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Protecting Human Rights

Case Study: Human Trafficking

While institutionalized slavery disappeared at the end of the nineteenth century due to the efforts of the first human rights advocates—the anti-slavery groups—slave-like practices of forced labor and trafficking in persons continue today. The scope of human trafficking owes much to the rapid pace of globalization that opened doors to the free flow of capital and trade as well as to illicit industries like human trafficking. Many of those trafficked are women and children lured by promises of a better life and held against their will only to work long hours and suffer other abuses.

It is estimated that around 12 million people worldwide may be victims of human trafficking. The varying definitions of what constitutes trafficking and the clandestine nature of the problem make the number uncertain, however. Among the more reliable data sources is the Database on Human Trafficking Trends developed by the UN Office on Drugs and Crime (UNODC). Drawing on human trafficking incidences recorded by 113 major institutions between 1996 and 2003 in 161 countries, the data show that the majority are females, three-quarters are trafficked for sexual exploitation, and one-quarter are trafficked for forced labor and domestic servitude. Many are illegal migrants (Cho 2013: 687).

Trafficking is framed as both a human rights issue and a transnational crime, with profits in the billions annually. This dual framing has produced two separate lines of action. Human rights framing means setting standards and securing victims' rights to legal and rehabilitative remedies where the UN system has long been involved. The Universal Declaration on Human Rights included the right to be free from slavery or servitude. In 1951, the Convention for the Suppression of Traffic in Persons went into effect, prohibiting trafficking in persons for the purpose of prostitution (even with their consent). In 1956, the General Assembly explicitly identified contemporary practices that were considered "slave-like," among them serfdom,

forced marriage, child labor, debt bondage, and trafficking in human beings, when it approved the Supplementary Convention on the Abolition of Slavery, Slave Trade, and Institutions and Practices Similar to Slavery. The ILO banned forced labor in a 1957 convention and addressed abuses of migrant workers in a 1975 convention. Other related UN actions include the conventions on women, children, and migrant workers; the Optional Protocol on Children in Armed Conflict and the Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography (2002); and the appointment of a special rapporteur to study the issues (see Table 10.1 later in the chapter).

Framing policy formulation under the rationale and language of criminal justice means ensuring aggressive prevention and prosecution of traffickers. Several actions have been taken, including the establishment of the Commission on Crime Prevention and Justice under ECOSOC, a global conference on transnational crime, and discussion of the possibility of a new convention on transnational organized crime. The consensus was that existing UN legal instruments were insufficient. Thus, in 1997, the General Assembly authorized the drafting of a new treaty.

Early in the drafting of the Convention Against Transnational Organized Crime, work began on a separate protocol on trafficking in persons. The drafting process for the protocol, which lasted from late 1998 through 2000, was highly contentious and drew active NGO advocacy. The most heated tug-of-war concerned the definition of sex trafficking. One camp, supported by the Coalition Against Trafficking in Women, insisted that prostitution in all its forms was exploitive and should be criminalized. The opposing view, advanced by the Human Rights Caucus, posited that noncoerced, consensual migrant sex work should not be prohibited by the protocol. The debate hinged on the definition of sex trafficking and "force" as a required element, as well as on whether "consent" should serve as a delineating concept between noncoerced sex work and sex trafficking. Both camps sought to influence the delegates directly as well as national governments. The final language maintains a distinction between consensual sex work and sex trafficking, but does not permit the consent of victims to be used as a shield for prosecution if other elements of exploitation are apparent.

The Convention Against Transnational Organized Crime, with the additional protocol on trafficking in persons as well as protocols on migrant smuggling and arms trafficking, was adopted by the General Assembly in 2000 and entered into force in 2003. All three are often referred to as the Palermo convention and protocols. According to the protocol on trafficking—officially titled the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children—human trafficking is defined as follows:

> The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

By 2014, 163 states had become party to the protocol. Because of its link to the transnational crime convention, the protocol uses the language of criminal law rather than of human rights. This means that the focus of implementation is not so much monitoring and promotion but law enforcement. UNODC works to combat trafficking under the convention, assisting states in drafting policies and providing training resources.

The Geneva-based UN human rights organs have continued their anti-trafficking work. The Human Rights Council (HRC) supports the special rapporteurs for these contemporary forms of slavery. These rapporteurs monitor and promote specific human rights by conducting country visits, receiving complaints from individuals, issuing reports to UN bodies, and communicating with governments. To generate publicity about slave-like practices, the UN General Assembly declared the year 2004 as the International Year to Commemorate the Struggle Against Slavery and Its Abolition and sponsored programs, exhibits, and educational programs. Likewise, the ILO undertook major studies in 2001 and 2005 of forced labor, including human trafficking, calling for its elimination within a decade.

In 1991, the General Assembly established the UN Voluntary Trust Fund on Contemporary Forms of Slavery to provide financial assistance to victims and to NGOs dealing with these issues. The aid to individuals is based on needs for security, education, independence, and reintegration and can include various supports such as legal aid, medical care, food, and counseling.

A second source of assistance for all stakeholders, including governments, business, civil society, and the media, is the United Nations Global Initiative to Fight Human Trafficking, better known as UN.GIFT. It was established in 2007 with funding from several UN agencies, the International Organization for Migration (IOM), the OSCE, and concerned states, among others. UN.GIFT's primary focus is on eradicating human trafficking by supporting partnerships and capacity building of state and nonstate stakeholders.

Particularly striking about efforts to deal with human trafficking is the absence of a single, dominant NGO coalition such as that formed to deal with violence against women or that formed to support the International

Criminal Court. The two coalitions active during the drafting of the Palermo protocol have not formed a single network to coordinate and facilitate anti-trafficking efforts. Anti-Slavery International includes human trafficking among its activities and works to raise awareness, lobbying countries to ratify conventions and strengthen their anti-trafficking efforts. Yet many NGOs prefer to operate independently and often see other NGOs as competitors for funding and attention, focusing on a particular group being trafficked. Yet, human trafficking remains a highly lucrative form of transnational organized crime. The scope of the problem continues to increase. Lack of public awareness of the problem in countries where trafficking originates (particularly many Southeast Asian and Eastern European countries) as well as in destination countries, including the United States, is an obstacle to these anti-trafficking efforts. In 2014, traffickers became increasingly active in the Middle East and North Africa in moving refugees, asylum-seekers, and migrants into Europe, posing major challenges for the EU and its members.

The focus on human trafficking reflects increased attention to human rights issues since World War II, a trend that Zbigniew Brzezinski (1989: 256) has called "the single most magnetic political idea of the contemporary time." That idea and attention have spurred the development of a broad range of international rights norms and global human rights governance initiatives.

The Roots of Human Rights and Humanitarian Norms

The question of who should be protected—who is human—and how they should be protected has broadened over the centuries. Beginning with the nineteenth-century abolition of the slave trade, former slaves were granted nominal rights and protections. Christians were viewed as a special group needing protection from mistreatment by the Ottoman Turks, and the rights of those wounded during war were articulated with the establishment of the International Committee of the Red Cross, as described in Chapter 6. In the mid–twentieth century, colonialism came to an end. As Martha Finnemore (1996a: 173) describes: "Humanity was no longer something one could create by bringing savages to civilization. Rather, humanity was inherent in individual human beings." Asians and Africans now had human "rights," including the collective right to self-determination, as well as individual rights.

The Holocaust—Nazi Germany's campaign of genocide against Jews, Gypsies, and other "undesirables"—was a powerful impetus to the development of the contemporary human rights movement. In the 1970s, human rights violations in the Soviet Union and Eastern Europe drew public condemnation, as did the "disappearances" of individuals under the authoritarian regimes of Chile and Argentina. South Africa's egregious policy of apartheid—systematic repression and violence against the majority of the country's population solely on the basis of race—had a similar mobilizing effect. The dissolution of the Soviet Union and the downfall of other communist regimes in the early 1990s liberated international efforts to promote human rights from the ideological conflict of the Cold War. Events in Bosnia and Rwanda prompted pressure for prosecution of those responsible for war crimes, crimes against humanity, and genocide, and television pictures of starving children in Somalia provoked public demands that something be done.

In each case, the revolution in communication technologies has magnified the horror of the events by broadcasting pictures of genocide, ethnic violence, the use of child soldiers, and starving populations. In a twenty-four-hour news cycle, the media report the abuses of governments and suppressed groups, and the Internet, Facebook, and Twitter are used to mobilize responses. Technology has led to pressure by states and individuals for a variety of governance activities. The fact that over 100 of the 193 member states of the UN are now democracies magnifies the pressure for human rights governance. The forces of liberalization and globalization have also contributed to the erosion of Westphalian state sovereignty and the gradual acceptance of international accountability for how states treat their citizens. The roots of human rights and humanitarian norms can be found in all major religions and in widely divergent philosophical traditions.

Religious Traditions

Hinduism, Judaism, Christianity, Buddhism, Islam, and Confucianism all assert both the dignity of individuals and people's responsibility to their fellow humans. Hindus prohibit infliction of physical or mental pain on others. Jews support the sacredness of individuals, as well as the responsibility of the individual to help those in need. Buddhism's Eight-Fold Path includes right thought and action toward all beings. Islam teaches equality of races and racial tolerance. While the relative importance of these values may vary, Paul Gordon Lauren (1998: 11) notes that "early ideas about general human rights . . . did not originate exclusively in one location like the West or even with any particular form of government like liberal democracy, but were shared throughout the ages by visionaries from many cultures in many lands who expressed themselves in different ways."

The Philosophers and Political Theorists

Like the world's religious thinkers, philosophers and political theorists have conceptualized human rights, although they differ on many specific issues and ideas. Human rights philosophers from the liberal persuasion traditionally have emphasized individual rights that the state can neither usurp nor undermine. John Locke (1632–1704), among others, asserted that individuals are equal and autonomous beings whose natural rights predate both

national and international law. Public authority is designed to secure these rights.

Key historical documents detail these rights, beginning with the English Magna Carta in 1215, the French Declaration of the Rights of Man in 1789, and the US Bill of Rights in 1791. For example, no individual should be "deprived of life, liberty, or property, without due process of law." Political and civil rights, including free speech, free assembly, free press, and freedom of religion, deserve utmost protection according to liberal theories. By custom, these rights have been referred to as first-generation human rights. To some theorists and many US pundits, these are not only the key human rights but also the only recognized human rights.

Theorists influenced by Karl Marx and other socialist thinkers concentrate on those rights that the state is responsible for providing. Emerging from Marx's concern for the welfare of industrialized labor, the duty of states is to advance the well-being of their citizens; the right of the citizens is to benefit from these socioeconomic advances. This view emphasizes minimum material rights that the state must provide to individuals. Referred to as second-generation human rights, these include the right to education, health care, social security, and housing, although the amount guaranteed is unspecified. Without those guarantees, socialist theorists believe that political and civil rights are meaningless.

Some contemporary writers have focused on human rights for specific groups. Indigenous peoples have been given special consideration, as have children, women, migrant workers, the disabled, refugees, and most recently gay, lesbian, bisexual, and transgender persons. Several UN resolutions also affirm certain collective rights, including the rights to development, a clean environment, and democracy. There is much more controversy over these emergent third-generation human rights. Does the expansion of fundamental human rights actually dilute the very rights that others are trying to protect?

The contemporary debate revolves around the relative priority attached to these three generations of rights. In Western liberal thinking, political and civil rights are clearly given higher status, while in many other parts of the world, priority goes to economic and social rights or to collective rights such as the right to development. Such disagreements help explain the lack of political will for international human rights enforcement and implementation. Just as the West has dominated economic relations, it has dominated human rights standard-setting. Thus the strongest part of both international and regional human rights governance mechanisms protects civil and political rights, while the other two generations of human rights have received less attention, in part because it is more difficult to establish standards of compliance for economic, social, and collective rights.

The Debate over Universalism and Cultural Relativism

Are all these human rights truly universal—that is, applicable to all peoples, in all states, religions, and cultures? Are they inalienable—that is, fundamental to every person? Are they necessary to life? Are they nonnegotiable—so essential that they cannot be taken away? Or are rights dependent on culture? Since the 1970s, some Islamists have questioned the notion of universal human rights. Two issues—the rights of Muslims versus non-Muslims and the rights of men versus women—have posed the most problems, reflecting conflicting interpretations of Islamic teachings and practice. One approach is to accept the notion of equality but offer reasons why the principle of equality is not undermined by different rules protecting one group over another (Mayer 2013). Another was evident at a 2003 conference in Beirut where Islamic human rights activists, NGOs, and some governments proclaimed the universality of human rights and rejected the use of either culture or Islam to restrict those rights.

In the early 1990s, a number of Asian states argued that the principles in the Universal Declaration and other documents represented Western values that were being imposed on them and that the West was interfering in their internal affairs with its own definition of human rights. They also argued that advocating the rights of the individual over the welfare of the community is not only unsound but also contrary to different cultural traditions.

Much of the debate has been clearly political, taking place between authoritarian states concerned about human rights intervention in their domestic affairs, and Western democratic states eager to promote political change. The debate over universality versus cultural relativism is particularly sensitive, however, with respect to issues of religion, women's status, child protection, family planning, divorce, and practices such as female circumcision.

The Vienna Declaration and Programme of Action, adopted at the 1993 World Conference on Human Rights, stated: "All human rights are universal, indivisible and interdependent and interrelated." Regional arrangements, the declaration stated, "should reinforce universal human rights standards." Yet even that document included the qualification that "the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind." Thus, Stephen Hopgood (2013) argues that while universalism has been the promise of the past, today it is ill adapted to the diversity of the multipolar world.

The Evolution of Humanitarian Norms

Just as human rights norms have emerged and changed over time, so too have humanitarian norms. Originating in the nineteenth century, humanitarian norms were developed to save lives and alleviate pain in zones of con-

flict, without regard to the underlying beliefs or political allegiance of individuals. Thus humanitarian principles were apolitical, their proponents maintained, providing relief in an impartial, independent, and neutral way. Yet as Michael Barnett (2005: 724) argues, during the 1990s those core principles "crumbled . . . as humanitarianism's agenda ventured beyond relief and into the political world and agencies began working alongside, and with, states." We explore the relationship between humanitarianism and human rights in more detail later.

The Key Role of States: Protectors and Abusers of Human Rights

States, as the Westphalian tradition and realists posit, are primarily responsible for protecting human rights standards within their own jurisdiction. Many liberal democratic states have based human rights practices on political and civil liberties, while socialist states have developed socioeconomic protections. Since the late 1970s, more than a hundred states have created national and subnational human rights institutions, independent bodies with the power to promote and protect human rights domestically. While these institutions have taken different forms (national commissions, ombudsmen, special commissions), they empower local actors and help embed human rights norms domestically (Kim 2013). States are also responsible for protecting against human rights abuses committed by private actors, including business enterprises acting in their jurisdiction, and for providing redress for those whose human rights have been abridged.

Some Western states also attempt to take their domestic commitment to human rights and internationalize it by supporting similar human rights provisions elsewhere. At US insistence, support for human rights guarantees was written into the new constitutions in both Iraq and Afghanistan. The EU has required candidate members to show significant progress toward improving their records on political and civil liberties prior to accession. These states believe that it is in their national interest to promote human rights abroad, that states sharing those values are better positioned to trade with, and less likely to go to war with, each other.

States are not just protectors, however; they are also the primary violators of individual human rights. Both regime type and real or perceived threats to the state are explanations for states' abuse of their own citizens. In general, authoritarian or autocratic states are more likely to abuse political and civil rights, while less developed states, even liberal democratic ones, may be unable to meet basic obligations of social and economic rights or collective rights due to scarce resources.

All states threatened by civil strife or terrorist activity, including democratic ones, are apt to use repression against foes, domestic and foreign.

State security prevails over individual rights in such situations. In fact, the International Covenant on Civil and Political Rights acknowledges that heads of state may revoke some political and civil liberties when national security is threatened. The United States, for example, has faced allegations of human rights violations concerning the continued detention at Guantanamo Bay of persons linked to the 9/11 attacks, and China has faced regular criticism for infringements of freedoms of assembly and expression as well as for its suppression of Uighurs and Tibetans. Poor states or states experiencing deteriorating economic conditions are apt to repress these rights, in an effort by the elite to maintain power and divert attention from economic disintegration. Economically developed states may also have difficulty meeting the demands of economic and social rights for all citizens. And in some cases, those rights may be deliberately undermined or denied due to discrimination on the basis of race, creed, national origin, or gender. Finally, high degrees of fractionalization along ethnic, religious, or ideological lines in societies tend to bring out the worst abuses. For example, Iraq's Shiite-dominated government has been accused of actions against the country's Sunni Arabs, Kurds, Turkmens, Christians, and other minorities.

