiny, as well as, a higher risk of being held accountable for their policies. Democratic states maintain systems of checks and balances, that although weakened in times of instability, can rapidly damage leaders’ credibility in the eyes of citizens, destroy the support of political allies, and create incentives for criticism by opposing political elites. This is the reason why, in democratic governments, leaders tend to construe the violations of human rights as a necessary means to protect national security. In this case leaders facing threats to their ability to maintain power, by domestic or international threats, and needing to resort to policies that would eliminate forms of instability undermining their position, tend to characterize violations of human
rights standards as a necessity to protect those in society who ultimately, because of the democratic standards in place, could remove them from office. Prior literature (Brysk and Shafir, 2007) has already touched upon this aspect with regard to the “war on terrorism.” Brysk and Shafir have cogently pointed out that a feeling of national insecurity can very rapidly destroy citizens’ support for the protection of international standards of human rights. Citizen’s perception that violations of international obligations are perpetrated in the best of interest of national security allows leaders to maintain a certain domestic support, as well as, justifying leaders’ policies as necessary to the international community and domestic political allies. The basic rule of law and the system of checks and balances is impaired, and the democratic leaders opt to trade off the respect for international obligations with their ability to control instability using policies contrary to basic human rights standards.

In autocratic or anocratic systems, leaders do not face citizens’ disapproval in the forms in which democratic leaders do. However, in choosing to escalate into a politics of repression, autocratic and anocratic leaders must be ever so mindful of the presence of a selectorate and the support of the military, leaders’ longa manus in perpetrating human rights violations. The very recent events taking place in the Middle East have shown that autocratic leaders resort to a political propaganda that delegitimizes the international scrutiny of human rights violations, while at the same time suggesting that violations of human rights would not be occurring had the government been left unchallenged. In this
case the responsibility for the events of repression falls over a specific sector of society (rebels or rioters) whose persecution is only necessary to preserve government stability. Autocratic leaders tend to be less successful in their national propaganda than democratic leaders and this is due to the fact that, as pointed above, the absence of threats and the presence of “stable conditions” carry a different meaning across regime types. In autocratic systems, citizens are hardly convinced that violations are the consequence of illegitimate threats to state authorities.

6.4.3 Variation of Repression across Regime Type and the Effects on Compliant Behavior

As suggested above and following previous literature (Poe, 2004; Davenport, 1996) I suggest that threats to regimes and the way leaders react to threats vary across regime type. Democracies, autocracies and anocracies because of their state capacities, constraints, and institutions react to threats and thus shape their compliant behavior in different ways. As indicated in the general theoretical framework, Henderson (1991) indicates that when the level of democracy increases within a nation, the perception of threats is low and the likelihood of repression decreases. By contrast autocratic leaders by definition experience a constant perception of threat, feel that the power will be taken away from them and thus resort to constant repression. This is also the reason why the deviation of behavior from international obligations is different. As stated in the introduction to this chapter, democracies and autocracies have different human
rights performance to begin with, even before conditions of threats and instability to the “legitimate government” are present. To this regard I contend that, regime type is relevant with regard to the way leaders respond to threats, with regard to the rate of deviation from international obligations, but it has little impact on the overall assessment of states’ compliant behavior. Both autocratic regimes and democratic regimes ultimately deviate from compliance under the presence of threats.

To exemplify my argument I present a small example which pairs democracies and autocracies in a dyadic relationship. In these cases we can again, as well as the stages of compliance, have different scenarios. First, we may observe autocracies maintaining a fairly stable, although low level of compliance. Indeed, if we assume that autocratic leaders live a constant state of threat, it should also follow that their repressive behavior will be consistent over time. At the same time we may observe democratic leaders experiencing threat and thus lowering their compliance as they believe is needed. In this case, democracies in the presence of threats will deviate from their expected behavior of commitment, bringing their obligations rate closer to those of autocratic regimes which are implementing their usual ratings of repression. Second, we may observe both democracies and autocracies experiencing threats. In these cases, the ratings of compliance of democracies will not get closer to that of autocracies, but both will deviate from their regular behavior and standard of commitment and compliance. Yet, when both democratic and autocratic leaders
are experiencing some form of threat the magnitude of deviation from their behavior under condition of stability should be different; we should expect democratic leaders deviate less from international obligations than autocratic leaders and this for all the above mentioned reasons, which make democratic leaders even under conditions of instability more susceptible to domestic and international scrutiny.

6.4.4 Threats, Liberal Democracies, Autocracies, and Anocracies

As I have argued, even in liberal democracies the presence of a national insecurity sentiment, one in which both government leaders and the population feel threatened by internal or external threats, can very rapidly destroy the support for both the rule of law and international human rights standards. Compliance with international human rights standards becomes of little importance and the violation of international obligations a legitimate behavior to protect perceived superior interests. The protection of the rule of law and the importance of protecting individual rights of liberty become secondary issues. Not only may we observe leaders who violate human rights and neglect to commit to new agreements, but citizens may become accomplices, creating a situation in which breaches of individual dignity become an accepted and legitimate policy. As I already suggested, the way democratic leaders frame their behavior assures them of maintaining some form of citizens’ and political support in the policies implemented. Democratic leaders are usually able, in these cases, to have
domestic audiences’ aligning with their policy preferences. Under these circumstances, scholars (Campbell, 2007) suggest that leaders tend to create the so called “grey zones” of legal standards, in which what is perceived to be illegal becomes nonetheless legitimate. The outcome of such circumstances is that state policies legitimize human rights violations. In this case other scholars (Wilson, 2005) have pointed out that nations tend to employ a “sliding scale of the rule of law” to adjust their standards of respect for the rule of law and international legal commitments to the magnitude and type of threat governments face. On the contrary, given the absence of domestic support leaders’ preferences to maintain power and stability are so paramount that repression, and then lack of compliance of international human rights standards, become less relevant for the achievement of their ultimate goal. Therefore I suggest the following hypothesis:

Hypothesis 6.3: The greater the level of instability liberal democratic states face the lower the likelihood the state will comply with international human rights treaties.

As suggested in the introduction to this section, autocratic or anocratic leaders live in a constant state of threat. It is well known that in spite of some form of ratification of some of the core international human rights treaties, autocratic leaders violate international human rights standards consistently. This would suggest that the presence of domestic threats and national insecurity is less of a factor in predicting state behavior toward international human rights treaties. However, what happens if autocratic leaders face extreme forms of
threats, violent upheaval, and strong citizens’ opposition? Logic suggest that the occasional experiencing of forms of strong political opposition forces autocratic and anocratic leaders to increase considerably their repression ratings by crushing any form of political threat. In these cases compliance with international human rights agreements, which is already low, tend to become lower.

Thus I suggest the two following hypotheses:

Hypothesis 6.4: Autocratic states that experience high levels of threats to government stability will be not compliant with international human rights treaties.

Hypothesis 6.5: Anocracies that experience high levels of threats to government stability will be not compliant less likely to comply with international human rights treaties.
CHAPTER 7
RESEARCH DESIGN AND EMPIRICAL TESTS

7.1 Introduction

In this chapter, I introduce different models which examine the three stages of compliance with the Convention Against Torture (CAT). For all three stages, I use a time series cross sectional (TSCS) data structure with the country year as the unit of analysis. In each stage I give a full description of the variables included in the model and a discussion of the results.

In the first section of the analysis, I analyze which factors affect leaders’ decisions to ratify CAT. To investigate the ratification decision I present different models. In the first set of analyses I investigate whether regime type, executive constraints, and political competition shape leaders’ behavior. In the second section, I introduce the “threat” factor for each regime type under consideration and analyze how threats change leaders’ willingness to ratify CAT. Leaders’ behavior toward ratification is observed since 1987, year in which CAT was entered into force.

Once I identify the factors shaping ratification, the second set of analyses aim at identifying those variables determining the implementation of the obligations dictated by CAT. Since the behavior of interest for these analyses is in compliance with international obligations, implementation refers specifically to how states answer to the domestic policy changes required by the Committee
Against Torture. States that must proceed to the implementation of domestic policies are those that have ratified the international agreement. As per the ratification stage, I consider different factors that may affect implementation. First, I analyze the factors already taken under consideration by prior studies such as regime type and domestic political settings and, on the other side. Then, I introduce once again the “threat” variable for each regime type.

The third and final set of analyses investigates leaders’ compliance behavior toward the obligations descending from CAT. In particular, I investigate whether states that have ratified CAT respect and follow its obligations or continue to violate. I use a simple OLS regression to investigate how threats and instability influence leaders’ repressive behavior using data from the CIRI Human Rights Projects (Cingranelli and Richards, 2008).

In the following section, before beginning the analysis of my models, I give an overview of some of the main concepts and variables that are included in the different models. In particular, I explain why the Convention Against Torture represents an interesting treaty against which leaders’ behavior is tested. Then, I give a description of the main explanatory variables which remain constant across models. Lastly, I present the analysis divided into three different sections as described above.

7.2 Common Aspects to the Analysis of the Three Stages of Compliance

In this study of compliance with international human rights agreements
there are some specific variables that remain constant across stages and models. I use the Convention Against Torture as the international human rights agreement against which I test leaders' behavior. The other aspect is the use of a pool of explanatory and control variables that remain the same across the different analyses. Thus, in order to avoid redundancy, in the following two sections I give a brief illustration of these variables.

7.2.1 The Convention Against Torture

The Convention Against Torture entered into force in 1987 and today has 149 states parties. There are several reasons why CAT is particularly interesting when examining leaders' behavior toward international human rights agreements. First and foremost, the organization which oversees the functioning of the international treaty, the Committee Against Torture, offers substantial information about the status of ratification, implementation and compliant behavior. The Committee Against Torture presents constant updates of the ratification status of the Convention and, through a system of annual and periodical reports, as well as comments on individual complaints, makes practitioners and individuals aware of the implementation and violations procedures by states parties to the treaty. This in turn, offers a considerable amount of information about the overall compliance status.

Second, although I provide more details about this point in the operationalization of “compliant behavior,” the definition of torture provided by the
Convention and the legal evolution of the concept encompass a high variety of human rights violations including physical torture to psychological forms of persecutions. Moreover, the behaviors criminalized by CAT not only include a broad range of violations, but in addition do not focus on specific victims (such as children or women), and do not criminalize only specific agents. Leaders, governmental officials, but also supporting governmental groups can be found in violation of international obligations, especially when acting as the agents and under the directives of leaders. Lastly, CAT operates according to the principle of “universal jurisdiction” according to which leaders are not only in violation of the obligations descending from the convention for committing persecutions, but also responsible for pursuing justice against a person suspected of committing torture. This in turn gives a broader range of acts and individuals to consider in the analysis section.

7.2.2 Common Principal Explanatory Variables

7.2.2.1 Regime Type

If compliance is driven by regime characteristics, then we should expect that, everything else being equal, democracies are more compliant than autocracies and anocracies, because of their domestic structure respectful of law-governed behavior. In order to capture the effects that regime characteristics have on compliance, I test the compliance measures for ratification, implementation, and compliant behavior against democracy, autocracy, and
anocracy. I define democracy as the regime in which citizens can access institutions and procedures to participate in the political decision making process of their country. Also, I define democracy as a system in which individuals can exercise their civil liberties and as a regime in which checks and balances are in place. Autocracies are those regimes in which leaders restrict or suppress political participation. Executives are usually chosen by political elites and their power is unchecked. Lastly, I define anocracies as “mixed regimes” possessing both the characteristics of autocratic and democratic systems. In particular, I identify democracies with countries which possess some form of democratic institutions but not completely developed. From the three described regimes I create dummy variables. In this way I am better able to capture the effects that each regime type has on compliance by using the three categories which encompass all the countries in the dataset. Using dummy variables also allows me to condition the results of some of the models in which the levels of instability are considered for each regime type, achieving the same results of an interaction model, in which the level of instability variable would be interacted with the regime type variable. In determining the dummy variables I use the Polity2 scale, which runs from -10 (most autocratic) to +10 (most democratic). Although scholars have used different cut-off points in creating dummy out of the Polity2 scale, in the estimation models, I substituted a Democracy dummy for the Polity scores +6 to +10, an Anocracy dummy for Polity scores +5 to -5, and an
Autocracy dummy for Polity scores -6 to -10, using the more common cut-off points.

