

# **THE ROLE OF INTERNATIONAL REGIMES IN THE CONSTITUTION OF STATE BEHAVIOR AND IDENTITY: THE CASE OF CONTEMPORARY MEXICO**

Alejandro Anaya Muñoz

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Résumé de l'article

Cet article examine le rôle que jouent les régimes internationaux des droits humains dans la politique nationale et transnationale des droits de la personne au Mexique. Suite aux constructivistes en relations internationales et aux approches libérales républicaines, nous estimons que les régimes internationaux de protection des droits humains ont joué un rôle particulièrement important au Mexique, car : a) ils ont fourni des standards, des forums adéquats et des moyens de pression efficaces pour contraindre les institutions mexicaines à respecter les droits humains; b) les organes et mécanismes de ces régimes de protection ont été des acteurs importants de promotion des droits humains; c) ces régimes ont contribué à l'élaboration de stratégies de mise en valeur des droits humains par les élites gouvernementales au plan national. Nous terminerons en offrant un cadre d'analyse pour comprendre le rôle que les régimes internationaux de protection des droits humains peuvent jouer dans d'autres situations nationales.

# THE ROLE OF INTERNATIONAL REGIMES IN THE CONSTITUTION OF STATE BEHAVIOR AND IDENTITY: THE CASE OF CONTEMPORARY MEXICO

ALEJANDRO ANAYA MUÑOZ\*

This article explores the role played by international human rights regimes in the transnational and domestic politics of human rights of Mexico. Following international relations constructivists and liberal republican approaches, this article argues that international human rights regimes have played a key role in Mexico in the following ways: a) they have provided the normative standards, information about behavior, and necessary forums for processes of shaming and argumentation; b) regimes' organs, bodies and mechanisms have been important actors in their own right in the aforementioned processes; c) regimes have been instrumental in the strategies of government elites seeking to secure their preferences in domestic politics. This article ends by offering a framework that might prove useful for understanding the role of international human rights regimes in other country-specific situations and by reflecting on the theoretical implications of its main argument.

Cet article examine le rôle que jouent les régimes internationaux des droits humains dans la politique nationale et transnationale des droits de la personne au Mexique. Suite aux constructivistes en relations internationales et aux approches libérales républicaines, nous estimons que les régimes internationaux de protection des droits humains ont joué un rôle particulièrement important au Mexique, car : a) ils ont fourni des standards, des forums adéquats et des moyens de pression efficaces pour contraindre les institutions mexicaines à respecter les droits humains; b) les organes et mécanismes de ces régimes de protection ont été des acteurs importants de promotion des droits humains; c) ces régimes ont contribué à l'élaboration de stratégies de mise en valeur des droits humains par les élites gouvernementales au plan national. Nous terminerons en offrant un cadre d'analyse pour comprendre le rôle que les régimes internationaux de protection des droits humains peuvent jouer dans d'autres situations nationales.

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\* Professor-researcher at the Division of International Studies of the Centro de Investigación y Docencia Económicas (CIDE), in Mexico City. He holds a Ph.D in Government and an MA in Theory and Practice of Human Rights from the University of Essex, England. He is member of the National System of Researchers of Mexico's National Council on Science and Technology. He has been Mexico Public Policy Scholar at the Woodrow Wilson International Center for Scholars, in Washington, DC. His publications on cultural diversity and human rights in Mexico include a book by Universidad Iberoamericana and Plaza y Valdéz, and articles in the *Human Rights Quarterly*, the *Journal of Latin American Studies*, the *Critical Review of International Social and Political Philosophy* and the *International Journal of Human Rights*.

Since the inclusion of human rights principles and purposes in the *Charter of the United Nations*<sup>1</sup> in 1945, States have praised human rights principles, adopted norms, crafted rules and established decision-making procedures for the regulation of their own behavior in the area of human rights.<sup>2</sup> In other words, by acting through intergovernmental organizations—in addition to the United Nations (UN), the Organization of American States (OAS), the Council of Europe and the African Union—States have created international human rights regimes.<sup>3</sup> The study of international regimes has a long tradition within the international relations literature, which has mainly addressed two types of questions: why do States create and/or maintain international regimes in the first place? Once these international regimes have been established, do they influence state behavior?<sup>4</sup> Both types of questions can (and in fact have been) posed specifically in relation to international human rights regimes.<sup>5</sup> This article focuses on the latter type of questions: Do international human rights regimes make a difference in practice? Do they play a meaningful role in the definition of outcomes and government behavior? After more than sixty years since the adoption of the *Universal Declaration of Human Rights*<sup>6</sup> (UDHR), and the ensuing proliferation of international norms, rules and decision-making procedures, the “so what?” question seems to be particularly important.<sup>7</sup>

<sup>1</sup> *Charter of the United Nations*, 26 June 1945, Can TS 1945 No 7.

<sup>2</sup> See generally Paul G. Lauren, *The Evolution of International Human Rights* (Philadelphia: University of Pennsylvania Press, 2003); Roger Normand & Sarah Zaidi, *Human Rights at the UN: The Political History of Universal Justice* (Bloomington, Indiana: Indiana University Press, 2008); Tom J. Farer, “The Rise of the Inter-American Human Rights Regime: No Longer a Unicorn, Not Yet an Ox” (1997) 19:3 Hum Rts Q 510; Jack Donnelly, “International Human Rights: A Regime Analysis” (1986) 40:3 International Organization 599; David P. Forsythe, *Human Rights in International Relations* (Cambridge: Cambridge University Press, 2000); Rosemary Foot, *Rights beyond Borders. The Global Community and the Struggle over Human Rights in China* (Oxford: Oxford University Press, 2000).

<sup>3</sup> International relations scholars have defined international regimes as sets of “principles, norms, rules, and decision-making procedures around which actor expectations converge in a given issue-area”. See Stephen D. Krasner, “Structural Cause and Regime Consequences: Regimes as Intervening Variable” in Stephen D. Krasner, ed., *International Regimes* (Ithaca, NY: Cornell University Press, 1983) 1 at 1 [Krasner, *International Regimes*].

<sup>4</sup> See generally Krasner, *International Regimes*; Robert O. Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton, NJ: Princeton University Press, 1984); Kenneth A. Oye, ed., *Cooperation under Anarchy* (Princeton, NJ: Princeton University Press, 1986).

<sup>5</sup> See Donnelly, *supra* note 2; Stephen D. Krasner, “Sovereignty, Regimes, and Human Rights” in Volker Rittberger, ed., *Regime Theory and International Relations* (Oxford: Clarendon Press, 1993) at 139 [Krasner, “Sovereignty, and Human Rights”]; Andrew Moravcsik, “The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe” (2000) 54:2 International Organization 217; Oona A. Hathaway, “Do Human Rights Treaties Make a Difference?” (2002) 111:8 Yale LJ 1935; Darren Hawkins, “Explaining Costly International Institutions: Persuasion and Enforceable Human Rights Norms” (2004) 48:4 International Studies Quarterly 119; Emilie M. Hafner-Burton & Kiyoteru Tsutsui, “Human Rights in a Globalizing World: The Paradox of Empty Promises” (2005) 110:5 American Journal of Sociology 1373; Eric Neumayer, “Do International Human Rights Treaties Improve Respect for Human Rights?” (2005) 49:6 J Confl Resolution 925.

<sup>6</sup> *Universal Declaration of Human Rights*, GA Res 217(III), UNGAOR, 3d Sess, Supp No 13, UN Doc A/810, (1948) 71.

