Rev Int Organ (2015) 10:489–512
DOI 10.1007/s11558-015-9213-0

# The domestic effectiveness of international human rights monitoring in established democracies. The case of the UN human rights treaty bodies

**Jasper Krommendijk**

Published online: 28 February 2015


**Abstract** Although the reporting process under UN human rights treaties is considered one of the most important universal mechanisms to monitor the implementation of human rights, its actual domestic effects have hardly been studied. This is surprising in the light of the rather extensive work involved and resources spent on the reporting process by states and UN human rights treaty bodies. This article attempts to fill the scholarly neglect by examining the effectiveness of this process in three countries, the Netherlands, New Zealand and Finland. It also explores some more general conceptual, theoretical and methodological issues with respect to the definition and measurement of effectiveness of international (human rights) standards at the domestic level. The empirical results, which are based on extensive document analysis as well as 175 interviews, are used to test two hypotheses based on domestic and transnational mobilization as well as reputational and legitimacy-based explanations. The article especially finds support for the liberalist mobilization thesis, while only limited support is found for reputational and legitimacy-based explanations, at least in established liberal democracies.

**Keywords** Effectiveness · International monitoring · Human rights · Domestic mobilization · Legitimacy · Reputation

**JEL Classification** F53 · K410

## 1 Introduction

One of most well-known puzzles in human rights research has been the question as to whether ratification of human rights treaties has any effect on state behavior. While

J. Krommendijk (✉)
Radboud University, Montessorilaan 10, Room 02.029, Postbus 9049, 6500 KK Nijmegen, The Netherlands
e-mail: j.krommendijk@jur.ru.nl

J. Krommendijk
e-mail: j.krommendijk@gmail.com

some studies found that treaties have hardly any positive effect and sometimes even a negative effect (Hathaway 2002; Neumayer 2005; Hill 2010), others actually found some improvements (Simmons 2009; Lupu 2013; Hafner-Burton 2013). In addition to this burgeoning literature on "first order compliance" with treaties, more attention has recently been paid to so-called "second-order compliance," the observance of the decisions and judgments of courts and committees monitoring international treaties (Fisher 1981). Especially the judgments of the regional human rights courts, such as the European Court of Human Rights (ECtHR) and the Inter-American Court of Human Rights (IACHR) have been studied (Von Staden 2009; Anagnostou 2010; Hawkins and Jacoby 2010; Hillebrecht 2014a). This relatively extensive literature dealing with regional court's judgments stands in sharp contrast with the near neglect of research on *international* human rights monitoring mechanisms and their domestic impact. One of the most important international mechanisms to monitor the implementation of UN human rights treaty standards is the process of state reporting (Alston 1989; Connors 2000: 4; Kälin 2012: 16). This process is based on the obligation of state parties to submit periodically, usually every 4 or 5 years, a report on the implementation of each UN human rights treaty and Optional Protocol it has ratified. A treaty body, a committee consisting of independent experts, examines this report through a so-called constructive dialogue with representatives of the state party. The assessment of the state report ends with the adoption of legal non-binding recommendations, the Concluding Observations (COs).

This article addresses the following research question: what is the effectiveness of this international human rights monitoring mechanism of state reporting? This will be examined by looking at the effectiveness of the COs and the extent to which policy, legislative or any other measures been taken as a result of these COs in the Netherlands, New Zealand and Finland. As will be explained below, the three countries were selected because they were considered most-likely cases for the effectiveness of COs. This article will focus on the COs of the six treaty bodies under the six main and oldest UN human rights treaties presented in Table 1.

The research question as to the effects of the reporting process and especially its capacity to induce states to change their behavior is especially pressing in light of the large financial and bureaucratic implications of this process for both the treaty bodies as well as states. An illustration of the resource-intensity of the process is that in 2010 alone, 139 state reports were submitted by 92 states with a total of 11,294 pages (Keller and Ulfstein 2012: 418). In 2012, the 172 treaty body experts of 10 different treaty bodies were in session for 74 weeks to discuss, amongst others, the different state reports (Pillay 2012: 17). States who have ratified all treaties and comply with their reporting requirements usually receive between 100 and 350 recommendations from the different treaty bodies they report to in a time period of 4 to 5 years (Kälin 2012: 18). In addition, civil society and non-governmental organizations (NGOs) also invest considerable resources in the process since they are allowed to submit alternative information to the treaty body via so-called shadow or parallel reports.

This article makes two contributions to the existing literature on the effectiveness of international monitoring mechanisms in the field of human rights. Firstly, this article offers an empirical contribution as to the effectiveness of the international human rights monitoring mechanism of state reporting based on the analysis of an original and extensive range of documents, including parliamentary minutes and government

**Table 1** Overview of the six main UN human rights treaties and treaty bodies

| UN human rights treaty | Treaty monitoring body |
|---|---|
| Convention on the Elimination of All forms of Racial Discrimination (ICERD) [adopted in 1965] | Committee on the Elimination of Racial Discrimination (CERD) |
| International Covenant on Civil and Political Rights (ICCPR) [1966] | Human Rights Committee (HRC) |
| International Covenant on Economic, Social and Cultural Rights (ICESCR) [1966] | Committee on Economic, Social and Cultural Rights (CESCR) |
| Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) [1979] | Committee on the Elimination of Discrimination Against Women (CEDAW Committee) |
| Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) [1984] | Committee against Torture |
| Convention on the Rights of the Child (CRC) [1989] | Committee on the Rights of the Child (CRC Committee) |

papers, court judgments, newspaper articles and NGO websites, as well as 175 interviews with different domestic actors. Secondly, this article aims to contribute to theory building and application in the context of International Relations (IR) and International Law (IL) as well. It tests two hypotheses based on domestic and transnational mobilization as well as legitimacy and reputational-based explanations. In doing so, this article helps to confirm or infirm the applicability of several underlying theories about the mechanisms through which international institutions affect the behavior of Western established liberal democracies.