7.2.2.2 Executive Constraints and Open Polities

As suggested by authoritative literature (Putnam, 1988; Dai, 2006) leaders’ behavior is often shaped by the presence of actors within society and government. Also, as scholars have indicated key actors able to pressure leaders are present across regime type (Geddes, 2003; Bueno de Mesquita, Morrow, Siverson, and Smith, 1999; Fearon, 1994). In open political systems leaders need to bear in mind the main views and values of a politically relevant domestic audience that can retaliate against them by choosing to elect different leaders. In autocratic regimes, leaders must be mindful of a political elite or small group of supporters that can remove incumbents given the right incentives to do so. In order to capture the level of constraints that these actors in government and society have on leaders’ decisions to comply with CAT, I use two different components of the Polity 2 scale. In order to capture political competition, I use the indicator for the “Competitiveness of Participation” which measures on a scale from +1 to +5 “the extent to which alternative preferences for policy and leadership can be pursued in the political arena.” 23 In order to measure the constraints that other officials in government have on leaders’ behavior, I use the Executive Constraints variable, which measures on a crescent scale from +1 to

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23 Reference to this variable in the Polity IV Codebook is Parcomp. The Polity IV codebook can be found at http://www.systemicpeace.org/polity/polity4.htm
the “extent of institutionalized constraints on the decision making powers of chief executives […]”

7.2.2.3 Level of Instability

As suggested throughout the theoretical section, assuming that compliance with international human rights agreements is determined principally by regime type gives a limited and faulty understanding of the factors shaping compliance and of the essence of compliance itself. Generally speaking we have learned from a consistent body of literature (Alfooni and Allen, 1991; Poe and Tate, 1994, Davenport, 1995; Keith, 1999; Harrelson-Stephens and Callaway, 2003; Neumayer, 2005; Brysk and Shafir, 2007) that leaders tend to ignore international human rights commitments during times of public emergency which threaten both the life of the nation and the ability of leaders to retain power. Leaders tend to perceive these circumstances as serious threats to superior interests that may outweigh any kind of international commitment. In these cases assessing only the impact of regime type would ignore factors that outweigh regime characteristics in the willingness to comply. In order to capture these additional aspects in the compliance process, I condition the level of compliance to the presence of threats to leaders’ stability. I use the Banks Cross-National Time Series Data Archive composite index of political instability, which encompasses multiple, individual indicators including riots, anti-government

24 Reference to this variable in the Polity IV Codebook if Xconst.
protests, guerilla attacks, general strikes, purges, government crises, and assassinations. These data are measured on an annual basis for all countries of the world and are weighted according to criteria from the Banks data. Higher values on this scale denote greater levels of political unrest and violence.

7.2.3 Common Control Variables

In all the three stages of compliance and for all the models of the three stages I employ a similar set of control variables. In particular, following the burgeoning literature on compliance with international human rights agreements and respect for physical integrity rights (Hathaway, 2002; Simmons, 2000; Neumayer, 2005; Greenhill, 2010) I included in the models a series of control variables which captures some additional domestic characteristics that may be affecting the likelihood of compliance. Most of the economic and demographic data are taken from the World Bank’s World Development Indicators. I include the indicators of the level of Trade and Foreign Investments as a percentage of GDP since both can be detrimental to the leaders' willingness to yield some degree of power to international institutions over domestic affairs. In fact, scholars (Greenhill, 2010; Meyer, 1996) argue that increases in wealth produced by trade and foreign investment empower leaders’ grip on governmental power. In reality even when it comes to the wealth produced by foreign direct investment and trade there is another side of the story. Scholars (Hafner-Burton, 2005;

\[^{25}\text{Data are available for purchase at } \text{http://www.databanks.sitehosting.net/} .\]
Hafner-Burton and Tsutsui, 2007) have indicated that the higher the level of wealth the higher would be leaders’ willingness to respect basic human rights conditions and thus compliance with international human rights instruments.

Other domestic variables that have been found related to the compliance level with international human rights obligations are Population Density and Population Growth. The population density and growth data were taken again from the World Bank’s World Development Indicators. The population density measures the number of people per square meter in the country of interest while the population growth measures the annual population growth rate independently from the status of citizenship of individuals. These indicators have been found by scholars (Poe and Tate, 1994) to have a negative effect on leaders’ willingness to respect human rights and it may affect the willingness of leaders to ratify, implement, and respect international agreements. The logic behind this assumption resides in the fact that the higher the population in a given country the lower the amount of resources available to individuals, which in turn can create strenuous conditions of living and instability.

Lastly, I introduced two economic variables GDP per capita and GDP growth both from the World Bank’s World Development Indicators. The GDP per capita is the measure of the GDP divided by the midyear population of a given country. The GDP growth is measured as the annual percentage growth rate of GDP per capita based on constant local currency. Scholars (Poe & Tate 1994; Poe, Tate & Keith 1999; Harrelson-Stephens & Callaway 2003; Richards,
Gelleny and Sacko 2001) have found that economically weak states tend to be more repressive and, thus, the same states are most likely going to be less compliant with international human rights obligations.

7.3 Testing Ratification

In the following section, I present the analyses for the first stage of compliance. I begin by giving a description of the dependent variable which is common to all the analyses about ratification. The first model presents the results about the effects that regime type have on ratification. Then, I move on to present the results of how political competition and executive constraints shape leaders’ ability to ratify CAT. Lastly, I move on to present the results on how instability affects the likelihood of ratification for each regime type.

7.3.1 Common Dependent Variable: Ratification

The analysis of ratification examines a population of 192 states and their ratification status from the moment CAT entered into force in 1987 to 2009. Today there are 149 states members to the convention, with Vanuatu being last state in terms of time to ratify CAT. The unit of analysis in this analysis is the country-year and this has resulted in 4414 observations. In order to determine which factors affect the likelihood of ratification for testing my hypotheses about ratification I use cross-sectional time series random effects regression models. Using as a reference the Office of the United Nations High Commissioner for
Human Rights\textsuperscript{26}, I code my dependent variable based on the year the ratification occurs. In particular, I code the years in which ratification by a state occurs as “1” and as “0” the years for which ratification has not occurred. This is to say, that the ratification values change from “0” to “1” in the year states ratify. Fundamentally, I am interested in determining which factors may affect the delay or prevent the ratification of CAT and, in particular, if specific domestic characteristics or events affecting the stability of governments in a particular moment may be more relevant. As a result, I include variables in the regression models that capture the domestic characteristics of specific regimes as well as the instability of governments. This approach permits me to develop a better understanding of the conditions that promote ratification under stable conditions of governments and those that affect leaders’ behavior given some form of instability.

7.3.2 Regime Type and the Ratification of CAT

7.3.2.1 The Effects of Regime Type

If ratification is driven by domestic characteristics then we should expect that democracies should be more likely to ratify CAT. As prior literature has indicated (Hathaway, 2002; Neumayer, 2005) democracies are more likely to promote international agreements and are also more likely to ratify them given

\textsuperscript{26} The website of the Convention against Torture can be found at http://www2.ohchr.org/english/bodies/cat/index.htm
the affinity between law governed behavior of democratic leaders and the values promoted by international obligations.

When it comes to autocracies and anocracies and their leaders’ willingness to ratify international human rights agreements I suggest that prior scholars have not been right about the analysis of the actual leaders’ behavior. Some (Hathaway, 2002; Simmons, 2009) have suggested that non democratic regimes may ratify international treaties seizing the opportunity to offer example of “good behavior” to the international community at a relatively little costs. This is mostly related to the fact that the same scholars have suggested that international human rights treaties are toothless in terms of enforcement mechanism. On the contrary, I suggest that ratification bears some form of burden for states. Especially today, it is particularly difficult to think that leaders can make international commitments and expect that they will not be held accountable for violations by the international community or international and domestic organizations. Additionally, this is especially true for autocratic regimes which, by ratifying international agreements, attract the unwanted attention of monitoring institutions and human rights activists. Thus, as I suggested in Chapter 4, I argue that both autocracies and anocracies are less likely to ratify CAT

7.3.2.2 Findings

Table 7.1 displays the results of the first regression model examining
cross-national variation in the ratification of CAT from 1987 to 2009. The model in which, as indicated above, I used regime type dummies, strongly support my first hypothesis that democracies are more likely than autocracies and anocracies to ratify. Specifically, it is particularly evident that those states more likely to ratify CAT are democracies and that, autocracies, contrary to what prior scholars have suggested, do not ratify international human rights agreements as a form of “cheap talk.”

Table 7.1 TSCS analysis of the Effects of Regime Type on Ratification

<table>
<thead>
<tr>
<th>Variables</th>
<th>Coefficients</th>
<th>Standard Errors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Democracies</td>
<td>.148</td>
<td>.022</td>
</tr>
<tr>
<td></td>
<td>(0.000)</td>
<td></td>
</tr>
<tr>
<td>Autocracies</td>
<td>-.255</td>
<td>.024</td>
</tr>
<tr>
<td></td>
<td>(0.000)</td>
<td></td>
</tr>
<tr>
<td>GDP Growth</td>
<td>.004</td>
<td>.001</td>
</tr>
<tr>
<td></td>
<td>(0.001)</td>
<td></td>
</tr>
<tr>
<td>GDP per capita (ln)</td>
<td>7.961</td>
<td>1.611</td>
</tr>
<tr>
<td></td>
<td>(0.000)</td>
<td></td>
</tr>
<tr>
<td>Population Growth</td>
<td>-.044</td>
<td>.007</td>
</tr>
<tr>
<td></td>
<td>(0.000)</td>
<td></td>
</tr>
<tr>
<td>Population (ln)</td>
<td>-.000</td>
<td>.000</td>
</tr>
<tr>
<td></td>
<td>(0.383)</td>
<td></td>
</tr>
<tr>
<td>Trade % of GDP</td>
<td>.001</td>
<td>.000</td>
</tr>
<tr>
<td></td>
<td>(0.000)</td>
<td></td>
</tr>
<tr>
<td>FDI % of GDP</td>
<td>-.002</td>
<td>.000</td>
</tr>
<tr>
<td></td>
<td>(0.013)</td>
<td></td>
</tr>
<tr>
<td>Constant</td>
<td>0.507</td>
<td>.042</td>
</tr>
<tr>
<td></td>
<td>(0.000)</td>
<td></td>
</tr>
</tbody>
</table>

Observations = 2727
Number of States = 145
Prob > \( \chi^2 \) = 0.000
Wald \( \chi^2 (7) = 380.39 \)
In particular, since the category of reference is the anocratic dummy, I found that being a democracy increases the likelihood of ratification by 14%, while being an autocracy decreases the same behavior by 25%. This clearly indicates that when it comes to international human rights agreements the affinity between the domestic values and the principle of law governed behavior creates favorable conditions to the ratification of international instruments which resemble the same kind of principles. On the contrary, as suggested in the theory section, the argument according to which the ratification of international treaties is not costly, thus promoting the idea that autocracies would proceed to ratification, is ill founded. States parties to agreements and international human rights organizations active in the promotion of individuals’ human rights often seize the opportunity of states ratifying international treaties to scrutinize leaders’ behavior. Ultimately, the results show that ratification, instead of being a form of cheap signal of cooperation, is a costly signal that calls the attention of the international community.

States that have a higher GDP per capita are significantly more likely to ratify CAT. This runs along the consistent findings of studies about the respect for human rights, also suggesting that factors that promote better human rights ratings also promote the likelihood that states will ratify international treaties.

Interestingly enough the FDI inflows and the indicator for trade show mixed results. FDI has a negative impact on the likelihood of ratification and trade has a positive impact. It is rather difficult to discern what the specific effects
of these two variables are. It is likely that mostly depends on the type of trade of
the kind of FDI inflows a specific country engages in or receives from foreigner
investors. After all, prior studies about the influence of these two variables have
shown mixed results as well. Scholars (Richards, et al., 2001) have indicated that
most of the positive effects of FDI and trade on human rights ratings captured by
analyses are due to the way these variables are measured and that a better
approach would be to specifically study the influence that international trade
agreements have on individuals’ human rights. If this is the case we should also
expect the same contrasting results when it comes to the ratification of CAT as a
treaty that would impose some forms of restriction on leaders’ behavior toward
human rights practices. Lastly, both population growth and population density
lower the likelihood of leaders’ ratifying CAT. These findings certainly accord with
much research that argues a strong link between the size of the population and
the human rights conditions of a given country.

7.3.3 Executive Constraints and Political Competition

7.3.3.1 The Effects Political Competition and Executive Constraints

As suggested in Chapter 4, leaders assessing whether to become party to
international human rights agreement are likely to consider the way those treaties
will affect their political survival given the presence in government of political
actors competing for power which could have a different standing about
ratification and, in society, of salient domestic audiences. I also suggested that
domestic audiences may perceive the ratification of international agreements as contrary to pivotal domestic interests, thus negatively affecting the chances of leaders remaining in power in case of ratification. I additionally argued that other actors in government may understand international agreements as an opportunity to become more involved in the decision making process. In fact, given the fact that ratification of international agreements usually entails extensive bargaining among opposing political groups and future involvement of other branches of government in implementing the treaty, political actors may favor ratification in order to seize some power from the individual decision making of leaders.

