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## TRANSNATIONAL ADVOCACY NETWORKS AND THE SOCIAL CONSTRUCTION OF LEGAL RULES

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*Kathryn Sikkink, a political scientist at the University of Minnesota, complements the perspective provided by Anne-Marie Slaughter by examining the increasingly important role of networks of nongovernmental organizations in producing international norms. Sikkink shows how NGOs and other kinds of international advocates form networks and develop strategies to challenge states in favor of new international norms—that may then ripen into law. Examples include international human rights and efforts to deter violence against women. Sikkink suggests the conditions that allow these advocacy networks to become successful in both building and enforcing international norms and some of the problems associated with this particular political strategy. The reliance on law, she suggests, may indeed succeed in empowering and legitimating the transnational networks that promote these norms.*

*She also has some caveats for this emerging approach. The power to influence international agendas is unevenly distributed. In addition, she points out, legal rules exclude as well as empower, and the processes of fighting for new rules can marginalize some groups while empowering others. Sikkink thus describes a process akin to that posited by Slaughter—geared to an international focus of a range of actors on developing and enforcing legal norms that will apply around the globe. As a political scientist, however, she raises more questions about how power will be distributed in this kind of global political economy.*





## Introduction

A burgeoning literature in political science argues that norms are becoming increasingly consequential in international relations and international organizations and that transnational nongovernmental actors are key instigators and promoters of new norms (Finnemore and Sikkink 1998; Risse-Kappen 1995; Smith 1997; Katzenstein 1996; Lipschutz 1992: 389–420; Wapner 1995: 311–40; Boli and Thomas 1999; Peterson 1992: 375–76; Thomas 2001; Nadelmann 1990: 479–526; Klotz 1995; Finnemore 1996; Crawford 1993: 37–61; Price 1998; Risse, Ropp, and Sikkink 1999; Khaghram, Riker, and Sikkink 2002). The insights from some of the norms literature in international relations has some interesting parallels with work in international law (Slaughter 1998). Other scholars suggest that there may be important similarities in the way norms work domestically and internationally (Sunstein 1997). What these literatures have not yet understood adequately is the relationship between transnational nongovernmental actors and international legal rules. Thus the purpose of this essay is to begin to delineate the processes through which transnational advocacy networks build and encourage the implementation of international law.

A transnational advocacy network includes those relevant actors working internationally on an issue who are bound together by shared values, a common discourse, and dense exchanges of information and services. Advocacy networks often reach beyond policy change to advocate and instigate changes in the institutional and normative basis upon which international interactions take place (Keck and Sikkink 1998). When they succeed, they are an important part of an explanation for changes in international law, but because they often work behind the scenes, their role may not always be recognized. Using the cases of transnational networks around human rights and violence against women, I will highlight the role of these networks in the creation of issues, agenda setting, and helping to build and enforce international norms, that is, in the social construction of the rule of law.<sup>1</sup>

In political science, the words *social construction* are sometimes used without much specification as to how, when, and why such social construction occurs, or what its limits are. It suggests a process that is quite abstract and that happens mainly at the level of discourse.<sup>2</sup> The social construction story of networks is a concrete and active story about groups who strive to re-create their world. Martha Finnemore and I call this process *strategic social construction*, in which actors strate-



gize rationally to reconfigure preferences, identities, or social context (Finnemore and Sikkink 1998). The process of strategic social construction, however, takes place within constraints and limits, those of the material world as well as those of the imagination. When networks encounter the legal world, those limits also include the limits of law, a world with which not all nongovernmental organizations (NGOs) are intimately familiar. Networks differ with regard to their knowledge of and interest in law. Human rights networks have long involved international and domestic legal scholars, and law has been an essential component of human rights activism.<sup>3</sup> International women's activism has focused much less exclusively on legal rules, although women's networks are increasingly involved in the construction of legal rules on issues of violence against women (Basu 1995; Bunch and Reilly 1994).

In this essay, I discuss the diverse ways that network actors contribute to the social construction of legal rules. They help build legal norms by bringing new ideas and issues into policy debates, by serving as sources of information and testimony, and in some cases by actually drafting legal rules. Advocacy networks espousing norms also promote norm implementation by publicizing the existence of legal norms and documenting rule-breaking behavior. In some cases networks and NGOs facilitate international litigation, pressure target actors to adopt new policies and laws and to ratify treaties, and monitor compliance with international standards. Networks contribute to changing perceptions that both state and societal actors may have of their interests and their preferences, by helping to transform the discursive and legal world within which interests are formulated.

But there are significant limits and constraints to the changes that networks can provoke. Not all issues lend themselves equally, or easily, to the social construction of new legal rules. Powerful states block the construction of legal rules contrary to their perceived interests, and networks themselves are often permeated by informal or hidden power asymmetries that raise serious questions about their representative capabilities.

### Networks and Nongovernmental Organizations (NGOs)

International and domestic nongovernmental organizations play a central role in all transnational advocacy networks. Although advocacy networks may also include social movements, foundations, and individuals



in international organizations and governments, the NGO members of networks usually initiate actions and pressure more powerful actors to take positions.