International Human Rights Institutions and Mechanisms

IGOs, in particular the UN, and NGOs have played key roles in the process of globalizing human rights. They have been central to establishing the norms, institutions, and activities for giving effect to the idea of universal rights. The international human rights movement—a dense network of human rights–oriented NGOs and dedicated individuals—has been responsible for drafting much of the language of human rights conventions and for mounting transnational campaigns to promote human rights norms. These groups and individuals and the processes by which they have persuaded governments to adopt human rights norms demonstrate the power of ideas to reshape definitions of national interests, a process best explained by social constructivist theorizing.

NGOs and the Human Rights Movement

Nongovernmental organizations have long been active in human rights activities, with anti-slavery groups being among the first and most active. In the late eighteenth century, abolitionists in the United States (Society for the Relief of Free Negroes Unlawfully Held in Bondage), Great Britain (Society for Effecting the Abolition of the Slave Trade in Britain), and France (Société des Amis des Noirs) organized to promote ending the slave trade. Although these groups were not powerful enough to effect immediate international change, the group in Great Britain was strong enough to force

Parliament in 1807 to ban the slave trade for British citizens. Less than a decade later, in 1815, the Final Act of the Congress of Vienna included an Eight Power Declaration that the slave trade was "repugnant to the principles of humanity and universal morality" (Lauren 1996: 27). Willingness to sign a statement of principles, however, did not mean states were ready to take specific measures to abolish the practice.

Many human rights and humanitarian NGOs formed around specific issues either during or immediately following wars. The ICRC was established in the 1860s to protect wounded soldiers, prisoners of war, and civilians caught in war. During and after World War I, numerous NGOs formed to protect women and children from the devastation. With World War II, humanitarian relief organizations grew in number, including groups like Catholic Relief Services, originally formed in 1943 as War Relief Services, to provide emergency aid to refugees fleeing conflict in Europe. Later its mandate expanded to include providing humanitarian relief to the poor, the displaced, and individuals suffering from natural disasters. CARE and Oxfam followed.

In the late 1970s, after the two international human rights covenants went into effect, the 1975 Helsinki Accords were signed to promote human rights in Eastern Europe and the Soviet Union. The 1976 riots in Soweto and murder of black South African leader Steve Biko and the growing number of "disappearances" and other human rights abuses in Latin America were widely publicized. US president Jimmy Carter made human rights a priority in US foreign policy and Amnesty International was awarded the 1977 Nobel Peace Prize. These events gave a boost to the establishment of a new generation of human rights NGO groups, including Helsinki Watch, the Mothers (and Grandmothers) of the Plaza de Mayo, and the National Endowment for Democracy, a quasi-NGO. With the Cold War's end and the rise of democratic states in the 1980s and 1990s, another generation of NGOs developed, including the Open Society Institute. Today there are thousands of human rights groups at the international, national, subnational, and grassroots levels. Amnesty International and Human Rights Watch are by far the largest, best-known, and most influential groups. Over time, discrete human rights NGOs have together forged the international human rights movement, due in part to the rise of investigative journalism and the attention it has brought to human rights issues (Neier 2012: 5). The information revolution has facilitated the movement's ability to transmit such information across borders.

Despite their diversity, human rights NGOs perform a variety of functions and roles, both independently and in conjunction with IGOs, in international human rights governance. These include educating the public, providing expertise in drafting human rights conventions, monitoring violations, shaming violators, and mobilizing public support for changes in national policies. They may also undertake operational tasks such as providing aid for victims of human rights abuses, training police and judges, and running programs to rehabilitate former child soldiers. In addition, NGOs provided much of the momentum for the UN human rights conferences of the 1990s, including the 1993 World Conference on Human Rights (Vienna) and the 1995 Fourth World Conference on Women (Beijing).

As discussed in Chapter 6, a major strategy used by NGOs generally involves organizing transnational campaigns on specific issues. In the human rights field, there have been a variety of such campaigns, including those against apartheid, child labor, and sweatshops, as well as those promoting the rights of indigenous peoples and migrant workers. Many of these campaigns have involved both local groups and transnational coalitions. With the Internet and social media, individuals and groups are able to voice their grievances swiftly to a worldwide audience and to solicit sympathizers to take direct actions. As constructivists have shown, these campaigns shape discourse and ideas, leading to learning across multiple constituencies and to norm creation.

One example of a media-driven effort illustrates the promise and problems of the campaign approach. Since the late 1980s, the Lord's Resistance Army in Uganda and its leader Joseph Kony have been kidnapping children in northern Uganda, using them as child soldiers and creating fear and intimidation among the population. Invisible Children, founded in 2004, is an NGO organized to call attention to this abuse through film and organized political activity. Over the years, it has presented a simplistic but graphic message aimed at Western audiences to fight against Kony. In 2012, a half-hour video piece titled "Kony2012" went viral, attracting 80 million hits. While all agree that this abuse represents an egregious violation of human rights, not everyone, including many in Uganda itself, agree with Invisible Children's solution—military action. So in constructivist discourse, NGOs can aid in the spread of ideas and they can use material resources for effect, but NGOs and campaigns in general also have the power to distort messages, to oversimplify complex problems, and to offer slick solutions. As discussed in Chapter 6, this can undermine NGOs' credibility and human rights campaigns in the long run.

As strong and vocal as the human rights NGOs are, they do not always get their way. At the 1993 Vienna Conference, for example, a number of key NGO demands were not included in the final document, such as rights of the disabled, AIDS victims, and indigenous peoples. NGOs were also restricted from participating in the drafting of documents.

Thus, NGOs are still not equal partners with states in human rights governance. Much of their success, however, has been due to opportunities presented by the League of Nations and the UN.

The League of Nations

The League of Nations Covenant made little mention of human rights, despite persistent efforts by some delegates to include principles of racial equality and religious freedom. One fascinating story concerns the efforts by representatives of the Japanese government to convince the principals, including US president Woodrow Wilson, to adopt a statement on human rights and racial equality. As a victorious and economically advanced power, Japan felt it had a credible claim and that such basic rights would not be rejected. Yet the initiative was blocked, with the US representatives recognizing that such a provision would doom Senate passage of the peace treaty (Lauren 1996: 82–93). The League's Covenant did, however, include specific provision for protection of minorities and dependent peoples in colonies held by Turkey and Germany, the defeated powers of World War I. These were placed under the mandate system, whereby a designated victor nation would administer the territory and supervise it through the Mandates Commission until independence.

The Mandates Commission, despite having no right of inspections, acquired a reputation of being thorough and neutral in its administration. Britain administered Palestine, Transjordan, Iraq, and Tanganyika; France assumed the same role for Syria and Lebanon. They divided responsibility for the Cameroons and Togoland; Belgium administered Rwanda-Urundi; South Africa administered South West Africa; and Japan administered several Pacific islands. Between 1932 and 1947, pressure from the Mandates Commission led to independence for the Arab mandates of Lebanon, Syria, Iraq, and Transjordan, with Palestine a glaring exception. The mandates in Africa (Cameroons, Togoland, and Rwanda-Urundi) and in the Pacific were transferred to the United Nations trusteeship system in 1946, with South West Africa being the sole exception. South Africa continued to administer the territory as its own, despite several legal challenges, and a long campaign through the UN led by African states. South West Africa (Namibia) did not attain independence until 1989, as discussed in Chapter 7.

The idea of the mandate system was a triumph, giving those under its supervision a greater degree of protection from abuses than they would have enjoyed otherwise. The system reflected the growing sentiment that territories were not to be annexed following wars, that the international community had responsibilities over dependent peoples, and that the eventual goal was self-determination.

In addition, US president Woodrow Wilson's powerful promise of a right to self-determination brought groups from all over the world to the 1919 Paris Peace Conference. As a result, the rights of minorities and the corollary responsibilities of states were a major topic. Five agreements, known as the Minority Treaties, required beneficiaries of the peace settlement, such as Poland and Czechoslovakia, among others, "to assure full and complete protection" to all their inhabitants "without distinction of birth, nationality, language, race, or religion." These agreements also provided for civil and political rights and imposed similar obligations on remnants of defeated states to be guaranteed by the League of Nations. Later, the League made admission of new members contingent on a pledge to protect minority rights. Minority rights were a major agenda item for the League bodies, creating "significant precedents for increased international protection of human rights" (Lauren 1998: 117).

In other human rights activities, the League conducted a study of slavery after intensive lobbying by the British Anti-Slavery and Aborigines Protection Society and established the Temporary Slavery Commission, whose report led to the 1926 International Convention on the Abolition of Slavery and the Slave Trade. While not listing specific practices or including monitoring provisions, the treaty was pathbreaking in setting the standard regarding slavery.

The League also established principles for assisting refugees and created the first organization dedicated to refugee relief, the Refugee Organization. Pressed by NGOs, it devoted attention to the issues of women's and children's rights, as well as the right to a minimum level of health, and in 1924 approved the Declaration on the Rights of the Child. In the 1930s, the League Assembly even discussed the possibility of an international human rights document, but no action was ever taken.

Rights of workers were an integral part of the International Labour Organization's agenda, as discussed in Chapter 3. The ILO's mandate to work for the improvement of workers' living conditions, health, safety, and livelihood was (and remains) clearly consistent with concepts of economic and social rights. Because it did not die with the League, the ILO's work provided a foundation for other UN human rights activities.

The United Nations

A very different climate shaped the drafting of the UN Charter. US president Franklin Roosevelt's famous "Four Freedoms" speech in 1941 called for "a world founded upon four essential freedoms," and his vision of "the moral order" formed a normative base for the Allies in World War II (Roosevelt 1941). The chilling revelation of Nazi concentration camps drew attention to human rights as an international issue. Thus, at the founding UN conference in San Francisco, a broad spectrum of groups, from churches to peace societies, along with delegates from a number of small states, pushed for the inclusion of human rights language. The Preamble reaffirmed "faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small." Although references to human rights were more weakly worded than advocates had hoped, there were seven such references in the

UN Charter, placing the promotion of human rights among the central purposes of the new organization.

The UN Charter adopted a broad view of human rights, going far beyond the view of the League of Nations. Included in Article 1 is the statement that the organization would be responsible for organizing cooperation in areas of a "humanitarian character," and "in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion." Articles 55(c) and 56 amplify the UN's responsibility to promote "universal respect for, and observance of, human rights and fundamental freedoms for all" and the obligation of member states to "take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55."

These provisions did not define what was meant by "human rights and fundamental freedoms," but they established that human rights were a matter of international concern and that states had assumed some as-yet-undefined international obligation relating to them. Despite the inherent tension between establishing international standards and Article 2(7)'s principle of noninterference in a state's domestic affairs, these provided the UN with the legal authority to undertake the definition and codification of human rights. The first step in this direction was laid by the General Assembly's passage on December 10, 1948, of the Universal Declaration of Human Rights. Taken together, the UN Charter and the Universal Declaration of Human Rights represented a watershed moment.

In 1946 and 1947, ECOSOC established the Commission on Human Rights, the Commission on the Status of Women, and the Sub-Commission on the Prevention of Discrimination and Protection of Minorities. Between 1946 and 2006, the Commission on Human Rights was the hub of the UN system's human rights activity. It was largely responsible for drafting and negotiating the major documents that elaborate and define human rights norms, including the Universal Declaration of Human Rights and the international covenants. It conducted studies and issued reports. Only in 1970, however, did the commission gain the authority to review complaints of human rights violations, and since it met just once a year, its sessions included hearing complaints and individual petitions as well as addressing major human rights themes such as racism and violations of human rights in Israeli-occupied Arab territories.

Beginning in the 1970s, the Human Rights Commission became the subject of intense criticism for targeting some countries while ignoring the records of other egregious violators. Between 1970 and 1991, a few cases, namely South Africa, Israel, and Chile (under Augusto Pinochet), received significant attention, while other violators were ignored. Nonetheless, an empirical study of the commission's actions from 1979 to 2001 found that

"targeting and punishment were driven to a considerable degree by the actual human rights records of potential targets" (Lebovic and Voeten 2006: 863). By the mid-1990s, some 60 percent of the more egregious violators had been examined by the commission, a finding consistent with the 2002–2005 period. Still, there was a growing tendency to avoid direct criticisms of states (Forsythe 2009). In 2001, the United States lost its commission seat for the first time and a few well-known human rights abusers such as Sudan, Zimbabwe, Saudi Arabia, Pakistan, and Cuba were elected members and Libya was elected chair (2002), causing the criticism of the commission to intensify.

In 2006, the Human Rights Commission was replaced by the Human Rights Council, whose forty-seven members are elected by secret ballot by a majority of members of the General Assembly for three-year renewable terms distributed among the five recognized regional groups. The HRC meets at least ten weeks throughout the year and reports to the General Assembly. To address the problem of having human rights violators among the membership, the human rights records of all potential council members are subject to scrutiny, and the council can suspend actual members suspected of abuses with a two-thirds vote—a provision that has failed to remedy the problem.

The council responds to complaints by appointing either individual experts or working groups to address specific concerns or thematic issues (known as Special Procedures 1235 and 1503). For example, the HRC has a number of special rapporteurs for specific human rights issues, including one for the Palestinian territories. These are individuals who investigate abuses with the consent of the state concerned. Another tool is the Universal Periodic Review, whereby each UN member state's record is reviewed every four years based on three documents: a written national report prepared by the state itself; a summary prepared by the Office of the UN High Commissioner for Human Rights (UNHCHR) with input from other UN bodies; and a summary report by international human rights groups and other stakeholders. The process includes dialogue among several HRC members, representatives from the state under review, and national and subnational human rights institutions (Wolman 2014). In 2008, the HRC established a new Advisory Committee, a human rights think tank of eighteen experts that conducts studies for the council employing a variety of governmental and independent sources. The UN human rights system is illustrated in Figure 10.1.

Some of the HRC's work has attracted public attention. In 2013, for example, the council established the Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea, and a year later this commission's 400-page report was released. With testimony from 80 witnesses and 240 confidential interviews, it cataloged in detail evidence of

Figure 10.1 UN Human Rights Organizational Structure (selected bodies)

systematic human rights abuses by the North Korean regime against its own citizens. North Korea vehemently denied the allegations. In late 2014, however, prompted by the report, the Security Council took up the subject of North Korea's human rights violations and the report's recommendation that the Security Council refer the problem to the ICC.

The Human Rights Council has legitimized an effort to consolidate an approach to businesses and human rights. In 2011 the council approved the "Guiding Principles on Business and Human Rights," a strong normative statement on how governments and businesses are expected to behave to protect human rights in a commercial setting, captured by the slogan "Protect, Respect, Remedy." The story of how that norm was created across various UN bodies and legitimated by the council is told by John Gerard Ruggie (2013), one of the architects, in the book *Just Business: Multinational Corporations and Human Rights*.

Despite these well-publicized actions of the HRC, we must ask: is the HRC less politicized than its predecessor, the Commission on Human Rights? One empirical study of four years of council decisions finds that the most controversial and polarizing resolutions are, indeed, sponsored by countries with blemished human rights records, including most notably Cuba, Egypt, and Pakistan (Hug and Lukacs 2014). A 2013 study of the P-5 and the first round of the Universal Periodic Review showed that France, the United Kingdom, the United States, and Russia all received many negative comments on their records while China primarily received positive ones, with all P-5 members participating. States accepted the recommendations and agreed to review the issues raised (Smith 2013: 13–14, 25). As transparent as the process was, the balance of comments clearly suggests a degree of politicization in the process.

The HRC shares its preeminent position with the UNHCHR, created in 1993. The latter provides a visible international advocate for human rights in the same way that the UN High Commissioner for Refugees focuses international attention on that problem. The office is responsible for mainstreaming human rights into the UN system, furnishing information to relevant UN bodies, promotion, and coordination. Increasingly, the UNHCHR is assuming an operational role, providing technical assistance to countries in the form of training courses for judges and prison officials, electoral assistance, and advisory services on constitutional and legislative reform, among other things (Mertus 2009b). With field offices in many countries, the UNHCHR is able not only to help strengthen domestic institutions, but also to promote compliance with international human rights standards and to report directly to the high commissioner on abuses.