The structure of the article is as follows. The second section will — after providing a definition of effectiveness — present the two hypotheses based on IR and IL theories about the effectiveness of international (human rights) norms. The justification as to why the Netherlands, New Zealand and Finland were selected is provided in the third section. The next section presents the methodology used to establish the effectiveness of COs. After presenting the empirical results in the fifth section, the final section will reflect on the applicability of the two hypotheses.

## 2 Theory and literature review

This section presents a literature review of the IR and IL theories that deal with the domestic impact of and compliance with international (human rights) standards. Before doing so, some words will be devoted to the concept of effectiveness which is used throughout this article.

### 2.1 Defining effectiveness

A lot of research has focused on "compliance" with international norms, which is defined as "a state of conformity or identity between an actor's behavior and a specified

rule" (Raustiala 2000: 388). There are several limitations to studying compliance. On the one hand, (full) compliance may not occur, even though a state has taken subsequent measures to address the issue. On the other hand, there may be a situation of compliance independently from the international norms. This means that behavior is simply in line with or merely correspond to international norms without these norms having had any role whatsoever in policy decisions. Compliance, thus, does not tell us anything about the role or relative weight of the specific norm, also because of other international norms or (inter)national factors that could have contributed to compliance. What distinguishes effectiveness from compliance is that effectiveness focuses on the relation between legal rules or recommendations and the government's behavior (Martin 2013). Effectiveness is different from compliance in the sense that it refers to "the extent to which it [the treaty] requires states to depart from what they would have done in its absence" (Downs et al. 1996: 383). Effectiveness, thus, implies that there are "changes in behavior that otherwise would not have occurred" (Raustiala 2000: 394).

Consequently, the starting point of research on the effectiveness of COs is the recognition that COs have "value if and only if they cause people to do things they would not otherwise do" (Mitchell 1994: 425). Effectiveness in the context of this article is understood as observable changes in behavior that were (partly) the *result of* the COs. This refers to changes that can be attributed to the COs, because of a relationship between the COs and the change. The behavioral change as a result of COs can take many forms. One could think of (an adjustment of) policy or legislative measures, the establishment of an interdepartmental working group or committee to review the policy or legal framework, the commissioning of a report or evaluation, the establishment of a new institution or the allocation of extra budgetary resources. COs can also be effective by thwarting an intended or desired behavioral change. This refers to a situation in which the government is precluded from taking measures that it would otherwise have taken, because they would go against the aim of COs. In such an instance, COs limit the policy options and courses of action available.

### 2.2 Underlying causal mechanisms

The theoretical starting point of this article follows the observation that the rationalist external incentive models based on coercion are hardly able to explain the effectiveness of the COs of the UN human rights treaty bodies. Coercion-based models treat the effectiveness of international (human rights) norms as the result of international material inducements which manipulate the utility calculations of states, such as sanctions or positive rewards in the form of aid (Guzman 2008; Schimmelfennig and Sedelmeier 2004). Models based on coercion are, however, rather unsatisfactory to explain the effectiveness of international human rights treaties and especially the COs. This is because the extent to which states are willing to coerce other states to comply in the field of human rights is limited. States usually do not have a strong interest in or incentive to enforce compliance with human rights in other states (Hathaway 2002: 1938; Simmons 2009: 122 and 126; Dai 2013: 95–96). This article will therefore include two other mechanisms that could explain the effectiveness of COs; reputational and legitimacy-based explanations (section 2.2.1) and domestic and transnational mobilization (section 2.2.2).

### 2.2.1 Reputational and legitimacy-based explanations

The rational choice model of reputation looks at a state's concern for damage to its reputation as a result of "naming, shaming and faming" (Schimmelfennig 2005: 831–832; Keohane 1997: 497; Hawkins and Jacoby 2010: 41). The central tenet of this model is that states are committed to maintaining their reputation for abiding by their international law obligations, because this ensures that other states will cooperate and enter into agreements with them in future. The rationalist cost-benefit version of reputation can be compared or contrasted with a more constructivist understanding of reputation which looks at states' felt sense of obligation to establish and maintain a good global standing and be a honorable member of the international community (Downs and Jones 2002: 96, Sharman 2007: 28; Brewster 2009: 238–241). Downs and Jones held that reputation is especially relevant for new and developing countries who are eager in gaining a reputation as a "rule of law" country and are, hence, more sensitive towards international criticism (Downs and Jones 2002: 112). On the basis of Downs and Jones' finding one could expect that established democracies with a rather solid human rights reputation can relatively easily ignore or resist implementing unfavorable or legitimate seeming COs. The reputational costs of the COs of the treaty bodies can thus vary depending upon the target state.