Often the power that NGOs exercise is "hidden" because it is carried out informally or behind the scenes. This may lead observers to overlook or disregard the influence of NGOs. For example, in the United Nations, NGOs play a far greater role than is recognized by the terms of the category of "consultative status." As former secretary-general Boutros Boutros-Ghali recognized, nongovernmental organizations "are now considered full participants in international life" and are "a basic form of popular participation and representation in the present day world" (Weiss and Gordenker 1996: 18, 7). A UN study to prepare the ground for the 1996 guidelines governing consultative status recognized that NGO involvement in the decision-making systems and operational activities of the UN "far exceeded the original scope of these legal provisions," and "relationships have diversified well beyond the formal framework" (UN ECOSOC 1994: 12, 13). But the new guidelines did not significantly alter the formal framework for NGO participation. This situation symbolizes a broader paradox of the role of NGOs in international life: NGOs are increasingly involved in diverse international issues, and yet neither the formal structure of international institutions nor international relations theory has formally recognized this role.

There has been significant growth in transnational advocacy NGOs since 1953. This growth has occurred across all issues, but to varying degrees in different issue areas. Human rights has been a predominant focus of international nongovernmental social change organizations since the 1950s. There are five times as many organizations working primarily on human rights as there were in 1950, but proportionally human rights groups have remained roughly a quarter of all such groups. The same holds true for groups working on women's rights, which accounted for 9 percent of groups in 1953 and 1993. Transnational environmental organizations have grown most dramatically in absolute and relative terms, increasing from 1.8 percent of total groups in 1953 to 14.3 percent in 1993. The percentage share of groups devoted specifically to international law, however, has declined from 12.7 percent in 1953 to 4.1 percent in 1993 (Keck and Sikkink 1997: table 1, p. 11; Smith 1997). Compared with the post-World War II period when international law was promoted by NGOs devoted to the general cause of international



law, advocacy today tends to be carried out by more issue-specific groups. This may be because the increasing diversity and complexity of international law means that few can follow or advocate general developments.

## Networks and Norms

One of the main ways networks and NGOs influence international law is by promoting new international norms and working to ensure compliance with existing norms. Political scientists now define norms as a standard of appropriate behavior for actors with a given identity (Katzenstein 1996: 5; Finnemore 1996: 22; Klotz 1995). According to legal scholar Cass Sunstein, norms are defined as “attitudes of approval and disapproval, specifying what ought to be done and what ought not to be done” (1997: 39). Thus the primary difference between law and social norms is the consequence of violating them: if you break a law you risk criminal and civil punishment; if you break a norm you risk social sanctions, such as being shunned and ostracized (1997: 39; Rosen 1997: 172). While norms and law often serve to reinforce each other, in some cases, norms may influence behavior more effectively than law, even within a domestic setting where law is strong (Sunstein 1997; Lessig 1995; Rosen 1997).

This helps explain why understanding norms is so essential for international relations and international legal scholars. Because the international system is characterized by law and norms operating without direct punitive capacity, both international norms and law depend primarily upon social sanctions (rather than punishment) for implementation and effectiveness. It is thus imperative to understand the process through which these social norms function internationally. The processes through which legal scholars claim norms work domestically are quite consistent with the research done by norm scholars in international relations and sociology. For example, Cass Sunstein’s concepts of norm “bandwagons” and “norm cascades” are similar to the processes of the rapid global diffusion of legal principles that John Meyer and Elizabeth Boyle discuss in their contribution to this volume (Sunstein 1997: 46–48). But what is still missing from these models is an understanding of the specific actors and mechanisms that contribute to building and implementing new norms.



## How Do Advocacy Networks Contribute to Building Legal Norms?

Networks exercise influence on international norms in numerous ways. Martha Schweitz categorized NGO roles in the following way: (1) provide information; (2) lobby and advocate; (3) participate in dispute resolution in international tribunals; (4) implement policies and programs of intergovernmental institutions; (5) collaborate in policy-making; (6) engage in lawmaking; (7) hold intergovernmental institutions accountable for compliance with their own internal directives (Schweitz 1995: 418).<sup>4</sup> Of these various roles, providing information is by far the most important, although a significant portion of groups also lobby (indeed, providing information is often a form of lobbying), collaborate in policy-making or lawmaking, or assist in implementing policy.<sup>5</sup>

In some cases discussed below, members of advocacy networks literally help write international declarations and conventions or facilitate international litigation. Prior to such direct involvement, and perhaps more significant than their actual role in drafting legal rules, is the role of networks in helping to create issues, set agendas, and provide the information to help create awareness of a problem.

### Agenda Setting: Naming, Framing, and Interpretation

Networks call attention to issues, or even "create issues" by using language that dramatizes and draws attention to their concerns. They often do this by reinterpreting an event or problem in such a way that it becomes amenable to legal action. Social movement theorists refer to this reinterpretation or renaming process as "framing" (Keck and Sikkink 1998: 2–3, 7).<sup>6</sup> Legal theory is very familiar with the world of framing and interpretation, but is more likely to argue for the primacy of law for creating the symbolic frameworks that condition the way citizens and officials interpret events.<sup>7</sup> Here I argue that the frames that later appear in the law often originate in groups in civil society. The construction of cognitive frames is an essential component of networks' political strategies, and when they are successful, the new frames *resonate* with broader public understandings and are adopted as new ways of talking about and understanding issues.

A good example of this kind of agenda setting through framing is the campaign against the practice of female genital mutilation. Before



1976, the widespread practice of female circumcision in many African and a few Asian and Middle Eastern countries was known outside these regions mainly among medical experts and anthropologists.<sup>8</sup> A controversial campaign initiated in 1974 by a network of women's and human rights organizations began to draw attention to these issues.