<sup>7</sup> Questions regarding the emergence, persistence and development of international human rights regimes are of course also relevant. From an international relations perspective, the mere existence of international human rights regimes is indeed puzzling. Why would States decide to constrain their own sovereign space for decision-making and behavior, and establish regimes that are not designed to secure security maximization or economic gain? As mentioned earlier, this article does not address

A common observer would probably hold the impression that, notwithstanding all international declarations and treaties, and the intergovernmental machinery for their implementation, terrible violations of human rights have continued to occur all over the world. Some practitioners and analysts, however, remain optimistic and give some credit to international regimes. International relations scholars, depending on their theoretical preferences, might be *a priori* pessimistic, cautious or perhaps contingently optimistic about the effectiveness of human rights regimes.<sup>8</sup> Conducting “large *n*” statistical studies, some scholars have empirically assessed the impact of the ratification of international human rights treaties on state behavior. The main findings of this literature are that the ratification of human rights treaties *per se* does not improve governments’ behavior with regards to human rights,<sup>9</sup> but that ratification does make a (positive) difference on rights protection in the case of democratizing countries that have a strong civil society with transnational linkages.<sup>10</sup> In a way, these findings partially coincide with those of the case studies literature, which has studied countries like Kenya, Uganda, South Africa, Tunisia Morocco, Indonesia, the Philippines, Turkey, Israel, the United States, Chile, Argentina, Guatemala, El Salvador, Colombia, Mexico and China, amongst others, concluding that the activism of transnational networks of human rights defenders and promoters has had a positive impact on the human rights behavior of governments.<sup>11</sup>

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such questions. For divergent accounts on the formation, persistence and development of human rights regimes see Donnelly, *supra* note 2. See also Krasner, “Sovereignty, and Human Rights”, *supra* note 5; Moravcsik, *supra* note 5; Hawkins, *supra* note 5.

<sup>8</sup> See Neumayer, *supra* note 5.

<sup>9</sup> See Hathaway, *supra* note 5; Hafner-Burton & Tsutsui, *supra* note 5.

<sup>10</sup> *Ibid*; Neumayer, *supra* note 5.

<sup>11</sup> Alison Brysk, “From Above and Below. Social Movements, the International System and Human Rights in Argentina” (1993) 26:3 Comparative Political Studies 259; Alison Brysk, *The Politics of Human Rights in Argentina. Protest, Change and Democratization* (California: Stanford University Press, 1994); Umit Cizre, “The Truth and Fiction about (Turkey’s) Human Rights Politics” (2001) 3:1 Human Rights Review 55; Susan Burgeimer, *Moral Victories. How Activists Provoke Multilateral Action* (Ithaca, NY and London: Cornell University Press, 2001); Caroline Fleay, “Australian Foreign Policy, Human Rights in China and the Spiral Model” (2006) 41:1 Australian Journal of Political Science 71; Rosemary Foot, *Rights Beyond Borders, The Global Community and the Struggle over Human Rights in China* (Oxford: Oxford University Press, 2000); Darren Hawkins, “Human Rights Norms and Networks in Authoritarian Chile”, in Sanjeev Khagram, James V. Riker and Kathryn Sikkink eds., *Restructuring World Politics: Transnational Social Movements, Networks, and Norms* (Minneapolis, IN: University of Minnesota Press, 2002) at 47; Nadirsyah Hosen, “Human Rights and Freedom of the Press in the Post-Soeharto era: A Critical Analysis” (2002) 3:2 Asia-Pacific Journal on Human Rights and the Law 1; Margaret Keck and Kathryn Sikkink, *Activists beyond borders: Advocacy networks in international politics* (Ithaca, NY: Cornell University Press, 1998); Andreas Laursen, “Israel’s Supreme Court and International Human Rights Law: The Judgement on ‘Moderate Physical Pressure’” (2000) 69:4 Nordic Journal of International Law, 413; Néstor Julián Ramírez Sierra, “Transnational Defense Networks. The Recent Case of the Colombian State in the Context of the Intervention of the Inter-American Court of Human Rights” (2009) 69 Colombia Internacional 182; Thomas Risse, Stephen Ropp and Kathryn Sikkink eds., *The Power of Human Rights: International Norms and Domestic Change* (Cambridge: Cambridge University Press, 1999); Daniel C. Thomas, “Human Rights in U.S. Foreign Policy”, in Sanjeev Khagram, James V. Riker and Kathryn Sikkink eds., *Restructuring World Politics: Transnational Social Movements, Networks, and Norms* (Minneapolis, IN: University of Minnesota Press, 2002) at 71; Daniel Thomas “Boomerangs and Superpowers: International Norms, Transnational Networks and US Foreign Policy” (2002) 15:1 Cambridge Review of International Affairs 25; Alejandro Anaya Muñoz, “Transnational and domestic processes in the definition of human rights policies in Mexico” (2009) 31:1 Human Rights

Even if, as suggested, the aforementioned literature has focused on the role of activists, it has been shown that they heavily rely on international norms and institutions to advance their cause and achieve their goals.<sup>12</sup>

In short, the international relations literature has shown that international human rights regimes do matter in the transnational politics of human rights. This article, however, seeks to tease out *how* it is that international human rights regimes matter. The argument developed here will be, in this way, more descriptive and interpretative than causal. In other words, this article will not offer another attempt to test hypotheses about the causal effect of human rights regimes, but will rather sketch an argument about the kind of role that regimes might play in transnational and domestic processes through which government interests and identities are constituted.<sup>13</sup> For this, the article draws on the insights provided by relevant international relations literature and on empirical evidence from the case of Mexico. The specific situation of Mexico can be particularly telling for the purposes of this article because transnational and domestic political processes around human rights policies and practices have been quite vivid in Mexico in recent times, and previous research shows that international human rights regimes have played some kind of role thereof.<sup>14</sup> In sum, the article provides a non-legalistic approach to the study of human rights regimes in one specific Latin American country. For this reason, it will hopefully offer an interesting contribution to a law-oriented journal, such as the *Quebec Journal of International Law*, and its special issue on human rights regimes in the Americas.

In the first section, the article follows two particular strands of international relations literature (constructivism and liberal republicanism) to elaborate a theoretical argument about the role of international human rights regimes in the transnational and domestic politics of human rights. Following this theoretical blueprint, the second and third sections trace the development of the transnational and

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Quarterly 35.

<sup>12</sup> See Margaret E. Keck & Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (Ithaca, NY: Cornell University Press, 1998); Thomas Risse, Stephen C. Ropp & Kathryn Sikkink, eds., *The Power of Human Rights: International Norms and Domestic Change* (Cambridge: Cambridge University Press, 1999). See also Alison Brysk, "From Above and Below. Social Movements, the International System and Human Rights in Argentina", (1993) 26:3 *Comparative Political Studies* 259; Susan Burgerman, *Moral Victories. How Activists Provoke Multilateral Action* (Ithaca and London, Cornell University Press, 2001); Sanjeev Khagram, James V. Riker & Kathryn Sikkink, "From Santiago to Seattle: Transnational Advocacy Groups Restructuring World Politics" in Sanjeev Khagram, James V. Riker & Kathryn Sikkink, eds., *Restructuring World Politics: Transnational Social Movements, Networks, and Norms* (Minneapolis: University of Minnesota Press, 2002) 3.

<sup>13</sup> For a general argument on the constitutive role of international regimes see Friedrich Kratochwil & John Gerard Ruggie, "International Organization: A State of the Art on an Art of the State" (1986) 40:4 *International Organization* 753. Martha Finnemore & Kathryn Sikkink argue, however, that an argument about constitution is ultimately one about causality, "since how things are put together makes possible, or even probable, certain kinds of political behavior and effects". See Martha Finnemore & Kathryn Sikkink, "Taking Stock: The Constructivist Research Program in International Relations and Comparative Politics" (2001) 4 *Annual Review of Political Science* 391 at 394.