One crucial precondition for the effectiveness of both reputational models is that the target state and the wider domestic and international audience bestow reputation on the treaty bodies and consider them as important and legitimate (Downs and Jones 2002: 98; Risse and Ropp 2013: 14). The possible reputational costs for states for not acting upon COs are low if a treaty body is not considered legitimate and does not have a solid reputation. This shows that there is a close relationship between the reputational models and theories dealing with the legitimacy of international institutions. The latter theories focus on the international institutions' legitimacy to explain the extent to which states take them seriously and change their behavior accordingly. Franck defined legitimacy as "a property of a rule or rule-making institution which itself exerts a pull towards compliance on those addressed normatively because those addressed believe that the rule or institution has come into being and operates in accordance with generally accepted principles of right process" (Franck 1990: 24 and 26). Legitimacy is especially crucial when courts or other institutions lack coercive means (Alvarez 1991: 206).[1] The concepts of reputation and legitimacy both deal with the impartiality, authority and expertise of the institution in the eyes of decision makers (Sharman 2007, 32–33). Both concepts thus strongly relate to subjective perceptions and the belief systems of actors (Trimble 1990: 838–840; Franck 1990: 24 and 26; Alvarez 1991: 206; Hurd 1999: 381, Brewster 2013: 531). They are also social constructs, which are the result of "an obscure mix of beliefs, narratives, associations, passions, etc." (Schrag 2010: 27–28; Brunnée and Toope 2013: 131). These constructs are continuously re-constructed and re-contested through interactions, especially between

[1] Legitimacy-based explanations are consistent with the constructivist literature on persuasion, which explains situations in which actors change their attitudes, beliefs and preferences in the absence of clear material benefits and coercion (Gibson and Caldeira 1995; Raustiala and Slaughter 2002: 541; Brunnée and Toope 2013: 131). That is to say, one precondition for persuasion to occur is when the persuader is seen as legitimate or authoritative (Trimble 1990: 835 and 845; Checkel 2001: 562–563; Schimmelfennig and Sedelmeier 2004: 676).

government officials and treaty bodies, but also their interaction with the wider world, including the media, civil society and the academic community.

The relationship between an institution's legitimacy or reputation and its effectiveness is primarily formulated as one of correlation in the literature and in hypothesis 1 (see below). This illustrates that the specific causal mechanisms have so far hardly been spelled out in a detailed fashion in the literature (Brunnée and Toope 2013: 130–132). This is also because such mechanisms primarily involve complex individual-level psychological processes, focused on the mindset of decision-makers. The difficulty of formulating specific causal trajectories is exacerbated by the fact that there are hardly any instances of "pure persuasion" in which the legitimacy or reputation of the institution is the sole explanation (Risse and Ropp 2013: 14). Legitimacy and reputation thus depend very much upon the working of other causal mechanisms in order to have full explanatory power. There is especially a relation with domestic mobilization, as will be further discussed in section 2.2.2. Mobilization and lobby by domestic actors is arguably more likely on the basis of legitimate treaty bodies.

Hypothesis 1: The higher the legitimacy and reputation of the treaty body in the eyes of government officials, the greater the effectiveness of COs of that respective treaty body.

### *2.2.2 Domestic and transnational mobilization*

The second mechanism incorporated in this article deals with domestic and transnational human rights mobilization and advocacy. This mechanism is grounded on liberal theories on domestic politics and mobilization. The central tenet of these theories is that international institutions are able to change the behavior of a state through domestic institutions, such as domestic courts, and by mobilising domestic advocacy groups, NGOs, political parties that pressure governments to change behavior (Neumayer 2005: 930; Hafner-Burton and Tsutsui 2005: 1385; Simmons 2009). International pressure can be a necessary, but is not a sufficient condition for policy change in itself. Crucial for this change is domestic resonance and support (Gourevitch 1978: 911; Putnam 1988: 429–430). Helfer and Slaughter focused on the ability of a supranational tribunal "to secure such compliance by convincing domestic government institutions, directly and through pressure from private litigants, to use their power on its behalf" (Helfer and Slaughter 1997: 278). Moravcsik also held that international human rights institutions "coopt" domestic actors who consequently pressure their governments "from within." International norms and institutions can subsequently shift the balance of power within and between domestic actors and prompt a change in coalitions and calculations underlying governmental policies, which might eventually lead to a policy change (Moravcsik 1995). Likewise, Alter held that international courts can act as "tipping point actors" by forwarding resources to and supporting compliance constituencies. In this way, they can tip the political balance in favor of policies in line with international norms (Alter 2011). Norms and pronouncements of international courts can, thus, be used as political opportunity structures to strengthen domestic actors' power vis-à-vis opponents by granting them additional resources (Börzel and Risse 2000; Schimmelfennig and Sedelmeier 2004: 672, Hafner-Burton 2013: 64). Dai's theory

on domestic compliance constituencies as "decentralised enforcers" noted how international norms and institutions can create a focal point for domestic actors and strengthen their leverage and legitimize their demands (Dai 2005 and 2013). This also reflects Simmons' domestic politics theory on compliance with human rights treaties as "a tool to support political mobilization" (Simmons 2009: 135, see also Hillebrecht 2014b).

The mobilization mechanism also builds on — predominantly constructivist— literature on transnational human rights advocacy. The most prominent elaboration can be found in Risse, Ropp and Sikkink's five phase spiral model of human rights change.[2] The main process through which this change takes place is "norms socialization," which is defined as "the process by which principled ideas held by individuals become norms in the sense of collective understandings about appropriate behavior which then lead to changes in identities, interests, and behavior" (Risse and Sikkink 1999: 10). One of the central tenets of the spiral model is that the diffusion and domestic change in relation to human rights is dependent on the strength of transnational human rights pressures and policies and, above all, advocacy networks. These networks consist of international human rights NGOs, like Amnesty International and Human Rights Watch, domestic NGOs, political parties, the media, intellectuals and international institutions (Keck and Sikkink 1999). The model incorporates Keck and Sikkink's "boomerang effect," which describes how domestic compliance constituencies and especially NGOs bypass their state to seek international support and link up with transnational network to bring outside pressure on their states. These international linkages allow them to gain leverage by introducing new issues, norms and discourses into the debate and strengthening and amplifying their demands so that the terms of the debate can shift (Risse and Sikkink 1999: 18; Keck and Sikkink 1999: 90 and 93). Risse and Sikkink's spiral model also illustrate that rationalist and constructivist causal mechanisms often operate in tandem (Börzel and Risse 2000: 2; Raustiala 2000: 399; Checkel 2001: 581). This joint operation of the two logics is in line with Checkel's "social sanctioning" (Checkel 2001: 558). According to Checkel, domestic actors can use international norms as "an additional tool" or an "additional weapon for shaming" to increase the pressure on policymakers engaging in a cost/benefit analysis (Checkel 2001: 569).