The strength of the commissioner as an effective and vocal spokesperson depends on the individual personality of the officeholder. Both Mary Robinson, former president of Ireland, and Louise Arbour, former member

of Canada's Supreme Court and chief prosecutor in the international ad hoc tribunals for Yugoslavia and Rwanda, elevated the effectiveness and prestige of the office. Likewise, South African judge Navanethem (Navi) Pillay, who served as high commissioner from 2008 to 2014, had a history of participation in human rights NGOs and was a strong and vocal commissioner, using her bully pulpit in 2014 to impose a deadline for the Sri Lankan government to initiate an inquiry into human rights violations during its civil war and to condemn the anti-LGBT legislation passed by Nigeria and Uganda. Yet the office, handicapped by its relatively small budget allocation (just 2 percent of the total UN budget), has had to appeal for voluntary contributions to perform essential tasks.

Although the former Commission on Human Rights and now the Human Rights Council have been the hubs for human rights activity in the UN, the General Assembly, by virtue of its central role for all issues, has also been important. In the General Assembly's first session in 1946, India and other countries introduced the issue of South Africa's treatment of its Indian population, beginning debate over what would become the UN's longest-running human rights issue: apartheid in South Africa. Colonialism was another prominent human rights issue during the UN's first twenty years, with debates over various colonial issues emerging out of the right to self-determination. Yet the General Assembly's role was circumscribed, because its members were seen as exercising a blatantly double standard. In the 1970s, for example, many third world states criticized white racism, Zionism, and neocolonialism, while at the same time ignoring issues of black racism, sexism in Muslim countries, and violations of human rights in the Soviet Union and Eastern European countries. That politicization of human rights undermined the General Assembly's legitimacy and effectiveness as a forum for human rights issues. Occasionally, however, the General Assembly has played a legitimizing role in introducing a new human rights issue, as illustrated in the LGBT case examined later in the chapter.

Neither the Security Council nor the International Court of Justice traditionally had significant involvement with human rights issues. In the case of the Security Council, this changed, however, in 1990. During the Cold War years, the Council linked security threats with human rights violations in only two instances: the unilateral declaration of independence by a white minority regime in Southern Rhodesia (now Zimbabwe) in 1965, and the white minority apartheid regime in South Africa. Both were treated as situations that threatened international peace and security, and sanctions were applied under Chapter VII of the UN Charter.

Since 1990, the Security Council has repeatedly been faced with threats to peace connected to large-scale humanitarian crises and demands for intervention under Chapter VII. Ethnic cleansing, genocide, and other crimes against humanity led it not only to authorize interventions and

peacekeeping, as discussed in Chapter 7, but also to include human rights activities in the mandates for peacekeeping operations and to create two ad hoc war crimes tribunals. Peacebuilding operations have increasingly needed to address human rights protection. Thus the Security Council has embraced human rights norms and, in response to the push by human rights NGOs, routinely issues declarations on issues ranging from child soldiers to the role of women in promoting international peace and security.

The Rome Statute, which created the International Criminal Court, also gave the Security Council a role in referring situations involving war crimes and crimes against humanity to the ICC, used in two cases as of 2014—the situation in Darfur in 2005 and the situation in Libya in 2011. And the Security Council has the power to defer an ICC investigation or prosecution for up to twelve months. Yet Council referrals and deferrals risk fueling politicization of the ICC and undermining the legal principles on which international criminal justice is based because of the Council's selectivity in deciding what to refer (Arbour 2014: 198). The Security Council, however, is still hampered from addressing human rights issues when the interests of the P-5 or their allies are directly affected. In 2007, China and Russia vetoed a resolution on violations in Myanmar, and in 2008 they voted not to impose sanctions on Zimbabwe for its government's human rights violations. They claimed in both cases that such measures represented excessive interference in the country's domestic affairs. Yet in 2014 the Security Council unanimously condemned the violations of human rights and international humanitarian law by the Syrian government and authorized delivery of relief across the conflict lines, a major step, given Russian and Chinese opposition to all previous draft resolutions on the Syrian conflict.

The ICJ's role in human rights has also generally been minimal. It did confirm the principle of self-determination in the case regarding Western Sahara, noting that "self-determination requires a free and genuine expression of the will of the peoples concerned" (ICJ Advisory Opinion 1975). And it concluded that South Africa had violated its obligations toward South West Africa (Namibia) under the Universal Declaration of Human Rights (ICJ Advisory Opinion 1971). In 1993, the first case under the Genocide Convention was brought to the ICJ. It concerned the ongoing ethnic cleansing in Bosnia-Herzegovina. Indicative of the court's slow procedures, the case was decided only in 2007; a similar case involving Croatia and Serbia was begun in 2009 and concluded in 2015.

As legal scholar Louis Henkin (1998: 512) noted, "The purpose of international concern with human rights is to make national rights effective under national laws and through national institutions." If that is true, then the task of international organizations like the UN is particularly problematic, because it poses the possibility of interfering in the domestic affairs of

states, which violates of the hallmark principles of state sovereignty. Yet the UN and regional organizations have undertaken a variety of functions and roles in creating processes for human rights governance, and states, too, are key players.

The Processes of Human Rights Governance

Over seven decades, an international human rights regime has emerged that has articulated human rights norms and codified these standards in treaties, legal decisions, and practices. IGOs and NGOs have engaged in monitoring the human rights records of states, receiving reports of abuses and compliance, promoting norms of the regime, and enforcing compliance when states have committed gross violations of those norms.

Setting Human Rights Standards and Norms

The prominent role of NGOs, transnational advocacy networks, and social movements in pushing for domestic laws and international treaties that set human rights standards has already been discussed. We can best illustrate NGOs' role here with a critical case. That role is well illustrated by the case of the anti-slavery movement. The UN and several regional IGOs have also played central roles in setting human rights standards.

NGOs. The nineteenth-century anti-slavery movement not only was one of the first examples of NGO activity, but also, as discussed earlier, helped create the norm prohibiting slavery. Supported by a diverse constituency in Great Britain, including religious groups (Quakers, Methodists, and Baptists), textile workers, rural housewives, and wealthy businessmen, the movement caught the attention of like-minded individuals in France and the Americas, forming what may be called the first transnational advocacy network. They worked tirelessly to abolish slavery, using a variety of tactics, including letter-writing, petitions, popular theater, and public speeches. They networked with others across the Atlantic, sending freed slaves on public speaking tours and exchanging strategies and information (Hochchild 2005). Later, the Anti-Slavery and Aborigines Protection Society played a key role in lobbying the League of Nations and in writing the 1926 International Convention on the Abolition of Slavery, as well as the 1956 Supplementary Convention on the Abolition of Slavery, Slave Trade, and Institutions and Practices Similar to Slavery. In the intervening quarter century, the group had expanded its agenda to include practices such as child labor, trafficking in human beings, and forced labor. In 1990, with a broadened orientation, the group changed its name to Anti-Slavery International. It and other NGOs continue to play key roles in setting human rights standards in many areas, since slavery in various forms, including human trafficking, continues to be a significant problem, as discussed in the opening case.

The key role of the United Nations and treaty-making. The UN's core role in the international human rights regime is its activity in defining and elaborating what constitutes internationally protected rights, initially in the Universal Declaration of Human Rights and the Convention on the Prevention and Punishment of the Crime of Genocide, both concluded in 1948. Under the leadership of Eleanor Roosevelt, who at that time was chair of the Commission on Human Rights, these documents articulated a far-reaching rights agenda. In particular, the Universal Declaration elucidated innovative principles: that people have these rights by virtue of being human; that they apply universally; that human rights include both political and civil rights and social and economic rights; and that advancement of these rights includes legislation, public discussion, and social monitoring. Almost seven decades later, the declaration continues to serve as a "rallying banner for the young, the poor, and the oppressed in their quest for a more just world" (Ramcharan 2008: 1). The expectation was that these rights would be set forth in treaties.

Although other human rights conventions were approved in the 1950s, it took until 1966 for the General Assembly to approve the International Covenant on Economic, Social, and Cultural Rights and the International Covenant on Civil and Political Rights. Both became operative in 1976 following the necessary number of ratifications. Together with the Universal Declaration, they are known as the "international bill of rights." That it took almost thirty years to define these legal standards suggests the difficulty of the task in a world where states jealously guard their national sovereignty. Indeed, not all states have ratified the covenants. The United States, for example, did not ratify the Covenant on Civil and Political Rights until 1992, and has yet to ratify the Covenant on Economic, Social, and Cultural Rights. Other states have ratified the covenants but attached reservations, declarations, or interpretative statements that in some cases undercut the whole intent. The same pattern is found with other human rights treaties such as the Convention on the Elimination of Discrimination Against Women (CEDAW). As of 2014, of the 188 parties to this convention, 62 had ratified with specific reservations, some on procedural issues and others on broader, more substantive issues such as provisions that conflict with sharia law. The price of ratification, therefore, has often been highly qualified, weaker conventions.

The covenants and the other human rights treaties exemplify the standard-setting character of the UN's role in human rights. Table 10.1 lists selected conventions by topic. These same standards are also found in national constitutions, legal documents, and court cases, as well as in regional human rights documents.

Regional human rights standards. Regional human rights bodies are also involved in the standard-setting process. Most have adopted similar stan-

Table 10.1 Selected UN Human Rights Conventions

Treaty	Year Opened for Ratification	Year of Accessions	Number of Countries Ratified (2014)
General human rights			
International Covenant on Civil and Political Rights	1966	1976	168
International Covenant on Economic, Social, and Cultural Rights	1966	1976	162
Racial discrimination			
International Convention on the Elimination of All Forms of Racial Discrimination	1966	1969	177
International Convention on the Suppression and Punishment on the Crime of Apartheid	1973	1976	109
Rights of women			
Convention on the Elimination of All Forms of Discrimination Against Women	1979	1981	188
Human trafficking and slave-like practices			
Supplementary Convention on the Abolition of Slavery and the Slave Trade (1926)	As amended in 1957	1957	123
Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery	1956	1957	123
UN Convention Against Transnational Organized Crime	2000	2003	147
Refugees and stateless persons			
Convention Relating to the Status of Refugees	1951	1954	145
Protocol Relating to the Status of Refugees	1967	1967	146
Children			
Convention on the Rights of the Child	1989	1990	194
Optional Protocol on the Involvement of Children in Armed Conflicts	2000	2002	156
Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography	2000	2002	167
Other			
Convention on the Prevention and Punishment of the Crime of Genocide	1948	1951	146
Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment	1984	1987	155
Convention Concerning Indigenous and Tribal Peoples in Independent Countries	1989	1991	22
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	1990	2003	47
International Convention for the Protection of All Persons from Enforced Disappearance	2006	2010	93
Convention on the Rights of Persons with Disabilities	2006	2008	147

Sources: University of Minnesota Human Rights Library, www.umn.edu/humanrts; UN High Commissioner for Human Rights, www.ohchr.org.

dards, although the relative importance attached to different kinds of rights has varied. The European system is viewed as the most successful system of human rights protection in terms of the consensus attained and the strength of the procedures established. The 1961 European Social Charter incorporates economic and social rights, including protections against poverty and sexual harassment. The 1953 European Convention on Human Rights and Fundamental Freedoms covers political and civil rights. The charter was revised in 1996 and all forty-seven members of the Council of Europe have ratified it.

The inter-American human rights regime, embedded in the Organization of American States and Inter-American Convention on Human Rights, highlights political and civil rights, although widespread abuses, including state-sanctioned disappearances in the 1970s and 1980s, undermined the regime. In the 1980s, Latin America experienced what has been called a "norms cascade," a rapid shift toward recognizing the legitimacy of human rights norms elucidated in the regional and international conventions (Lutz and Sikkink 2000: 638). In the 1990s, the OAS incorporated protection of democratic governments into its mandate, as discussed in Chapter 5.

The African Charter on Human and Peoples Rights, which was approved in 1981 and entered into force in 1986, is of special interest for two reasons. First, specific attention is given to third-generation rights—group and collective rights that are compatible with African traditions, including the right to development, to self-determination, and to full sovereignty over natural resources. Second, the African Charter is unique because of numerous "clawback clauses" that qualify or limit specific standards. For example, fundamental civil and political liberties are guaranteed except for reasons of law and order or for national security. Such clauses permit states to suspend fundamental rights with little protection and undermine the standards articulated in the African Charter (Mutua 1999: 358).

Conspicuously absent from the regional picture are Asian and Middle Eastern norms, standards, and institutions, although this is now changing in Southeast Asia. The ASEAN Charter, approved in 2008, included human rights for the first time. In 2009, the ASEAN Intergovernmental Commission on Human Rights was established, followed in 2010 by the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children and in 2012 by the ASEAN Declaration on Human Rights. Even though civil society groups were critical of flaws in the declaration, these are major steps in a region where any discussion of international human rights norms has been considered inconsistent with the norm of noninterference. The mix of authoritarian, military, and democratic governments in the region, however, still makes it unlikely that there will be major progress in developing regional standards.

States' commitment to and compliance with human rights treaties. Why do states sign and ratify international human rights treaties? Do human rights standards and treaties actually change state behavior? The evidence is mixed on both questions.

Beth Simmons's study (2009: 28) of international law in domestic politics identifies three categories of governments on the question of why they ratify human rights agreements: the "sincere ratifiers," the "false negatives," and the "strategic ratifiers." The first and third are fairly self-evident; some governments genuinely support the rights covered by a particular treaty and expect to comply; others figure that by ratifying they may avoid criticism or improve their reputations at least in the short run. The United States illustrates the case of the "false negatives" in its long-standing pattern of refusing (or being unable) to ratify a number of conventions such as CEDAW and the Convention on the Rights of the Child despite its support for these rights on account of domestic political or institutional challenges that prevent ratification. The US federal system complicates implementation of international rights treaties because the national government's authority is constitutionally limited. The death penalty, for example, is a matter for state courts in the United States.

With regard to commitment, it is useful to study the wide variations in patterns of ratification of the various human rights treaties listed in Table 10.1. The Convention on the Rights of the Child has been ratified by all countries except the United States and Somalia; the Convention on the Rights of Migrant Workers has been signed by only thirty-eight countries and ratified by forty-seven as of 2014, more than a decade after it came into force. Furthermore, what the table does not show are the numbers and types of reservations that states have attached to their ratifications. Although more than 150 governments have ratified the Convention Against Torture, a significant number of them did so with reservations; the same is true for CEDAW. Not surprisingly perhaps, there are significant regional variations in the patterns of ratification, with the European countries having the strongest records, since commitment to democratic values and Western cultural mores are among the factors that tend to strengthen commitment to human rights (Simmons 2009: 65–66).

The ability of treaties to contribute to changes in states' behavior depends in large part on domestic politics. Compliance may therefore take place through domestic litigation and domestic executive and legislative processes by groups, including human rights NGOs, lawyers, and civil society activists, to translate treaty legal obligations into domestic law and practice and to aid the process of mobilizing support for change (Simmons 2009: 129–149). Compliance may depend on the presence of sympathetic NGOs. Emilie Hafner-Burton and Kiyoteru Tsutsui (2005), for example, have found that state ratification of six core international human rights

treaties has led to changes in state practice if the issues covered by treaties are taken up by local NGOs that mobilize around the new standards and can use the treaty obligations to pressure governments. What both Hafner-Burton and Tsutsui (2005) and Simmons (2009), among others, have demonstrated is that increased NGO activity within a country, whether by local or transnational groups, or national and subnational human rights institutions such as provincial human rights councils and municipal ombudspersons, increases the likelihood that human rights treaties will have a positive effect on local human rights practices.

State judicial practices also matter. Milli Lake (2014), for example, shows how domestic and international actors have taken advantage of judicial processes in the eastern provinces of the Democratic Republic of Congo to compile a startlingly successful record in addressing rape and other sexual and gender-based violence in that fragile state. Other studies point to cases where ratification of treaties has led to significant changes in state behavior. Efforts by Turkey and Eastern European states to comply with European human rights conventions to boost their applications for EU membership illustrate the pull of compliance. As David Weissbrodt (2003: 89) aptly put it, "Getting countries to toe the mark is only possible when there is a mark to toe." Over time, the UN and some regional bodies have moved incrementally from articulating the standards to monitoring states' behavior.