<sup>14</sup> See Alejandro Anaya Muñoz, "Transnational and Domestic Processes in the Definition of Human Rights Policies in Mexico" (2009) 31:1 *Hum Rts Q* 35 ["Human Rights Policies in Mexico"].

domestic politics of human rights in Mexico before and after the country's political transition in 2000. The article finds that international human rights regimes have indeed mattered in the Mexican case—they have played a central role providing legitimate normative standards, reliable information about behavior and forums or arenas—all of which were necessary elements for the exertion of ideational pressure (or shaming) and the argumentation by NGOs and Western government actors with the Mexican government. Furthermore, the article argues that these regimes' organs, bodies and mechanisms have been agents in their own right, directly exerting shame and contributing to the development of a process of "rhetorical entrapment". In addition, the article finds that human rights regimes have been instrumental in the implementation of specific political strategies by Mexico's post political-transition government elite, which wanted to secure its preferences for human rights. This article concludes that its theoretical argument and the findings about Mexico offer a framework that might prove useful for understanding the role of international human rights regimes in other country-specific situations. From a different perspective, this article ends with a reflection on the theoretical implications of its findings, suggesting that it might be the case that international human rights regimes will gain more significance for rights violating countries if transnational advocates manage to produce strong shaming and argumentation campaigns *and* if an elite with preferences for human rights comes to power. In this way, the article suggests that international human rights regimes will play a greater role in the politics of human rights if the expectations of both constructivism and liberal republicanism concur.

## I. International Human Rights Regimes and State Behavior

International human rights regimes do not have the leverage to enforce compliance by States. Following the typology offered by Jack Donnelly, it could be argued that the majority of human rights regimes tend to be "implementation" ones—that is, they can only offer assistance, provide channels for the exchange of information, facilitate policy coordination and undertake monitoring activities.<sup>15</sup> In the words of Emile Hafner-Burton, human rights regimes are "soft"<sup>16</sup>—they provide the instruments to collect, exchange and disseminate information about violations of human rights, but do not have mechanisms to coerce States into compliance. Nevertheless, even if they do not have coercive powers, they do offer standards and mechanisms for identifying and forums for publicizing the inappropriate behaviors of States. In this sense, different authors (conducting statistical studies), who have not found a positive correlation between membership in human rights regimes and improvement in human rights behavior, have nonetheless acknowledged the

<sup>15</sup> For Donnelly, promotional regimes basically offer assistance to States and provide channels for information exchange. Implementation regimes, on the other hand, facilitate policy coordination and monitor behavior. Enforcement regimes have stronger monitoring powers and adopt binding decisions. See Donnelly, *supra* note 2, at 604-605. In this sense, only the European regime and, to a lesser extent, the "sub-regime" of the Inter-American Court of Human Rights can be considered enforcement regimes.

<sup>16</sup> Emile M. Hafner-Burton, "Trading Human Rights: How Preferential Trade Agreements Influence Government Repression", (2005) 59:3 International Organization 593 at 602-604.

“persuasive” role that human rights regimes might play.<sup>17</sup>

As suggested in the introduction, some international relations scholars within the constructivist tradition have developed an argument about the way in which transnational advocates of human rights influence the behavior (and processes of identity formation) of rights-violating governments. This literature focuses on political processes driven by the activism of transnational advocacy networks (TANs)—an alliance of domestic and international non-governmental organizations (NGOs), Western governments, inter-governmental organizations and actors such as Churches, trade-unions and funding agencies that advocate principled ideas and share information and services. Human rights TANs use regimes’ norms and rules and the information generated by their decision-making procedures as legitimate benchmarks and sources of evidence for the identification of inappropriate behavior.<sup>18</sup> TANs exert pressure “from above” and “from below” (that is from within and from outside the target-country) over rights-violating governments, targeting both material and ideational interests (the former related to trade, aid and investment, the latter to “social” reputation and membership). Ideational pressure is particularly important in the transnational advocacy of human rights. TANs “shame” rights violating governments exposing a gap between their behavior and collective expectations (based on norms and rules), stating therefore that they do not deserve to be members of the community of “civilized nations”. Governments that care about such reputational and membership aspects are particularly vulnerable to being shamed. Using empirical evidence from different case studies, this literature has shown that, under certain circumstances, TANs’ pressure generates positive responses from target governments.<sup>19</sup>

According to the literature, domestic and international NGOs are the main actors within TANs—they animate the formation of networks and generally organize and lead processes of transnational pressure.<sup>20</sup> As mentioned in the introduction, the relevance of civil society actors has also been found by other authors who, referring to statistical evidence, have concluded that the ratification of human rights treaties will have a positive influence on the behavior of governments in those countries that have a strong civil society with transnational linkages.<sup>21</sup> In this way, as concluded by

<sup>17</sup> See Hafner-Burton, *ibid*; Hathaway, *supra* note 5.

<sup>18</sup> The decision-making procedures of human rights regimes are the numerous organs, bodies and mechanisms or procedures specialized in human rights linked to intergovernmental organizations and to specific human rights treaties. They can be jurisdictional, quasi-jurisdictional or non jurisdictional. They gather, produce and disseminate information about the human rights behavior of governments. They assess the behavior of governments and make recommendations or adopt dispositions thereof. These recommendations or dispositions—expressed in reports, resolutions, rulings and other kind of decisions—provide a fundamental source of legitimate information regarding the behavior of States on the bases of which TANs conduct their actions.

<sup>19</sup> See Keck & Sikkink, *supra* note 11; Risse, Ropp & Sikkink, *supra* note 11. See also Brysk, *supra* note 11; Burgerman, *supra* note 11; Khagram, Riker & Sikkink, *supra* note 11.

<sup>20</sup> See Keck & Sikkink, *supra* note 12 at 102-103; Risse, Ropp & Sikkink, *supra* note 12 at 22-23. See also Burgerman, *supra* note 12; Khagram, Riker & Sikkink, *supra* note 12; James C. Franklin, “Shame on You: The Impact of Human Rights Criticism on Political Repression in Latin America”, 2008 52:1 *International Studies Quarterly* 187.

<sup>21</sup> See generally Neumayer, *supra* note 5; see Hafner-Burton and Tsutsui, *supra* note 5.

Hafner-Burton and Tsutsui, “civil society provides the enforcement mechanism that international human rights treaties lack.”<sup>22</sup> In sum, otherwise “toothless” regimes gain relevance if transnational civil society actors use their normative standards and the information they generate to shame right-violating governments.

This literature on the transnational advocacy of human rights demonstrates that third governments—particularly those of developed democracies—are key actors in the exertion of shame over rights-violating governments.<sup>23</sup> Indeed, the opinion of the ideological and material leaders of the community of “civilized nations” holds great importance; at least in relation to those governments who wish to join “the club”. If the leaders of the international community consider that a particular government is not behaving as expected (i.e., according to norms and rules), then its group-membership can be questioned and put in jeopardy. In this sense, if criticisms by NGOs matter, more so does the opinion of the governments of developed democracies. Human rights regimes, again, play an important role in this respect. Governments base their criticism on regime standards and often use the information produced by their decision-making procedures to adopt a position regarding a particular rights-violating government.

In addition, some regimes—in particular that of the UN—provide the forum in which governments and NGOs exert ideational pressure. This was clearly the case of the United Nations Commission on Human Rights (UNCHR): the periodical sessions of the Commission were an ideal venue to criticize and condemn.<sup>24</sup> To a good extent, this continues to be the case of the United Nations Human Rights Council—Council members will be able to publicly express their views through the discussion of particularly grave situations and the Universal Periodic Review mechanism. In this sense, human rights regimes play a pivotal role in the generation of shaming by third-governments.