7.3.3.2 Findings

Table 7.2 displays the results of the time-series regression model investigating how political competition and executive constraints affect leaders’ willingness to ratify CAT across regimes type. My second hypothesis suggests that strong political competition may affect negatively the likelihood to ratify because of citizens being more concern about domestic interests than international agreements. My third hypothesis suggests that higher constraints on the chiefs’ executive on the contrary would increase the likelihood of ratification because of other branches of governments take the chance to seize control of decision making process.
I find for both indicators strong support for my hypotheses. Most importantly, leaders whose polities can greatly affect their chances of remaining in power are less likely to ratify CAT. On this point, my central contention was that the general public usually sees international obligations as an excessive burden especially in those polities where human rights are protected. Ratification of international instruments and the time devoted by government to abide by interests that seem to be not pertinent to immediate concerns of the general public may give the impression to salient domestic audiences that the more important domestic issues are not addressed. In particular, the results show that for every unit increase in the political competition scale the likelihood that leaders ratify CAT decreases by 5%.

States whose executives are constrained in the use of their decision making power and have to share their decision making authority with other governmental and politically relevant actors more likely to ratify CAT. This is also in line with my central contention that ratification of international agreements is seen by relevant political actors as a moment to seize control over important decision making processes. This also indicates that when the constraints are higher the decision making of leaders decreases considerably. As well as for political competition, for every unit increase in the executive constraints scale, the likelihood of ratification increases by 5%.

The other indicators in the model present similar patterns to the first model about ratification. Again higher levels of GDP per capita significantly increase
the likelihood of ratification of CAT and this for the same reasons illustrated above. Again the FDI inflows and the indicator for trade show mixed results and this is probably due to the way these two variables are measured with no regards to the specific characteristics of trade and FDI inflows. Ultimately, population growth and population density lower the likelihood of leaders’ ratifying CAT and present similar type and weight of impact on the likelihood of states to ratify international human rights treaties.

<table>
<thead>
<tr>
<th>Variables</th>
<th>Coefficients</th>
<th>Standard Errors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Executive Constraints</td>
<td>.050</td>
<td>.006</td>
</tr>
<tr>
<td>Openness of the Electoral Political System</td>
<td>-.051</td>
<td>.007</td>
</tr>
<tr>
<td>GDP Growth</td>
<td>.005</td>
<td>.001</td>
</tr>
<tr>
<td>GDP per capita (ln)</td>
<td>8.581</td>
<td>1.681</td>
</tr>
<tr>
<td>Population Growth</td>
<td>-.049</td>
<td>.001</td>
</tr>
<tr>
<td>Population (ln)</td>
<td>-.000</td>
<td>.000</td>
</tr>
<tr>
<td>Trade % of GDP</td>
<td>.002</td>
<td>.000</td>
</tr>
<tr>
<td>FDI % of GDP</td>
<td>-.001</td>
<td>.001</td>
</tr>
<tr>
<td>Constant</td>
<td>0.392</td>
<td>.043</td>
</tr>
</tbody>
</table>

Observations = 2734
Number of States
Prob > $\chi^2 = 0.000$
Wald $\chi^2 (8) = 188.17$
7.3.4 Instability and Ratification of CAT

7.3.4.1 The Effects of Instability

As I argued in Chapter 4, cross national variation in treaties’ ratification greatly depends on leaders’ interest in remaining in power and key selectorate’s ability to affect this outcome. Indeed, the presence of threats alters the relationship between leaders and domestic audiences. Across regime types the presence of threats affect the ability of leaders to maintain their position in government through a consensus building or democratic processes. I contend that, given the presence of such threats, leaders tend to behave according to different concerns. Given the general assumption that leaders’ chief concern is that of retaining their power, I suggest that challenges to this ability alter the way leaders govern, their policy choices, and their willingness to commit to international obligations.

I also suggested that the impact of these threats can vary across regime type with autocratic and anocratic leaders, who must stay cognizant of their ability to maintain power, being affected by the presence of threat less than leaders of democratic regimes. This would suggest that the presence of threats would not make any difference in leaders’ decision to ratify CAT. However, I also argued that if autocratic states experience peaks in level of threats that would affect leaders’ willingness to ratify CAT.
7.3.4.2 Findings

a. Instability

In this section of the analysis I test my hypotheses which suggested that the presence of threats lower the likelihood of ratification across regime type. In order to test the three different hypotheses for the three regime types under consideration, I build three models that isolate the observations of threats for each regime type. I select for each model whether the effects of threats are isolated for the democratic, autocratic, or anocratic dummies that I created as explained above. This also translates into a smaller number of states per model and a small number of observations.

Tables 7.3, 7.4, 7.5, show the results for the three different models. My central contention that democracies would be less likely to ratify given the presence of threats to the regime is supported by the results. Table 7.3 shows that, although the impact of threats is very small on the likelihood of ratification by democracies, the presence of forms of instability lowers the likelihood that leaders are willing to ratify CAT. The low coefficient is mostly due to the fact that when democracies experience some form of threat this is usually a low degree of instability that has little impact on leaders’ standing. In the sample analyzed which included 97 democratic states, 76% of those states had instability values of “0” and very few states raised above significant level of threats in the years between 1987 and 2009. Table 7.4 shows the results for the effects of threats over autocratic leaders’ decision to ratify CAT.
As suggested above the level of threats can really have no impact on ratification by autocratic leaders and the results show indeed that instability index bears no significance on the overall estimation of autocratic leaders’ behavior. These results most likely indicate that if the “cheap talk” theory is true and autocratic leaders believe that ratification signals the international community good intentions and some degree of openness, than ratification would be more beneficial right when instability increases and leaders are forced to resort to repression. Ultimately, in comparing these findings with the first model about regime type and ratification we can see that everything else being equal
autocracies are less likely to ratify CAT and that the presence of threats is not really significant upon their behavior.

<table>
<thead>
<tr>
<th>Variables</th>
<th>Coefficients</th>
<th>Standard Errors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Instability Index (ln)</td>
<td>1.150</td>
<td>.000</td>
</tr>
<tr>
<td>GDP Growth</td>
<td>.003</td>
<td>.002</td>
</tr>
<tr>
<td>GDP per capita (ln)</td>
<td>-.1.781</td>
<td>7.381</td>
</tr>
<tr>
<td>Population Growth</td>
<td>-.023</td>
<td>.009</td>
</tr>
<tr>
<td>Population (ln)</td>
<td>-.001</td>
<td>.000</td>
</tr>
<tr>
<td>Trade % of GDP</td>
<td>.001</td>
<td>.000</td>
</tr>
<tr>
<td>FDI % of GDP</td>
<td>-.002</td>
<td>.001</td>
</tr>
<tr>
<td>Constant</td>
<td>0.091</td>
<td>.082</td>
</tr>
</tbody>
</table>

Observations = 479
Number of States = 68
Prob > $\chi^2$ = 0.000
Wald $\chi^2$ (7) = 63.81

This supports also one of my contentions according to which autocratic leaders tend to have a more consistent type of behavior given the constant presence or perception of threats by them.

Table 7.5 shows similar findings for the anocratic leaders. Although the direction of the coefficient for instability indicates that given the presence of instability, anocratic leaders are less willing to ratify CAT, I find no evidence of a statistically significant relationship between the level of instability and the
likelihood of ratification by anocratic leaders. It is possible that as scholars have suggested (Fein, 1995) anocracies are regimes that are amongst the worst offenders of individuals’ human rights considering their mixed regimes’ characteristics that creates forms of constant instability. Thus, as with autocracies, the presence of instability does not really make any difference on whether to ratify or more generally comply with international human rights agreements.

<table>
<thead>
<tr>
<th>Variables</th>
<th>Coefficients</th>
<th>Standard Errors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Instability Index (ln)</td>
<td>-2.44</td>
<td>7.39</td>
</tr>
<tr>
<td>GDP Growth</td>
<td>.010</td>
<td>.002</td>
</tr>
<tr>
<td>GDP per capita (ln)</td>
<td>2.091</td>
<td>5.641</td>
</tr>
<tr>
<td>Population Growth</td>
<td>-.014</td>
<td>.016</td>
</tr>
<tr>
<td>Population (ln)</td>
<td>-.000</td>
<td>.000</td>
</tr>
<tr>
<td>Trade % of GDP</td>
<td>.001</td>
<td>.000</td>
</tr>
<tr>
<td>FDI % of GDP</td>
<td>-.001</td>
<td>.001</td>
</tr>
<tr>
<td>Constant</td>
<td>0.424</td>
<td>.078</td>
</tr>
</tbody>
</table>

Observations = 625
Number of States = 72
Prob > $\chi^2 = 0.001$
Wald $\chi^2 (7) = 24.10$

b. Control Variables

The control variables have similar effects, but for small variations in the
coefficient and statistical significance across the three models. Once again GDP per capita is the strongest predictor of ratification for democracies and anocracies, favoring leaders' willingness to ratify. However, when it comes to autocracies I find no statistical significance between ratification and GDP and the coefficient points in the opposite direction of what would be expected. An explanation for this kind of trend may be the difference in those that benefit from the GDP growth in autocracies and in the other regimes. When the GDP grows in autocracies it is usually the leaders and those loyal to the leaders that benefit from the new wealth, thus increasing actually the power of those that hold repressive and corrupted positions. As in the previous models the results also suggest that more populous countries, with higher FDI inflows, and population growth are less likely to ratify, while trade and GDP growth favor ratification.

7.4 Discussion

This set of analyses focused on leaders’ behavior toward ratification in two different sets of conditions. By isolating circumstances in which, on one side, leaders face threats to their regimes and, on the other, do not face similar threats, this analysis sought to identify whether specific regimes and human rights agreements characteristics or threats to the regime stability are the actual determinants of ratification. In conditions of stability it was found, in accord with much of the research, that democracies are more likely than anocracies and autocracies to ratify CAT. Contrary to what other scholars have suggested
however, autocracies do not ratify CAT as not even to signal some form of cooperation to the international community. Autocratic leaders are very well aware that ratification bears some costs of commitment. There is strong evidence that indeed autocracies do not accept international obligations.

Additionally, this analysis has sought to adapt the concept of threats to the ratification of CAT. By using some of the same logic of the human rights literature and state repression has analyzed a stage of the overall compliance process. In the second stage of the analysis about ratification, I found that democracies will be less likely to ratify CAT when they are experiencing some form of instability. As I suggested in Chapter 4, the same instability does not have any statistical significance on autocratic or anocratic leaders’ decision to ratify CAT. This indicates that, for democracies, when we isolate threats from regime type we are better able to assess leaders’ behavior and their standing toward international human rights agreements. These findings suggest that threats shape democratic leaders’ behavior to a certain extent and that regime type becomes less of a factor in determining ratification. They also suggest that when it comes to leaders’ behavior and international law general assumptions, such as those suggesting that democracies are more prone to ratify international agreements are misleading. In order to understand correctly how compliance work and thus to find solutions to instances of non-compliance, it is important to first look at the actual behavior of leaders and then investigate what circumstances might have determined their response to international obligations up for ratifications.
These findings also suggest that studies about regime type and ratification have given a myopic view of treaty commitment and that, in an effort to establish patterns of ratifications we have missed to investigate those few democracies that do not ratify international agreements. This would not be relevant, if it did not imply that in this way we have probably missed democracies whose human rights ratings are quite dubious. It is true that when it comes to the ratification ratings of human rights treaties democracies are present in an overwhelmed majority and it is also true that commitment of democracies to some of the core human rights treaties is almost perfect. However, is also true that the ratification history of a number of treaties by some democracies shows that leaders are not driven purely by their regime characteristics. As reported by the Office of the High Commissioner for Human Rights, among democratic countries Australia, Canada, and the United States have not ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families fearing that the treaty would bound their sovereign power to limit the already large number of immigrants. Among the core human rights treaties CAT, although ratified by a majority of democracies, has the lowest democratic commitment. Only around 90% of the existing democracies have ratified CAT and among those considered advanced democracies that have not ratified CAT, India has very high torture ratings. This ultimately suggests that polity type is only part of the ratification story and that commitment may become difficult across regime type given the necessity to violate the obligations ratified. In the next
stage of analysis, I take the pool of states that have ratified CAT and examine the factors that affect leaders’ behavior towards implementation, the next step in the compliance process.

7.5 Testing Implementation

In the following section I present the analysis for the second stage of compliance. In order to understand the main dependent variable I use in this stage, I begin by giving a brief overview of the implementation procedures required by CAT and then a description of the dependent variable which is common to all the analyses about implementation. The first model presents the results about the effects that regime type have on implementing CAT. I then move on to present the results of how political competition and executive constraints shape leaders’ ability to implement CAT. Lastly, I move on to present the results on how instability affects the likelihood of implementation for each regime type.