One way the campaign drew attention to the issue was to reframe it by renaming the problem. Previously the practice was referred to by more technical and neutral terms such as female circumcision, clitoridectomy, or infibulation. The campaign around female genital mutilation raised its salience, literally creating the issue as a matter of public international concern. By renaming the practice, the network broke the linkage with male circumcision (seen as a personal medical or cultural decision), implied a linkage with the more feared procedure of castration, and reframed the issue as one of violence against women. It thus resituated the problem as a human rights violation. The campaign contributed to laws against female genital mutilation in many countries, including France and the United Kingdom; the United Nations studied the problem and made a series of recommendations for eradicating certain traditional practices.<sup>9</sup>

New frames also create new conflicts. The initial campaign on female genital mutilation (FGM) had become an explosive topic for the women's movement by the Copenhagen conference in 1980. Some women and men from countries where such practices occurred argued that for Western feminists to criticize FGM was inappropriate and even a form of "cultural imperialism" and racism. Other African women's organizations recognized the problems associated with FGM, but wondered why it got so much more attention than other pressing problems of health and development.

In some senses, we can say that networks help create issues that did not exist before. The creation of issues and of awareness about problems in turn helps create a demand for legal rules to address these problems. One recent and clear example of issue creation is the case concerning violence against women. In the 1970s, the issue of violence against women was not on the agenda either of the women's movement or of international human rights groups. The main international treaty on women's rights, the Convention for the Elimination of All Forms of Discrimination against Women (the CEDAW Convention) that was drafted in the 1970s and adopted in 1979, does not mention violence against women. The thirty articles of this otherwise extremely comprehensive



document establish detailed norms on matters of equality and opportunity. But they contain not a single mention of rape, domestic or sexual abuse, female genital mutilation, dowry death, or any other instance of violence against women.<sup>10</sup> In retrospect, it is a glaring absence.

In one sense, international women's networks literally created the issue of violence against women—they helped construct it as a problem. At first such a claim seems obviously false. No one created domestic abuse, or rape—it is all too real and common. But what networks did was create a category—violence against women—that didn't exist before. They used the term to encompass a range of violent practices in diverse locations, from household brutality to the practices of state security forces. Essentially, by using the concept "violence against women," the campaign unified a series of practices that until then were not understood to be connected.

What existed prior to the mid-1970s was not a category "violence against women" but separate activist campaigns on different practices—against rape and domestic battery in the United States and Europe, female genital mutilation in Africa, female sexual slavery in Europe and Asia, dowry death in India, and torture and rape of political prisoners in Latin America. It was neither obvious nor natural that one should think of female genital mutilation and domestic abuse as part of the same category. The category "violence against women" had to be constructed and popularized before people could think of these practices as the "same" in some basic way. And yet, activists cannot make just any category stick. This one caught on because in some way it made sense and captured the imagination. As the Latin American activist Susana Chiarotti, the founding coordinator of Indeso-Mujer, Rosario, Argentina, pointed out, "the violence theme is very evocative. No woman can help but feel it as her own. I don't think any one of us can say that she has never felt violence against her. It crosses all our lives" (quoted in Center for Women's Global Leadership 1993: 25). At the same time, the category served some key strategic purposes for activists trying to build a transnational campaign because it allowed them to attract allies and bridge cultural differences. This strategic focus forced transnational activists to search for a most basic common denominator—the belief in the importance of the protection of the bodily integrity of women and girls—that was central to liberalism and at the same time at the core of understandings of human dignity in many other cultures.

The campaign created a new category. When wife battering or rape



in the United States, female genital mutilation in Africa, and dowry death in India were all classified as forms of violence against women, it helped women to interpret these as common situations and to seek similar root causes. But the new category also helped diffuse conflict within the women's movement because it pointed out that women everywhere were victims of violence, rather than singling out a particular practice like female genital mutilation for criticism. When female genital mutilation was resituated as one practice within a broader category of violence against women, it was diffused and legitimated as an issue. At that point, the issue was embraced by a wider number of groups, including and especially groups of African women.

The fundamental work of renaming, issue creation, and attention made possible the later work of the construction of legal rules. By 1994, the UN General Assembly had adopted a Declaration on the Elimination of Violence against Women, and the Organization of American States (OAS) adopted the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women.<sup>11</sup> The OAS convention includes stronger enforcement mechanisms than those of any existing convention on women's issues. It sets out a specific section on the duties of states, both to refrain from engaging in violence against women, and to prevent, investigate and impose penalties for violence against women in the public and private sphere. The Convention permits any person or group of persons, or any nongovernmental organization legally recognized in one or more states of the organization, to lodge petitions with the Inter-American Commission on Human Rights containing denunciations or complaints of violations of Article 7 of the Convention (the article listing the duties of the states) by a state party. The Convention was rapidly ratified by thirty member states of the OAS.

### Providing Information and Testimony: Persuasion

One of the most important tactics that networks use is "information politics" or what human rights activists sometimes call the human rights methodology: "promoting change by reporting facts" (Thomas 1993: 83). Networks often provide information that would not otherwise be available in public debates. This information is central to the social construction of legal rules because legal remedies are seen as necessary and appropriate only after publics are convinced that a problem exists that needs to be addressed and that the problem is sufficiently wide-



spread and intractable that it requires a legal solution. Human rights networks have been particularly effective in this regard, and legal scholars have been most attentive to this aspect of NGO influence (Weissbrodt 1984: 403–38; Wiseberg and Schoble 1979).