As said in the previous section, there is a close interaction between domestic and transnational mobilization and reputational and legitimacy-based explanations. Domestic and transnational actors are more likely to lobby and mobilize on the basis of COs of treaty bodies that are (generally) considered legitimate and enjoy reputation (Conant 2006: 79; Cichowski 2006: 11–12). When the respective treaty body enjoys a solid reputation, this offers (additional) legitimacy and strength to the demands and arguments of domestic actors (Alter 2011: 7). COs of such a reputable treaty body offer domestic actors the greatest possibilities of putting real pressure on the government and thus gives them higher chances of achieving the desired result. The greater the reputation or legitimacy of the

[2] Another example of a socialization model focusing on 'transnational norm entrepreneurs' is Koh's 'transnational legal processes' (Koh 1997: 2640 and 2645). For a related theory, see the social process of acculturation based on 'cognitive and social pressures to conform with the behavioral expectations of the wider culture' (Goodman and Jinks 2008: 726).

treaty body, the larger the reputational costs for the state will be when it does not act upon the COs will be.

Hypothesis 2: The greater the level of domestic or transnational mobilization with respect to the COs of a treaty body, the higher the effectiveness of COs of that treaty body.

## 3 Country selection

The Netherlands, New Zealand and Finland were selected, because they were considered most likely cases for the effectiveness of international monitoring in the field of human rights. There are several reasons for focusing on countries in which the process and the COs potentially "work" instead of countries in which one would expect hardly any result from the outset. This is, firstly, because much has already been written about the limited effectiveness of the process of state reporting and deficiencies in the functioning of the treaty bodies (Alston and Crawford 2000; Bayefsky 2000; Keller and Ulfstein 2012). This means that the instances and factors contributing to the ineffectiveness of most of the COs are rather well known. Secondly, a most-likely case selection also enables the analysis of the mechanisms and conditions under which specific COs have been effective. Such an analysis also helps to test the two hypotheses presented in the previous section. Focusing on least likely cases would not be particular fruitful for this endeavor (Landman 2009: 38–39).

The Netherlands, New Zealand and Finland — as established strong liberal democracies— are considered most likely cases. Western liberal democracies take the reporting requirement relatively seriously and report with the least delays (Leblanc et al. 2010). This is because these countries usually have an adequate bureaucratic and financial capacity to fulfil the rather burdensome reporting requirements and implement the numerous COs. Several rationalist liberal IR approaches discussed in section 2.2.2 have also shown that international human rights processes have been most effective in countries committed to the rule of law and democracy with a domestic human rights culture and domestic constituencies in the form of active civil society actors and NGOs, an independent judiciary and a free press as "an enabling domestic environment" (Helfer and Slaughter 1997: 329–330; Heyns and Viljoen 2001; Hafner-Burton 2013). This assumption also reflects a logic of appropriateness argument that international human rights norms are particularly effective in stable democracies, because human rights protection is considered to be the norm and the right thing to do.

Three relatively similar countries within the group of Western liberal democracies were chosen in order to avoid too much variance and thus limit the number of differing and potentially confounding variables within the group of Western liberal democracies as far as possible. Comparing most similar countries with considerable commonalities better enables isolating the factors that might explain (the variation in) the effectiveness of COs (Landman 2009: 33–34). The three countries are similar in the sense of not being a federal state and not having a strong constitutional court. Research

has shown that human rights implementation in a federal state adds an additional layer of complexity (Heyns and Viljoen 2001: 508). In addition, countries with powerful Constitutional or Supreme Courts have experienced a hampered reception of international human rights law. Several scholars found that courts in such countries tend to be reluctant to base their rulings on the European Convention on Human Rights (ECHR) as an independent source of law, because they primarily defend *national* human rights. As a result, such a strong national "pre-existing human rights judicial tradition" in countries like Germany, Italy and Ireland, was found to hamper the reception of ECHR and the jurisprudence of ECtHR (Keller and Stone Sweet 2008: 686; Helfer and Slaughter 1997: 332–333).

The decision was made to select the Netherlands and Finland, who both consistently rank high in democracy indexes and have a relatively open constitutional and political system for the reception of international law (The Economist Intelligence Unit 2013: 3). Finland is one of the Nordic countries, which are regarded as consistent compliers with international norms (Falkner et al. 2005; Sverdrup 2004). Finland was chosen from the Nordic countries, primarily because of the availability of academic literature in English about UN human rights treaties in Finland (Heyns and Viljoen 2001; Niemi 2003). Both the Netherlands and Finland are members of ECHR regime and the EU. The choice was made to include one country which is not a member of such regional (human rights) systems. This was inspired by earlier findings that UN human rights treaties and the COs are often overlooked because of the pervasiveness of ECHR and EU law and the stronger enforcement mechanisms in the form of the ECtHR and the Court of Justice of the European Union (Krommendijk 2012a: 473–474; Langford 2010; Heyns and Viljoen 2001: 520–521; Steiner 2000: 34). New Zealand was selected out of the group of non-European Western democracies that also include Australia, Canada and the United States. New Zealand is not a member of a regional (human rights) system like Canada or the United States. Neither is New Zealand a federal state like Australia, Canada or the United States, nor does it have a constitutional court like the United States. This article will, however, only marginally reflect on the differences between the three countries and the expectation of a higher effectiveness of the COs in a country which is not a member of a (strong) regional human rights regime (Krommendijk 2014a, b).