7.6 Dependent Variable: Number of Reports

States parties to CAT are subject to basic obligations with regard to the implementation of the rules and regulations dictated by the convention. Article 2 of the treaty indicates what kind of measures states need to take to implement the Convention, which refers to the tools states possess to generally implement international legislation (legislative, administrative, judicial tools).
Article 2 reads: “1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.” In order to monitor the implementation procedures by states Article 17 of CAT established the creation of the Committee against Torture (hereafter the Committee) which is vested with a series of different tasks. Specifically, according to the definition given by the Convention, the Committee is a body established to monitor the implementation of CAT, the compliance with the Convention in terms of absence of violations of human rights, and to receive complaints with regard to the occurrence of violations.27 The main reason why the analysis of the Committee is particularly important for this study is because the Committee functions as the organ that not only monitors the absence of violations by states, but also assesses the legislative processes of states parties to accommodate the obligations descending from CAT within their domestic criminal systems according to article 4 of the Convention. More specifically, the implementation process is monitored through the so called “reporting procedures.” A state party is required to submit its first report to the Committee against Torture within one year of the ratification of the Convention and then submit one report every four years. These reports are intended to communicate to the Committee the measure that states have taken to give effect to their

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27 The Committee consists of ten experts who are elected by state parties and are nationals of state members to the Convention. Their mandate is to act, not in the capacity of national representatives, but in their personal capacity as experts. The experts have also the mandate to communicate with states parties and the U.N. General Assembly through the submission of yearly reports.
obligations under CAT. In addition to these periodic reports, the Committee can ask states to submit reports to clarify their position on certain aspects of their implementation or compliance status. In doing so the Committee assigns specific terms within which these reports must be submitted. States often violate these terms and do not follow their obligations. These reports are then considered by the Committee against Torture, which, at the end of its evaluations, communicates conclusions and recommendations to the governments of the state parties. That being said, it has been observed that states tend not to submit reports to the Committee when they have not met the requests submitted by the Committee or when they are in clear fault as per the changes needed to the domestic system. After numerous analyses of the reports submitted to the Committee against Torture and the evaluation of the implementing procedures, I found that states whose reporting rates were higher had addressed most of the legal discrepancies between the Convention against Torture and the domestic legal framework. In assessing the reporting procedures I then built a dependent variable which remains the same for all the analyses on implementation that is based on the difference between the reports due by a state and the actual

28 The greatest obstacles to the effective functioning of the monitoring procedures by the Committee come from the state parties themselves. Members to the Convention have hardly ever submitted their reports on time and when reports have been submitted, there has been a widespread refusal by states to provide legislative remedies. In its 2006 annual report the Committee against Torture reported that 62% of the state parties had overdue reports and that most of the same states had not responded to solicitations to comply with the reporting procedures by the members of the Committee. In many cases, states ignore the Committee recommendations by either not responding to the request for follow up reports or by dismissing the request of implementation procedures. However, while reporting procedures have not been perfect, the monitoring ability of the Committee, in terms of its investigative powers, is extremely weak.
number of reports that are submitted by states. I basically assume that the greater the number of reports submitted the greater the implementation status. The values the variable assumes correspond to the number of missing reports per year with lower values indicating better implementation ratings. Additionally, the reason why it is necessary to count the missing reports per year is because states that are at fault and have accumulated a certain number of missing reports can submit to the Committee more than one report at the same time, thus filling the gap of missing report. Lastly, since states encounter the reporting obligation from the time of their ratification, implementation is measured by the number of reports submitted calculated on the total reports states were obliged to submit from the moment of the ratification.

7.7 Regime Type and the Implementation of CAT

7.7.1 The Effects Regime Type

As suggested in Chapter 5, the implementation stage of human rights agreements entails different costs and benefits for states. We should expect democracies to implement CAT readily given their affinity with the rules and values dictated by international treaties. On the other hand, however, we should also expect democracies to be reluctant to make changes to their domestic legislation, given that democratic leaders are aware that the implementation process of those standards in their legal framework would benefit their systems very little, while imposing, on the contrary costs in terms of time and resources
spent in the legislative process. I also suggested that, given the empowering effects that implementation can have on the status of domestic human rights and organization working for the betterment of human rights standards, autocracies and anocracies should be less likely to implement human rights.

7.7.2 Findings

In Chapter 5 I hypothesized that democracies may be at the same time both more likely and less likely to implement CAT and most depends upon whether the costs of implementing human rights agreements are seen as an unnecessary and costly burden for democracies already possessing rules protecting human rights within their territory. Table 7.6 shows the results for first time-series cross-sectional regression model on implementation. I utilize again the dummy regime type variable omitting autocracy as my reference category. I find support for one of my central contention according to which democracies will be less likely to implement CAT. Indeed the high scores indicate greater number of missing reports and thus poor implementing behavior. This indicates that when it comes to changing their domestic legal system, democracies are less likely to submit reports to the Committee.

Thus I find strong evidence that states that have a strong domestic legal system tend to resist recommendations from or communications to international organizations supporting international human rights treaties. Therefore, on one hand, democracies have already legalized standards of human rights protection
which do not need international norms to be improved. On the other hand, the implementation process always requires some kind of legal and political commitment on the side of the government, which involves time consuming procedures and creates a legitimate ground for the interference of international monitoring institutions which democracies do not seem to be willing to accept.

Table 7.6 TSCS Analysis of the Effects of Regime Type on Implementation

<table>
<thead>
<tr>
<th>Variables</th>
<th>Coefficients</th>
<th>Standard Errors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Democracies</td>
<td>.729</td>
<td>.115</td>
</tr>
<tr>
<td></td>
<td>(0.000)</td>
<td></td>
</tr>
<tr>
<td>Anocracies</td>
<td>.689</td>
<td>.109</td>
</tr>
<tr>
<td></td>
<td>(0.000)</td>
<td></td>
</tr>
<tr>
<td>GDP Growth</td>
<td>.009</td>
<td>.004</td>
</tr>
<tr>
<td></td>
<td>(0.039)</td>
<td></td>
</tr>
<tr>
<td>GDP per capita (ln)</td>
<td>1.881</td>
<td>5.301</td>
</tr>
<tr>
<td></td>
<td>(0.000)</td>
<td></td>
</tr>
<tr>
<td>Population Growth</td>
<td>-.091</td>
<td>.036</td>
</tr>
<tr>
<td></td>
<td>(0.013)</td>
<td></td>
</tr>
<tr>
<td>Population (ln)</td>
<td>.001</td>
<td>.000</td>
</tr>
<tr>
<td></td>
<td>(0.002)</td>
<td></td>
</tr>
<tr>
<td>Trade % of GDP</td>
<td>.009</td>
<td>.001</td>
</tr>
<tr>
<td></td>
<td>(0.000)</td>
<td></td>
</tr>
<tr>
<td>FDI % of GDP</td>
<td>.004</td>
<td>.003</td>
</tr>
<tr>
<td></td>
<td>(0.153)</td>
<td></td>
</tr>
<tr>
<td>Constant</td>
<td>-.274</td>
<td>.163</td>
</tr>
<tr>
<td></td>
<td>(0.094)</td>
<td></td>
</tr>
</tbody>
</table>

Observations = 1678
Number of States = 109
Prob > $\chi^2 = 0.000$
Wald $\chi^2(7) = 158.99$

Scholars (Goldsmith and Posner, 1999) have described this phenomenon as the democratic double standard to indicate that democracies are more likely to ratify agreements that enforce some kind of standards on others’ regimes. As Henkin
(1994) wrote about the United States, many democracies share “a common view […] that international human rights are good but not for [them].”

I also find support for my other contention that anocracies are less likely than autocracies to submit reports to the Committee against Torture. The reasons behind anocratic leaders’ behavior may result from the mixed character of anocracies, in which both democratic and autocratic traits of regimes are present, that makes leaders more vulnerable to the effects of implementation of international agreements by empowering the domestic system in favor of individuals’ human rights.

Interestingly, autocracies are all more likely to submit reports to the Committee against Torture. In building a separate model, shown in Table 7.7 in, which the category of reference left out is anocracies, I found that autocratic leaders submit more reports than democracies. More than 40% of the autocracies that have ratified CAT have “0” missing reports per country year. The explanation for this finding which runs counter to what logic would suggest about autocracies resides most likely in the fact that autocratic leaders do not embark upon time consuming legislative processes when communicating with international institutions. Because of their strong control of government, it is less costly for autocratic leaders to communicate to the Committee against Torture about implementing procedures. In this case a better investigation of autocratic leaders’ behavior toward implementation would require the analysis of the actual
legal framework of autocratic regimes in order to see if communications are truly followed by changes in domestic policies or are a cheap form compliance.

Table 7.7 TSCS Analysis the Effects of Regime Type on the Implementation of CAT

<table>
<thead>
<tr>
<th>Variables</th>
<th>Coefficients</th>
<th>Standard Errors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Democracies</td>
<td>.050</td>
<td>.076</td>
</tr>
<tr>
<td>Autocracies</td>
<td>-.687</td>
<td>.109</td>
</tr>
<tr>
<td>GDP Growth</td>
<td>.009</td>
<td>.004</td>
</tr>
<tr>
<td>GDP per capita (ln)</td>
<td>1.941</td>
<td>5.381</td>
</tr>
<tr>
<td>Population Growth</td>
<td>-.099</td>
<td>.036</td>
</tr>
<tr>
<td>Population (ln)</td>
<td>.001</td>
<td>.000</td>
</tr>
<tr>
<td>Trade % of GDP</td>
<td>.009</td>
<td>.001</td>
</tr>
<tr>
<td>FDI % of GDP</td>
<td>.004</td>
<td>.003</td>
</tr>
<tr>
<td>Constant</td>
<td>0.406</td>
<td>.140</td>
</tr>
</tbody>
</table>

Observations = 1678
Number of States = 109
Prob > $\chi^2 = 0.000$
Wald $\chi^2 (7) = 160.57$

Of the control variables that are significant, it appears that wealthier countries, greater FDI inflows, and trade lower the number of reports submitted, while population growth increases the number of reports. This is most likely due to the fact that richer countries are also those countries that are more democratic and thus implement CAT less, while countries that experience high level of
population growth are usually poor countries with autocratic forms of governments.

7.8 Political Competition, Executive Constraints and Implementation

7.8.1 The Effects Political Competition and Executive Constraints

As I suggested in Chapter 5, the involvement of domestic actors that may take part in the process of compliance or are affected by compliance is even more relevant at the implementation stage. I expect two different types of influence on leaders' willingness to implement. First, I expect that political forces within governments such legislative branches and political majority leaders may use the opportunity of a ratified treaty to seize some control over the decision making process and do so by pushing for implementation procedures. Second, I expect that the presence of a large selectorate, who considers domestic interests paramount to the implementation of international rules, may negatively affect leaders' willingness to implement human rights obligations. This is even truer for those countries in which citizens feel that their human rights are already protected and that the additional implementation of international obligations would only be superfluous. I suggested that these two forces within the domestic political system work in opposite directions. I hypothesized that the higher the constraints other actors within the government can exercise on political leaders the higher the number of reports. I also hypothesized that higher levels of political competition, through which a salient domestic audience can retaliate against
leaders for what it believes being poor foreign policy decisions, lower leaders’ willingness to implement human rights agreements. Additionally, the polities in which a domestic audience is given the opportunity to retaliate against leaders are those which are characterized by openness of the political system and basic guarantees of human rights. Most likely those are the polities in which more than any other polities, domestic audiences may find implementation particularly superfluous.