“Information flows in advocacy networks provide not only facts, but also *testimony*—stories told by people whose lives have been affected. Moreover, activists interpret facts and testimony: usually framing issues simply, in terms of right and wrong, because their purpose is to *persuade* people and stimulate them to act” (Keck and Sikkink 1997: 19). Persuasion is the mission of norm entrepreneurs: they seek to change the beliefs, positions, or courses of action of other players to reflect some new normative commitment.<sup>12</sup> Among individuals, persuasion is the process through which attitudes are formed and changed (Chaiken, Wood, and Eagly 1996). Most definitions of *persuasion* stress that it is a communicative process that happens through argument and the reception of messages which leads to changes in beliefs and preferences. In this sense, persuasion should be seen in contrast to coercion that is based on threats rather than communication. Both coercion and persuasion (or some combination of the two) can lead to normative change, but they rely on very different resources and methods and so must be distinguished analytically.

Nongovernmental actors rely on a variety of techniques to persuade, including appeals to emotion or affect, evoking symbols, as well as the use and extension of logical arguments. Although some authors privilege the role of logic in the extension of norms, much psychological research suggests that both affect and cognition operate synergistically to produce and change attitudes (Crawford 1993; Eagly and Chaiken 1993). Networks implicitly understand the necessity to link emotion and cognition in persuasion because they often evoke powerful symbols and use personal testimony together with factual information to dramatize and amplify their “information politics” so the dry facts are humanized. All of these efforts create the impression of a pressing human problem that needs to be addressed, which in turn helps create a demand for legal rules to help address this problem.

### Drafting Legal Rules

In some cases, individuals in networks are directly involved in the actual drafting of legal rules. Process-tracing the origins of legal rules very



often reveals key roles for specific individuals without whom attempts to build the norm might have failed. The Genocide Convention owed a singular debt to the work of a Polish lawyer, Raphael Lemkin, who coined the term *genocide* in 1944, helped promote the use of the term, and assisting in drafting and securing the passage of the genocide treaty.<sup>13</sup> Nadelmann has called such activists “transnational moral entrepreneurs” who engage in “moral proselytism” (1990).<sup>14</sup> This kind of norm entrepreneurship is not necessarily new, though it has become more frequent recently with the proliferation of international conventions. As early as 1923, Eglantyne Jebb, founder of the Save the Children Fund, wrote a “Declaration of the Rights of the Child” that was adopted by the fifth Assembly of the League of Nations in 1924. The 1924 Declaration is mentioned in the preamble to the 1989 Convention on the Rights of the Child, and some of its language and concerns are echoed in that document (Wilson 1967: 182–83, 224).

More commonly, however, activism to promote new norms of behavior is shared among a number of individuals in an NGO or an advocacy network (Boven 1990). For example, in 1945, the forty-two nongovernmental consultants to the U.S. delegation at the San Francisco Conference played a pivotal role in securing the inclusion of human rights language in the UN Charter, language that served as the basis for all further UN efforts in the human rights area. The initial U.S. drafts of the Charter contained no reference to human rights, while the proposals that emerged from the Big Four meeting at Dumbarton Oaks to prepare for the San Francisco conference contained only one reference to human rights (Robinson 1946: 17). Nongovernmental organizations representing churches, trade unions, ethnic groups, and peace movements, aided by the delegations of some of the smaller countries, “conducted a lobby in favor of human rights for which there is no parallel in the history of international relations, and which was largely responsible for the human rights provisions of the Charter” (Humphrey 1984: 13; Department of State 1946). In particular, NGOs urged four amendments to the Dumbarton Oaks Proposals that would further institutionalize and incorporate human rights concerns and language into the Charter. The most important of these amendments were the proposal to add the phrase “to promote respect for human rights and fundamental freedoms” to the first chapter outlining the basic purposes of the new organization and the specific provision calling on the Economic and Social Council to set up a human rights commission (Robins 1971: 218–19). These early NGO



activists were aware of the importance of finding an institutional home for the human rights idea.

A member of the U.S. delegation later told the NGO consultants, "If you had been at Dumbarton Oaks where we struggled for weeks literally to get just the two words 'human rights and fundamental freedoms' somewhere into the proposals, you would realize what enormous progress has been made during the last six months. . . . it has largely resulted from the action of this group . . . which really changed history" (Robins 1971: 132).

But the contribution of NGOs and networks to the drafting of international human rights law did not end with the UN Charter. When John Humphrey, Director of the UN Division on Human Rights, wrote the "Secretariat Outline" (a draft bill of rights) for the Human Rights Commission to use in its deliberations, he used for models the score of drafts the secretariat had collected from law professors and legal and social NGOs.<sup>15</sup> Although the secretariat outline was modified significantly during the debates, the influences of these diverse nongovernmental sources are clearly seen in the final version of the Universal Declaration of Human Rights.<sup>16</sup>

Such a substantial role for networks and NGOs occurred with later human rights treaties as well. For example, Amnesty International has played a fundamental role in contributing to the development of international legal rules on torture, disappearances, and summary execution (Clark 2001). Amnesty's Campaign against Torture (in 1973) created the impetus behind the decision of governments to bring torture before the General Assembly, and Amnesty's legal staff contributed to the actual drafting of the wording of the Torture Convention (Clark 2001; Boven 1990: 213; Burgers and Danelius 1988: 13; Burgers 1992; Leary 1979).