## 4 Research design: Methodology to assess the effectiveness of COs

This section will discuss the methodology used for the assessment of the effectiveness of the COs. The methodology is based on three approaches, whereby the last two are designed to answer the two hypotheses formulated in the previous section.

Firstly, this article tried to approximate the effectiveness of COs in the three countries. Table 2 lists the indicators that were used to assess the (in)effectiveness of COs. The assessment was largely based on an analysis of the documents in which the government gave a reaction to the COs, especially the periodic state reports sent to the treaty bodies and governmental papers and policy notes sent to parliament. This document analysis was complemented with semi-structured interviews of domestic

**Table 2** Indicators used to measure the effectiveness of COs

| Operationalising (in)effectiveness | Indicators |
|---|---|
| Ineffective COs. A distinction will be made between:<br>- COs that have been (explicitly) rejected<br>- Standing policy and legislative measures that are already in line with and simply coincide with the COs | Indicators that make the absence of a relation between CO and follow-up measures or actions less likely:<br>- Government challenges CO on factual and/ or legal grounds<br>- No interviewees hold that the CO played a (considerable) role in the follow-up measures<br>- No explicit link is made between CO and measures in Bills, policy documents or reports<br>- Follow-up measures were announced prior to COs<br>- Domestic actors have not used the COs in their lobby leading to the measures |
| (Partly) effective COs. A distinction will be made between the following modalities of effectiveness:<br>- New policy initiatives or extra resources for (existing) policy measures<br>- The adoption of legislative changes<br>- The raising of the salience of an issue (agenda setting function)<br>- The initiation of studies or evaluations<br>- The establishment of a new institution or the strengthening of an existing one<br>- The prevention of an intended policy or legislative course | Indicators that make a relation between CO and follow-up measures or actions more likely:<br>- An explicit link is made between CO and measures in Bills, policy documents or reports<br>- Measures are taken (shortly) after the CO<br>- Domestic actors have used the COs in their lobby leading to the measures<br>- The number of interviewees who mention the measures as an example of effectiveness |

stakeholders (in)directly involved in the reporting process, including government officials, NGO representatives, representatives from national human rights and Ombudsmen institutions, academic scholar, ministers, MPs, lawyers and judges.[3] 63 stakeholders were interviewed in the Netherlands, 62 in New Zealand and 50 in Finland in the period of 2010–2013.

Secondly, hypothesis 1 necessitates assessing whether the treaty bodies are considered legitimate. This was done on the basis of the interviews with government officials and members of government who were involved in the reporting process. These interviews served to establish the officials' attitudes and perceptions towards the quality of the different treaty bodies, the process of state reporting and the COs. In addition, several constructive dialogues with treaty bodies were attended to examine the quality of the dialogue and to observe the attitude of the officials in the government delegation in their interaction with the treaty body.

Thirdly, in order to test hypothesis 2 on domestic and transnational mobilization, this article examined whether domestic actors have been involved in the process and have

[3] In order to arrive at a comprehensive and reliable picture, domestic stakeholders in relation to all the six human rights treaties were interviewed. It was made sure that all the reporting cycles under the six treaties since the mid-1990s were covered and that officials from all the ministries involved in the reporting process were interviewed. Interviewees were asked how they regard the effectiveness of COs in their country and the COs' role in policy and legislative making. In addition, they were asked to give concrete examples of measures taken and changes made as a result of COs and specify the role of the COs in this regard. Secondly, the author questioned the interviewees about policy and legislative changes and measures that in his view could have been potentially (partly) influenced by COs.

used the COs in their domestic work. This means that this article studied the role of COs in the political decision making at the executive level, in the legislative process, in litigation and in NGO lobbying. It was, for example, examined whether MPs submit (written) parliamentary questions, motions or legislative proposals as a result or on the basis of the COs. Another matter is whether and how NGOs use the COs in their domestic advocacy and litigation. For the Netherlands, this was done through a (database) search of parliamentary minutes and papers, court judgments, newspaper articles and NGO websites for the period 1 September 1995 until 31 August 2011.[4] A similar search was conducted for parliamentary minutes in New Zealand.[5] In addition, UN documents and academic literature were used as well. This documentary analysis was supplemented with the views from interviewed domestic actors themselves about the organization of the process of reporting and the effectiveness of COs. The research for Finland was primarily based on a documentary analysis of UN documents and secondary literature as well as interviews.