7.8.2 Findings

Using the Polity2 indicators as described above, I find strong support for both my central contentions. The higher the level of constraints on the executive the higher the number of reports submitted to the Committee against Torture. This indicates that when other political actors within the government can seize control of the decision making power through implementing procedures, thus influencing the domestic legal framework, they do so by increasing the number of reports. In particular, I observe a 7% increase in the number of reports for every unit increase in the scale of executive constraints. This may also be an indication that states, which have stronger apparatus surrounding the executive power, have also more resources at their disposal to devote the attention to the writing of lengthy and detailed reports to the Committee against Torture.
Table 7.8 TSCS Analysis of the effects of Political Competition and Executive Constraints on Implementation

<table>
<thead>
<tr>
<th>Variables</th>
<th>Coefficients</th>
<th>Standard Errors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Executive Constraints</td>
<td>-.075</td>
<td>.025</td>
</tr>
<tr>
<td></td>
<td>(.003)</td>
<td></td>
</tr>
<tr>
<td>Openness of the Electoral Political System</td>
<td>.071</td>
<td>.026</td>
</tr>
<tr>
<td>GDP Growth</td>
<td>.009</td>
<td>.004</td>
</tr>
<tr>
<td></td>
<td>(.057)</td>
<td></td>
</tr>
<tr>
<td>GDP per capita (ln)</td>
<td>2.131</td>
<td>5.351</td>
</tr>
<tr>
<td></td>
<td>(0.000)</td>
<td></td>
</tr>
<tr>
<td>Population Growth</td>
<td>-.131</td>
<td>.135</td>
</tr>
<tr>
<td></td>
<td>(.000)</td>
<td></td>
</tr>
<tr>
<td>Population (ln)</td>
<td>.001</td>
<td>.000</td>
</tr>
<tr>
<td></td>
<td>(.006)</td>
<td></td>
</tr>
<tr>
<td>Trade % of GDP</td>
<td>.009</td>
<td>.001</td>
</tr>
<tr>
<td></td>
<td>(0.000)</td>
<td></td>
</tr>
<tr>
<td>FDI % of GDP</td>
<td>.007</td>
<td>.003</td>
</tr>
<tr>
<td></td>
<td>(0.036)</td>
<td></td>
</tr>
<tr>
<td>Constant</td>
<td>0.554</td>
<td>.136</td>
</tr>
<tr>
<td></td>
<td>(0.000)</td>
<td></td>
</tr>
</tbody>
</table>

Observations = 1669
Number of States = 108
Prob > $\chi^2 = 0.000$
Wald $\chi^2 (8) = 122.30$

I also find strong support for the hypothesis according to which higher levels of political competition lower the number of reports submitted. As suggested above, polities with high levels of political competition are also polities with higher degree of respect for political and civil rights. This in turn might affect the opinion of the domestic audience about the usefulness of spending time and resources to implement values already existent within the legal framework. These findings also indicate that implementation is greatly dependent upon domestic actors. Constraints to sovereign powers or domestic pressures from a
salient and attentive audience determine the direction of the implementation rates. Scholars (Bayefsky, 2001) have shown that democratic leaders are particularly sensitive to both sovereign constraints and citizens’ discontent with the domestic economic and social condition. Among democracies and across human rights treaties some of the least implementing countries are Italy and India, polities economically weak and in which citizens lament the disinterest of governments to their most compelling needs. This trend is also visible in new democracies parties of human rights treaties and in which leaders most likely try to strike a balance between domestic interests, political forces, and the pressure of monitoring institutions. The other control variables work as in the prior model about regime type, with wealthier countries reporting less and more populous countries reporting more to the Committee.

7.9 Instability and Implementation across Regime Types

7.9.1 The Effects of Instability

I contend that the level of threat alter leaders’ willingness to implement human rights treaties. I suggested that these threats, although weighing more in the initial and final phase of compliance, should play a critical role in the implementation phase as well. I argued that, when the costs associated with compliance increase, because governments face threats to their security and stability, threats become the predictor of implementation regardless of the democratic or non-democratic nature of the regime. In particular, I suggested that
given the empowering effect of implementation, states facing threats to their stability should report less to the Committee against Torture regardless of their regime type.

7.9.2 Findings

By using the regime type dummy variables as described above, I built three different time-series cross sectional models for each regime type. Tables 7.9, 7.10, and 7.11 show the results of three different models. Against my hypotheses, across all three models instability does not play a considerable role in shaping leaders’ behavior toward implementation.

<table>
<thead>
<tr>
<th>Variables</th>
<th>Coefficients</th>
<th>Standard Errors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Instability Index (ln)</td>
<td>-.000</td>
<td>.000</td>
</tr>
<tr>
<td></td>
<td>(0.005)</td>
<td>.000</td>
</tr>
<tr>
<td>GDP Growth</td>
<td>.000</td>
<td>.005</td>
</tr>
<tr>
<td></td>
<td>(0.905)</td>
<td></td>
</tr>
<tr>
<td>GDP per capita (ln)</td>
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<td>5.581</td>
</tr>
<tr>
<td></td>
<td>(0.000)</td>
<td></td>
</tr>
<tr>
<td>Population Growth</td>
<td>-.069</td>
<td>.049</td>
</tr>
<tr>
<td></td>
<td>(0.163)</td>
<td></td>
</tr>
<tr>
<td>Population (ln)</td>
<td>.001</td>
<td>.000</td>
</tr>
<tr>
<td></td>
<td>(0.093)</td>
<td></td>
</tr>
<tr>
<td>Trade % of GDP</td>
<td>.007</td>
<td>.001</td>
</tr>
<tr>
<td></td>
<td>(0.000)</td>
<td></td>
</tr>
<tr>
<td>FDI % of GDP</td>
<td>-.002</td>
<td>.004</td>
</tr>
<tr>
<td></td>
<td>(0.545)</td>
<td></td>
</tr>
<tr>
<td>Constant</td>
<td>0.449</td>
<td>.167</td>
</tr>
<tr>
<td></td>
<td>(0.000)</td>
<td></td>
</tr>
</tbody>
</table>

Observations = 1149
Number of States = 83
Prob > $\chi^2$ = 0.000
Wald $\chi^2$(7) = 49.12
Table 7.10 TSCS Analysis Autocracies, Instability, and Implementation

<table>
<thead>
<tr>
<th>Variables</th>
<th>Coefficients</th>
<th>Standard Errors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Instability Index (ln)</td>
<td>.000</td>
<td>.000</td>
</tr>
<tr>
<td>GDP Growth</td>
<td>.012</td>
<td>.010</td>
</tr>
<tr>
<td>GDP per capita (ln)</td>
<td>4.471</td>
<td>1.651</td>
</tr>
<tr>
<td>Population Growth</td>
<td>-.013</td>
<td>.085</td>
</tr>
<tr>
<td>Population (ln)</td>
<td>.001</td>
<td>.000</td>
</tr>
<tr>
<td>Trade % of GDP</td>
<td>.005</td>
<td>.002</td>
</tr>
<tr>
<td>FDI % of GDP</td>
<td>-.002</td>
<td>.004</td>
</tr>
<tr>
<td>Constant</td>
<td>0.253</td>
<td>.3</td>
</tr>
</tbody>
</table>

Observations = 168
Number of States = 23
Prob > $\chi^2$ = 0.008
Wald $\chi^2$ (7) = 18.85

Although, autocracies seem to be reporting less than when threats are absent, while autocracies and anocracies seem to be reporting more, the changes in behavior are not entirely relevant as the small coefficients of the instability index show across the three models.

As I suggested earlier in this work, I expected that threats would play less of a role in affecting this stage of compliance than in ratification and compliant behavior. This may be due to the real consequences that are attached to the implementation of international agreements. Indeed, the presence within a domestic legal framework of a specific set of rules does necessarily mean that
violations of those rules will not occur. Although implementation has been considered extremely important for the validation of international obligations, ultimately the presence of threats at the implementation phase changes very little the impact that the restrictions descending from the obligations may have on leaders.

<table>
<thead>
<tr>
<th>Variables</th>
<th>Coefficients</th>
<th>Standard Errors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Instability Index (ln)</td>
<td>.000</td>
<td>.000</td>
</tr>
<tr>
<td></td>
<td>(0.086)</td>
<td>.010</td>
</tr>
<tr>
<td>GDP Growth</td>
<td>.002</td>
<td>(0.844)</td>
</tr>
<tr>
<td>GDP per capita (ln)</td>
<td>4.471</td>
<td>1.651</td>
</tr>
<tr>
<td>Population Growth</td>
<td>-.085</td>
<td>.064</td>
</tr>
<tr>
<td>Population (ln)</td>
<td>.002</td>
<td>.000</td>
</tr>
<tr>
<td>Trade % of GDP</td>
<td>.012</td>
<td>.003</td>
</tr>
<tr>
<td>FDI % of GDP</td>
<td>.064</td>
<td>.013</td>
</tr>
<tr>
<td>Constant</td>
<td>0.259</td>
<td>.317</td>
</tr>
</tbody>
</table>

Observations = 332  
Number of States = 41  
Prob > χ² = 0.000  
Wald χ² (7) = 63.51

This is also the consequence of the fact that the level of implementation, measured through reporting behavior, is a lengthy procedure which gives leaders plenty of time for adjusting their behavior to the presence of threats and the reporting obligations. In fact, as some scholars have suggested (Bayefsky,
2001), at the pace at which human rights monitoring institutions are examining state reports, it will take to each monitoring Committee of the core human rights treaties an average of six years per treaty to review submitted reports. This implies that, by the time monitoring institutions can effectively address the situation of a state party, leaders will have dealt with threats and instability without the need of facing deep scrutiny of the human rights committee members. Additionally leaders of state parties are well aware of the slow pace at which monitoring institutions are moving and also aware that the time devoted to each and every report submitted is particularly perfunctory given the time constraints which these institutions face. However, these findings rather than being irrelevant should ring an alarm bell for international policy makers trying to improve the impact of international obligations. Monitoring implementation should have more than an inconsiderable impact on leaders’ behavior, especially bearing in mind that implementation, although it does not create “inviolable” rules, it increases the chances of enforcing and prosecuting violations those rules.

7.10 Discussion and Conclusions

The models presented to test the second stage of compliance sought once again to isolate factors that are typical of regime characteristics from factors such as threats that can occur across regime type. The models show that democratic states and anocratic states are less likely to report implementation
procedures to the Committee against Torture but the results are quite weak. Counter to what I argued in the theory section, autocracies have been found to report more to the Committee with a high number of country years observations in which the number of missing reports is “0.” This section also sought to determine the effects of executive constraints and political competition on implementation. Even in this case I found strong support for my central theory according to which open political competition lowers implementing procedures, while the higher the level of executive constraints increases the number of reports submitted.

Although counter to what I suggested in the theory section and with statistically significant results, there is little evidence that threats alter leaders' implementing behavior. Autocratic leaders, who appeared to be more compliant absent threats, reported less given the presence of instability and, on the contrary, democratic and anocratic regimes reported more. This is the indication that the reporting procedures and the impact of report submission on leaders' behavior is almost non-existent, which in turn limits the value of the human rights system. In the next stage of analysis, I take the pool of states that have ratified CAT and see how and what factors affect leaders' compliant behavior, the final step in the compliance process.

7.11 Testing Compliant Behavior

In the following section I present the analysis for the last stage of
compliance. I begin by giving a description of the dependent variable which is common to all the analyses about compliant behavior. Then, I present the models individually focusing in particular on the explanatory independent variables of regime type and threats.

7.11.1 Dependent Variable – Torture: The Behavior Criminalized

In deciding which kind of behavior to focus on in this last stage of compliance, it is necessary to begin by giving a brief description of the actual behaviors that are considered as crimes and violations of the obligations by the international treaty. What is torture? Although prior international human rights treaties condemned torture, CAT appears to be the first international treaty providing a definition of the criminalized behavior. Article 1 of CAT specifies that for the purpose of the Convention

\[
\text{torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.}
\]

While the definition provided by the Convention gives precise guidelines, Article 1 is sufficiently broad as to make it difficult to identify a correct operationalization that could encompass all the criminalized behaviors enumerated. From the definition given by the Convention we know very little
about what exactly would constitute torture. We can identify those that can be held responsible for the violations of CAT, but then again we know very little about the "mental element of the crime." Ultimately, when the final draft of the convention was declared open to signatures and ratifications, the interpretation given to the concept of torture was deliberately left open. The drafters that the

29 It is important to underline that it was not in the intention of those participating to the preparatory works to provide an exhaustive definition of torture. In fact, most of the discussion taking place during the preparatory works dealt with the fact that the terms “cruel, inhumane or degrading acts” were too vague for a convention whose main goal was that of strengthening and furthering the protection of individuals’ most fundamental human rights. Furthermore, some observers to the working groups pointed out that if the definition was left open, so that the convention would only be a copy of the prohibition of torture already established in prior human rights conventions. However, state representatives to the working groups in charge of drafting the convention were primarily concerned that, by enumerating acts, the use of new methods of torture by governmental officials could not fall under the obligations set up in the convention. The definition provided by the convention contains important points. First and foremost, Article 1 specifies that both mental and physical suffering constitute torture. To this regard states’ representatives participating to the working groups agreed that both requirements of mental and physical suffering needed to be included, but disagreed on the actual content of the violations. Some states suggested that there were forms of abuse, such as the use of “truth drugs” or the abuse of psychological coercion that although not visibly causing mental or physical sufferings were forms of abuse of the free will of individuals. At the end the definition was left open to the interpretation of the monitoring committee assigned to the convention.