Monitoring Human Rights

Monitoring the implementation of human rights standards requires procedures for receiving complaints of violations from affected individuals or interested groups and reports of state practice. It may also be accompanied by the power to comment on reports, appoint working groups, and vote on resolutions of condemnation. Publicity and public shaming are key tools.

UN approach. The ILO was the first IGO to establish procedures for monitoring human rights within states, particularly workers' rights, as outlined in Chapter 3. The ILO's experience with monitoring is similar to the experience of other UN bodies. With only states represented in the UN and on the HRC, monitoring has had a checkered history. Only in 1967, for example, was the Commission of Human Rights empowered to examine gross violations in South Africa and Southern Rhodesia; three years later that authority was extended to include confidential investigations of individual complaints. Although this so-called 1503 procedure proved weak, during the 1970s the commission expanded its activities, creating working groups to study specific civil rights problems such as forced disappearances, torture, and religious discrimination. In its first report, in 1981, for example, the Working Group on Disappearances reported about 11,000–13,000 cases

of disappearances from fifteen countries, ten of them in Latin America. By 1996, the same working group reported the virtual end of disappearances in the Western Hemisphere (Lutz and Sikkink 2000: 637). The 1503 procedure remains a way to pressure offending governments. Thematic and country rapporteurs as well as independent experts have been limited by minimal publicity, however. The Universal Periodic Reviews, described earlier, provide another monitoring mechanism. As states have fallen behind in meeting their obligations under the periodic review, however, in part because the process is burdensome, the reality of regular monitoring weakens.

Further initiatives in UN monitoring activities have accompanied the entry into force of specific treaties, many of which require states to submit periodic reports of their progress toward implementation. The General Assembly has established nine committees of independent experts, elected by the parties to each treaty and known as human rights treaty bodies, that review the reports and monitor treaty implementation. One of the most thorough is the Human Rights Committee, designed to process state reports under the International Covenant on Civil and Political Rights. It conducts open meetings, exposing states' human rights practices and its own actions to publicity by the media. These periodic reports are reviewed and discussed with states by the treaty committees. Human rights NGOs and national and subnational human rights institutions may also provide input.

Since the 1990s, there have been several significant developments in UN monitoring. These include the first human rights monitoring in conjunction with a peacekeeping mission, following the end of civil wars in El Salvador and Guatemala, as well as extensive involvement in election monitoring in conjunction with complex peacekeeping. Beginning in 1992, the Human Rights Committee removed the veil of secrecy and now publishes its conclusions. It has also appointed rapporteurs and special missions to address massive human rights violations in countries from Georgia and Colombia to the DRC.

Does UN monitoring make a difference? One argument contends that, over time, repeated condemnations can change attitudes, as was true, in part, in the case of South Africa. But that case is not entirely clear, since the repeated condemnations were subsequently coupled with more coercive sanctions. Another point of view holds that public monitoring, including naming and shaming, can antagonize states and harden their positions, leading to precisely the opposite of the intended effect. One study examined the question of monitoring by compiling data on efforts by the UN, NGOs, and news media between 1975 and 2000 to name and shame the human rights practices of 145 states. The data suggest that "governments put in the global spotlight for violations often adopt better protections for political rights afterward, but they rarely stop or appear to lessen acts of terror. Worse, terror sometimes increases after publicity" (Hafner-Burton 2008: 706).

In short, although UN human rights monitoring has increased, its impact is limited. Changing procedures does not necessarily result in changes in states' attitudes and behavior. The case of China suggests the difficulties. Following the 1989 Tiananmen Square massacre, the UN's Sub-Commission on the Prevention of Discrimination approved the first resolution ever directed against a P-5 member. Subsequently China became a target of attention, NGO interventions, and pressure from Western nations. Yet China fought back by challenging the independence of commission members, the secret voting, and NGO involvement. In 1991 it persuaded the United States and European Union to drop a resolution in return for China's offer not to veto a Security Council resolution on Iraq's invasion of Kuwait (Kinzelbach 2013: 168). China failed to block a resolution in 1995, but narrowly avoided condemnation when the vote failed. Its response was to offer to hold regular human rights dialogues, demonstrating the limits of UN monitoring of ongoing, systematic abuse of human rights by a powerful state. Ten years later, the UN Special Rapporteur on Torture made an official visit, only to find abuse "still widespread." Although China files required reports to treaty bodies, it continues to block efforts to examine its human rights record outside the Universal Periodic Review. Still, NGOs and other states have used that process to target China's actions in Tibet, against Muslim Uighurs in western China, and against other religious minorities as well as its restrictions on freedom of expression (Smith 2013: 16).

European and other regional experiences with monitoring. Of the regional human rights regimes, the European regime is the most effective for human rights monitoring. Under the European Convention on Human Rights, the European Commission of Human Rights is responsible for monitoring the general human rights situation, researching problem areas, conducting on-site visits, and engaging in promotional activities. Today the commission focuses on broader human rights issues, working directly with member states of the Council of Europe to improve human rights records.

The 1978 Inter-American Convention on Human Rights also established a dual commission and court system. The Inter-American Commission on Human Rights has monitoring responsibilities that include analyzing and investigating petitions from individuals who claim their rights have been violated by a member government. It receives about 1,500 petitions annually. The commission also issues requests to governments to adopt "precautionary measures" in cases where an individual is in harm's way. In 2013, among several hundred requests, requests to governments occurred in twenty-two cases. The commission decides whether the cases go to the Inter-American Court of Human Rights. Just over 1 percent of these petitions have been referred to the court.

The Inter-American Commission has also been active in issuing reports that outline human rights abuses. For example, it issued several reports on torture and arbitrary detention in Uruguay during the mid-1970s. Later in the 1970s and in the 1980s, it reported on abuses in Paraguay and conducted on-site investigations in Argentina and Nicaragua (Lutz and Sikkink 2000). Although final authority rested with domestic authorities, the monitoring and public condemnation of an abusive regime was a breakthrough. Still, the case of Ecuador illustrates the challenges. Ecuador's president Rafael Correa had a history of attacks on the press, and the OAS special rapporteur for freedom of expression had cited Ecuador for a number of incidents of infringement of press freedom. In 2012, Ecuador introduced recommendations to the commission that called for severe cuts to the special rapporteur's budget and for elimination of country reports, highlighting the difficulties of monitoring bodies calling attention to domestic abuses. In 2014, the commission visited the southern-border region of the United States as part of a monitoring report on the status of unaccompanied minors.

In Africa, the Commission on Human and Peoples Rights has had limited monitoring functions. It can consider state reports, collect documents, initiate studies, and disseminate information, but has no real monitoring or enforcement power. It has been hindered by the poor quality of the state reports submitted (Mutua 1999: 348–349). Thus, while the commission has had the authority to monitor behavior, in practice it cannot.

So the regional picture is a mixed one. The region where the human rights record is the best (Europe) is the one with the most active regional body involved in monitoring, but it is also the same region that is the most economically developed, has the most democracies, and has the strongest civil societies, all strong predictors of better human rights practices. Where abuses are greater, the monitoring system is weaker. Is it weak monitoring or underlying political and economic conditions that explain variations in human rights records among regions? In Asia and the Middle East, the lack of regional organizations with a human rights mandate means that human rights monitoring is left either to international institutions like the UN or to civil society or NGOs.

NGO monitoring: Amnesty International and Human Rights Watch. Given the relative weakness of regional IGO monitoring, a number of NGOs have stepped in to fill the gap. Amnesty International (AI), founded in 1961, was until 1981 the only NGO continuously monitoring human rights abuses and is perhaps the most well-known human rights NGO and among the most respected (Clark 2001). Emphasizing impartial and independent research, the AI secretariat, based in London, was traditionally organized along national lines, with individual researchers following specific cases over time. That information was utilized by individual chapters, which used the media and letter-writing campaigns to protect prisoners of conscience across all types of political systems. The approach facilitated direct links between those individuals and their supporters. Amnesty International often worked with sitting governments to advocate for the release of prisoners. High-profile cases maintained the momentum of the organization as "keepers of the flame" (Hopgood 2006). Its credibility as an independent and reliable information source and as an NGO with no political affiliation earned the organization the 1977 Nobel Peace Prize.

During the 1970s, Amnesty International, overwhelmed by the number of individual cases, began to move to support campaigns on broader cross-national issues. Although that change was controversial within the secretariat, AI mounted campaigns against torture and inhumane treatment of prisoners, the death penalty, violence against women, and, more recently, discrimination based on sexual orientation. In these situations, it has acted strategically, finding issues and states where there is reasonable likelihood of success. One empirical study of Amnesty International's background reports and press releases covering 148 countries between 1986 and 2000 found the organization concentrating on high-profile powerful countries, such as China, Russia, Indonesia, and the United States, while some of the most repressive states, including Afghanistan, Somalia, Myanmar, and Burundi, received considerably less attention (Ron, Ramos, and Rodgers 2005). Still, Amnesty International has maintained its credibility. There is evidence that it does not exaggerate human rights abuses in crisis situations, although it might be in their strategic interest for fund-raising purposes (Hill, Moore, and Mukherjee 2013). That credibility has led the US Department of State and various UN bodies to use AI information in their reports on states' human rights records.

Human Rights Watch (HRW), founded in 1978 following the Final Act of the Conference on Security and Cooperation in Europe, was designed to monitor progress in liberalizing Eastern Europe under the so-called Helsinki Accords. Originally named Helsinki Watch, it was also formed to mobilize the US government to take a more active stand on civil and political rights. The timing was auspicious, as then–US president Jimmy Carter was a vocal supporter of human rights. Transformed into Human Rights Watch, its reach became global and its focus expanded to all generations of human rights. It was Aryeh Neier, executive director of Human Rights Watch, who in 1992 proposed creating the ad hoc war crimes tribunal for Yugoslavia. Without his initiative, supported by a number of other NGOs, the tribunal would have never been established. And thanks to the courageous reporting and meticulous research of Alison Des Forges, HRW's representative in Rwanda, the organization was able to alert the international community to the cause of the Rwandan genocide.

While both Amnesty International and Human Rights Watch have expanded coverage of human rights issues, the two organizations differ. AI is a mass-membership organization (3 million individuals strong) with offices in eighty countries. Mobilization of its constituencies and networking are critical to its success, along with its attention to research. HRW relies more on the financial support of powerful foundations, in addition to individual contributions. With a smaller membership, it works to shame abusers by publicizing actions and working through governments.

Both organizations' monitoring, as well as that of other human rights organizations, is legitimized by their accurate documentation of abuses. On-site investigations are key, as is meticulous research. Armed with this information, human rights organizations have acquired sufficient legitimacy to pressure governments and international organizations and to develop networks with like-minded NGOs.

Grassroots and international NGOs, as well as IGOs, have taken full advantage of communication technologies since the UNHCHR launched its website in 1996. For the first time, NGOs had access to both official documents and government reports to the treaty bodies. As access to official information has become easier, the NGOs have become adept at using the Internet and social media. Whether in southern Mexico, Liberia, East Timor, Myanmar, or Tibet, grassroots NGOs have been able to get their messages out and form networks with like-minded groups. Through such networks, NGOs are able to articulate a moral consciousness, empower domestic opposition, and pressure governments themselves to pay attention to issues and situations (Risse, Ropp, and Sikkink 1999). In short, the change in communications used by both NGOs and IGOs has propelled human rights to the forefront of the international agenda in a way never before envisioned.

The experts that make up the UN human rights treaty bodies depend heavily on information compiled by NGOs, since many state reports are self-serving and rarely disclose treaty violations. So NGOs, with their unique local information base, along with national and subnational human rights institutions, have undertaken the task of evaluating such reports, gathering additional information, pushing states for compliance, and publicizing abuses. The relationships between NGOs and the treaty bodies vary, however. The Committee on the Rights of the Child enjoys the closest working relationship with NGOs, which regularly review state reports, maintain dialogue with local NGOs, and help to disseminate information. The Committee Against Torture calls upon concerned NGOs only on an ad hoc basis, while the Committee on the Elimination of Discrimination Against Women does not formally solicit information from NGOs. So while NGOs may enjoy a unique capacity to engage in monitoring, part of their ability to carry out this function depends on the political space provided by each separate treaty body.

National human rights institutions now have access to participate in the work of the Human Rights Council independent of their national delegations, while subnational institutions generally lack such access. Both the disabilities convention and the optional protocol to the torture convention, however, contain provisions that require state parties to set up, designate, or maintain mechanisms for implementation at subnational levels. This has led to subnational human rights institutions playing key roles as independent mechanisms for monitoring and reporting (Wolman 2014: 445–446).

Thus, IGOs and NGOs have developed unanticipated capacities for monitoring, but their measurable impact is still limited. Does naming and shaming work as a strategy? Amanda Murdie and David Davis (2012) examine the effects of human rights organizations' shaming on state behavior. Drawing on data from over 400 human rights organizations on shaming governments between 1992 and 2004, the authors find that states targeted by NGOs do improve their human rights practices. Shaming by international NGOs, however, proved not to be enough. Consistent with earlier findings, shaming is effective when there are both domestic NGOs present on the ground and advocacy by other third parties and individuals.

Changes in attitudes and behavior, however, also require proactive efforts to educate government officials, police, judges, and ordinary citizens about international human rights norms—tasks that promote human rights.

Promoting Human Rights

Translating norms and rhetoric into actions that go beyond stopping violations and also change long-term attitudes and behavior is the challenge of promoting human rights. These efforts have been increasingly shared by the various actors in human rights governance.

UN role. The UN has played a far more active role in human rights promotion since the early 1990s. It has promoted democratization through its electoral assistance programs, both in conjunction with postconflict peacebuilding missions such as in Kosovo, Iraq, East Timor, and Afghanistan, and at the request of states needing assistance in reforming electoral and judicial institutions. The UN Electoral Assistance Division, created in 1992, provides technical assistance to states regarding political rights and democratization. More than a hundred member states have requested assistance in organizing and conducting democratic elections.

The UN role varies. Sometimes it involves certifying electoral processes, as it did in the contested Côte d'Ivoire election in 2010; sometimes it involves expert monitoring using personnel from the UN as well as regional

organizations such as the OSCE and the OAS, or from NGOs like the Carter Center and the National Endowment for Democracy. Sometimes the UN shares that responsibility with states, as in Afghanistan in 2004–2005 and again in 2014, Iraq in 2005, and South Sudan in 2011. The UN provides technical assistance to states in developing credible, sustainable national electoral systems. In Afghanistan's 2014 presidential election, the UN was also responsible for overseeing the recount of all votes. Although international monitoring does not necessarily eliminate cheating or fraud, states gain legitimacy by having external monitors and are viewed as illegitimate if monitors are not present (Kelley 2008).

Since the early 1990s, the language of second- and third-generation human rights has increasingly been linked to development activities and programs across the entire UN system. Secretary-General Boutros-Ghali's *Agenda for Development* (1995) helped to make this connection through its emphasis on the right to development. Since the mid-1990s, the World Bank has promoted "good governance" in its development programs, including attention to the recipient's political and civil rights record and the empowerment of women and civil society actors. The UN is geared operationally to promoting those rights in a proactive way by integrating human rights norms, standards, and principles into policies and processes of development. The UNHCHR, as discussed earlier, has primary responsibility for overseeing the UN's promotional activities, supported by many of the specialized agencies.

In the case of the Democratic Republic of Congo, the Security Council's initial (1999) mandate for the UN mission there (MONUC and later MONUSCO, discussed in Chapter 7) recognized the need to "assist in the protection of human rights" and included creation of a technical assistance program and a rule-of-law section for judicial capacity-building. Support came from both the UN and the EU Commission. The UNDP has been a key partner in this process, launching a $390 million program in 2008. Part of the reform included the creation of a special police unit for the protection of women and children, with funding from USAID, the American Bar Association, CARE, and Save the Children. The NGO Avocats Sans Frontières, along with the UNDP, the EU, NGOs, and other governments, initiated a mobile courts program to spur a rapid legal response of investigations into crimes, hearings, and court decisions. Congolese authorities, including judges, retain jurisdiction over sentencing and enforcement (Lake 2014: 520–522). Clearly, the DRC case highlights the interaction between the UN and NGOs as well as other actors in promoting human rights.