The normative process is a circular one: transnational actors both help create some international norms and in turn are empowered by them (Thomas 2001). Once international legal rules and norms are in place, they empower and legitimate the transnational networks that promote them. But legal rules exclude as well as empower, and new rules can silence or marginalize some groups at the same time they empower others. Participation in the drafting of new international legal rules does tend to privilege certain types of NGO and network activists at the expense of others. For example, as women's organizations began to work on women's human rights, they increasingly needed to privilege international legal expertise. In 1997, women's rights NGOs partic-



ipated in a working group drafting an optional protocol to the CEDAW Convention that would allow the submission of individual complaints of violations to the CEDAW Committee. The working group drafting the Optional Protocol was open to NGO observers, but one NGO, the International Women's Rights Action Watch (IWRAP), warned its members that NGOs who wished to participate should be "well prepared to follow the technical discussion. IWRAP's experience suggests that the most effective NGO participants with respect to the optional protocol are lawyers or those who have extensive experience in working with the wording of international legal instruments" (IWRAP 1997: 2). The newsletter then cites a recent law review article that provides a comprehensive review of the elements of the protocol for members to consult. Increasingly, more professional NGOs have staff with this kind of expertise, but it does limit the involvement of other, more grassroots organizations.

### Transnational Advocacy Networks and Compliance with International Law

Building international norms is, in and of itself, insufficient, because many existing international norms are frequently violated. Thomas Franck has discussed the conditions under which countries are more likely to comply with international legal rules. Many of these conditions have to do with the qualities of the rules themselves (Franck 1992: 51, 56). Applying this framework, the prohibition against torture is the most embedded in international law. It has the oldest pedigree, the greatest determinacy, and possesses high magnitudes of coherence and adherence (McEntree 1996: 1–20).

Nevertheless, torture continues to be widely practiced in the world today. Clearly, the embeddedness of the legal rule and the qualities of the rule itself are insufficient to explain compliance with the rule. How can these widely accepted international and domestic legal norms be implemented? The absence of formal enforcement mechanisms for most international human rights law does not mean that such law is not enforced. Networks contribute to a range of informal actions that help ensure compliance with international law. These informal actions can be thought of as a way that states are socialized to new legal rules (Risse and Sikkink 1999).



Socialization involves the “induction of new members . . . into the ways of behavior that are preferred in a society” (Barnes, Carter, and Skidmore 1980: 35). International socialization thus implies the presence of an “international society” and is the process through which new members to that society are induced to change their behavior in accordance with international norms.<sup>17</sup> According to the international relations theorist Kenneth Waltz, socialization occurs through the emulation (of heroes), praise (for behavior that conforms to group norms), and ridicule (for deviation) (1979). In addition to the processes mentioned by Waltz—emulation, praise, and ridicule—socialization can also occur through learning, shaming, ostracism, and coercion. The point often overlooked is that socialization is not always a benign process, but can involve painful interactions.

The primary way that networks contribute to socialization is by publicizing behavior they deem inappropriate, using factual information or symbolic politics. A transnational human rights advocacy network promotes these socialization processes through adverse international publicity about a state’s violations of human rights so that noncompliance leads to embarrassment or damages the state’s reputation. Moreover, once a state’s human rights misconduct has been exposed, more damaging bilateral or multilateral enforcement measures may follow. Such publicity, as well as focused network lobbying, may also activate bilateral foreign policies of other countries toward target states.

### Publicizing the Existence of International Legal Norms

One first step toward ensuring compliance with international human rights norms has been informing citizens of the existence of these legal rules and their possibilities for redress. Some NGOs devote large amounts of time simply to publicizing the existence and the specific rules of international conventions. Women’s groups such as the International Women’s Rights Action Watch (IWRAW) have been especially active, for example, in publicizing the contents of the Convention on the Prevention of All Forms of Discrimination against Women (CEDAW Convention) and monitoring implementation of the convention. These NGOs also intervene in the reporting procedures for CEDAW. When government reports to the CEDAW Committee have



been weak, groups help write counter reports to circulate among friendly government delegations. Women's groups have also worked to bring national women's NGOs from member countries to the Vienna CEDAW Committee meetings to hear and perhaps challenge their government's reports on the status of women in their country.<sup>18</sup>

These kinds of pressures have recently proven quite effective vis-à-vis Japan. After Japan ratified the CEDAW Convention ten years ago, it made some tentative efforts to comply by enacting a limited employment discrimination law. In 1995, after reviewing Japan's second and third periodic reports, the CEDAW Committee strongly criticized the Japanese government and suggested that it address the issue of indirect discrimination in the workplace. The committee's observations had been influenced by the information submitted by twelve Japanese NGOs to counter the government report. Encouraged by the CEDAW review, twenty-one women sued the giant Sumitomo conglomerate, claiming wage discrimination, failure to promote, and a company and government policy that violated the CEDAW Convention. The plaintiffs are receiving support from women's rights organization within Japan as well as international support from IWRAW and other women's rights groups (IWRAW 1997: 1-2).