30 Article 1 established the notion that such acts of torture must be perpetrated by a public official or someone acting on his behalf. Even on this point, states debated on the limits of such definition. Some states suggested that torture should have been prosecuted regardless of the perpetrators, while other suggested that in order to observe torture for the end of achieving information or discriminating against individuals, a hierarchical position in terms of power should have been present. The definition as provided in article 1 simply represents a compromise between the above two different points of view. The fact that not only acts perpetrated strictly by public officials, but also acts for which public officials can be “objectively” responsible leaves some space to consider violations committed by individuals acting under the “instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”.

31 The definition specifies that torture is the result of an intentional action and excludes the occurrence of torture when the physical or mental suffering arises as a consequence of a lawful action. On this point, states’ representatives were particularly concerned with the possibility that some states could appeal to national legal practices to justify acts that were otherwise considered unlawful under the convention. While the most common view held by many members of the delegation to the preparatory works was that no national standards could interfere with international obligations, the different delegations were not able to reach a precise agreement. Once again, the final draft of the article was left open to interpretation with just one clear understanding according to which the national lawful actions which prompted the violations otherwise called torture must be aligned with international human rights standards.
small enumeration of the purposes of torture would only refer to most egregious violations of human rights (such as discrimination) but that the acts could aim at something different and still fell under the jurisdiction of the convention.

I suggest that the broad definition of torture is actually an advantage for the enforcement of the Convention against Torture. Rather than limiting the criminalized behavior to a restricted set of conducts, members of the Committee can investigate various forms of violations that can easily fall under the protection of the Convention. Scholars (Cingranelli and Richards, 1999) have also suggested that assigning a specific etiquette to the violation of a human right, such as unlawful detention, only favors those who violate human rights. This is because as suggested by the same authors unlawful detention is often followed by torture or enforced through torture. Thus considering the detention in itself as a behavior criminalized by the Convention against Torture increases the chances of that the Convention rules might find ground to be applied. more apply the Convention itself. This is also to say that the only way we can have different behaviors falling under CAT protection is by leaving the definition of torture as broad as possible and increase its chances of being applied.

This is also why I chose to identify violations of CAT through the physical integrity rights index provided by Cingranelli and Richards (2009). In building their physical integrity rights index, an eight point scale where a score of one represents worst human rights conditions and a score of eight the best human rights conditions – the authors found that if governments chose to engage in
some kind of violation of the human rights to physical integrity it usually practiced torture, thus implying that each and every component of the scale encompasses a form of torture.

7.12 Regime Type and Compliant Behavior

As suggested in Chapter 6, whether or not we observe compliance greatly depends upon the meaning we attribute to compliance. If we define compliant behavior as the lack of violations by leaders with no further specifications, we should assume that given their regime characteristics democracies are more likely to appear compliant with international obligations than autocracies or anocracies. The high respect for the rule of law, the openness of political participation, and open political competition are all factors typical of a democratic system which facilitates the alignment of leaders’ behavior to the values and rules of the international agreement. On the contrary, autocratic and anocratic leaders may only be interested in maintaining themselves in power by repressing. The results in Table 7.12 indicate that among the countries that have ratified CAT, democracies are more respectful of their obligations than anocracies.

Being an autocracy decreases significantly respect for physical integrity rights compared to democracies. These findings are definitely in accord with prior studies about human rights. On one side, democracies which are generally more respectful of human rights appear to be ever more so respectful given state
membership in an international treaty. On the other side, being members of CAT seems to leave unchanged autocratic leaders’ behavior.

<table>
<thead>
<tr>
<th>Variables</th>
<th>Coefficients</th>
<th>Standard Errors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Democracies</td>
<td>1.50</td>
<td>.115</td>
</tr>
<tr>
<td></td>
<td>(0.000)</td>
<td></td>
</tr>
<tr>
<td>Autocracies</td>
<td>-.329</td>
<td>.164</td>
</tr>
<tr>
<td></td>
<td>(0.045)</td>
<td></td>
</tr>
<tr>
<td>GDP Growth</td>
<td>-.021</td>
<td>.010</td>
</tr>
<tr>
<td></td>
<td>(0.038)</td>
<td></td>
</tr>
<tr>
<td>GDP per capita (ln)</td>
<td>1.521</td>
<td>4.181</td>
</tr>
<tr>
<td></td>
<td>(0.000)</td>
<td></td>
</tr>
<tr>
<td>Population Growth</td>
<td>-.392</td>
<td>.040</td>
</tr>
<tr>
<td></td>
<td>(0.000)</td>
<td></td>
</tr>
<tr>
<td>Population (ln)</td>
<td>-.001</td>
<td>.000</td>
</tr>
<tr>
<td></td>
<td>(0.000)</td>
<td></td>
</tr>
<tr>
<td>Trade % of GDP</td>
<td>.013</td>
<td>.001</td>
</tr>
<tr>
<td></td>
<td>(0.000)</td>
<td></td>
</tr>
<tr>
<td>FDI % of GDP</td>
<td>-.047</td>
<td>.006</td>
</tr>
<tr>
<td></td>
<td>(0.000)</td>
<td></td>
</tr>
<tr>
<td>Constant</td>
<td>3.75</td>
<td>.163</td>
</tr>
<tr>
<td></td>
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<tr>
<td>Observations = 1751</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prob &gt; F = 0.000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>R-squared = 0.31</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

7.13 Instability

As I said at the beginning of this section, observing leaders’ behavior regarding respect of international obligations as principally determined by regime type, tells us very little about the actual level of compliance. On the contrary, if we define compliant behavior as the alignment of leaders’ behavior with their international obligations under incentives to violate them, we should be better
able to assess whether leaders’ behavior is the effect of the regime type or if leaders are willing to pay political costs to adhere to their international obligations. By approaching the study of compliance through the lenses of incentives to violate the international obligations, I am better able to eliminate those confounding factors that would indicate that democratic leaders are more compliant than others. Indeed, one of the major criticisms to the human rights literature is that in approaching compliance through the study of human rights ratings the obvious conclusion that democracies are better than other regimes is hard to contradict. However, again we do not really know if those ratings are a reflection of sincere and unconditional commitment to human rights or just the effects of regime type. I present three different models in which I observe democracies, autocracies, and anocracies that have ratified CAT, their level of instability, and how the latter changes leaders’ behavior toward international protected human rights. Tables 7.13, 7.14, and 7.15 show the results for the three separate models about instability.

The findings support my central contention that levels of instability affect the respect for human rights. Although, I found that instability in both autocracies and anocracies lowers their respect of physical integrity rights. The most critical finding is that instability negatively affects compliance with international obligations among democratic states. This indicates that whether or not we observe compliance must be addressed with greater scrutiny. In this study
“threats” are one of those factors that may help dissect leaders’ behavior toward compliance.

Table 7.13 OLS Analysis Democracies, Instability and Compliance with CAT

<table>
<thead>
<tr>
<th>Variables</th>
<th>Coefficients</th>
<th>Standard Errors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Instability Index (ln)</td>
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<td>.000</td>
</tr>
<tr>
<td></td>
<td>(0.000)</td>
<td></td>
</tr>
<tr>
<td>GDP Growth</td>
<td>-.015</td>
<td>.013</td>
</tr>
<tr>
<td></td>
<td>(0.252)</td>
<td></td>
</tr>
<tr>
<td>GDP per capita (ln)</td>
<td>9.461</td>
<td>3.961</td>
</tr>
<tr>
<td></td>
<td>(0.017)</td>
<td></td>
</tr>
<tr>
<td>Population Growth</td>
<td>-.466</td>
<td>.049</td>
</tr>
<tr>
<td></td>
<td>(0.000)</td>
<td></td>
</tr>
<tr>
<td>Population (ln)</td>
<td>-.001</td>
<td>.000</td>
</tr>
<tr>
<td></td>
<td>(0.000)</td>
<td></td>
</tr>
<tr>
<td>Trade % of GDP</td>
<td>.006</td>
<td>.001</td>
</tr>
<tr>
<td></td>
<td>(0.000)</td>
<td></td>
</tr>
<tr>
<td>FDI % of GDP</td>
<td>-.040</td>
<td>.008</td>
</tr>
<tr>
<td></td>
<td>(0.000)</td>
<td></td>
</tr>
<tr>
<td>Constant</td>
<td>6.28</td>
<td>.146</td>
</tr>
<tr>
<td></td>
<td>(0.000)</td>
<td></td>
</tr>
</tbody>
</table>

Observations = 1172
Prob > F = 0.000
R-squared = 0.39

In particular, given the general assumption that leaders’ main concern is that of retaining power, at the compliant behavior stage ratified international commitments are an additional impediment to the leaders’ ability to maintain their position when threats are present. The rules set in international human rights treaties and the institutions created to encourage compliance by domestic leaders are at odds with leaders’ interests.
<table>
<thead>
<tr>
<th>Variables</th>
<th>Coefficients</th>
<th>Standard Errors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Instability Index (ln)</td>
<td>-.0003</td>
<td>.002</td>
</tr>
<tr>
<td>GDP Growth</td>
<td>-.035</td>
<td>.013</td>
</tr>
<tr>
<td>GDP per capita (ln)</td>
<td>-1.111</td>
<td>2.361</td>
</tr>
<tr>
<td>Population Growth</td>
<td>-.061</td>
<td>.101</td>
</tr>
<tr>
<td>Population (ln)</td>
<td>-.000</td>
<td>.000</td>
</tr>
<tr>
<td>Trade % of GDP</td>
<td>.015</td>
<td>.002</td>
</tr>
<tr>
<td>FDI % of GDP</td>
<td>-.036</td>
<td>.008</td>
</tr>
<tr>
<td>Constant</td>
<td>3.08</td>
<td>.390</td>
</tr>
</tbody>
</table>

Observations = 182
Prob > F = 0.000
R-squared = 0.47

Thus while scholars (Alfooni and Allen, 1991; Poe and Tate, 1994; Davenport, 1995; Keith, 1999; Harrelson-Stephens and Callaway, 2003; Neumayer, 2005; Brysk and Shafir, 2007) have mainly addressed how threats generally alter the likelihood of human rights violations, concluding that leaders tend to ignore international human rights commitments during times of public emergency, they have left unexplored another important aspect. Scholars have never looked at states that actually commit to human rights treaties and then analyzed their behavior against treaty membership under incentives to violate international obligations.
Table 7.15 OLS Analysis Anocracies, Instability and Compliance with CAT

<table>
<thead>
<tr>
<th>Variables</th>
<th>Coefficients</th>
<th>Standard Errors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Instability Index (ln)</td>
<td>-.0001</td>
<td>.000</td>
</tr>
<tr>
<td></td>
<td>(.000)</td>
<td></td>
</tr>
<tr>
<td>GDP Growth</td>
<td>.008</td>
<td>.017</td>
</tr>
<tr>
<td></td>
<td>(.614)</td>
<td></td>
</tr>
<tr>
<td>GDP per capita (ln)</td>
<td>-5.761</td>
<td>1.011</td>
</tr>
<tr>
<td></td>
<td>(.000)</td>
<td></td>
</tr>
<tr>
<td>Population Growth</td>
<td>-.175</td>
<td>.059</td>
</tr>
<tr>
<td></td>
<td>(.000)</td>
<td></td>
</tr>
<tr>
<td>Population (ln)</td>
<td>-.003</td>
<td>.000</td>
</tr>
<tr>
<td></td>
<td>(.004)</td>
<td></td>
</tr>
<tr>
<td>Trade % of GDP</td>
<td>.004</td>
<td>.002</td>
</tr>
<tr>
<td></td>
<td>(.101)</td>
<td></td>
</tr>
<tr>
<td>FDI % of GDP</td>
<td>.000</td>
<td>.022</td>
</tr>
<tr>
<td></td>
<td>(.994)</td>
<td></td>
</tr>
<tr>
<td>Constant</td>
<td>4.28</td>
<td>.280</td>
</tr>
<tr>
<td></td>
<td>(.000)</td>
<td></td>
</tr>
</tbody>
</table>

Observations = 356
Prob > F = 0.000
R-squared = 0.21

Ultimately as scholars have suggested (Campbell, 2007) the presence of threats works as that factor that capture the real intention behind leaders' compliance. Threats alter the normal channel of communication between leaders and constituency; they incentives for leaders to employ a “sliding scale of the rule of law” to adjust their standards of respect for the rule of law and international legal commitments to the magnitude and type of threat governments face.