NGO role. NGOs have been active in providing education on human rights in Cambodia, Central America, Kosovo, Afghanistan, and elsewhere. The Unrepresented Nations and Peoples Organization, for example, assists and empowers indigenous peoples such as Australia's Aborigines, circumpolar groups in the Arctic, and Native Americans to represent themselves more effectively by providing training in international and human rights law among other things. The NGO Cultural Survival has an extensive education and outreach program to raise awareness about indigenous peoples, ethnic minorities, and human rights. Through its publications, it has helped to shape the debate on the third-generation rights affecting indigenous peoples. And Amnesty International–USA, the National Endowment for Democracy, and the Open Society Institute have sponsored the development of human rights educational curricula and lobbied state and local educational boards for their adoption.

In the DRC case, international NGOs coordinate the schedules for the mobile courts program, collect evidence, recruit witnesses, and perform a number of other tasks that normally might fall to branches of the government. Congolese NGOs such as HEAL Africa conduct legal education as well as capacity-building for Congolese courts and legal practitioners and operate support structures for victims and witnesses that have facilitated their participation in legal processes. The availability of international grants to support such activities facilitates the process (Lake 2014: 522).

Regional organizations. Many of the regional IGOs in Europe, Latin America, and Africa undertake relatively noncontroversial and similar educational promotional activities with respect to human rights. For newly created states, or states wishing to join an organization, seminars are given regarding human rights and how to incorporate provisions for their protection into constitutions. For special groups, such as women, educational programs detailing specific rights are undertaken. There are training programs for judges, police, and teachers. Promotional activities are by their nature long-term solutions to human rights problems. They do not mitigate current abuses to enforce human rights compliance.

Enforcing International Human Rights Norms

Of the various governance tasks in human rights, enforcement is the most problematic, since states generally have low stakes in enforcing other states' compliance and international institutions have limited capacity to compel compliance. Although the international community has increasingly undertaken various enforcement activities, states continue to be the major enforcers of human rights norms. States seeking to enforce human rights in other countries can generally take two approaches to enforcement: national courts and coercive measures.

National courts. Two cases illustrate the ways in which judicial action through national courts may be used to enforce international norms. Under

the US Alien Tort Claims Act of 1789, federal courts in the United States have jurisdiction in civil cases filed by individuals of any nationality who are present in the country, for egregious acts committed in violation of the law of nations (i.e., international law) or a US treaty. In one much publicized case, *Doe v. UNOCAL* (2002), the US-based oil company was accused of complicity in using forced labor provided by the Burmese military government and of rape and murder during the construction of a gas pipeline in that country (Myanmar). The case was eventually settled in 2005 when the company agreed to compensate Burmese villagers and work to improve the quality of life for people in the pipeline region. Use of the Alien Tort Claims Act is increasingly controversial, however. In 2013, the US Supreme Court, in *Kiobel v. Royal Dutch Petroleum*, announced in a unanimous decision that the Nigerian plaintiffs could not sue in US courts on the grounds that they had only a minimal presence in the United States and the human rights abuses had occurred abroad. This case may provide a "chilling effect" on efforts to use US courts for relief of human rights violations abroad.

Another example of using national courts relying on international law to enforce human rights involves the case of former Chilean dictator Augusto Pinochet. Under a warrant issued by a Spanish judge seeking to extradite him, Pinochet was detained in Great Britain in 1998 for crimes allegedly committed while head of state. While some of those crimes were committed against Spanish nationals living in Chile, Spain also claimed universal jurisdiction on the basis of crimes against humanity, which any state can legitimately do. The Judicial Committee of Britain's House of Lords upheld Pinochet's arrest on the basis of international prohibitions against torture and murder and rejected his claim of sovereign immunity. Pinochet's ill health, however, was used as justification for turning him over to Chilean authorities and hence avoiding political repercussions. Although Pinochet was subsequently stripped of his immunity and indicted, his death in 2006 ended the prosecution. Spanish magistrates have continued to invoke universal jurisdiction, issuing arrest warrants in 2013 against several Chinese leaders for human rights violations in Tibet. As in the United States, however, this approach is increasingly controversial and the Spanish government is trying to limit the power of the judiciary to prevent judges from investigating crimes of genocide committed abroad. Still, the precedent has been set that under universal jurisdiction individual leaders can be held accountable in other jurisdictions for major human rights violations committed against their own people, thus loosening the Westphalian hold on sovereignty.

Coercive measures. Whereas national courts are used by individual plaintiffs, NGOs, or activist judges, governments and groups of states may take

coercive actions. The international community may impose sanctions through the UN or regional IGO, authorize other enforcement measures, or initiate action through the Security Council to refer a case involving war crimes or crimes against humanity to the International Criminal Court. The case of apartheid in South Africa illustrates how governments themselves may take unilateral coercive measures against other states. While the UN General Assembly recommended international sanctions against that country for its apartheid policy, little happened until the 1980s, when key states changed their policies. Responding to a public campaign of civil disobedience, the US Congress called for a review of US policy and for sanctions and, in 1986, approved the Comprehensive Anti-Apartheid Act over a presidential veto. Other powerful states followed suit, including Great Britain. The imposition of sanctions boosted the morale of apartheid opponents and inflicted pain on the South African business community and, through it, the government. The sanctions, along with the persistent campaign by the international community, were partly responsible for ending apartheid in the early 1990s and the installation of a majority democratic government in 1994.

A second instance illustrates the difficulty of sustaining sanctions. Following China's crackdown on dissidents and the Tiananmen Square massacre in June 1989, the United States along with Japan and EU members instituted an arms embargo against China, suspended export credits and official visits, and got the World Bank and Asian Development Bank to cancel new lending to China. Some estimate that the coercive actions may have cost China over $11 billion in bilateral aid over a four-year period. By 1990 Japan had ended its sanctions, and in 1994 the United States granted most-favored-nation status to China without human rights conditions attached (Donnelly 1998: 120–124), each bowing to economic pressures.

Studies of foreign aid donors' use of sanctions to punish repressive states suggest that donors use negative sanctions for human rights abuses selectively and that an aid recipient's human rights record plays at best a limited role in aid allocation. Richard Nielson (2013), for example, found that aid sanctions are used when the donor has few close ties with the violator, when violations negatively affect the donor, and when violations are widely publicized. Furthermore, donors are likely to cut aid to economic sectors yet continue aid for basic social services. Countries with strong human rights traditions, however, are "*less* likely to sanction rights violations," leading Nielson (2013: 800–801) to suggest that "supposedly moral policies may be adopted for amoral reasons: to pursue state interests."

UN enforcement. The UN's enforcement authority, as discussed in Chapters 4 and 7, is found in Chapter VII of the UN Charter. Under that provision, if the Security Council determines that human rights violations

threaten or breach international peace, it has the authority to take enforcement actions. Yet in the two Cold War cases of enforcement discussed earlier, the Security Council failed to make an explicit linkage between human rights violations and security threats. The sanctions weakened the minority regimes, but did not directly change their policies.

Whether UN sanctions should be instituted against governments responsible for gross violations of human rights is still highly controversial, as the case of Zimbabwe illustrates. Since 2000, the regime of Robert Mugabe has engaged in systematic human rights abuses against its citizens and undermined the democratic process. In 2008, the United States and EU proposed targeted UN sanctions against Mugabe and other Zimbabwean officials (specifically travel bans and asset freezes), but Russia and China vetoed the draft resolution. The EU had instituted sanctions in 2002 and the United States in 2003, each targeting individual members of the regime, but not the government as a whole or the business community. Gradually each has relaxed the sanctions, reducing the number of individuals on the list, in hopes of encouraging political reform.

Enforcement action may also involve the use of military force. Since the Cold War's end, enforcement actions have been authorized under Chapter VII to deal with numerous ethnic conflicts that have produced egregious human rights violations and tough policy dilemmas for states, IGOs, and NGOs. Ethnic cleansing in Bosnia and Kosovo, genocide in Rwanda and Darfur, famine and state collapse in Somalia, systematic rape and chaos in the DRC, and Qaddafi's threats against his own people in Libya have all led to humanitarian interventions involving UN or regional peacekeeping forces to protect individuals from abuse. As discussed in Chapter 7 and illustrated by the discussion of genocide later in this chapter, humanitarian intervention, particularly R2P, is still a contested norm. When applied, however, it demonstrates international will to use the UN to enforce human rights and humanitarian norms.

A major step in human rights enforcement has involved the expansion of international criminal law with trials of individuals charged with war crimes and crimes against humanity in ad hoc tribunals, in hybrid courts, and through the International Criminal Court.

Ad hoc war crimes tribunals. The desire to punish individuals responsible for war crimes during World War II led to the establishment of the first war crimes tribunals. Because the Nuremberg and Tokyo trials were the victor's punishment, they were not regarded as precedents for future wartime crimes, however. Yet in the 1990s, the idea of individual responsibility for war crimes and crimes against humanity was revived in the face of the atrocities committed during conflicts in the former Yugoslavia and Rwanda. Frustrated by the international community's inability to bring to justice those responsible for crimes and prodded by human rights activists, the UN Security Council established the International Criminal Tribunal for the Former Yugoslavia (ICTY) in 1993, followed by the International Criminal Tribunal for Rwanda (ICTR) in 1994, and facilitated the creation of other hybrid courts. Each of these courts began slowly, developing structures and procedures, hiring personnel, and winning the cooperation of states.

The ICTY, employing twenty permanent judges and three separate proceedings, as well as over 750 staff members from seventy-six countries, developed answers to questions of authority, jurisdiction, evidence, sentencing, and imprisonment. As of 2014, the court had completed proceedings for 141 out of 161 persons indicted. Of those cases, seventy-four individuals were sentenced, thirteen were transferred to countries in the former Yugoslavia for trial, while thirty-six cases were terminated or indictments withdrawn, including that of former Yugoslav president Slobodan Milosevic, who died during the trial in 2006. Eighteen individuals were acquitted. The 2008 capture of Radovan Karadzic, wartime leader of the Bosnian Serbs, followed in 2011 by that of former Serb general Ratko Mladic, led to their indictment for the 1995 killing of almost 8,000 Bosnian Muslim men and boys in Srebrenica and torturing and sexually assaulting non-Serbs. Their capture, transfer to The Hague, and prosecution added two high-profile cases to the ICTY docket, which as of 2014 still had eighteen other cases in process. The accomplishments of the ICTY include developing procedures for establishing the relevant facts, providing victims a forum in which to be heard, and fleshing out international laws on war crimes, genocide, and torture. Some accountability has been achieved and the rule of law strengthened. While its proceedings have bogged down in technicalities and the costs have escalated to $250 million as of 2012–2013, the ICTY has developed a body of jurisprudence and its procedures have paved the way for the ICTR and other tribunals, including the ICC.

The ICTR has also been criticized for its slow proceedings and high cost, attributed in part to its location in Arusha, Tanzania. Nonetheless, by the end of 2014, all the trial work had been completed for the ninety-four accused; fifty-two individuals had been convicted; an additional eleven cases remained on appeal; twelve individuals had been acquitted; two persons had been released; two had died before their trials were completed; and ten were transferred to national jurisdiction. The very first trial, of Jean-Paul Akayesu, set a key precedent when the court concluded that rape (a strategy used against Tutsi women) is a crime of genocide. Among those convicted are a former prime minister and the highest authority in the Rwandan defense ministry, convicted in 2008 for the killing of the Rwandan prime minister, the president of the constitutional court, and three top opposition leaders.

These two tribunals had set 2014 as termination dates. The ICTR was closer to conclusion, however, than the ICTY at that point. Both have elaborated on the Geneva Conventions, established many precedents for procedure, and applied international humanitarian law to internal armed conflicts.

Hybrid courts. In 2002 and 2008, two courts employing national and international law, procedures, and jurists were established by agreements between the UN and the governments of Sierra Leone and Cambodia to judge individual criminal responsibility for crimes against humanity and war crimes. In theory, such courts, because of their proximity, may have greater cultural sensitivity and hence more legitimacy, although because they operate with voluntary contributions, they have fewer resources. The Special Court for Sierra Leone tried individuals for crimes against civilians and UN peacekeepers during that country's civil war (1991–2002). Of ten persons tried, nine were convicted and sentenced; two others died before proceedings commenced; a third escaped. The most well-known defendant was Charles Taylor, the former Liberian president, who was convicted in 2012 of terrorism, participation in a joint criminal enterprise, planning attacks on three cities, war crimes, and crimes against humanity in aiding the two rebel groups in the Sierra Leone civil war. This made him the first former head of state found guilty by an international criminal tribunal. His trial was held in The Hague and he is serving his sentence in a UK prison. The Sierra Leone tribunal concluded its work at the end of 2013.

The Khmer Rouge Tribunal (Extraordinary Chambers in the Courts of Cambodia) has faced significant difficulties in its trials of individuals charged for their roles in the Khmer Rouge regime and the deaths of 1.7 million Cambodians by starvation, torture, forced labor, and execution between 1975 and 1979. The length of time that has passed makes gathering evidence difficult. The first trial, against "Duch," the former chair of the central prison in Phnom Penh, concluded in 2010 and his conviction was upheld on appeal in 2012. Trials of two other survivors from the Khmer leadership concluded in 2014 with their conviction and sentencing; another two trials were terminated by death and illness; five additional suspects were still under investigation in late 2014; and three suspects were charged in early 2015. The Cambodian government has repeatedly tried to block the court proceedings. The question of whether these trials are, in fact, achieving the goal of bringing justice to Cambodia and promoting national reconciliation remains an open one.

There are a number of other hybrid, mixed, or internationalized courts now that vary in makeup and procedures as well as in how they link national and international law. These include programs in Kosovo, Lebanon, and Timor Leste. Clearly, however, efforts to find ways to hold individuals accountable for various types of crimes under international humanitarian law continue. How well these courts serve justice is another question.

The International Criminal Court. In 1998, in light of the difficulties posed by the ad hoc nature of the tribunals for Yugoslavia and Rwanda and a long-standing movement to create a permanent international criminal court, UN members concluded the Rome Statute for the International Criminal Court. The Coalition for the International Criminal Court, an umbrella group of 2,000 NGOs, mobilized international support for the ICC and promoted ratification of the statute, and today continues with promotional activities. The ICC is officially recognized as an independent permanent judicial institution, but it reports its activities to the UN Secretary-General, has observer status in the General Assembly, and may address the Security Council.

The ICC began to function in 2002 and its first judges (eighteen) and prosecutors were chosen in 2003. As of 2014, 122 states had ratified the Rome Statute, including all European and South American states, but still representing only a minority of the world's peoples. Prominent among the absentees are China, India, Iraq, Turkey, and the United States. Perhaps most controversial was Palestine's decision to join the court in 2015.

When inaugurated, the ICC was called "the most ambitious initiative in the history of modern international law" (Simons 2003: A9). It enjoys both compulsory jurisdiction and jurisdiction over individuals, in contrast to the jurisdiction of the ICJ. The court has jurisdiction over "serious" war crimes that represent a "policy or plan," rather than just random acts in wartime. Abuses must be "systematic or widespread." Four types of crimes are covered: genocide (attacking a group of people and killing them because of race, ethnicity, religion); crimes against humanity (murder, enslavement, forcible transfer of population, torture); war crimes; and crimes of aggression (initially undefined). No individuals (save those under eighteen years of age) are immune from jurisdiction, including heads of state and military leaders. The ICC functions as a court of last resort in that it can hear cases only when national courts are unwilling or unable to deal with grave atrocities. Prosecution is forbidden for crimes committed before July 1, 2002, when the court came into being, and individuals must be present during the trial. Anyone—an individual, government, group, or the UN Security Council—can bring a case before the ICC.

As of early 2015, there were twenty-two cases on the ICC docket addressing war crimes or crimes against humanity in nine "situations," all African cases, including individuals in the Central African Republic, Côte d'Ivoire, Darfur, the Democratic Republic of Congo, Kenya, Libya, and Mali. Four states had referred cases; those in Côte d'Ivoire and Kenya were

initiated by the ICC prosecutor; and the two others were referred by the UN Security Council. Preliminary examinations of other potential cases in Afghanistan, Colombia, Georgia, Guinea, Honduras, Iraq, Nigeria, Palestine, and Ukraine were at various stages of investigation in early 2015.