## 5 Empirical results

Since the mid-1990s, there have been 74 legislative, policy and other measures in the Netherlands, New Zealand and Finland which were taken (partly) as a result of the COs (Krommendijk 2014a: 372). Before elaborating on these effective COs, it should be noted that a large majority of the COs remained ineffective. Out of a total of more than 1000 COs, more than 900 COs have not had any effect on policy, legislative or other measures in the three countries. At a first glance, this finding seems disappointing and low. One should, however, keep in mind that (neo)realist IR theoreticians would not expect any result from the COs. Likewise, as sketched in the second section, those following the rationalist external incentive model would neither expect much from the COs, especially because COs are legally non-binding and the treaty bodies are rather weak institutions. Legal positivists who are mainly concerned with "hard" law based on legally binding obligations also overlook the impact of COs for the same reasons. What's more, the finding of a certain degree of effectiveness of COs is also remarkable in the light of the anecdotal evidence presented by many scholars and observers that COs are almost never followed-up (Schmidt 2001: 215; O'Flaherty and O'Brien 2007: 143; Gaer 2011: 114). Schmidt et al. spoke about "chronic" or "distressing" levels of non-compliance and an "implementation crisis… of dangerous proportions" (Schmidt et al. 1997: 470). Others portrayed the system as "an empty diplomatic ritual" or as a system "in crisis" (Connors 2000: 4; Bayefsky 2000: 315).

One can broadly distinguish between two categories of ineffective COs. Firstly, the largest number of ineffective COs are the rather broadly and vaguely formulated ones. One example is the recommendation of the CERD to the Netherlands to "take adequate policy measures to ensure proper representation of ethnic minority groups in the labor market" (CERD 2004: 10). Likewise, the CESCR recommended Finland to "continue

[4] Use was made of, respectively, Parlando/ Overheid.nl, rechtspraak.nl, Lexis Nexis and Google Search. The search terms and results can be retrieved from the author upon request.

[5] On 14 June 2012, an advanced search was conducted on Hansard, which contains the transcript of debates in the New Zealand House of Representatives as well as written and oral questions since 1 January 2000.

strengthening its legal and institutional mechanisms aimed at combating discrimination" without giving any concrete policy suggestions (CESCR 2008: 22). In response to such COs, the governments have usually made clear that measures had (already) been taken that are in line with or address the COs sufficiently. Thus, COs frequently coincide with existing policy or legislative measures without having (had) any effect on them. Secondly, several COs have been rejected by the three governments. On these occasions, governments have justified their decision not to act upon COs by pointing to, amongst others, budgetary constraints, diverging views as to the desirability of policy action or other conflicting interests or human rights obligations. Hence, domestic political preferences have prevailed. The New Zealand government dismissed several COs because "the intervention proposed by the [CEDAW] Committee is not preferred by New Zealand" (MWA 2008: 14–16). Examples are the continued use of electroshock weapons (tasers) by the police and the unwillingness to halt the privatization of (some) prisons. The Dutch government was, for example, unwilling to change its euthanasia policy or revise the lifting on the ban of brothels as a result of the COs. COs that were related to those points have simply been taken note of. Dutch government officials spoke about "agree to disagree" points and an irreconcilable (fundamental) difference of opinion.

Most of the legislative, policy or other measures that were taken (partly) as a result of the COs were related to the COs of the CRC Committee, at least in absolute terms.[6] 33 of the 74 responses related to the COs from the CRC Committee (Krommendijk 2014a: 374). This different position of the COs of the CRC Committee is illustrated by Table 3. Table 3 also shows that there are differences between the three countries, with a slightly higher effectiveness of the COs in Finland.[7] Noteworthy is that the COs have *not* been more effective in New Zealand than in the other two countries. This is surprising in the light of the expectation that the COs would be more effective in a country which is not a member of a (strong) regional human rights system but is only part of the UN human rights machinery (see section 3). This finding can, however, be explained by the absence of an external human rights check for New Zealand in line with the ECHR and ECtHR, which has contributed to a lower salience and more limited role of human rights in general (Krommendijk 2012b: 610–614).

The next section will closely examine which hypothesis or hypotheses might account for the effectiveness of the COs. It will also focus specifically on the

[6] The differences among the six treaty bodies and six countries are less significant in relative terms, i.e., the number of effective COs as a percentage of the total number of COs of a treaty body. The following statistical data should, however, be taken with a grain of salt. This is because it was difficult to arrive at a precise number for the total of COs for each treaty body and country, since one paragraph in the COs often contains multiple recommendations. In addition, these figures do not tell anything about the depth of effectiveness (whether COs merely had an agenda setting function or whether they had a more profound effect in the form of a legislative change) and the relative importance of the COs amongst other factors in contributing to a certain change. The effectiveness of the COs of the six treaty bodies is as follows: 8,2 % of the COs of the Committee Against Torture have been effective (9 out of 109); 8,1 % of CRC Committee (33 out of 401 COs); 6,5 % of CERD (10 out of 154), 6,1 % of the CEDAW Committee (12 out of 224); 3,6 % of the HRC (4 out of 109) and 0 % of CESCR (0 out of 185). For Finland 7,4 % of the COs adopted by the six treaty bodies have been effective (30 out of 401 of the COs), 5,9 % for New Zealand (20 out of 341) and 5,4 % for the Netherlands (24 out of 446).

[7] At the same time, a smaller number of COs has been rejected and Finnish officials have been more positive about the value of reporting. The difference can be explained by the presence of more favorable domestic factors in Finland, such as the central organization of the reporting process and the strong compliance culture (Krommendijk 2014a: 317–363; 2014b).

**Table 3** Quantitative overview of the number of legislative, policy or any other measures that have been taken in the Netherlands, New Zealand and Finland as a result of the COs

| | CRC | CEDAW | ICERD | CAT | ICCPR | ICESCR | TOTAL |
|---|---|---|---|---|---|---|---|
| NL | 11 | 7 | 4 | 1 | 1 | 0 | 24 |
| NZ | 11 | 3 | 2 | 4 | 0 | 0 | 20 |
| FIN | 11 | 4 | 4 | 4 | 3 | 0 | 30 |
| TOTAL | 33 | 14 | 10 | 9 | 4 | 0 | 74 |

For Finland, there have been four effective COs which were recommended by two or more treaty bodies. These are not put in the table, which explains why the number of effective COs for Finland adds up to 26 instead of 30

differences between the effectiveness of the COs of the six treaty bodies and especially the higher effectiveness of the COs of the CRC Committee.