7.14 Discussion and Conclusions

Through the models presented to test the final stage of compliance, I have sought to determine whether compliance with human rights obligations
depends upon regime type or there are other factors that may alter leaders’ willingness to comply. The basic models about regime type, found in accord with prior studies that everything else being equal, democracies are substantially more compliant to CAT than autocracies or anocracies. However, once threats were introduced in the models I found that political instability alters leaders’ willingness to comply. Although also for this stage of compliance the impact of threats is rather low, as the small coefficients indicate, the substantial meaning of the models are more important to identify patterns of behavior which suggest that there is something more than polity type behind compliance with international human rights obligations. More specifically, threats alter democratic compliance ratings. To this regard, although today most of the attention is devoted to U.S. fallout in its war against terror, there are numerous democracies resorting to torture in order to protect their stability. Northern Ireland, the U.K., and Spain are only few of the democracies whose national security and stability standards have given a “license to torture” (Shafir, 2007) to leaders. The small coefficients of my models only tell part of a much broader trend in place today, in which new challenges to leaders across regimes type, in the form of domestic and international terrorism, create incentives to violate human rights obligations. The most important aspect of this trend showing changes in leaders’ behavior toward compliance due to threats is to understand how to counterbalance and prevent episodes that lead to low levels of compliance. There is a considerable difference between the interests pursued by leaders under conditions of instability and the
supranational interests protected by international human rights treaties. It seems that a vertical and horizontal accountability in which other states and the international community are able to promptly report on violations and remove the agents is the right response to violations. However, when it comes to compliance the question is if human rights treaties constrain leaders’ behavior before violations occur. I began this work suggesting that talking about human rights ratings leaves the international human rights system defeated. Investigating whether we can improve treaties constraining power and stop violations, instead of simply improving ratings is the better quest the international human rights literature must embark upon. If governments fail to respect the rights of even few individuals than the effort and time put into the creation of the many human rights regimes will be lost. If it is true that even in marginal cases ratifying states because of instability and threats violate human rights then a deeper scrutiny of the relationship between leaders and international obligations is in order, one that goes above and beyond polity type.
CHAPTER 8
CONCLUSIONS AND IMPLICATIONS

8.1 Introduction

The purpose of this dissertation has been to study the conditions that affect leaders’ behavior toward international obligations and in particular toward the Convention Against Torture. I began the dissertation discussing the ways in which the compliance literature has conceptualized and theorized about factors determining compliance, emphasizing both the areas of strength and weakness within the literature. The dissertation then moved to developing a theoretical argument about the regime type and contextual conditions that can improve or hinder leaders’ willingness to comply with international law. I described different causal processes for the regime type, focusing on the divide among democracies, anocracies, and autocracies and on the way regime characteristics and various political pressures may shape leaders’ compliance.

I then added, as the central contention in the dissertation, the argument according to which compliance is a situational phenomenon. In particular, I suggested that contextual factors, such as instability and threats to governmental power when present become the main determinants of compliance. Within the analysis of contextual factors, I also distinguished how instability and threats may alter leaders’ behavior according to their regime characteristics. In the next section of the dissertation, I focused on the empirical analysis of the conditions
that affect compliance throughout the three stages of ratification, implementation, and compliant behavior. In all three stages, I looked at the conditions affecting compliance under both stable and unstable environments. Since states that need to implement and comply with the Convention Against Torture are those that have ratified the Convention, in the second and third analysis sections I looked specifically at all the states that up to 2009 had ratified CAT. This final chapter focuses upon summarizing, synthesizing, and discussing the practical implications of the analyses and the dissertation.

8.2 Synthesizing the Analysis

8.2.1 The Factors Affecting Ratification

Numerous studies about states’ ratification of international law have suggested that leaders’ behavior is shaped by regime characteristics and the “toothless” nature of international human rights agreements, thus concluding that ratification is a constant behavior across regime type. I believe that the results from this work contradict the literature on different grounds. In testing ratification against regime type, this work shows that while democracies do ratify CAT, autocracies and anocracies are less likely to commit to international obligations. This indicates that contrary to what prior studies suggested ratification involves some kind of consequences for leaders’ behavior. The findings would suggest that autocratic and anocratic leaders do not believe that ratification is a costless signal of cooperation to the international community. As I argued, ratification may
open the door to the scrutiny of monitoring institutions and human rights organizations which could limit leaders’ behavior. Especially today international organizations such as Amnesty International and Human Rights Watch monitor continuously the status of ratification of the major human rights treaties and seize the moment states ratify international obligations as an opportunity to scrutinize leaders’ behavior and intentions.

The results from this work show, as well as prior studies, that democracies ratify international obligations. The natural affinity of interests and values may be the reason behind the high rates of ratification of CAT by democracies. Today of the 149 states parties to CAT over 85 states are democracies and, although it is particularly difficult to determine with certainty the type of regime to which states belong over time due to political transitions, the number of democratic parties of CAT is always been greater than autocracies and anocracies.

Following prior literature I also investigated whether specific domestic political pressures may alter leaders’ willingness to ratify. I focused in particular on two of the most important components of the Polity2 scale. The executive constraints, which limit the discretion of the decision making power of executive leaders and the competitiveness of participation, which indicates the presence of competitive political elections. The results strongly support my theoretical contention. Executive constraints and political competition work in the opposite direction in influencing leaders’ behavior across regime type. Regimes with higher executive constraints seem to be more likely to ratify CAT. This supports
the assumption that other political actors in government may seize ratification as a moment to take control over part of the domestic legal framework. Instead, the results show that higher political competition lowers the likelihood of ratification. This is most likely due to the fact that citizens tend to punish leaders who pay attention to supranational obligations when domestic interests are considered paramount to anything else. Interestingly, these findings indirectly contradict those of prior studies (Keith, 2002; Davenport 2007) which concluded that higher political competition is positively correlated with high respect for human rights and would then suggest that leaders would be more likely to ratify international human rights. However, when support for human rights standards comes from within a domestic regime two effects may be at work. On one side, citizens do not feel the need to ratify international obligations promoting rights that are already existent within a domestic legal framework. On the other side and consequently, citizens may see ratification as a costly choice to the detriment of more compelling domestic issues.

Ultimately and most importantly, I also suggested that the degree of commitment to international obligations is not only determined by regime characteristics or the nature of international obligations. This logic would suggest that CAT should have almost a universal ratification. Democracies ratify because of their affinity with international obligations and autocracies because of the “toothless” nature of human rights regimes. However, as mentioned in the analysis section about ratification, among the international human rights treaties,
CAT has the lowest level of democratic commitment. Thus, in attempting to understand what factors my alter leaders’ willingness to commit and then improve the value of international obligations I moved away from the analysis of ratification as just the consequence of regime characteristics. By introducing the concept of threats used by the human rights literature to the study of compliance with international law, I showed that threats alter leaders’ willingness to commit to CAT and that, although for autocracies and anocracies threats do not change the direction of their leaders’ behavior, for democracies threats make commitment slightly more difficult. These initial findings for one specific human rights treaty indicate that there are factors at stake other than regime characteristics and the nature of the international treaty that condition compliance with international obligations. Assuming that because of their character democracies will ratify international obligations only tells one side of the story. The presence of instability highlights leaders’ true standing towards international obligations. The existence of threats that closely touch the ability of leaders to remain in power shows that governments, regardless of their polity type, worry about issues considered paramount to the commitment to supranational obligations. Thus, given the presence of threats leaders may assess international obligations as an additional burden to their ability to remain in power.

8.2.2 The Factors Affecting Implementation

Implementation, the second stage of compliance analyzed in this work,
has received no attention from a quantitative point of view. Although there have been numerous scholars (Conforti, 1993; Koh, 1998) suggesting that implementation of international obligations is particularly important for the improvement of respect of international rules, no scholars have systematically analyzed what factors affect leaders’ willingness to implement ratified international agreements. Thus, my analysis is particularly novel to the field of compliance with international law. Using a similar structure employed for the ratification stage, I looked at compliance under two different sets of conditions, stable and unstable government environments. In trying to address implementation quantitatively and relying on the qualitative studies about the effects and consequences of implementation, I suggested that democracies may be both more likely and less likely to implement CAT. Using the number of reports submitted to the Committee against Torture, I found support for my second hypothesis – democracies are less likely to implement international norms. I suggested that implementation is a process particularly time consuming, which involves two different sets of bargaining. First, different domestic political actors must agree on the right formula translating international obligations into domestic norms. Second, the international institution monitoring implementation must be convinced that the adopted domestic legislation gives full implementation and support to the obligations descending from the international agreement. Given this particularly complex process, democracies which already possesses a system of human rights guarantees, may find implementation an
excessive and unnecessary burden.

As per autocracies and anocracies the results run counter to what I had suggested in my hypotheses. Everything else being equal, autocracies and anocracies submit more reports to the Committee against Torture. As suggested in the analysis section this may be due to the fact that autocratic leaders do not need to go through domestic political actors to create legislation and, usually, they maintain a monopoly over the content of the reports submitted to the Committee. This implies that the costs associated with the process of implementation in a democratic settings are absent for other regimes.

In looking at the executive constraints and the political competition across regime types, the results show that executive constraints increase the number of reports submitted to the Committee, while higher levels of political competition work in the opposite direction. These findings support what suggested in the theory section. Strong executive constraints enable section of governments to take control of part of the legislation and of the domestic legal framework, while high levels of political competition hinder implementation. This latter effect may be due to the fact that high levels of political competition are usually allowed in more open systems in which human rights are also generally respected. In this case a domestic audience, which manifests its standing through participation, may retaliate against leaders spending time and effort on issues not of primary citizens’ concern.
In adding threats to the models and analyzing each regime type with regard to the presence of threats, the results of the analyses do not show statistically significant results. What can be suggested by the results is that leaders change slightly their implementing behavior given the presence of threats but not in a drastic way to be considered relevant to this phase of compliance. As I suggested earlier in this work, I expected that threats would play less of a role in affecting this stage of compliance than in ratification and compliant behavior. In the analysis I indicated that the consequences and costs associated with implementation are less relevant to leaders’ behavior while facing threats than for the other stages of compliance and this is for two main reasons. First, presenting a report to the Committee does not create any immediate obligation for leaders. Second, the presence of threats does not really affect the likelihood that reports will be submitted.

Additionally, leaders are perfectly aware of the lengthy procedures associated with the review or reports by the Committee. As suggested in the analysis section, states parties submitting reports should expect to wait for a long time before the Committee replies with recommendations and requests for clarifications. This implies that, by the time monitoring institutions can effectively address the situation of a state party, leaders will have dealt with threats and instability without the need of facing deep scrutiny of the human rights committee members. Thus, I find that as suggested before, threats do not have a real
impact on state behavior and that the monitoring and reporting process may become the predictors of leaders’ behavior more than instability.

8.2.3 Factors Affecting Compliant Behavior

There is a general understanding among scholars that the higher the level of threats real or perceived by leaders the higher the extent to which leaders repress. The human rights literature (Poe and Tate, 1994; Fein, 1995; Davenport, 1997) has found that together with other structural components of the regimes, threats are the predictors of human rights violations. However, prior studies have mostly focus on autocratic and anocratic regimes and have not isolated those states that have ratified international obligations. My results generally do not contradict what prior literature has suggested. Everything else being equal, democracies that have ratified CAT have higher respect for human rights obligations than autocracies and anocracies. However, once threats are introduced in the model democracies begin to deviate from their expected compliant behavior and start violating the international ratified obligations.