The ICC initiated its first trials in 2009 after almost seven years of preparatory work ranging from the selection of initial judges and appointment of the chief prosecutor to developing the processes for investigating and selecting cases, establishing court regulations, and evaluating issues of jurisdiction and admissibility (Schiff 2008: 102–143). For the two ad hoc criminal tribunals, whose missions were much clearer than that of the ICC, these processes had taken about two years. As of late 2014, the ICC had tried, convicted, and sentenced two defendants, both Congolese warlords, and acquitted a third individual. Thomas Lubanga Dyilo was convicted of war crimes in recruiting child soldiers, while Germain Katanga was found guilty of both war crimes and crimes against humanity in attacking a village in eastern DRC, but acquitted of rape and using child soldiers. In 2009, the ICC, in its first indictment against a sitting president, charged Sudan's Omar Hassan al-Bashir and three associates with war crimes and crimes against humanity. In 2011, an indictment was issued against Uhuru Kenyatta and two other Kenyans for their role in the interethnic violence following the 2007 presidential election. Although it had initiated the ICC proceeding, the Kenyan government sought to defer the trials. Kenyatta became president in 2013 and efforts to postpone the trial or change court procedures continued until late 2014 when the case was dropped for lack of evidence. Still, President Kenyatta set an important precedent when he appeared in person before the court. In the Sudanese case, the ICC prosecutor suspended investigations in late 2014 because no arrests had been made in a decade and the Security Council and member states had been unwilling to take further action. In March 2015, the ICC asked the Security Council to take steps to enforce compliance. Many international jurists view the case and the court's ability to carry out prosecution as a test of the court's credibility.

The prevalence of African cases at the ICC and the high-profile cases of Presidents Bashir and Kenyatta has sparked a strong backlash against the ICC in Africa. The UN Security Council rejected Kenya's request to delay proceedings, nonetheless, while the African Union, Organisation of Islamic Cooperation, and Arab League accused the court of racism and neocolonialism. President Bashir himself openly defied the court, while some African leaders mounted a campaign to press African states to withdraw from the ICC. A counter-movement has also been launched by an international advocacy group, Avaaz, calling on African leaders to stay in the ICC.

Even Western advocates for the ICC are becoming increasingly disillusioned. Is the $1 billion cost for just two convictions worth the price? Is the annual budget of $166 million justified? As one reporter (D. Davenport 2014) remarked, "small fish, few cases, fewer convictions, arrest warrants ignored, all while the Court burns through millions of dollars a year in The Hague. It seems evident that something is wrong with this picture."

Consider the case of the United States and the ICC. Historically, the United States supported international accountability for war crimes, but ended up opposing the ICC and "unsigning" the Rome Statute in 2001. One major concern was the possibility that the ICC might prosecute US military personnel or even the US president without US approval. More generally, the United States asserted that the ICC infringes on its sovereignty and, as a world power, it has "exceptional" international responsibilities that should make its military and civilian leaders immune from the ICC's jurisdiction. It would have preferred an international court whose powers depended upon approval by the UN Security Council. To shield itself from ICC jurisdiction, the United States negotiated bilateral immunity and impunity agreements with over a hundred countries that promised not to turn over indicted US nationals, as permitted under Article 98 of the ICC statute. Economic aid to countries not signing such agreements can be suspended. The 2003 American Service-Members Protection Act offers another measure of protection.

In reality, the United States has ended up taking a more pragmatic approach. In 2005 it abstained on the Security Council resolution referring Darfur/Sudan to the court, and in 2011 it voted in favor of referring Libya. It has sent US troops to assist in capturing Joseph Kony. In 2014, the US pushed a Security Council draft resolution to refer Syria to the court, knowing full well that it would fail, but also inserting language to block any investigation into the Golan Heights occupied by Israel, any prosecution of US soldiers, and any US financial support for the court. Clearly, the United States supports the ICC "only when it suits the administration's foreign policy agenda, using the threat of prosecution to skewer its foes while protecting its friends from its reach." The danger, however, in such a selective approach is that international criminal justice and the ICC could become increasingly politicized, undermining their credibility (Sengupta 2014b).

These international criminal proceedings raise key dilemmas, since the ICC, ad hoc courts, and hybrid courts are not just judicial bodies, but also political entities whose decisions affect interstate relations. If states like Cambodia try to limit a court's reach and the court accepts the limitations, its legitimacy as an independent judiciary may be undermined. If states reject a court's indictment, as Sudan has done, and its president openly defies the ICC's order to arrest him, then the court's legitimacy is tarnished. And if states cooperate out of purely political motives, like Serbia and the United States, then a court's credibility as a judicial body may likewise be undermined.

Perhaps even more vexing is the tension between peace and justice. The jurisdiction of the international criminal courts extends to crimes committed during time of wars or conflict. Yet seeking to hold key individuals responsible for those crimes might jeopardize the possibility of securing long-term peace. Thus, is it more critical to try individuals for wrongdoing or to ensure a peace? Might international prosecution actually prolong ongoing conflicts if key individuals refuse to negotiate peace out of fear of punishment? The 2005 ICC indictment of Joseph Kony just when a peace agreement seemed possible may explain his disappearance. Likewise, the indictment of the Sudanese president and his defiance of the court have contributed to the failure of efforts to secure peaceful resolution of the Darfur conflict. Unquestionably, civilians in the region have suffered still more, as the government expelled humanitarian aid agencies in 2009 and 2010 in retaliation for the arrest warrant for President Bashir. Thus, international criminal courts may punish the responsible in the name of justice, but jeopardize the possibilities of achieving peace and stability in a country or region (Schiff 2008; Snyder and Vinjamuri 2003–2004). Regional human rights courts do not face these same dilemmas, since their jurisdiction covers different types of human rights violations.

Regional enforcement. With mandatory jurisdiction over forty-seven member states and 800 million people, the European Court of Human Rights (ECHR) is the only regional court that has enforcement mechanisms. In the European Convention on Human Rights, two-thirds of the articles deal with enforcement. Over time, the ECHR's caseload has increased exponentially, with 91 percent of the judgments occurring since 1998. Over 50,000 applications are submitted annually, although 90 percent are ultimately proclaimed inadmissible. Between 1958 and 2011, the court issued 14,940 binding rulings (Alter 2014: 73). The subjects include controversial issues in political and civil rights such as challenges to Great Britain's policy of collecting and keeping fingerprint and DNA samples of all criminal suspects (even those later found innocent); Bulgaria's procedures for fair trials and sentencing; and Poland's permitting of US Central Intelligence Agency "black sites" where prisoners were mistreated and tortured during the US-led global war on terror.

The ECHR's judgments are directly enforced in the national courts of states that are parties to the European Convention on Human Rights. States are obligated to inform the Council of Europe of actions taken to comply with the court's judgment. Sometimes that means paying compensation, which is relatively easy to enforce. National laws or practices may need to be changed, making it more difficult to ensure enforcement. Bulgaria, for example, had to strengthen its laws after a 1998 decision found its legal procedures inadequate for investigating charges of wrongdoing by police and other officials. While occasionally states choose not to enforce the court's decisions, the European system exhibits the only case of states yielding sovereignty to an international human rights court that can enforce its judgments.

Among the other regional courts, the Inter-American Court of Human Rights is the most active, hearing appeals from the twenty member states of the Inter-American Commission on Human Rights, as well as from individuals, totaling roughly 1,500 petitions annually. It also issues several hundred requests to states each year to adopt "precautionary measures" where individuals are at risk of harm. Twenty-two of its thirty-five members have accepted compulsory jurisdiction. Between the court's founding in 1979 and 2011, it had issued 239 binding rulings and 20 advisory opinions (Alter 2014: 73). In 2011, the Inter-American Court issued a landmark ruling requiring states to investigate human rights violations and punish those responsible, regardless of amnesty laws that had been passed to protect former officials of military regimes. As part of the efforts to enforce human rights standards, the Inter-American Commission also conducts on-site visits and reports on human rights situations.

As discussed in Chapter 5, the 2001 Inter-American Democratic Charter helped broaden the conditions under which the OAS may act in the event of an unconstitutional regime change in a Latin American state that undermines the regional commitment to democracy. While not legally binding, the charter has been used on several occasions to apply diplomatic pressure on Haiti, Honduras, Venezuela, Ecuador, Bolivia, and Nicaragua (Hawkins 2008). Together, the commission and the court have increasingly taken on the "pivotal role of condemnation and early warning in response to situations that undermine the consolidation of democracy and rule of law" in the hemisphere (Dilitzky 2012: 11).

The African Court of Human and Peoples Rights became operational in 2006, following the entry into force in 2004 of the Protocol to the African Charter on Human and Peoples Rights. It has its seat in Arusha, Tanzania, and is composed of eleven judges serving six-year terms. Between receipt of its first case in 2008 and 2014, the court handled twenty-eight cases, finalizing twenty-three of them, with five contentious cases pending in 2014. A 2013 judgment, for example, found Tanzania had violated several articles of the African Charter, including rights to freedom of association. The court directed Tanzania to take constitutional, legislative, and other measures to remedy the violations.

Limiting the reach of the African court, however, is the fact that only half of the AU's fifty-four members have ratified the protocol and become parties, despite the AU's encouraging of member states to use the court

rather than the ICC. In a further indication of many African states' desire to keep human rights enforcement within Africa, the 2008 AU summit approved a protocol to merge the African Court of Human and Peoples' Rights with a yet-to-be-established African Court of Justice, to form the African Court of Justice and Human Rights. The court's jurisdiction would extend to cases of genocide. A 2014 amendment to the protocol, if ratified, will give heads of state and other senior officials immunity from prosecution. This would make the proposed court a very different entity, as the jurisdiction of all other international criminal courts has applied equally to all persons. As of early 2014, only five countries had ratified the protocol, however.

Nonstate enforcement efforts. Nonstate actors, strictly speaking, lack capacity to compel compliance with human rights norms through coercive measures. Debate among NGOs, for example, has focused on whether or not to join with states and IGOs in supporting sanctions and boycotts against offending states. Many NGOs have feared that taking sides by supporting sanctions might jeopardize neutrality and hence their effectiveness and legitimacy. The World Council of Churches confronted this dilemma beginning in the late 1960s. The council adopted two enforcement approaches: money disbursed to liberation groups in southern Africa to support their struggle against white minority regimes, and participation in a global campaign to pressure MNCs to change behavior or withdraw investment from the region. Their strategy resonated with most but not all of the council's membership and was one part of the global campaign to end racial discrimination in southern Africa.

As a result of the creation of the UN Global Compact and other initiatives regarding corporate behavior, MNCs and international businesses, while not technically enforcers, increasingly are viewed as having the duty to respect human rights, meaning not infringing on the rights of others and addressing harms that do occur (Ruggie 2013). Thus, businesses have the responsibility to establish expectations of adherence to human rights norms and to work to ensure that those policies are reflected in corporate operations.

Global Human Rights and Humanitarian Governance in Action

Of the many human rights and humanitarian issues, four in particular—genocide and ethnic cleansing, violence against women, LGBT rights, and refugees—help to illustrate the strengths and successes, and the weaknesses and failures, of global human rights governance in action.

Genocide and Ethnic Cleansing

Despite the rhetoric of "never again," genocide continues to take the lives of millions. The Holocaust of World War II was a key event, but genocides occurred before (the Belgian Congo in the late nineteenth century, Armenia in 1915) and after (East Pakistan, Cambodia, Iraq, Rwanda, Darfur, and South Sudan). Yet prior to 1944, the term *genocide* did not exist. It was coined by a Polish lawyer, Raphael Lemkin, a tireless advocate for recognition of the crime, although he did not live long enough to see the UN's Convention on the Prevention and Punishment of Genocide ratified by his adopted country, the United States (Frieze 2013). The convention was drafted after a laborious two-year process in ECOSOC's Ad Hoc Committee on Genocide, and unanimously adopted by the UN General Assembly in 1948. The convention defines the crime of genocide, lists the prohibited acts, and calls for punishment of the perpetrators (see Figure 10.2 for key provisions).

The Genocide Convention was rapidly signed and ratified and widely recognized as a major advance in international human rights law. Yet how would it be interpreted and enforced? For example, it does not specify how many people have to be killed to constitute genocide, but only addresses the intention on the part of the perpetrators to destroy a group of people "in whole or in part." The convention created no permanent treaty body to monitor situations or provide early warnings of impending or actual genocide. And for many years it seemed to have little effect. The international community ignored several situations that appeared to be genocide, such as the "killing fields" of Cambodia, where almost one-third of the country's population died in the mid-1970s.

Three post–Cold War cases, Bosnia, Rwanda, and Darfur, illustrate the dilemmas associated with application of the Genocide Convention. Were these cases genocide? Was there a systematic attempt by one group to exterminate another group? Or were these just brutal civil wars? If genocide was committed, the parties to the convention were obligated to respond under Article I, but proving genocide is problematic. Few perpetrators leave behind conclusive evidence of intent. In all of these cases, the UN member states failed to act decisively to stop the killing.

During the Yugoslav civil war, the term *ethnic cleansing* was coined to refer to systematic efforts by Croatia, the Bosnian Serbs, and Serbia itself to remove peoples of another group from their territory, but not necessarily to wipe out the entire group or part of it as specified in the Genocide Convention. In Bosnia, Muslim civilians were forced by Serb troops to flee towns for Muslim areas within Bosnia or for neighboring countries. Some were deported to neighboring Macedonia, while others were placed in concentration camps. Sixty thousand Bosnian women were raped by Serb

Figure 10.2 The Genocide Convention (key provisions)

Article I Genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and punish.

Article II Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

(a) Killing members of the group;
(b) Causing serious bodily or mental harm to members of the group;
(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
(d) Imposing measures intended to prevent births within the group;
(e) Forcibly transferring children of the group to another group.

Article III The following acts shall be punishable:

(a) Genocide;
(b) Conspiracy to commit genocide;
(c) Direct and public incitement to commit genocide;
(d) Attempt to commit genocide;
(e) Complicity in genocide.

Article IV Persons committing genocide or any of the other acts enumerated in Article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.

Article V The Contracting Parties undertake to enact . . . the necessary legislation to give effect to the provisions of the present Convention and to provide effective penalties for persons guilty of genocide or any of the other acts enumerated in Article III.

forces. Croatia expelled Serbs from its territory, and Serbia expelled Kosovar Albanians from Kosovo.

Investigators from the UN Commission on Human Rights, beginning in 1992, reported "massive and grave violations of human rights" against the Bosnian Muslim population. In the same year, the General Assembly condemned Serbia's ethnic cleansing of Bosnia's Muslims as a form of genocide, while the ICJ began to consider the specific case in 1993. A Commission of Experts created by the Security Council in 1993 conducted further investigations. Before its report was issued in 1995, the Security Council established the ICTY, instituted an arms embargo on all parties, and imposed trade sanctions on Serbia, condemning it for human rights violations. By December 1995, when the Dayton Peace Accords were signed, the war had resulted in 200,000 deaths and millions of homeless, missing, or internally displaced persons.

Why didn't the Security Council undertake more direct action? Was ethnic cleansing in Bosnia equivalent to genocide? The UN Commission of Experts and the Commission on Human Rights both said that Serbia had a conscious policy of systematic genocide. Some states and NGOs, such as Doctors Without Borders, disagreed. Still others maintained that all sides were guilty. The fact was that Security Council members lacked the political will to stop the killing. In 2007, the ICJ concluded that although Serbia failed to prevent the 1995 Srebrenica genocide, Serbia neither committed genocide nor conspired nor was complicit in the act of genocide. The judges pointed to insufficient proof of intentionality to destroy the Bosnians as a whole or in part. The controversy continues, however. In 1999, Croatia filed suit against Serbia over the genocide claims, and Serbia filed a countersuit in 2010. Hearings finally began in 2014 and a decision was announced in 2015 that neither Croatia nor Serbia had committed genocide against each other's population during the Balkan wars that followed the collapse of Yugoslavia in the early 1990s. Crimes were committed by both countries, but the intent to commit genocide had not been proven against either, the court decided (ICJ Contentious Case 2015). The ICTY, however, has long since ruled that genocide was committed in Bosnia when the UN safe haven of Srebrenica was overrun by Bosnian Serb forces in 1995. And, in 2015, prosecutors in Serbia began arresting persons suspected of having participated in the Srebrenica massacre, widening the focus beyond high-level personnel. These trials will be held in Serbia itself—a first.