## 6 Examining the hypotheses

### 6.1 Hypothesis 1: Reputational and legitimacy-based explanations

The reputational and legitimacy-based explanations can hardly account for the effectiveness of COs. Government members and officials were generally negative about the legitimacy of the six treaty bodies. The views demonstrating a lack of legitimacy and reputation of the treaty bodies in the eyes of government officials and members of government were corroborated by public statements in debates or documents as well as the views expressed in internal memos. These views also echo the observations of interviewed representatives from human rights institutes and NGOs and the scholarly literature (Alston and Crawford 2000; Bayefsky 2000; Keller and Ulfstein 2012). Note that Finnish government officials were not as negative and dismissive as Dutch and New Zealand officials. They referred to the shortcomings, but they were generally better able to put these deficiencies into perspective by pointing to the difficult context of the treaty bodies, such as the limited resources and time as well as the politicized elections for new expert members (Krommendijk 2014b: 357–359).

The following statements illustrate the low reputation and limited legitimacy of the treaty bodies in the eyes of government officials. One Dutch official from the Ministry of Social Affairs for example argued that the Committee on Economic, Social and Cultural Rights is “an amateurish Committee that made arbitrary decisions. As compared to, for instance, the ILO institutions, it functioned as a kangaroo court” (Reiding 2007: 146). Officials pointed to the basic and limited knowledge of several treaty body members about the national context and the poor preparation of some members. A New Zealand official held that treaty bodies do not have the background or expertise to deal with “huge policy issues” with “huge significance for states” (MacKay 1999: 16). Likewise, an internal briefing of the New Zealand Ministry of Women’s Affairs about the COs of the CEDAW Committee argued that: “it is disappointing that some of the recommendations do not fully reflect New Zealand’s domestic situation” (MWA 2008: appendix B). Officials also lamented the one-sided approach of treaty bodies and the

fact that they easily take over information and criticism of NGOs without any factual check. The same briefing of the Ministry of Women's Affairs about the CEDAW Committee stated that "some criticism … is unbalanced. In particular, some of the criticism gives undue weight to the input of non-governmental organization without any supporting evidence" (MWA 2008: appendix B). Moreover, government officials had the feeling that some of the COs were already completed before the actual dialogue, which in their view also hampered the legitimacy of treaty bodies. In addition, officials criticized the lack of independence and the political nature of the process as well. New Zealand Prime Minister Helen Clark stated about the Committee on the Elimination of Racial Discrimination: "This is a Committee on the outer edges of the UN system. It is not a court. It did not follow any rigorous process as we would understand one. In fact, the process itself would not withstand scrutiny at all […] Well, I think I have a somewhat better understanding of the UN system than they do" (Charters and Erueti 2005: 258).

These statements show that those who need to be persuaded; the government officials and members of government do not see the potential persuaders (the treaty bodies) as legitimate. Treaty bodies, thus, have a rather bad reputation. This reduces the reputational costs for states when they do not act upon the COs. There are also other reasons for the limited reputational costs for states and especially established democracies. Firstly, the COs and the treaty bodies are hardly known outside a small circle of diplomats and government officials (Steiner 2000: 38–39; Downs and Jones 2002: 112; Simmons 2009: 124–125). Secondly, it is often not clear when states deviate from COs, because COs are generally rather ambiguous and treaty bodies hardly determine in explicit terms in their COs that a country has violated a treaty provision (Guzman 2008: 1863). Thirdly, as was discussed before, established democracies with a rather solid human rights reputation, such as Netherlands, New Zealand and Finland, can relatively easily resist implementing unfavorable COs (see section 2.2.1). This is because a strong human rights-abiding status makes it possible to offset reputational costs of COs.

The question, however, remains as to whether or not the officials speak ill of the treaty bodies because the treaty bodies do not have legitimacy in their eyes or if they are trying to make the COs appear illegitimate because they simply do not like the recommendation.[8] In both cases the outcome would be non-implementation, but the underlying causal mechanisms are quite different. The answer is a bit of both. It is a natural reaction for governments to initially disagree with recommendations when they require a change of the status quo (Cohen 1996). This defensive attitude also stems from a certain degree of self-righteousness, especially among Dutch and New Zealand government officials. UN human rights treaties and the treaty bodies are primarily seen as relevant for others. An internal debriefing to the New Zealand Minister for Social Development about the dialogue with the CRC Committee in 2011, for example, mentioned that: "The Chair of the Committee later told me that our examination was though as they look to New Zealand as a world leader and they wanted to really test us and learn from our experience" (MSD 2011: para. 12). In order to justify their dismissive attitude, governments and government officials portrayed the treaty bodies — and their COs — as illegitimate by focusing on their deficiencies, such as their limited expertise or independence. They did this in order to downplay the necessity

[8] I would like to thank the peer reviewer for highlighting this point.

of implementing (specific) COs. The bad reputation of the treaty bodies in the eyes of officials thus enabled officials to discredit the COs.