However, in addition to being providers of standards, information and forums for third governments, human rights regimes—in particular their decision-making procedures—are TAN actors in their own right. They directly shame rights-violating governments. One author has concluded that the shaming exerted directly by intergovernmental human rights bodies, organs and mechanisms has not had an impact on government behavior in Latin America.<sup>25</sup> This is surprising—even to the author himself—and contradicted by other authors, who have argued that States devoted significant diplomatic energy and resources to defend themselves from the criticism of the (now extinct) UNCHR.<sup>26</sup> Indeed, if the logic of shaming depends on

<sup>22</sup> See Hafner-Burton & Tsutsui, *supra* note 5 at 1385.

<sup>23</sup> See generally Keck & Sikkink, *supra* note 12; Risse, Ropp & Sikkink, *supra* note 12. See also Burgerman, *supra* note 12; Brysk, *supra* note 12; Franklin, *supra* note 20.

<sup>24</sup> See James H. Lebovic & Erik Voeten, “The Politics of Shame: The Condemnation of Country Human Rights Practices in the UNCHR” (2006) 50:4 *International Studies Quarterly*, 861. In the terms of an institutional approach to international regimes, international human rights regimes reduce the transactions costs for the transnational generation of shame (see Keohane, *supra* note 4).

<sup>25</sup> See Franklin, *supra* note 20.

<sup>26</sup> See P. Forsythe, *supra* note 2 at 70-71; Lebovic & Voeten, *supra* note 24 at 861-865; Foot, *supra* note 2 at 9.



the target government's desire to "belong" to a community of States, then it is to be expected that the opinion of the international organs and bodies in which that community is embodied will be of some importance.<sup>27</sup>

The literature on the transnational advocacy of human rights underlines that TANs not only "twist arms" through shaming and thus in a way "force" governments to react and somehow change their human rights behavior. The literature also proposes that TANs engage in argumentation processes with rights violating governments and thus attempt to persuade them to acknowledge that respecting human rights is the *appropriate* thing to do. According to different authors, this logic of argumentation is very important because it goes beyond a simple instrumental change of behavior, and introduces the possibility of the internalization of norms and thus of identity change.<sup>28</sup> An important mechanism within the logic of argumentation is what the literature calls "rhetorical entrapment": bombarded by TANs pressure, governments might start "talking the talk" of human rights. This discourse "entraps" governments, which then find it increasingly difficult not to "walk the walk". In other words, in time, human rights rhetoric (even if initially instrumental and shallow) might result in change of behavior and even internalization of norms.<sup>29</sup> Again, human rights regimes are fundamental because they provide the normative standards and legitimate information about actual behavior on the bases of which arguments are constructed. Arguments are made on the bases of what States should do and on the grounds of what they actually do, and both elements are provided by international regimes.<sup>30</sup> In addition, regimes are important to the extent that they provide the forums in which argumentation takes place. As it already has been suggested, international regimes are "key meeting places", arenas for "consensus mobilization" and sites for the "battle of justifications".<sup>31</sup> Again, however, human rights regimes are also players in argumentation processes (i.e. "speakers") in their own right—they directly engage governments in debates and arguments, trying to convince them of the appropriateness of respecting established norms and rules.

<sup>27</sup> For a similar argument about the role of human rights regimes as actors that directly exert pressure see Christopher Rudolph, "Constructing an Atrocities Regime: The Politics of War Crimes Tribunals" (2001) 55:3 *International Organization* 655 at 681.

<sup>28</sup> See generally Risse, Ropp & Sikkink, *supra* note 12; Thomas Risse, "Let's Argue!: Communicative Action in World Politics" (2000) 54:1 *International Organization* 1. See also Hawkins, *supra* note 5; Hathaway, *supra* note 5 at 2020-2025; Hafner-Burton, *supra* note 16 at 600-604; Foot, *supra* note 2 at 9-10.

<sup>29</sup> See Thomas Risse, "International Norms and Domestic Change: Arguing and Communicative Behavior in the Human Rights Area" (1999) 27:4 *Politics and Society* 529; Risse, *supra* note 28; Frank Schimmelfennig, "The Community Trap: Liberal Norm, Rhetorical Action, and the Eastern Enlargement of the European Union" (2001) 55:1 *International Organization* 47-70; Foot, *supra* note 2 at 10 and 18.

<sup>30</sup> Of course, international regimes are not the only providers of information about the way governments behave: such information is also produced by (domestic and international) NGOs, and also by governments (e.g. through annual human rights reports). It could be argued, however, that given the intergovernmental nature of regimes, the information they generate might obtain greater international legitimacy than that produced by NGOs and governments, which might be accused of following ideological or political agendas in their assessments of the human rights behavior of specific governments.

<sup>31</sup> See Khagram, Riker & Sikkink, *supra* note 12 at 11. See also Hawkins, *supra* note 5; Foot, *supra* note 2 at 8-9.

A different strand of international relations literature – republican liberalism, which focuses not on transnational but on domestic politics – also suggests the relevance of international human rights regimes in the politics of human rights. Seeking to explain the emergence of the European human rights regime, Andrew Moravcsik found that the European regime’s main promoters were the governments of newly established democracies, which had an interest in “locking in” democratic change and enhancing the credibility of the new domestic political system and its stability against (possible future) authoritarian threats.<sup>32</sup> New democratic governments had strong incentives to acquire commitments abroad particularly when “the benefits of reducing future political uncertainty outweigh[ed] the ‘sovereignty costs’” implied.<sup>33</sup> Even if Moravcsik focused on the emergence of the European regime of human rights, he suggested that his explanatory scheme could “be generalized to other human rights regimes ... and unilateral human rights policies.”<sup>34</sup> Existing international human rights regimes, therefore, can be instrumental for government elites of new democracies, offering them not only treaties that establish international legal obligations but also international allies (the regimes’ organs, bodies and mechanisms) in possible domestic political debates or struggles about the definition of legitimate ways to govern.

In sum, different strands of international relations literature propose that even if most international human rights regimes lack effective enforcement powers, they do play an important role in the transnational and domestic political processes through which government behavior, interests and identities are shaped. International human rights regimes provide legitimate normative standards, information about actual behavior and forums. All these elements are fundamental for the exertion of shaming and the elaboration of argumentation by NGOs and governments of developed democracies. In addition to playing such a key pivotal role, international regimes—through their decision-making procedures—participate as actors in the transnational and domestic politics of human rights, directly exerting shame and engaging in argumentation with rights violating governments. In addition, human rights regimes might be considered as normative and institutional “international locks” that are instrumental for the protection of the preferences of government elites in new democracies. The following two sections trace the role played by the human rights regimes of the UN and the OAS in the transnational and domestic politics of human rights in contemporary Mexico.

## II. 1994 to 2000: An era of human rights monitoring

Mexico was one of many countries to advocate the inclusion of human rights language and objectives within the *Charter of the United Nations* and the *Charter of the Organization of American States*. Mexico equally supported the adoption of the

<sup>32</sup> See Moravcsik, *supra* note 5.

<sup>33</sup> *Ibid.* at 220.