### Publicizing Rule-Breaking Behavior

If we assume that states (or individuals) sometimes break legal rules because they believe that nobody will ever know, then the simple collection and dissemination of information about rule breaking can have a dampening effect on violations. Torture survivors from all over the world report that torturers use a common refrain—"no one will ever know what happened to you. No one cares." This is both a psychological device to isolate and torment the individual and a statement that torturers believe that their actions are hidden or secret (Weschler 1990: 171-72, 238). A similar situation exists with problems of violence against women in the household. When women's rights organizations in India documented that large numbers of women who died in kitchen fires were not victims of household accidents but were being set on fire by their in-laws because of dissatisfaction with their dowries, the police began to investigate any case of a kitchen fire more closely. A few high-profile convictions of people for murder—the so-called dowry death—sent a message to other families that these actions could no longer be as



easily hidden (Kumar 1995: 67). Once again, publicity and documentation in and of themselves may make a significant contribution to compliance with law.

### Facilitating International Litigation

In the Americas, networks of NGOs have taken on the task of supporting international human rights litigation by bringing cases before the Inter-American Commission and Court. For example, Americas Watch represented the families of four victims of disappearance in Honduras before the Inter-American Court and obtained a landmark decision that is frequently cited as an important international law precedent (Mendez and Vivanco 1990: 507, 535).

In 1990 a network of human rights organizations throughout Latin America together with Americas Watch set up a new NGO specifically dedicated to the task of bringing human rights cases before the Inter-American human rights system. The new organization, the Center for Justice and International Law (CEJIL), has taken responsibility, in partnership with domestic human rights groups, for a large docket of cases before the Inter-American Commission (Mendez 1992: 5).

Aside from their legal expertise, one of the most important activities of NGOs involved in bringing cases before the commission and court had been to secure funding from foundations to enable the pursuit of the case. For example, in the important Honduras disappearance case, the Inter-American Court could not pay the expenses to bring witnesses to testify in Costa Rica. Americas Watch secured funding from the Ford Foundation and other foundations in order to pay airfares and per diems to bring witnesses before the court.

Another venue for the implementation of international human rights law has been the contribution of NGOs in bringing human rights cases in domestic courts in other countries. Courts in countries such as the United States, Spain, and Italy have condemned violations of international human rights norms and imposed penalties on rights-violating states or individuals. Once again, the plaintiffs often depend upon NGOs to help them prepare and present their cases.

In 1979 Jose Filartiga and his daughter Dolly, who then resided in the United States, filed a lawsuit against Américo Peña Irala who was also in the United States. They accused Peña Irala, former police inspector of Asunción, of kidnapping and torturing to death Filartiga's



teenage son, Joelito, in 1976 in Paraguay. The Filartiga family was assisted by the Center for Constitutional Rights in New York in crafting a novel and convincing legal argument (Claude 1992). They invoked the Alien Tort Claims Act of 1786, which grants federal courts jurisdiction in "any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States" (Burley 1989). The court's decision in the Filartiga case broke new ground because it held that in the 1970s the torturer now had a status in customary international law akin to that of the pirate and slave trader—"an enemy of all mankind."<sup>19</sup> Since the Filartiga decision, U.S. federal courts have adjudicated numerous cases involving human rights abuses in other countries under a variety of jurisdictional statutes (Lutz and Sikkink 2000). Courts in the United States and Europe have become mechanisms through which victims of violations of customary international human rights law norms have sought to vindicate their rights, but these cases reach U.S. and European courts because of the efforts of a network of human rights and legal activists and NGOs who prepare, support, and litigate the cases. Some of these have had a chilling effect on government, police, and military officials in repressive countries (Lutz and Sikkink 2001).

### Convincing More Powerful Actors to Impose Bilateral Sanctions to Enforce International Law

Aside from their ability to publicize rule breaking, NGOs have few tools available to convince states to comply with international human rights norms. They can use their information and influence, however, to lobby more powerful actors to apply bilateral sanctions to enforce international legal rules. In the early 1970s, the authors of U.S. human rights policy explicitly incorporated language from international human rights treaties into legislation requiring the United States to impose enforcement measures including sanctions on states that engage in a consistent pattern of gross violations of internationally recognized human rights (Fraser 1979).

Such language was rarely used, however, because policymakers were hesitant to accuse any country of engaging in a consistent pattern of gross violations of rights. With reports detailing extensive human rights abuses, human rights organizations such as Amnesty Interna-



tional brought the human rights situation in countries such as Uruguay, Argentina, and Chile to the attention of U.S. congressmen and thus contributed to country-specific cessation of military and economic aid. It is likely that these bilateral sanctions would not have been possible in the absence of the information and lobbying of human rights networks (Schoultz 1981: 84–85).

Networks have also targeted multilateral institutions to try to change their policies and to gain additional political leverage to influence change in target states. Environmental networks have successfully lobbied multilateral banks (especially the World Bank) to make their projects less environmentally destructive and to encourage them to use their influence to change state policies. These campaigns have brought together network activists from northern and southern countries to pressure for compliance (Keck 1995).

### The Limits to and Asymmetries within the Process of Network Social Construction of Legal Rules

While the overall assessment of the contribution of networks to building and implementing legal rules has been positive, it is important to note the limitations and problems with these processes. Not all kinds of ideas lend themselves equally well to the process of the social construction of legal rules. Some scholars argue that norms that are clear and specific are more likely to be effective than norms that are ambiguous or complex, and that norms that have been around longer are more likely to be effective (Chayes and Chayes 1993; Legro 1997).