The findings for this stage of compliance, as well as for implementation, do not indicate that there is a drastic change in behavior by leaders. As suggested in the theory section, the character and degree of deviation from the human rights obligations still depends upon some aspects of the polity type to which leaders belong. However, as also suggested several times, this work was not intended to understand which states commit less violations and which ones
have better human rights ratings. This work aimed at investigating instances of non compliant behavior and then assess for the situations that have led to those violations. The logic behind this approach to the study of compliance with international human rights obligations descends from a simple understanding of the work that goes into the creation of these international instruments and the effects they are expected to produce. Thus, the quest to understand whether or not these international human rights treaties are effective in constraining leaders’ behavior cannot stop at the assessment of human rights ratings, but needs to address even small occurrences of violations. Ultimately, if we understand the obligations of international human rights treaties as particularly vital for the protection of individuals, even a small indication that threats cause non-compliance should be alarming for the international community. This is to say that the results, even when showing a small impact on the dependent variable, have an important validity in understanding the reason behind non-compliant behavior. More important is the indication that those deviating from a compliant behavior are the same governments that are generally considered to have better human rights ratings. In looking at democratic leaders’ behavior today, scholars and practitioners have focused their attention on the U.S. and the attempt of leaders to pursue a policy of torture justified by supranational interests. However, as also indicated above, democracies resort to different kinds of behaviors that violates basic human rights standards without necessarily falling under the telescope of the international community. This is to say, that democracies not
always engage in exceptional forms of violations of basic human rights, but very often democratic leaders employ mild forms of repressions that, because of a persistent ideological bias in favor of democratic human rights standards, escape the attention of international organizations. This is why, it is particularly relevant to look at leaders’ behavior regardless from the assumption that their regimes has certain ratings when it comes to compliance with international human rights obligations. The most important question that must be addressed by looking at the results of my analyses is about the derogability of rights; how much is the international community ready to accept the presence, even in small percentage, of violations of human rights obligations given public emergencies? Although my results do not speak of high levels of non-compliant behavior, they still indicate that threats cause violations of human rights obligations and thus speak about the constraining power of those obligations. What can be inferred from the results of the last stage of compliance? When threats strike the constraining power of CAT diminishes. Even more, the fact that democracies, traditional supporters of international human rights obligations, resort to non-compliant behavior indicates that the constraining power of CAT is particularly weak. Moreover, the fact that autocracies and anocracies that have ratified CAT violate human rights under “stable” and unstable circumstances, given that threats do not make any difference on leaders’ behavior, also suggests that CAT has little constraining behavior where its provisions should matter the most.
8.3 Future Research

The results of this study suggest that there are some weaknesses that need to be addressed, but also suggest that are several areas that can be explored in future research. One aspect of this research that can be improved is that is that of looking at multiple treaties. In fact, although it is true that international agreements generally impose similar costs on state parties (i.e. loss of sovereignty), the nine core international human rights treaties differ in the type of specific restrictions they impose on leaders’ behavior with regard to the rights protected by each and every one of them. This is particularly relevant for the theory put forth in this study. Indeed, if it is true that threats have, on such limited pool of observations, an impact in changing leaders’ behavior toward compliance with CAT, it may be true that different types of threats could have an impact on leaders’ behavior toward other specific human rights treaties. In the example given in the analysis section, about Canada, U.S., and Brazil not ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICPRW) it is evident that different states react to different treaties’ obligations according to the challenges they face within the domestic framework. The threat feared by the leaders of Canada or the U.S. is for example the considerable amount of immigration which has strained leaders’ ability to maintain some stability within society. Under these circumstances the ratification of ICPRW is seen by governmental leaders as an additional burden in the management of a domestic problem that undermines their ability to retain
power. Expanding the realm of research to the multiple international human rights treaties which today populate the international law landscape can definitely help our understanding of how leaders react to different types of threats. This is also in accord with what much of the literature (Simmons, 2009; Hathaway, 2007) has already suggested; when it comes to international obligations leaders become “sophisticated negotiators.” They not only master the ability of bargaining at the different levels of governments, both with international institutions and domestic actors, but also selectively choose what kind of treaties are the most convenient for their specific domestic situation. This process of preselecting the treaties to which to commit is a clear indication that there is no a general golden rule associated with compliance. Not all democracies have ratified all nine core international human rights treaties and a closer look at the patterns of ratifications shows that commitment is considerably affected by the type of obligations descending from the treaty and the type of challenges leaders face domestically. Expanding the investigation to all nine core international human rights treaties would also require to include other considerations in the analysis of compliance.

In fact, some human rights treaties, such as the International Covenant on Civil and Political Rights, allow leaders to ask for derogations to their commitment to some of the rights protected within the Covenant during times of emergency, while other treaties’ obligations, such as CAT are non-derogable. Derogations provisions which accommodate considerably some of the threats
and challenges leaders face domestically can definitely improve leaders’ willingness to commit to a treaty. This is also to say that including all treaties in the investigation would give a better assessment of the degree to which threats actually affect leaders’ decisions, especially for agreements which provide leaders with justification clauses.

In these cases two additional considerations could be added to the study of compliance. First, if treaties which provide for derogations under states of emergency have higher level of commitments, then we could conclude that leaders take under serious considerations real or potential threats to their stability. Second, if leaders that have ratified treaties that offer derogation clauses use such clauses to free themselves from obligations under conditions of instability, then we will have additional evidence that when it comes to balancing government stability and compliance with international human rights obligations the first has more weigh on leaders’ behavior.

On a second point, the findings of this study give a first indication that threats shape in some form leaders’ behavior toward compliance. However, the use of the Banks Instability Index to capture the weight of threats on leaders’ willingness to commit, to implement, and comply with international obligations does not exactly offer a precise view of the challenges governmental leaders face. This is even truer with regard to democracies, since these regimes generally experience forms of challenges that do not rise to extreme levels of violence. In the recent events involving the economic crisis in Greece or the G8
clashes between police and protesters in Italy, violence has not necessarily reached the magnitude of guerrilla warfare or civil conflict, but nonetheless has prompted the European Court for Human Rights and international human rights agencies to indicate that violations of international obligations were taking place.

More sensitive measures of instability could be better able to capture milder forms of instability even at an earlier stage to the actual repression or violation. It is common that leaders facing heavy criticisms by their citizens on economic or social programs limit the ability of the population to manifest or publicly express their discontent. If we were able to capture a more sensitive measure of instability probably the impact that threats have on the actual level of compliance with international obligations would increase.

This also implies that the analysis of human rights violations through the CIRI indicator of the physical integrity rights index could be improved by a more sensitive measure of violations. The CIRI index looks specifically at Torture, Extrajudicial Killing, Political Imprisonment, and Disappearance indicators, but does not capture other basic human rights indicators such as the freedom of expression, freedom of movement, and the right to a due process. These are all rights that are usually limited considerably by democratic governments when political, social, and economic conditions could potentially lead to citizens taking the streets to manifest against leaders. Although these are issues beyond the scope of the analysis of compliance with CAT, the inclusion of more sensitive measures for both the instability index and the violation of human rights is
something that must be considered in future research to better capture the constraining power of international obligations and the factors affecting compliance.

Lastly, this work has shown that threats have little relevance when it comes to the implementation of human rights agreements. I also suggested that I expected that threats would have no relevance because of the lengthy procedures associated with the implementation process of international human rights agreements. The findings also showed that autocracies seem to be implementing more than democracies and anocracies. In order to correctly interpret these results a series of considerations must be addressed. First and foremost, in addressing implementation I used as a proxy of compliance the number of reports submitted to the Committee. Although it is true that the more reports submitted the more effort countries are showing in addressing the Committee’s concerns, it also true that this effort may remain on paper. This is why I suggested that autocracies report more because leaders’ do not have to bargain or follow up with the legislative branch of government in writing reports and creating implementing legislation. While on the other hand democracies could report less because they take under serious consideration the implication descending from the reports submitted.

Thus, although the number of reports submitted gives an indication of some form of states’ responsiveness to the Committee’s recommendations, it tells us only part of the story of the implementation process. Improving the
understanding of this stage of compliance would require a considerable amount of time and resources to conduct an in depth analysis of the reports submitted by states, the recommendations provided by the Committee, and the actual changes taken by states to satisfy the Committee’s recommendation. In fact, first of all it would be necessary to analyze whether states are correctly reporting the information to the Committee with regard to their legislation on Torture. Second, it would be necessary to understand what steps the Committee recommends to states. Third, it would be necessary to conduct an in depth analysis of the legislative framework of each and every state party to the Convention. All this process is further complicated by the fact that states tend to submit multiple reports at once if they have missed deadlines for reporting to the Committee. Thus, most of the times states’ reports contain subsections in which they address different Committee’s recommendations and an attentive comparison between documents becomes necessary. Lastly, analyzing domestic legislation is a complicated matter, which requires knowledge of multiple legal systems and languages, and access to information that is not always available.

The work offers multiple fruitful areas of future research to improve the understanding of compliance with international human rights law. In particular, given the little research of compliance as a complex process, the little attention shown to the implementation of international agreements, and the fact that this work has shown that to some extent compliance is a situational phenomenon, shows that it is important not to divorce the study of compliance from its
complexity and its dependence on the circumstances surrounding leaders' decisions.

8.4 Policy Implications

As indicated in the introduction to this work, this project has attempted to make a valuable contribution to the interdisciplinary field of international relations and international law. By looking at how leaders react to international obligations, this work attempts to contribute to the understanding of those conditions that can improve the constraining power of international obligations. What kind of policy implications can be inferred from this study and the results obtained? First and foremost, if threats are indeed a factor affecting leaders' compliance with international human rights obligations and causing violations, then threats can function as a warning sign alerting the international community and international human rights organizations on the possible escalation of violations of human rights. This study has begun with a simple assumption about leaders' behavior descending from the human rights literature. Scholars (Poe et al., 1994; Fein, 1995; Davenport, 1995) have found that threats to leaders lead them to repression. The same scholars have also shown that most of the times leaders tend to escalate repression based on perceived more than real threats and that the misperception of threats is also the consequence of leaders' capabilities in dealing with domestic economic and political problematic.
However, the above studies have not looked specifically at states’ obligations toward international human rights agreements and have focused on forms of instability that are most likely to occur within countries whose polity types fall along the lines of autocratic and anocratic regimes. In reality, prior research has laid the groundwork to generate a more comprehensive understanding of leaders’ behavior. I suggested that if autocratic and anocratic leaders repress more under conditions of “instability” they should also be less respectful of ratified international human rights agreements. Yet, if we are interested in seeing how effective international human rights agreements are, it follows that the analysis must take into consideration polity types other than autocracies and anocracies. Although it is true that the latter are the regimes where international human rights agreements should matter the most, it is also true that the compliance ratings of democracies also show violations of compliance by democracies along the three stages designed in this work. This is to say that, although democracies do not resort to the type of repression to which autocratic and anocratic leaders resort, thus not falling under the attention of scholars and international practitioners, they still entertain in milder forms of violations of international obligations that can only be captured by looking specifically at compliance. Thus, this should suggest two important issues to policy makers. First and foremost, compliance with international human rights agreements gives a better picture of leaders’ behavior toward human rights across regime type. Second, this also suggests that policy makers must be
aware of the fact that there are threats that create non compliance and violations of human rights that do not rise to the level of civil and international wars, but also mild forms of threats that apply to regimes such democracies and that case non compliance.

Additionally, this work tries to eliminate the preconceived idea that compliance is governed by a general rule, according to which democracies are compliant and autocracies are not compliant with international obligations. I suggested earlier in this work that among scholars there has been almost an “ideological bias” toward believing that the better human rights records of democracies compare to those of autocracies almost equals to the absence of violations across democratic regimes and thus to perfect ratings of compliance. On the contrary, violations of physical integrity rights are not events confined to authoritarian regimes. Although at a lower level than autocracies, democracies tend to violate physical integrity rights. This work does not try to suggest to policy makers that international human rights regimes should achieve a level of perfect compliance in which at least democracies are fully complying at all times and with all international human rights treaties. This is truly beyond the scope of this work and practically impossible to achieve even for domestic laws which have higher degree of enforcement than international rules. However, this work tries to suggest that it is important not look at the ratings of compliance, but at the actual episodes in which violations of compliance occur. By shifting the attention on the incidents of violations and the circumstances surrounding them instead than
looking at which countries have better compliance ratings, we are better able to improve our understanding of why violations occur in the first place. Ultimately, we are better able to address also those instances of violations often overlooked by scholars and practitioners because of the political context within which they occur.

Lastly, this study aims at addressing how much of a constraining power international human rights treaties really have on leaders’ behavior and to understand how to improve international human rights instruments to make them more effective on leaders’ behavior. As indicated in the introduction and as correctly said by Koh (1998) most observers are skeptical about the enforceability of human rights laws. That is because “human rights norms are vague and aspirational, because enforcement mechanisms are toothless, because treaty regimes are notoriously weak, and because national governments lack the economic self-interest or the political will to restrain their own human rights violations” (Koh, 1998, p. 1397). It is true that when we observe compliance with international human rights obligations we are really observing a voluntary behavior; leaders ultimately decide whether and how to commit to international obligations and to what extent by submitting reservations and using derogation clauses. It is also true that, in looking at the patterns of behavior adopted by leaders, we are able to capture some of the nuances that affect that voluntary behavior.
While prior literature has suggested that what affects leaders' willingness to commit and comply with international agreements depends upon their content and whether agreements give more or less freedom to leaders to maintain their sovereignty, I suggest that leaders behave according to different rules. Leaders look at the agreements' content and the ability to derogate to some obligations based on the challenges they face domestically. It is a comparative evaluation of the rights protected by the international agreements, the presence of domestic challenges, and the need to resort to violations of international obligations because of those challenges that affects leaders' compliance. Thus, agreements' content and the presence of derogation clauses can affect leaders' decision, but only based on the domestic challenges leaders face. Understanding that exogenous factors to treaty's content, such as threats, alter leaders' compliance with international law, gives us a better insight in the motives behind human rights violations and into the early detection of the circumstances that could trigger violations. Most importantly, this study could give a better understanding of the tools that could prevent violations in the first place. This is particularly significant for the study of international obligations because it provides a different perspective of the importance of international law; it is not only matter of how international treaties cause compliance, but also matter of how international treaties can counterbalance incentives to violate them. If we understand what are the circumstances that lead to violations then we can better articulate
international law around them, thus improving the effectiveness of international human rights obligations.