<sup>34</sup> *Ibid.*

UDHR and the *American Declaration of the Rights and Duties of Man*.<sup>35</sup> After 1948, and throughout most of the second half of the twentieth century, however, Mexico only paid “lip service” to international human rights, failing to show a true interest in the development of international regimes with real powers to intrude in the domestic affairs of States. Mexican foreign policy remained firmly grounded on the principles of national sovereignty and nonintervention; it consistently opposed any interference by intergovernmental organs and bodies—including those related to human rights—in its domestic affairs.<sup>36</sup> Mexico was rather cautious about joining the human rights regimes that started to develop within the UN and the OAS. Mexico ratified in 1981 the *International Covenant on Civil and Political Rights* (ICCPR),<sup>37</sup> the *International Covenant on Economic, Social and Cultural Rights* (ICESCR)<sup>38</sup> and the *American Convention on Human Rights*.<sup>39</sup> However, for many more years, Mexico did not accept the more intrusive elements of the UN and OAS regimes: it did not recognize the jurisdiction of the Inter-American Court of Human Rights until 1998 and the competence of UN treaty bodies to receive individual complaints until 2002. In any case, the human rights regimes of the UN and the OAS could have provided normative standards and generated information about actual behavior on the part of the Mexican government. They also could have directly engaged in shaming and argumentation activities with the government in relation to the human rights situation in Mexico.

However, the human rights organs, bodies and mechanisms of the UN and the OAS did not pay much attention to the situation in Mexico before the late 1980s and early 1990s.<sup>40</sup> In 1986, the Inter-American Commission on Human Rights (IACHR) received its first individual petition regarding the violation of human rights in Mexico. The petition was related to an alleged violation of due process rights in the state of Nuevo León. The IACHR, however, declared the case non admissible in 1988 on the grounds that the facts were not characterized by the violation of article 8 of the American Convention on Human Rights.<sup>41</sup> Later on, in 1987 and 1989, the National Action Party (PAN), which was at that time in fierce opposition to the Revolutionary

<sup>35</sup> See Lauren, *supra* note 2 at 166-187; Keck & Sikkink, *supra* note 12 at 85-86.

<sup>36</sup> See Ana Covarrubias, “Human Right and Mexican Foreign Policy” in Daniel Drache, ed., *Big Picture Realities. Canada and Mexico at the crossroads* (Waterloo, Ontario, Canada: Wilfrid Laurier University Press, 2008) 87 at 88-91; Alejandro Anaya Muñoz, “Actors and Processes in the Generation of Change in the Human Rights Policy of Mexico” in Monica Serrano, Vesselin Popovski & Nicholas Turner, eds., *Human Rights Regimes in the Americas* (Tokyo: United Nations University Press, 2010) at 189 [“Actors and Processes in the Generation of Change”]; María del Mar, Monroy García, & Fabián Sanchez Matus, *Experiencia de México ante la Comisión Interamericana de Derechos Humanos* (Mexico City: H. Cámara de Diputados, LX Legislatura & Fundación Honrad Adenauer Stiftung, 2007).

<sup>37</sup> *International Covenant on Civil and Political Rights*, 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976, accession by Mexico 23 March 1981) (CCPR).

<sup>38</sup> *International Covenant on Economic, Social and Cultural Rights*, 7 December 1966, 993 UNTS 3 (entered into force 3 January 1976, accession by Mexico 23 March 1981) (CESCR).

<sup>39</sup> *American Convention on Human Rights*, 22 November 1969, OASTS 1969 No 36 (entered into force 18 July 1978, accession by Mexico 24 March 1981) [*American Convention*].

<sup>40</sup> See Keck & Sikkink, *supra* note 12 at 103-120.

<sup>41</sup> See del Mar, Monroy & Sanchez Matus, *supra* note 36 at 73-77.

Institutional Party (PRI),<sup>42</sup> took four complaints to the IACHR denouncing the violation of *inter alia* political rights, and the right to an adequate judicial remedy. The petitions concerned the adoption of new electoral legislation in Nuevo León, and alleged electoral fraud in state and municipal level elections in Chihuahua and Durango.<sup>43</sup> The Mexican government reacted and argued that any involvement of the IACHR on electoral matters would constitute an act of intervention in the internal affairs of the country. The IACHR, however, declared that the cases were admissible and issued resolutions calling for legislative measures to guarantee the exercise of political rights and for the establishment of effective judicial procedures for their protection.<sup>44</sup> According to Margaret Keck and Kathryn Sikkink, the pressure exerted by the IACHR through these resolutions added to that by political parties and domestic human rights organizations, generated domestic political processes that led to the reform of Mexico's electoral law.<sup>45</sup>

The involvement of the human rights regimes of the UN and the OAS in the case of Mexico intensified after the uprising in Chiapas of the Zapatista Army of National Liberation (EZLN) in 1994. The greater engagement by international regimes was driven by the activism of a network of domestic and international human rights NGOs. Accompanied and supported by US-based NGOs (the Center for Justice and International Law for example), Mexican advocates increased their linkages and interaction with the IACHR, while European NGOs (the Geneva-based International Service for Human Rights for example) facilitated the direct engagement of Mexican actors with the different organs, bodies and mechanisms of the UN regime. In this way, as of 1994, a network of Mexican and international NGOs recurrently requested public hearings to the IACHR and filed more and more individual petitions within the Inter-American body. In addition, Mexican NGOs regularly attended the sessions of the UNCHR and the Sub-Commission on Prevention of Discrimination and Protection of Minorities (Sub-Commission), and began to send information and establish direct communication with the UNCHR and the different treaty bodies.<sup>46</sup>

As the second half of the 1990s evolved, international human rights regimes intensified their monitoring and assessment activities around the human rights situation in Mexico. In 1996, the Mexican government invited the IACHR to conduct the first fact-finding mission to the country. In 1997, the government agreed to invite the UNCHR Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. This increasing attention to the situation in Mexico was

<sup>42</sup> The PRI monopolized political power in Mexico since the late 1920s and until 2000. Since 2000, the PAN has taken control of the federal government. For an overall account of the human rights situation in Mexico "after the PRI" see Alejandro Anaya Muñoz, "Mexico After the Institutional Revolutionary Party" in David Forsythe, ed., *Encyclopedia of Human Rights*, vol 3 (New York and Oxford: Oxford University Press, 2009) at 495-506 ["Mexico After the PRI"].

<sup>43</sup> Cases 9768, 8780, 9828 and 10.180.

<sup>44</sup> See OAS, Inter-American Commission on Human Rights, *Annual Report of the Inter-American Commission on Human Rights 1989-1990*, OR OEA/Ser.L/V/II.77/Doc. 7, rev 1 (1990); Monroy García & Sanchez Matus, *supra* note 36 at 77-111; Covarrubias, *supra* note 36 at 90.

<sup>45</sup> See Keck and Sikkink, *supra* note 12 at 114.