The evidence of genocide in Rwanda is much more definitive. In April 1994, following the death of the Rwandan and Burundian presidents in a mysterious plane crash, Hutu extremists in the Rwandan military and police began systematically slaughtering the minority Tutsis as well as moderate Hutus in a campaign of violence orchestrated by Radio Libres des Milles Collines. In a ten-week period, over 800,000 were killed out of a total Rwandan population of 7 million. Even before the plane crash, reports from NGOs and UN peacekeepers warned that there were plans to target the Tutsi population. In January 1994, General Romeo Dallaire's warnings of an impending genocide went unheeded at UN headquarters and his request for additional UN troops to augment his small, 2,500-member peacekeeping force was denied. Instead, he was forced to confine his activities to evacuating foreigners.

Why did the international community fail to respond? Samantha Power (2002) traces the reasons for the US failure to take any action to self-serving caution and the belief at first that the killings were merely "random tribal slaughter." When evidence mounted to the contrary, it was ignored and officials avoided using the term *genocide*, knowing full well that if it was invoked, they would be forced to take action under the terms of the Genocide Convention. Philip Gourevitch (1998) and Michael Barnett

(2002) place harshest blame on the UN, which they maintain should not have withdrawn its peacekeepers when it did. Virtually all the key Security Council members preferred taking no military action, and the Secretariat misunderstood and ignored the problem. Other scholars have suggested that the genocide occurred so fast, beginning in outlying areas, that the world could not have reliably known enough or had the time to prevent it (Kuperman 2001).

Beginning in 2003, thousands of people fled their homes in the western region of Darfur in Sudan after attacks from government-backed Arab militias (the Janjaweed) on a rebel uprising. Although the international community and UN provided humanitarian relief, the Security Council issued only weak warnings to Sudan, despite the efforts of some, including then-US secretary of state Colin Powell, who labeled Darfur a case of genocide in 2004. Exact figures are hard to come by, but estimates are that between 2003 and 2008, over 300,000 people were killed in Darfur, 2.3 million were displaced within the country, and another 250,000 fled, mostly to neighboring Chad. Large numbers of villages were destroyed and more than 3 million people were dependent on international humanitarian aid. The situation drew the attention of celebrities such as George Clooney and sparked a "Save Darfur" media campaign to raise awareness of the little-known region and to press governments to act. With both China and Russia opposing coercive measures against Sudan, the Security Council referred the case to the ICC in 2005 and supported a small AU monitoring force. Only in 2007, with Sudan's consent, was the stronger hybrid UN-AU peacekeeping force (UNAMID) approved, and until 2009 it looked like conflict had diminished and displaced people were returning home. While levels of violence in Darfur did diminish for a time, when the ICC in 2010 issued a second arrest warrant against Sudan's President Bashir, violence flared in retaliation against humanitarian aid groups and workers. Neither the peace agreement between North and South Sudan nor the 2011 referendum supporting the South's secession have led to the permanent cessation of violence.

As discussed in Chapter 7, UNAMID has had serious problems and been routinely hampered by the Sudanese government, its peacekeepers often subject to attack (a crime under the ICC Rome Statute). More serious, however, are charges contained in a 2014 report that the mission failed to protect Darfur civilians, and the peacekeepers' "presence didn't deter either the government or the rebels from attacking the civilians." More damning perhaps are revelations that the UN withheld evidence collected by UNAMID linking Sudanese authorities to serious crimes and that UNAMID itself often failed to report attacks on civilians. One former UN official is quoted as saying, "We can't say all what we see in Darfur" (Lynch 2014a).

All three cases demonstrate the failure to enforce the international norm prohibiting genocide despite the evidence that genocide was occurring. The fact that two of the cases occurred in Africa, a continent already rife with ethnic and racial strife, provides some explanation. Were these just examples of brutal civil wars or were they truly genocides? Was racism itself a factor in the failures to respond adequately? The cases also point to the practical limitations to taking action against massive human rights violations. Timing (close to the Somalia debacle) and location proved critical in the Rwanda case; remoteness has been a factor in the Darfur case, as it has in the case of interethnic violence bordering on genocide in the newly independent South Sudan and in the Central African Republic in 2014. In all three cases, the UN Security Council's P-5 had competing priorities and therefore lacked the political will to act. To compensate for the UN's own institutional weaknesses and lack of an early warning mechanism, the UN Office of the Special Adviser on the Prevention of Genocide was established in 2004 to collect information on potential future genocides and make recommendations to the Security Council on actions to prevent or halt genocide, albeit too late to prevent "never again" in any of these cases. And other cases of possible genocide continue to occur. In early 2015, for example, the UNHCHR reported that ISIS may have committed genocide and war crimes against the minority Yazidi community in Iraq and called for the Security Council to refer the case to the ICC.

Violence Against Women

Violence against women has been a problem for centuries, much like the problem of human trafficking discussed at the beginning of this chapter. Until recently, these issues were hidden in the private sphere of family and communal life, where local authorities and national governments did not intervene and to which the international community turned a blind eye. Forced marriages at a young age, physical abuse by spouses including disfigurement and rape, crippling dowry payments, female genital mutilation, and honor killings all occur within the home and family. A gendered division of labor forces women into sweatshop labor, prostitution, and trafficking in their bodies; and in civil and international wars, women are raped, tortured, and forced into providing sexual services for troops. Yet only since the 1990s have these abuses against women come to be viewed as human rights issues.

Although the UN and its specialized agencies took up women's issues beginning in 1946, discussion was not framed in terms of women's rights as human rights until the 1980s and 1990s. NGO work on this issue dates from 1976, when a group of women from developed countries organized the International Tribunal on Crimes Against Women, gathering 2,000 women activists from forty different countries. The tribunal was ironically a reac-

tion to the 1975 UN Conference on Women, which failed to address the issue of violence against women. It heard testimonials from those who had suffered from domestic violence (dowry-death) or community violence (rape and sexual slavery). It provided a major impetus to publicizing gender violence and to networking, opening up an issue that had theretofore been regarded as private. The tribunal contributed also to the adoption of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1979, yet that convention did not address violence against women.

During the 1980s, small groups of experts based in agencies within the UN system convened intergovernmental meetings. The first UN survey on violence against women was published in 1989. Yet the UN itself still separated women's rights and human rights conceptually and bureaucratically, with the Commission on Human Rights located in Geneva and the Commission on the Status of Women located in New York. Activist Charlotte Bunch's 1990 article "Women's Rights Are Human Rights" helped establish the conceptual link between the two. The 1993 World Conference on Human Rights, in Vienna, endorsed this concept and put the issue on the agenda. The success of the Vienna Conference in marrying human rights and women's rights can be attributed to the ninety or so human rights and women's NGOs that organized the Global Campaign for Women's Human Rights. A key element in that campaign was the focus on gender-based violence. Feminist organizations demanded institutional changes, engaged in lobbying, brought lawsuits, and networked across international and regional organizations (Htun and Weldon 2012). The Global Campaign also organized the Global Tribunal on Violations of Women's Human Rights at the parallel NGO forum, hearing testimony of abused women and putting a human face on the related problems. The joint efforts of women's and human rights groups produced Article 18 of the Vienna Declaration and Programme of Action, which declared: "The human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights." Violence against women and other abuses in situations of war, peace, and domestic family life were identified as breaches of both human rights and humanitarian norms.

In 1993, the UN General Assembly approved the United Nations Declaration on the Elimination of Violence Against Women. It also called for a special rapporteur on violence against women as well as for states to take steps to combat violence against women (Joachim 2007).

The UN system was not the only locus of activity. Activists in the Americas also introduced violence-against-women issues in the OAS, which concluded the Inter-American Convention on Violence Against Women in 1994. Members of the EU likewise undertook to combat gender violence as a result of the interest of states that had strong domestic feminist lobbies, including Germany, Sweden, Finland, and Austria. Both the Maastricht Treaty (1993) and the Amsterdam Treaty (1997) expanded EU legal competence and highlighted respect for human rights and the rule of law. In 1996, a widely publicized Belgian case of sexual abuse of young girls drew attention to the fact that gender violence was occurring not just "out there in the developing world" but also right at home. The European Women's Lobby, with its 2,700 affiliates, brought the issue to the public agenda through its Policy Action Center on Violence Against Women. This precipitated a response from the European Parliament's activist Women's Rights Committee. With enlargement to the east and the Schengen Agreement opening the EU's internal borders, trafficking in women and violence emerging from that practice became a broader European issue.

Getting women's issues on the European agenda was not without controversy, as activists questioned the competence of the European Women's Lobby. The European Commission itself was slow to take up the issues until pushed by activist female commissioners. And there has been an ongoing dispute about prostitution, as discussed in the opening case of this chapter. The EU established the Daphne program in 1997 to address gender violence, helping to expand the capacity of states and local organizations to aid victims (Montoya 2008).

A comparative study of seventy countries over four decades by Mala Htun and Laurel Weldon (2012) found that strong advocacy and mobilization by autonomous domestic feminist groups and gradual regional diffusion of norms addressing violence against women rather than ratification of CEDAW, leftist parties, women in government, or national wealth best explained variations in states' policy development. Over time, then, states began to take a variety of actions such as funding domestic violence shelters, creating rape crisis centers, adopting specialized legislation, targeting vulnerable populations of women like immigrants, minority groups, and refugees, training professionals who respond to victims, and funding prevention and public education programs. These women's groups "articulate the social perspective of marginalized groups, transform social practice, and change public opinion . . . [and] drive sweeping change" (Htun and Weldon 2012: 564).

The issue of female genital mutilation (FGM) has garnered significant attention and effort. NGOs like Tostan framed the issue as one of women's health and human rights. UNICEF and UNESCO have provided educational materials and financial support for a human rights–based curriculum addressing the issue. A 2013 UNICEF report found that the practice, which has affected as many as 125 million girls and women, was in decline in about half of the twenty-nine states in Africa and the Middle East where it has been prevalent. The study suggests that changes in attitudes of the rising generation offer the best explanation for this trend. Nevertheless, in

states where Tostan has been most active, such as Senegal, the practice continues, and remains prevalent also in Djibouti, Egypt, Eritrea, Guinea, Mali, and Somalia (UNICEF 2013).

In 2014, a four-day Global Summit to End Sexual Violence in Conflict was convened in London by Britain's foreign secretary and Special Envoy for the UNHCR Angelina Jolie. The summit drew 123 government delegations, along with 1,700 activists and survivors of conflict zones. Among the outcomes of the summit was the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict, which sets standards for collecting information, evidence, and witness protection. The efforts of activists and sentences delivered by international tribunals and the ICC have begun to make those responsible for committing sexual violence accountable. Still, UN Secretary-General Ban Ki-moon called attention to a UN report in March 2015 that indicated one in three women today are subject to physical violence. The report also drew attention to the rise of extremism and conservatism as a factor in the persistence of the problem of violence against women (Sengupta 2015a).

Ultimately, the solution to addressing violence against women, indeed all discrimination against women, is to elevate women from their historically subordinate status to men. Liberal feminists see that progress has been made, because both public and private abuses are the subject of media attention, concerted NGO activities, and states' actions. Critical feminists, however, point to the economic forces that continue to place women in a disadvantaged position. Virtually all condemn the various forms of both public and private violence against women, though their remedies for relief vary.

The Quest for LGBT Rights

Rights based on sexual orientation and gender identity of lesbian, gay, bisexual, and transgender persons have gained increasing prominence, even though they remain highly controversial. While the first gay organization dates from 1892 in Germany, that movement peaked during the 1930s in Germany, the Netherlands, and Sweden. The Society for Human Rights, the first formally organized gay group in the United States, was established in 1924. The Nazi suppression of homosexual groups during the World War II, however, had a chilling effect on public activities for several decades. During the 1970s and 1980s, organizations in the United States, Canada, Australia, and Western Europe connected, using the language of civil rights, much like African Americans and women before them. First in Norway in 1981, then several years later in the English-speaking world, the groups met with success by building on grassroots activities in voluntary associations and labor unions, then lobbying municipal and state or provincial administrations for legalization of gay rights. Since that time, some European states

(the Netherlands, France), several Latin American states (Brazil, Argentina, Uruguay), Canada, and South Africa have accepted LGBT rights as human rights and even legalized marriage; the Indian Supreme Court recognized transgender persons as a third gender and acknowledged their equal rights. Still others have legalized LGBT civil and political rights, although laws prohibiting sexual relations between consenting adults of the same gender remain on the books.

The challenge has been greater in the developing world and in nations where traditional religious and social structures are dominant. In those cases, national laws permitting discrimination on the basis of sexual orientation with respect to employment, movement, housing, and government services are common, generally supported by their publics. Such laws are especially common in the Islamic world. In addition, harassment, assault, and even murder of gays and lesbians continue to be widespread; in 2014, seventy-six countries still criminalized homosexual behavior; ten countries made it punishable by death or life imprisonment. For example, Nigeria passed a law in 2014 stipulating fourteen years imprisonment for entering a same sex union and Uganda passed a law punishing homosexual acts by life in prison. In five countries, the penalty for engaging in homosexual behavior is death. In Bolivia, Russia, and South Africa, LGBT demands have actually provoked a backlash. Some anti-gay rights NGOs have formed coalitions of their own and shared information and strategies to block reforms. This has led some to advise gay activists to limit their objectives, consistent with the relatively conservative Yogyakarta Principles discussed below (Mittelstaedt 2008).

The goal of the International Lesbian, Gay, Bisexual, Trans, and Intersex Association (ILGA), an umbrella group of hundreds of LGBT advocacy groups formed in 1978, has been to internationalize the struggle for LGBT rights. But getting access to the UN and other international bodies has been an uphill battle. Even Human Rights Watch and Amnesty International were reluctant to endorse LGBT rights. Only after contentious debate did AI agree in 1991 to defend people imprisoned because of homosexuality. In its 1994 report on LGBT rights, AI noted rather cautiously that no international treaty explicitly defended these rights. Amnesty International provided encouragement for Human Rights Watch to take up the issue a few years later (Hagland 1997; Mertus 2009a).

Participation of LGBT groups in UN human rights forums came slowly. Lesbian groups participated in the UN women's conference in 1985 and two gay organizations attended the Vienna conference on human rights in 1993. The ILGA was granted consultative status to the UN in 1992, but that status was subsequently suspended in 1994 after the United States and a number of conservative NGOs objected on the grounds that one of the ILGA's affiliates advocated sex between adults and minors. After the ILGA

expelled the group in question, it reapplied for NGO consultative status which was granted in 2011 (ILGA 2013).

LGBT success in changing policy also has come slowly. The ILGA's first success was persuading the WHO to drop homosexuality from the International Classification of Diseases in 1993. In 1992 the Commission on Human Rights declared that the right against discrimination on the basis of sex declared in the International Covenant on Civil and Political Rights should be read to also mean "sexual orientation." In 2003, a proposal before the Commission on Human Rights to condemn discrimination on the basis of sexual orientation was narrowly accepted. Those opposed to it threatened to add innumerable amendments, prompting the delegates to agree to delaying action. By 2006 support had grown and the resolution passed (O'Flaherty and Fisher 2008).

LGBT groups have carved a message and a successful strategy that has proven compelling to their international audience. In 2007, twenty-nine legal scholars from twenty-five countries (with the support of the International Commission of Jurists and the International Service for Human Rights) drafted the Yogyakarta Principles on the Application of Human Rights Law in Relation to Sexual Orientation and Gender Identity. Rather than develop new rules to govern policies on LGBT issues or propose a new convention, they instead scoured the existing international human rights agreements and showed how they applied to gay rights. For example, where a human rights treaty forbids discrimination on the basis of gender, it is contended under these principles that this also refers to sexual orientation. Likewise, where treaties endorse the right to privacy, they are implicitly endorsing the right to partnering between consenting adults (Principles 2 and 6). CEDAW has been interpreted to endorse nondiscrimination on the basis of sexual orientation, although many states have appended reservations that nullify this interpretation (Mittelstaedt 2008: 362).

The UN General Assembly in 2008 broke the taboo on the subject of homosexual rights in major UN bodies. With support from the UNHCHR and European and Latin American states, the Assembly issued a declaration seeking to decriminalize homosexuality. Two years later, the UN Special Rapporteur on the Right to Education, Vernor Muñoz, drafted a proposal calling for teaching that same-sex relations are valid, prompting a reply from Malawi's representative that the special rapporteur had "sought to introduce 'controversial concepts' that were not recognized under international law; create new human rights; and . . . propagate controversial principles [the Yogyakarta Principles] that were not endorsed at the international level" (International Service for Human Rights 2010).