Claims about which substantive normative claims will be more influential in world politics have varied widely. Boli and Thomas argue that five principles are central to world culture: universalism, individualism, voluntaristic authority, rational progress, and world citizenship. By implication they suggest that norms underpinned by these principles will be more successful internationally (Boli and Thomas 1999). Thus we would not expect to find much support for norms that do not reflect these principles, such as, for example, collective economic or cultural rights. My colleague Margaret Keck and I have specified which norms are particularly effective transnationally and cross-culturally. These include norms involving (1) bodily integrity and prevention of bodily harm for vulnerable or “innocent” groups, especially when there is a



short etiological chain between cause and effect; (2) legal equality of opportunity; and (3) issues that successfully invoke "adjacency" claims to already existing strong global norms (Keck and Sikkink 1997: 204–5). Norm entrepreneurs must speak to aspects of belief systems or life experiences that transcend a specific cultural or political context. Although notions of bodily harm are culturally interpreted, they also resonate with basic ideas of human dignity common to most cultures, because they respond to minimal criteria of commonality—human frailty.

Finally, divisions and imperfections within networks themselves limit the effectiveness of new legal rules. First, although most NGOs stress democracy and democratization, many are not themselves internally democratic. One dilemma with "democratizing" NGOs is that it is not always clear who should participate in decision making about leadership and policies—should NGOs be run by their staff, their boards, their volunteers, their members, those who provide funds, or those on whose behalf they organize? How might such systems of accountability be set up?

Second, the vast majority of NGOs originate in and are still based in the developed world. In 1993, 72 percent of the transnational advocacy NGOs still had their secretariats in Western Europe, the United States, or Canada. Even those international NGOs based in the developing world often depend on funding from foundations located in the wealthy countries.<sup>20</sup> Almost half of international human rights funding provided by U.S. foundations from 1973 to 1993 was provided by a single foundation—the Ford Foundation (Keck and Sikkink 1997: 99). Thus, another source of hidden power within transnational networks resides in the influence of foundations from wealthy countries who are part of these networks.

Because of the dominance of northern NGOs and foundations, the asymmetries within transnational networks have often been framed in north/south terms. As such the actions of networks may be seen as vehicles for "exporting" norms from the north to the south, or of cultural imperialism.<sup>21</sup> While this may be a useful starting place or shorthand for some of the internal divisions within transnational networks, it does not capture fully the complexity of such divisions and asymmetries. Margaret Keck and I have argued that networks, while plagued with asymmetries, are communicative structures and political spaces in which differently situated actors negotiate—formally or informally—the social, cultural, and political meanings of their joint enterprise (1997).<sup>22</sup> The



campaign on violence against women illustrates this potential of networks because it picked up on issues that were not initially dominant strands in the mainstream national women's movement in the United States and Europe during the 1970s; concerns about rape and domestic abuse were more common in local women's groups and among more radical feminists in the United States. The movement to combat violence against women also has its roots in local action in other parts of the world. Locally based projects and coalitions in the Third World—such as GABRIELA in the Philippines, Mujeres por la Vida in Chile, and various women's groups in India and Bangladesh working on dowry death—had started to work on issues of violence in the mid- to late 1970s (Kumar 1995: 61, 65–66; Jahan 1995: 6). The way in which these various groups came together around the issue of violence illustrates that the process of the social construction of international law can be more than the “export” of practices from the developed world. Networks can be part of an interactive process by which people in far-flung places communicate and exchange beliefs, information, testimony, strategy, and sometimes services. In the process of exchange, they may influence and alter one other.

Nevertheless, many of the legal rules promoted by networks have both empowering and exclusionary effects. Although the examples in this essay have tended to focus on the empowering effect of international norms, there are also “silences,” exclusions, or paradoxical effects of some international advocacy. Economic rights have not received the kind of attention that basic civil and political rights receive, although campaigns on infant health and child labor suggest that campaigns on economic rights are possible, at least if the “victims” fit the category of innocent or vulnerable children.

Some women's rights activists now admit that they jumped into the rights frame without fully thinking through the consequences for their movement.<sup>23</sup> What the human rights discourse implied was that if women's organizations were going to use international and regional human rights bodies and machinery, they would have to enhance their knowledge of international law. This requires privileging lawyers and legal expertise in a way that the movement had not previously done or desired to do. The wisdom of this approach is still being debated within the transnational network, and some activists are now trying to reframe violence against women as a health issue. They note that the human rights frame has been important for raising consciousness about the issue, but fear that it won't be as effective for prevention and treatment.



When measured against ideal visions of representation, democracy, accountability, and autonomy, most transnational NGOs fall short. Yet the appropriate standard against which to measure the representative capacities of NGOs is the existing degree of representation in international institutions and in the process of building international law. International institutions are imperfectly representative. In such a situation of highly imperfect representation, most efforts by NGOs and networks bring into international institutions and international law a greater diversity of viewpoints and information than would be available in international institutions devoid of their presence.

#### NOTES

1. This essay draws upon concepts developed in my book with Margaret Keck, *Activists beyond borders: Advocacy networks in international politics* (1998), and I want particularly to recognize my coauthor's contributions to the ideas presented here. This essay tries to build on discussions in that volume to address more systematically the specific issue of advocacy networks and the social construction of legal rules. I also want to recognize the contributions of three additional coauthors to my thoughts on these issues: Martha Finnemore, Ellen Lutz, and Thomas Risse.