<sup>46</sup> See Anaya Muñoz, *supra* note 14 at 46-47 (the author of this article participated as a representative of Mexican NGOs in the 1997 session of the Sub-Commission and as their external advisor during the 2000 session of the Commission on Human Rights).

enhanced by the “Acteal massacre”. In December 1997, a group of armed civilians linked to the PRI and allegedly supported or at least tolerated by the Military and the Chiapas state police executed forty five indigenous civilians (mostly women and children) in the community of Acteal, in the High Lands of Chiapas. International human rights regimes provided the forum for the expression of unanimous international condemnation and calls for justice. The machinery established by human rights regimes intensified its investigations regarding Mexico, gathering, elaborating and publicizing more information about the human rights violations in the country. In 1998 and 1999, the regular sessions of the UNCHR and its Sub-Commission provided a readily available forum for the intensification of shaming activities by NGOs and, quite importantly, for the condemnation by government actors, like the European Union. Particularly noteworthy was the shaming action directly conducted by the regimes’ organs and bodies, including the UN High Commissioner for Human Rights (UNHCHR), the Sub- Commission (which issued a critical resolution on Mexico in 1998<sup>47</sup>) and the Special Rapporteurs on torture and extrajudicial, summary and arbitrary executions.<sup>48</sup> Also around this time, the IACHR issued a quite critical special report on Mexico, which resulted from the aforementioned 1996 *in loco* visit of IACHR to the country.<sup>49</sup>

In sum, since the early 1990s, but particularly after 1994, Mexico was in the spotlight of international human rights regimes. The Mexican government was shamed by an unprecedented wave of hearings, visits, reports, cases, statements and resolutions, which pointed at diverse and severe human rights problems in the country. The normative point of reference for this wave of shaming was provided by the norms established by international human rights regimes. Mexican and international NGOs started to use these norms and to recur to the different forums provided by international human rights regimes to launch a shaming campaign against the Mexican government. In addition, the human rights organs, bodies and mechanisms of international regimes started to produce critical information regarding the human rights behavior of the Mexican government. This information directly fed into the spiral of shame initially ignited by NGOs. In other words, Mexico’s human rights international reputation was put under severe strain, and the human rights regimes of the UN and the OAS played a central role in this, not only by providing norms, evidence and forums to be used by other actors, but also by exerting pressure directly themselves.

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<sup>47</sup> Developments in the Situation in Mexico, Sub-Commission Resolution 1998/4 (E/CN.4/SUB.2/RES/1998/4).

<sup>48</sup> See Question of the Human Rights of All Persons Subjected to Any Form of Detention or Imprisonment, in Particular: Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Report of the Special Rapporteur, Mr. Nigel S. Rodley, Submitted Pursuant to Commission on Human Rights Resolution 1997/38, Addendum (E/CN.4/1998/38/Add.2) (1998); Civil and Political Rights, Including Questions of: Disappearances and Summary or Arbitrary Executions, Ms. Asma Jahangir, Submitted Pursuant to Commission on Human Rights Resolution 1999/35, Addendum (E/CN.4/2003/3/Add.3).

<sup>49</sup> See Muñoz, *supra* note 14 at 38-39 and 46-49.

### III. The Early 2000s: Arguments and “Locks”

Human rights bodies and mechanisms of the UN and OAS continued to monitor and critically assess the human rights situation in Mexico after the country's political transition of December 2000. Specific cases or situations—like the death of human rights defender Digna Ochoa, the prolonged detention of General José Francisco Gallardo or that of environmental activists Rodolfo Montiel and Teodoro Cabrera—attracted some international attention. Indeed, the disappearance and brutal murder of hundreds of women in Ciudad Juárez, Chihuahua, generated an impressive wave of shaming activity, particularly during 2003 to 2005.<sup>50</sup> But the broad reputational context in which international actors approached the human rights situation in Mexico changed significantly after December 2000. For the first time in over 70 years, an opposition candidate occupied the presidency, and this was interpreted by many within and outside Mexico as the culmination of the country's long transition to (electoral) democracy. In this sense, at the end of 2000, Mexico became a “newly established democracy” in the eyes of the international community. In addition, president Vicente Fox completed and buttressed a policy ambiguously inaugurated by his predecessor, Ernesto Zedillo, opening the country to the monitoring and scrutiny of its human rights situation by all sorts of international actors. Mexico issued an open and unrestricted invitation to all international human rights organs, bodies and mechanisms to visit the country and say what they had to say. Quite importantly in 2000 and 2002, Fox signed technical cooperation agreements with the UNHCHR, which implied the formal implementation of specific projects (e.g., the elaboration of a comprehensive diagnosis of the human rights situation in Mexico) and the establishment of a permanent office of representation in the country.<sup>51</sup> In addition, Mexico ratified a good number of human rights treaties and, as mentioned before, accepted the competence of different treaty bodies to receive personal communications.<sup>52</sup> In sum, under the Fox government, Mexico unabashedly

<sup>50</sup> See Alejandro Anaya Muñoz, “Explaining High Levels of Transnational Pressure over Mexico: The Case of the Disappearances and Killings of Women in Ciudad Juárez” (2011) 15:3 Int'l JHR 339.

<sup>51</sup> Acuerdo Marco de Cooperación entre los Estados Unidos Mexicanos y la Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos [Framework Cooperation Agreement Between the United Mexican States and the Office of the United Nations High Commissioner for Human Rights], December 2000, online HCHR <<http://www.hchr.org.mx/documentos/acuerdomarco.pdf>>; “Acuerdo entre el Alto Comisionado de las Naciones Unidas para los Derechos Humanos y el Gobierno de los Estados Unidos Mexicanos Relativo al Establecimiento de una Oficina en México”, [Agreement between the United Nations High Commissioner for Human Rights and the Government of the Mexican United States about the Establishment of an Office in Mexico] 1 July 2002, online, <<http://www.ordenjuridico.gob.mx/Publicaciones/CDs2010/CDTratados/pdf/B579.pdf>>.

<sup>52</sup> During this period, Mexico ratified the following treaties: *Inter-American Convention on Forced Disappearance of Persons*, 9 June 1994, OASTS No. 68 (entered into force 23 March 1996, accession by Mexico 28 February 2002); *Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity*, 26 November 1968, 754 UNTS 73 (entered into force 11 November 1970, accession by Mexico 15 March 2002); *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*, 25 May 2000, 2171 UNTS 227 (entered into force 18 January 2002, accession by Mexico 15 March 2002); *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict*, 25 May 2000, 2173 UNTS 222 (entered into force 12 February 2002, accession by Mexico 15 March 2002); *Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or*

abandoned its traditional human rights foreign policy based on the principles of national sovereignty and nonintervention, adopting a new approach, based on a complete opening of the country to the assistance, monitoring and scrutiny of international actors, particularly those of the human rights regimes of the UN and the OAS.<sup>53</sup>

It could be argued that, regardless of the actual human rights situation in the country, after 2001 and throughout the rest of the Fox administration, Mexico ceased to be a source of grave concern for international actors, particularly for Western governments and for human rights organs and bodies of the UN and the OAS.<sup>54</sup> Mexico was no longer publicly shamed by the European Union, nor was it the target of a general country investigation by the IACHR or the possible object of a resolution by the UN Commission on Human Rights or its Sub-Commission. Indeed, during the early 2000s, there was a striking change in Mexico's international human rights reputation, and therefore in its position within the distribution of identities that underscores processes of shaming<sup>55</sup>: Mexico was no longer conceived as part of the problem, but rather as part of the solution for international human rights actors.<sup>56</sup> As

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*Degrading Treatment or Punishment*, 18 December 2002, 2375 UNTS 237 (entered into force 22 June 2006, accession by Mexico 11 April 2005); *Rome Statute of the International Criminal Court*, 17 July 1998, 2187 UNTS 3 (entered into force 1 July 2002, accession by Mexico 28 October 2005). For a critical approach to these ratifications, see Amnesty International, *Mexico. "Disappearances": an Ongoing Crime* (2002) online: Amnesty International <<http://www.amnesty.org/en/library/info/AMR41/020/2002>> at 5-8; Human Rights Watch, *Justice in Jeopardy: Why Mexico's First Real Effort To Address Past Abuses Risks Becoming Its Latest Failure* (Washington, D.C., July 2003) online: Human Rights Watch <<http://www.hrw.org/sites/default/files/reports/mexico0703.pdf>> at 17-24; Sergio García Ramírez, *La Corte Penal Internacional* (Mexico City: Instituto Nacional de Ciencias Penales, 2002).

<sup>53</sup> See Anaya Muñoz, "Human Rights Policies in Mexico", *supra* note 14 at 38-42; Anaya Muñoz, "Actors and Processes in the Generation of Change", *supra* note 36.