Despite such opposition, both the High Commissioner for Human Rights, Navi Pillay, and the UN Secretary-General, Ban Ki-moon, began to speak out publicly. In 2010, the Secretary-General, rejecting discrimination based on sexual orientation and gender identity, affirmed: "Where there is a tension between cultural attitudes and universal human rights, universal rights must carry the day" (United Nations Secretary-General 2010). In 2011, the Human Rights Council adopted the first UN resolution (Resolution 17/19) on sexual orientation, expressing "grave concern" at violence and discrimination against individuals based on sexual orientation and gender identity. That was followed by the first UN report on the issue, written by the office the UNHCHR. The Human Rights Council in 2012 became the first UN intergovernmental body to hold a formal debate on the subject, and High Commissioner Pillay launched a public information campaign to promote greater respect for the rights of LGBT people a year later.

The struggle for LGBT rights continues in other forums. Decisions taken by the European Court of Human Rights in support of LGBT rights are increasing the probability of policy change in Council of Europe member states. National courts are using the European court's precedents to rule domestic laws invalid, if the governing regime at the time those laws were passed was not opposed to LGBT equality (Helfer and Voeten 2014). The issue will not be ignored, even if it remains highly controversial.

The Humanitarian Challenges of Refugees and IDPs

Once thought to be a temporary problem at the end of World War II, the refugee problem worldwide has increased dramatically, with people fleeing war, civil unrest, genocide, famine, and dire economic conditions. The scale of the problem now poses a severe global governance challenge, highlighting both the shortcomings of the existing legal regime and the practical questions of how to serve both the short- and long-term needs of individuals.

By the end of 2014, the total number of persons "of concern" was 51.2 million—the highest since the end of World War II—including 16.7 million refugees and 33.3 million internally displaced persons. There were also 4.9 million Palestinians under the care of the UN Relief and Works Agency (UNRWA), created in 1949 specifically to serve their needs. The largest numbers of refugees were from Afghanistan, Syria, Iraq, Somalia, the DRC, and Sudan. Much of the increase was driven by the conflict in Syria, as well as violence in the Central African Republic and South Sudan (UNHCR 2014). Eighty percent of the refugees and IDPs were hosted by developing countries, and children made up 46 percent of the refugee population. Yet only 526,000 refugees were voluntarily repatriated in 2012, and 88,600 were resettled in twenty-two countries, illustrating what has become a problem of protracted situations. It is compounded by a "crisis of asylum" as states have adopted restrictive asylum policies and Western states have sought to keep refugees in their region of origin (Loescher and Milner 2011: 196). Yet the numbers of asylum-seekers soared more than 45 percent in 2014 over 2013 as more than 850,000 new applications for asylum were

filed, most of them in Europe (Sengupta 2015c: A5). The problem is
a humanitarian and a human rights problem.

Key to understanding the work and limitations of the UNHCR is
definition of "refugee" in the 1951 Convention Relating to the Status
Refugees: a person who because of a "well-founded fear of being pe
cuted for reasons of race, religion, nationality, membership of a partic
social group or political opinion, is outside the country of his nationa
and is unable or, owing to such fear, is unwilling to avail himself of
protection of that country." The UNHCR's responsibility is to protect
ple who are certified as refugees by providing temporary refuge
another state grants them asylum or they can return home. The most sig
icant right of a refugee is "non-refoulement"—the principle that refu
cannot be forced to return to their country of origin. The UNHCR's m
date, therefore, is to provide administrative assistance and identity pap
and protect refugees from forced repatriation and from exploitation in
host state. This legal protection mandate has become increasingly diffic
to implement as the numbers of refugees have surged.

Originally, the 1951 convention only applied to Europe, but it w
made universal by the 1967 protocol. And the definition of refugee h
been broadened through regional agreements in both Africa and Centr
America to include those displaced by internal conflicts. These regio
documents now correspond more to actual causes of flight, but they al
respond to the reality that it is "often impossible for asylum seekers to ge
erate documented evidence of individual persecution required by the 19
Convention . . . [since] most contemporary mass exoduses occur wh
political violence is of a generalized nature rather than a direct individu
threat" (Loescher and Milner 2011: 191–192). Thus the UNHCR ha
adapted its own mandate to address this reality, shifting from legal prote
tion to providing assistance to refugees in camps, while potential countri
of asylum focus more on individuals and on persecution rather than o
groups of people at risk from violence.

Internally displaced persons, people forced to move or relocate within
their own country due to violence, development projects, or natural disas
ters (but not poverty or unemployment), are not considered refugees under
the convention. They present particular challenges since they remain
within the boundaries of ostensibly sovereign states and hence are subject
to domestic jurisdiction. Until the early 2000s, there was no international
legal basis for providing assistance. The largest numbers of IDPs (over 1
million each) are found in Colombia, the DRC, Iraq, Nigeria, South Sudan,
Sudan, and Syria (see the website of the Internal Displacement Monitoring
Centre, www.internal-displacement.org). Their numbers have increased
dramatically because of changes in the nature of warfare, ethnic cleansing,
and even more accurate data (Weiss and Korn 2006: 12).

Attention to the issue of IDPs came primarily as a result of the work
of two individuals in the 1990s—Francis Deng and Roberta Cohen—as
well as the concerns of NGOs such as the World Council of Churches, the
Refugee Policy Group, and Quakers. The initial step was getting the UN
Commission on Human Rights to identify existing laws and mechanisms
for their protection. Deng, a former Sudanese diplomat and expert on
African anthropology, was named Special Representative of the UN Secretary-
General in 1992. He provided intellectual leadership through a combina-
tion of personality, his framing of an idea regarding international protec-
tion for IDPs, his position as a temporary civil servant, and his stature as a
person of prominence outside the UN bureaucracy (Bode 2014). Cohen
had been active with the Refugee Policy Group in Geneva, which had been
lobbying on the issue; she had also written the first paper articulating the
idea of sovereignty as "responsibility on the part of governments to protect
their citizens" (Weiss and Korn 2006: 24). Throughout the 1990s, Deng
and Cohen led the Project on Internal Displacement at the Brookings Insti-
tution, and Deng served as SRSG (1992–2004), urging states to incorpo-
rate IDP principles into domestic law. The roles of Deng and Cohen illus-
trate how important key individuals can be in bringing attention to a
human rights issue.

The culmination of Cohen and Deng's efforts came when the 2005
World Summit endorsed the Guiding Principles on Internal Displacement,
which state that national governments have the primary responsibility for
protection and assistance to IDPs within their jurisdiction and that interna-
tional assistance to IDPs is not to be considered interference in a state's
internal affairs. In 2009, the AU adopted the Convention for the Protection
and Assistance of Internally Displaced Persons in Africa.

Since the mid-1990s, the UNHCR has gradually taken on responsibil-
ity for assisting a significant portion of IDPs worldwide, along with
refugees and asylum seekers. As Cohen (2009: 589) points out, "their status
is often interchangeable . . . [and] IDPs are potential refugees while return-
ing refugees often become IDPs." In part, however, to remedy the problem
of so called "protection gaps" for IDPs, the UN established a system in late
2005 of appointing different UN agencies as leads in various areas of
humanitarian action. As discussed in Chapter 3, the UNHCR works with
the World Food Programme, UNICEF, and UNESCO, and the International
Organization for Migration (IOM), as well as with regional organizations.
The IOM, founded to facilitate the settlement of the displaced after World
War II, provides a wide range of services in migrant, refugee, and disaster
relief camps and tracks migration trends as part of its mandate to support
orderly and humane migration. Among the NGOs serving refugees and
IDPs are the International Committee of the Red Cross and Doctors without
Borders.

The Syrian civil war illustrates the scale of the problems of int displacement and the governance challenges they present. As of the be ning of 2015, over 9.3 million people needed assistance inside Sy including 6.5 million IDPs and perhaps as many as 5 million child There were more than 3 million refugees in the neighboring countries Turkey, Lebanon, Jordan, and Iraq. In just one weekend in late Septem 2014, more than 130,000 Syrians fled into southern Turkey to escape advance of ISIS.

The handling of the situation is different in each host country, but th UNHCR generally serves as the lead agency because of its responsibili for registering all persons. In providing relief, it works with IGOs, NGO and local groups. For example, the Turkish Disaster and Emergency Man agement Authority is the lead agency in Turkey, coordinating all the agen cies, including Turkish NGOs and IGOs. More than twenty-two refuge camps have been constructed, but these serve only about 30 percent of the refugees in Turkey, providing education, health care, banking, translation, communication, religious services, security, and social activities. Working alongside Turkish NGOs like the Foundation for Human Rights and Free doms and Humanitarian Relief are a few international NGOs. The Turkish government's position is that these individuals are "guests" and Turkey is providing "temporary protection" until the individuals return to Syria.

While the specific situations are different in Lebanon, Jordan, and Iraq, the challenges are the same. How can the states provide housing and sustain the large number of refugees? While some refugees in Jordan, for example, are housed in UNHCR-organized camps, many are dispersed, staying with family members and friends. Can Lebanon remain stable given that the growing number of refugees are becoming a burden on the local population? Fearing that danger, in early 2015, Lebanon began limiting the number of Syrians who could enter the country. International financial contributions, coordinated in part by the UN through the 2014 Syria Regional Refugee Response Plan, have been slow to arrive, despite the desperate pleas of the humanitarian community. Little is known about Syrian refugees in Iraq since ISIS's seizure of territory in 2014. In 2014, the needs were estimated at a cost of $2.3 billion, yet as of midyear less than half that amount had been received in donations, underscoring the chronic problem of resources for international agencies totally dependent on voluntary donations.

Referring to some of the dilemmas in refugee aid, Sadako Ogata (2005: 25), head of the UNHCR from 1990 to 2000—a period of massive refugee flows—concludes in her book *The Turbulent Decade* that, ultimately, although the UNHCR saves lives and protects people from flagrant abuses, "there are no humanitarian solutions to humanitarian problems." Refugee problems "are essentially political in origin and therefore have to be addressed through political action. Humanitarian action may create space for political action but on its own can never substitute for it." Syria's refugee problem, like that in many other conflict situations, awaits a political solution.

The Globalization of Human Rights and the Role of the United States

States remain key actors in the globalized world of human rights, although IGOs, NGOs, experts, and networks play critical roles in norm creation, monitoring, promotion, and in some cases enforcement. No state may be as crucial as the United States.

Historically, the United States was a leader in supporting human rights and international mechanisms for accountability. Founded on liberal principles guaranteeing the political and civil rights of individuals, it has long been a beacon for others. Yet its record is a mixed one. The United States has failed to sign many human rights conventions. It has signed but never ratified many others, including the Convention Relating to the Status of Refugees, the International Covenant on Economic, Social, and Cultural Rights, CEDAW, the Convention on the Rights of the Child, and the Rome Statute of the ICC. That trend continued in 2012 when the US Senate failed to ratify the UN Convention on the Rights of Persons with Disabilities.

In short, the United States has a record of not committing itself to international human rights standards. Although the specific reasons may vary, both realist and liberal institutionalist explanations are relevant. The United States may work to reinterpret or thwart treaties already in force, consistent with what is deemed in the national interest. Its human rights record since 9/11 has been under particular scrutiny, as discussed earlier. While US abuses are not as widespread or as degrading as those in other countries, they have tarnished America's reputation "because they were carried out by a powerful democratic state with great influence on other states" and because both transnational campaigns and domestic pressure by the courts and civil society proved ineffective at changing US policy, at least in the short run (Sikkink 2013: 145–146).

Consistent with liberal institutionalist theory, domestic structure and politics provide major explanations for US policy. The United States opposes or has attached reservations to treaties that it deems to be contrary to the US Constitution or inconsistent with the principles of federalism, such as the death penalty, which is a prerogative for states. An understanding was attached to the Convention on the Elimination of All Forms of Racial Discrimination, for example, saying that the provisions would be implemented by the federal government to the extent that it had jurisdiction in such matters. In virtually every case, the United States also adds the dec-

laration that the particular treaty is not self-executing—that is, it does not create rights that are directly enforceable (Buergenthal 1995: 290–91). Julie Mertus (2008: 2) calls the US approach a "bait and switch," arguing that "human rights are something the United States encourages for other countries, whereas the same standards do not apply in the same manner in the United States."

Why is the United States so ambivalent about committing itself to the international human rights regime? Stewart Patrick (2002), Andrew Moravcsik (2002), and others explain this ambivalence by referring to US exceptionalism. This idea has led to the claim that the United States should not have to be accountable for human rights protections in the same way that other countries are accountable, and the stance that it will not be circumscribed by the actions of others. The United States also is very sensitive to the possibility of losing its authority to what some Americans view as an unelected and unaccountable global bureaucracy.

Has US ambivalence toward the international human rights regime made a difference? At one level, the answer is "of course." When international institutions clash with a superpower that controls essential financial resources, it makes a difference. Yet at another level, adherence to human rights norms is firmly established in a strong network of NGOs and democratic states, supported by public opinion. As constructivists argue, the norms are firmly implanted and this explains why the deviant behavior of the United States has generated such vigorous debate and condemnation both inside and outside the country. The jury on the long-term impact of this behavior may still be out, however, particularly as shifts in global power mean more influence for China and other emerging states that are far less devoted to human rights norms than is the United States.

There has been remarkable progress in human rights governance since World War II. Globalization of communication and ideas has been a powerful stimulus to the development of international human rights and humanitarian activities. Just as there has been a backlash against economic and cultural globalization, however, so too there may be a backlash against political globalization implicit in human rights governance. Environmental issues, the subject of the next chapter, have become globalized in many of the same ways.

Suggested Further Reading

Barnett, Michael. (2011) *Empire of Humanity: A History of Humanitarianism*. Ithaca: Cornell University Press.

Brysk, Alison, and Austin Choi-Fitzpatrick, eds. (2012) *From Human Trafficking to Human Rights: Reframing Contemporary Slavery*. Philadelphia: University of Pennsylvania Press.

Ishay, Paul Gordon. (2011) *The Evolution of International Human Rights: Visions Seen*. 3rd ed. Philadelphia: University of Pennsylvania Press.

Loescher, Gil, Alexander Betts, and James Milner. (2008) *The United Nations High Commissioner for Refugees (UNHCR): The Politics and Practice of Refugee Protection Into the Twenty-First Century*. New York: Routledge.

Mertus, Julie A. (2009) *The United Nations and Human Rights: A Guide for a New Era*. 2nd ed. London: Routledge.

Soyer, Aryeh. (2012) *The International Human Rights Movement: A History*. Princeton: Princeton University Press.

Schiff, Benjamin. (2008) *Building the International Criminal Court*. New York: Cambridge University Press.

Sikkink, Kathryn. (2011) *The Justice Cascade: How Human Rights Prosecutions Are Changing World Politics*. New York: Norton.

Simmons, Beth A. (2009) *Mobilizing for Human Rights: International Law in Domestic Politics*. New York: Cambridge University Press.

Important Databases

International Displacement Monitoring Centre: www.internal-displacement.org
University of Minnesota International Human Rights Instruments: www1.umn.edu/humanrts/instree/ainstls1.htm

Internet Resources

Amnesty International: www.amnesty.org
Anti-Slavery International: www.antislavery.org
Avocats sans Frontières: http://en.asf-network.org
Coalition for an International Criminal Court: www.iccnow.org
European Court of Human Rights: www.echr.coe.int
Extraordinary Chambers in the Courts of Cambodia: www.eccc.gov.kh/en
Feminist Majority Foundation: www.feminist.org
Human Rights Watch: www.hrw.org
Inter-American Commission on Human Rights: www.oas.org/en/iachr
Inter-American Court of Human Rights; Inter-American Convention on Human Rights: www.umn.edu/humanrts
International Commission of Jurists: www.icj.org
International Committee of the Red Cross: www.icrc.org
International Criminal Court: www.icc-cpi.int
International Criminal Tribunal for Rwanda: www.ictr.org
International Criminal Tribunal for the Former Yugoslavia: www.un.org/icty
International Lesbian, Gay, Bisexual, Trans, and Intersex Association: http://ilga.org
International Organization for Migration: www.iom.int
Open Society Initiative: www.opensocietyfoundations.org
Special Court for Sierra Leone: www.sc-sl.org
UN High Commissioner for Human Rights: www.ohchr.org
UN High Commissioner for Refugees: www.unhcr.org
World Council of Churches: www.wcc-coe.org