2. Some legal scholars have been quite successful in linking theoretical constructs to rich empirical case studies of the social construction of legal rules. See, in particular, Yves Dezalay and Bryant G. Garth (1996) and David M. Trubek, Yves Dezalay, Ruth Buchanan, and John R. Davis (1994).

3. Jack Donnelly identifies challenging or altering state legal norms as one of the principal uses of human rights claims (1993: 20).

4. A simpler taxonomy of NGO roles divides them into two broad categories: (1) operational roles and (2) educational and advocacy roles. Operational roles involve all the multiple ways in which NGOs increasingly provide services and become project "subcontractors" for international institutions (Weiss and Gordenker 1996: 32).

5. A survey of the activities of 150 international human rights NGOs about their activities in 1995 found the following percentage of groups engaged in these international activities: "provided information to U.N. or other intergovernmental agency—92%; lobbied U.N. officials—70%; lobbied government delegations at the UN—65%; participation in the 1995 UN Human Rights Commission Meeting—62%; consulted with international agency official to plan international strategy—60%; developed international policy paper/draft resolution on human rights—56%; assisted intergovernmental agency to implement human rights policy—56%" (Smith, Pagnucco, and Lopez 1997: 8).



6. David Snow has called this strategic activity *frame alignment*—"by rendering events or occurrences meaningful, frames function to organize experience and guide action, whether individual or collective" (Snow, Rochford, Worden and Benford 1986: 464).

7. For example, McCann argues that law consists of "a complex repertoire of discursive strategies and symbolic frameworks that structure ongoing social intercourse and meaning making activity among citizens" (1994: 282).

8. Female genital mutilation is most widely practiced in Africa, where it is reported to exist in at least twenty-six countries. Between 85 and 114 million women in the world today are estimated to have experienced genital mutilation (World Bank 1993: 50).

9. For example, Leonard Kouba and Judith Muasher (1985) and Alison Slack (1988) address the issue of female circumcision generally. Elise Sochart talks about the British campaign in her 1988 article, while an example of the French campaign can be found in the November 23, 1993, *New York Times*. UN recommendations on the subject can be found in the Report of the "Working Group on Traditional Practices Affecting the Health of Women and Children" (1986), and Elizabeth Boyle and Sharon Preves (2000) have written about the emergence of national laws against female genital mutilation.

10. The only mention of the issues that today are categorized as violence against women is one article that calls on governments to suppress traffic in women and exploitation of prostitution (UN General Assembly 1981).

11. The convention was adopted at the 24th regular session of the General Assembly of the OAS on June 9, 1994, in Belém de Pará, Brazil.

12. This section draws on ideas from a coauthored work with Martha Finnemore, "International Norm Dynamics and Political Change" (1998).

13. The term *genocide* was first used by Raphael Lemkin (1944: 79). His efforts to promote the word and the treaty were reported in the October 20, 1946, *New York Times* (section 4, p. 13) and were also discussed by Leo Kuper (1985: 10) and William Korey (1989: 45–46).

14. Yves Dezalay and Bryant Garth apply the concept of the "moral entrepreneur" to the legal area in chapter 3 of *Dealing in Virtue* (1996: 33–62).

15. Some of the more important of these drafts were written by Hersch Lauterpacht and by a committee started by H. G. Wells and chaired by Viscount Sankey after a public debate conducted in Britain by the Daily Herald, the American Law Institute, the American Association for the United Nations, and the American Jewish Congress (Humphrey 1984: 31–32).

16. On this point I want to recognize the research assistance of Douglas Olsen, who prepared an article by article summary of the UDHR, "The Textual Origins of the Universal Declaration of Human Rights," which points to the influence of the Secretariat Draft as well as the declarations of scholars such as Professor Lauterpacht, and the influence of historical human rights declara-



tions within countries such as the U.S. Bill of Rights, the French Declaration of the Rights of Man and Citizen, and the Constitution of the USSR.

17. The idea of an international society was first developed by Hedley Bull. According to Bull, we live in an international society when, on the basis of common interests and values, states "conceive themselves to be bound by a common set of rules in their relations with one another and share in the working of common institutions" (1977: 13). Bull, however, conceived of international society as a society of states, while here I present a vision of international society in which nonstate actors are fundamental players.

18. Interview with Marsha Freeman, Minneapolis, Minnesota, March 1, 1996.

19. *Filártiga v. Pena-Irala*, 630 F.2d 876, 890 (2d Cir. 1980).

20. In their survey of international human rights NGOs, Smith, Pagnucco, and Lopez found that 60 percent of the NGOs received foundation grants to support their work, and 52 percent received grants from government or inter-governmental agencies (Smith, Pagnucco, and Lopez 1997: 22, 7).

21. Stephen Brill underscores this kind of perception: "The rule of law is on the march in the world. It is a product that America should be exporting, because we're the best at it. I say that proudly" (*Baltimore Sun*, May 23, 1994).

22. The idea of networks as political spaces developed in conversations between Margaret Keck and Elizabeth Umlas; for an application of this concept to domestic environmental NGO networks in Mexico, see Umlas 1996.

23. Interview with Lori Heise, Washington, D.C., September 27, 1995.

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