<sup>54</sup> See Human Rights Watch, *Lost in Transition: Bold Ambitions, Limited Results for Human Rights Under Fox* (Washington DC: 2006) online: Human Rights Watch <<http://www.hrw.org/en/node/11319/section/1>>; Anaya Muñoz, "Mexico After the PRI", *supra* note 42.

<sup>55</sup> Identities are inter-subjective constructs. In international relations, identities are the outcome of complex processes of interpretation of what actors - most commonly States or governments—say and do. In this sense, Mexico did acquire a new international identity because other States, intergovernmental organizations and even international NGOs interpreted what Mexico said and did *in foreign policy* as the sign of a new identity. In this text, when we talk about Mexico's new identity, we mean the identity constructed internationally and mainly in the area of foreign policy. See Alexander Wendt, "Anarchy is What States Make of It. The Social Construction of Power Politics" (1992) 46:2 *International Organization* at 391.

<sup>56</sup> Mariclaire Acosta, Mexico's Special Ambassador for Human Rights and Deputy Secretary for Human Rights and Democracy at the Mexican Ministry of Foreign Affairs from the beginning of the Fox administration until early 2003, recalls that the ultimate change in Mexico's international human rights reputation came when, in addition to opening the country to international monitoring and scrutiny, the Mexican government started to vote in favor of country-specific (e.g. Cuba and Russia) resolutions within the UN Commission on Human Rights. Telephone interview of Mariclaire Acosta by the author (23 October 2006) [Interview of Mariclaire Acosta]. Juan José Gómez Camacho, Director of Human Rights and Democracy at the Mexican Ministry of Foreign Affairs during most of the Fox administration, considers that the change in Mexico's international human rights reputation resulted from the "positive expectations generated by the change of government" and from the policy of opening the country to international monitoring and scrutiny. See Alejandro Anaya Muñoz, "Hacia una Nueva Política Exterior Mexicana en Materia de Derechos Humanos: Entrevista con Juan José Gómez Camacho," (2006) 2 *Revista Iberoamericana de Derechos Humanos* at 187. Edgar Cortez and Michel

noted by Mexican and foreign civil society advocates, after 2000, it became increasingly difficult for NGOs to get other international actors to criticize Mexico's human rights record.<sup>57</sup> The climax of Mexico's new reputation came in 2006 when the country was not only elected as a member of the newly established Human Rights Council of the UN, but was also invited to preside over its first year of sessions.

In a context of a more positively framed interaction between the Mexican government and the international "human rights community", international human rights regimes can be understood more as facilitators or participants in processes of argumentation than as generators of shame. As mentioned above, the UNHCHR established a permanent office of representation in Mexico, becoming a regular interlocutor of government officials. It is worth mentioning, in this respect, the elaboration by the UNHCHR office in Mexico of a diagnosis of the human rights situation in the country.<sup>58</sup> The diagnosis made thirty one concrete recommendations, which were explicitly and publicly accepted by president Fox.<sup>59</sup> In addition to this formal and permanent interaction with the UNHCHR, the Mexican government was highly exposed to direct encounters with numerous actors from international human rights regimes: between 2001 and 2005, Mexico received representatives of fourteen UN and OAS human rights bodies and mechanisms, including Mary Robinson (UNHCHR) and José Zalaquet (president of the IACHR). During these visits, regime representatives not only met with civil society actors and victims of violations of human rights, but also with a long list of high-ranking government officials, including president Fox and Cabinet members. In these visits, and through the elaboration of written reports, regime agents would explicitly express concerns, highlight problems and make recommendations. Far from denouncing or rejecting such critical appraisals and views, Mexican government officials welcomed and accepted them, stressing publically time after time the government's commitment to uphold human rights, to promote reforms, to investigate and punish abuses and so forth.<sup>60</sup>

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Maza, human rights activists from the NGO network Todos los Derechos para Todos, also consider that Mexico's international human rights reputation improved dramatically during the early 2000s, and recall that, for instance, the Mexican government was considered by the UNHCHR as an example of international collaboration and domestic action. Interview of Edgar Cortez (Executive Secretary of the National Network of Human Rights Organizations "All Rights for All") and Michel Maza (Human Rights Officer of the same network) by the author in Mexico City (31 October 2007) [Interview of Cortez & Maza].

<sup>57</sup> Interview of Cortez & Maza and interview of Maureen Meyer (Associate for Mexico and Central America, Washington Office for Latin America; former international issues officer of the "Miguel Agustín Pro" Human Rights Center, Mexico City) by the author in Washington DC (31 July 2007).

<sup>58</sup> Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos, *Diagnóstico sobre la Situación de los Derechos Humanos en México* (Mexico City : Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos, 2003) online : Incide Social <[http://incidesocial.org/images/pdf/diagnostico\\_dh.pdf](http://incidesocial.org/images/pdf/diagnostico_dh.pdf)>.

<sup>59</sup> Vicente, Fox, "Palabras del Presidente Vicente Fox Durante la Sesión Extraordinaria del Pleno de la Comisión de Política Gubernamental en Materia de Derechos Humanos" online: Presidencia de la República <<http://fox.presidencia.gob.mx/actividades/?contenido=7021>>.

<sup>60</sup> For statements made by president Vicente Fox, see "Palabras del Presidente Fox Durante la Visita que Hizo a la Corte Interamericana de Derechos Humanos", online: Presidencia de la República <<http://fox.presidencia.gob.mx/buscador/index.php?contenido=2879andpagina=7andpalabras=derechos+humanos>>; "El Presidente Fox Recibió a la Alta Comisionada de la ONU para Derechos Humanos Mary Robinson", online: Presidencia de la República <<http://fox.presidencia.gob.mx/buscador/>



In other words, the Mexican government decisively adopted a coherent human rights discourse within and through its interaction with the different organs, bodies and mechanisms of international human rights regimes. We are not arguing that international human rights regimes *caused* by themselves (or in conjunction with NGOs or Western governments) the adoption of a human rights discourse by the Mexican government. What we are arguing is that through their *in loco* visits, their reports, and overall, their interaction with the Mexican government, international human rights regimes contributed to the reproduction of a logic of “rhetorical entrapment”, as aforementioned.<sup>61</sup> Whether or not this process of “rhetorical entrapment”, together with continued processes of argumentation between the Mexican government and its critics will lead to the adoption of a new identity in Mexico remains a hypothesis to be tested in due time. For the time being, international human rights regimes have provided the norms around which the Mexican government has constructed a new discourse, and through their numerous meetings with Mexican officials and the elaboration of reports, they have contributed to shaping and buttressing that discourse.

From a different, liberal republican, perspective, high-ranking government officials of the Fox administration (in charge of designing and implementing the policy of opening to international monitoring and assistance) have explicitly maintained that the role of international human rights regimes during the early 2000s was to support the new (democratic) government in its efforts to secure its preferences for democracy and human rights—in the face of possible authoritarian comebacks. This was the view explicitly held by Jorge Castañeda, Mexico’s Minister of Foreign Affairs from 2001 to 2003, Marielaire Acosta, Deputy Minister for Human Rights and Democracy at the Mexican Ministry of Foreign Affairs for the same period, and other government officials from the Fox administration.<sup>62</sup> In fact, Castañeda claimed that this was the main reason behind the decision to open the country to international monitoring and scrutiny of human rights.<sup>63</sup> In line with Moravcsik’s “locking in” argument sketched above, from the new government’s point of view, the role of international human rights regimes in Mexico’s internal human rights situation was to put a “lock” to domestic change through international means.<sup>64</sup> Indeed, different aspects of the Fox approach to the involvement of international actors in domestic human rights affairs became institutionalized (i.e., through the ratification of treaties, the acceptance of the competence of treaty bodies, and the signing of agreements with the UNHCHR). This interpretation of the role played by international human rights regimes is of course compatible with one that underlines the strengthening of the logic

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index.php?contenido=3306&pagina=1&palabras=derechos+humanos>; “El Presidente Fox durante la firma del *Protocolo Facultativo de la Convención Contra la Tortura y Otros Tratos Crueles, Inhumanos o Degradantes*”, online: Presidencia de la República <<http://fox.presidencia.gob.mx/buscador/index.php?contenido=6378&pagina=6&palabras=reuni%F3n+y+derechos+humanos>>; “El Presidente de la República se Reunió con José Zalaquett, Presidente de la Comisión Interamericana de Derechos Humanos”, online: Presidencia de la República <<http://fox.presidencia.gob.mx/buscador/index.php?contenido=8696&pagina=1&palabras=derechos+humanos>>.

<sup>61</sup> See Part I (International Human Rights Regimes and State Behavior), above.

<sup>62</sup> Interview of Marielaire Acosta and interview of Cortez & Maza, *supra* note 56.

<sup>63</sup> Interview of Jorge Castañeda by the author in Mexico City, 12 February 2007.

<sup>64</sup> Anaya Muñoz, *supra* note 14 at 53-55.

of “rhetorical entrapment”. Options for policy making are not only constrained by the ratification of treaties, the acceptance of the jurisdiction or competence of international judicial or quasi-judicial organs, and the adoption of formal agreements with international agencies: they are also “secured” through the repeated and consistent reproduction of a particular discourse.

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The human rights regimes of the UN and the OAS started to play a significant role in transnational and domestic politics of human rights in Mexico after 1994, when a network of national and international NGOs introduced the country’s situation to the agenda of international human rights regimes. During the mid to late 1990s, international human rights regimes played a key role as providers of normative standards, producers of information about the behavior of the Mexican government, and forums for the exertion of shame by NGOs and, to a lesser degree, Western government actors (particularly the European Union). Indeed, in the Mexican case, the activism of transnational networks of human rights advocates increased the salience and significance of international human rights regimes, making them matter in political processes through which interests and, to a lesser degree, identities were constituted. Indeed, these advocates generated a shaming process, providing the leverage that non-enforcement regimes lack on their own. But this case study also provides evidence to argue that, without legitimate norms, information and forums provided by international regimes, transnational advocates would be left out in the cold, with much less leverage over rights-violating governments. Furthermore, in addition to being providers of legitimate normative standards, evidence and arenas, regimes’ organs, bodies and mechanisms directly shamed the Mexican government. The levels of transnational shaming exerted over Mexico in this period would have not been the same without direct influence of the 1998 report of the IACHR<sup>65</sup>, the resolution adopted that year by the Sub-Commission on the Prevention of Discrimination and Protection of Minorities<sup>66</sup>, and reports issued by the Special Rapporteurs on torture and on extrajudicial, summary or arbitrary executions.<sup>67</sup> It has been shown elsewhere that the transnational shaming exerted by different international actors (including organs, bodies and mechanisms of international regimes) over Mexico in this period was consequential for the definition of the

<sup>65</sup> See OAS, Inter-American Commission on Human Rights, *Report of the situation of human rights in Mexico*, OR OEA/Ser.L/V/II.100/Doc. 7, rev 1 (1998).

<sup>66</sup> Developments in the Situation in Mexico, Sub-Commission Resolution 1998/4 (E/CN.4/SUB.2/RES/1998/4).

<sup>67</sup> Question of the Human Rights of All Persons Subjected to Any Form of Detention or Imprisonment, in Particular: Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Report of the Special Rapporteur, Mr. Nigel S. Rodley, Submitted Pursuant to Commission on Human Rights Resolution 1997/38, Addendum (E/CN.4/1998/38/Add.2); Civil and Political Rights, Including Questions of: Disappearances and Summary or Arbitrary Executions, Ms. Asma Jahangir, Submitted Pursuant to Commission on Human Rights Resolution 1999/35, Addendum (E/CN.4/2003/3/Add.3).

government's approach to human rights in foreign and domestic policies.<sup>68</sup> The main argument here has been, however, that international human rights regimes mattered in the transnational politics of human rights not only because they facilitated the exertion of shame by NGOs and Western governments, but also because they directly exerted shame.

After the 2000 political transition, however, as Mexico started to be perceived as a "good" or "worthy" member the international community, the role of international human rights regimes changed. In the absence of a bad reputation, the logic of shaming lost strength. In such a context, a logic of argumentation gained salience, particularly in the form of "rhetorical entrapment". In the case of Mexico, this mechanism acquired greater importance as the government adopted an unambiguous human rights discourse. The argument is that, in addition to providing normative bases for the definition of that discourse, international human rights regimes contributed to the encroachment of the rhetorical trap. As stressed above, it remains to be seen if this will eventually lead to the adoption of a different, rights-respectful identity by the Mexican government. What seems to be clear is that international human rights regimes continued to play a key role in the development of transnational human rights political processes after 2000, not only contributing significantly to the development of shaming dynamics, but also facilitating the unfolding of argumentation mechanisms.

A parallel process in post-political transition Mexico was the arrival of a new government elite, with preferences for democratic governance and the respect of human rights. During the early 2000s, the Fox government adopted stronger international commitments within the framework of human rights regimes. Regimes provided not only normative grounds and animated transnational processes of pressure and argumentation, but also were instrumental in securing the preferences of the new government elite. In this sense, international human rights regimes also played a role in the development of Mexico's domestic political processes related to human rights.

In sum, international human rights regimes have mattered: they have played an important role in Mexico's transnational and domestic politics of human rights, and thus in the processes through which its interests and identities have been constituted. They have played a central pivotal role, intervening between the actions of NGOs and Western government actors and the reactions of the Mexican government. But regimes have also played the role of actors in their own right, directly engaging the Mexican government through shaming and argumentation dynamics. They have also played an instrumental role in domestic political processes, facilitating the implementation of strategies by Mexico's government elite. This offers a framework that might prove useful for understanding the role of international human rights regimes in other country specific situations. Have international human rights regimes intervened as providers of norms, information and forums between a given rights-violating government and its critics? Have regimes' organs, bodies and

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<sup>68</sup> *Supra* note 64.

mechanisms engaged directly the government in question? Have these very regimes' organs, bodies, and mechanisms been used by the government's elite as instruments to pursue their domestic political agenda?

Overall, the relevance of international human rights regimes in the case of Mexico has been contingent: their significance has depended on the existence of strong and active transnational advocates and on the preferences held by the government elite, particularly after important democracy-oriented political changes. In other words, the relevance of the role played by international human rights regimes in the case of Mexico was boosted by the coincidence of a strong and active TAN and the arrival to power of a democracy-oriented political elite with preferences for human rights. From a theoretical perspective, the Mexican case suggests that the constructivist-oriented literature on transnational advocacy of human rights meets Moravcsik's liberal republicanism: international human rights regimes will presumably gain greater salience when strong and active TANs coincide with the ruling of government elites with preferences for human rights. Of course, this suggestion will have to be pursued elsewhere more systematically, drawing evidence from more than one case study. This suggestion by the Mexican case, and the fact that a possible positive encounter between constructivism and liberal republicanism was originally suggested by Moravcsik himself,<sup>69</sup> invites the undertaking of further research.

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<sup>69</sup> Andrew Moravcsik, "Taking Preferences Seriously: A Liberal Theory of International Politics" (1997) 51:4 *International Organization* 513 at 540.