One question is whether the variance in the effectiveness of COs of the various treaty bodies can be explained by different reputations of certain treaty bodies. This is not the case. Two findings in particular support this conclusion. Firstly, the lower legitimacy and reputation of the CRC Committee and its COs in the eyes of officials in all three countries has not led to a lower effectiveness of the COs in comparison with the COs of the other treaty bodies, as hypothesis 1 would predict. On the contrary. In section 5 it was argued that most of the follow-up measures as a result of the COs related to the COs of the CRC Committee. Government officials were, however, not more positive about the CRC Committee and its COs, compared with the other treaty bodies. They were sometimes even more critical about the CRC Committee (Krommendijk 2014a: 377–378). This is well illustrated by the views of Dutch government officials about the CRC Committee. One Dutch government official counted the CRC Committee among the "activist" committees that do not always keep a close eye on the text of the CRC. Some officials even held that the CRC Committee was undeservedly critical and tendentious and approached the state delegation without respect in some instances. They specifically singled out the attack of the Indonesian chair during the dialogue in 1999, allegedly based on personal feelings owing to the colonial past. One official spoke about "sneering and conceited remarks" about the "rotten policy" in the Netherlands. In addition, it was noted that the great majority of expert members of the CRC Committee had not read the report and did not seem interested in the discussion but primarily in other issues, such as their return flight or the submission of their expense account. Legitimacy-based explanations can thus not account for the higher effectiveness of the COs of the CRC Committee.

Secondly, further support against the hypothesis that a higher legitimacy translates into a higher effectiveness are the COs of the HRC monitoring the ICCPR. These COs have remained almost completely ineffective even though government officials in all three countries were less negative about the HRC. The HRC has a reputation of being the most professional and most serious committee. Officials generally mentioned the sessions and dialogues as among the best given the detailed and focused questions and structured dialogue. These relatively positive views have, nonetheless, not resulted in a higher effectiveness of the COs of the HRC. Table 3 showed that the COs of the HRC have been least effective of all the six treaty bodies, with the exception of the CESCR. Only four COs of the HRC have had some effect (Krommendijk 2014a: 378).

The only exception to the finding that legitimacy-based explanations cannot or hardly account for the effectiveness COs is the position of the Committee Against Torture in New Zealand and — to a lesser extent — Finland. Officials in both countries did not really question the legitimacy of the Committee Against Torture and they considered the dialogue with and the COs of this Committee relatively useful. Several government officials in New Zealand argued, for example, that the dialogue and the resulting COs in 2009 were better informed and more sensible. The latter was also attributed to the inclusion in the government delegation to the dialogue with the Committee Against Torture of officials from the Department of Corrections who have an operational background. This led to a more technical and better informed discussion with this Committee. The COs of 2009 consequently trickled through to the Department of Corrections and a couple of things were done at the operational level. Another

reason for the latter was the open attitude of some officials. One official from the New Zealand Corrections Departments, for example, expressed a genuine willingness to learn from overseas and also change things to improve them. He noted that he was inspired by the dialogue with the Committee Against Torture in 2009 and persuaded to act upon the COs. After the dialogue he also exchanged several issues with a Committee member via email. The latter official initiated training workshops on the framework of international human rights obligations for prison personnel together with the New Zealand Human Rights Commission. Another example of persuasion on the basis of the Committee Against Torture are the measures taken to strengthen the independence of the Independent Police Conduct Authority. This was done as a result of the COs 2009 of the Committee in which it had expressed its concern about the impartiality of the Authority with respect to investigation into alleged acts of torture and ill-treatment by members of the police, because of the inclusion of current and former police officers (CAT 2009: para. 12). It recommended the Authority to be staffed with independent experts only. There was initial reluctance among government officials to address this CO because legislative changes had recently been made to assure the Authority's independence already. The COs were, nonetheless, acted upon and led to a big overhaul of staff. One factor that contributed to the willingness to take measures was that the Chair of the Police Conduct Authority, Justice Goddard, was deeply concerned about the CO and its effect on how the Authority would be perceived. This might be because of her interest in and knowledge about the international human rights framework and its importance, which is illustrated -or influenced by- her election to the Subcommittee on the prevention of torture in October 2010.

According to hypothesis 1, the higher the legitimacy and reputation of the treaty body in the eyes of government officials, the greater the effectiveness of COs of that respective treaty body. There are few empirical results from the three established democracies included in this research that could support this hypothesis, with the possible exception of the Committee Against Torture and some of its COs in New Zealand.

### 6.2 Hypothesis 2: Domestic and transnational mobilization

The effectiveness of COs can primarily be explained by the mobilization and lobby of domestic actors. The following three examples, one from every country, show that domestic mobilization is crucial for the effectiveness of COs. They also illustrate how domestic actors, such as NGOs and MPs, use the COs to strengthen and legitimize their claims. The first example includes the steps taken in the Netherlands to avoid the joint detention of juvenile offenders and children institutionalized for behavioral problems. The CRC Committee recommended this in 2004 (CRC 2004: para. 59(d)). Shortly after the dialogue in 2004 between the government delegation and the CRC Committee, the government decided to house these two categories of minors separately. The government argued that this decision was made "partly in response" to the CO (UN Doc. 2008: para. 271). It took, however, until 1 January 2010 before the process of separate housing was eventually completed. In this period, various domestic actors kept pressure on the government to expedite this process. The CRC and the CO were used as a supporting argument by several domestic actors, including MPs and children's rights NGOs (TK 2009/10: 12). Government officials and NGO representatives that were

interviewed confirmed that the CRC in general and the CO in particular were two of the many factors that played a role in accelerating the separate housing of these two categories of minors.

The most prominent example of an effective CO in New Zealand was the prohibition of corporal punishment as the CRC Committee recommended in 1997 and 2003 (CRC 2003: para. 29–30). As a matter of fact, it was not a prohibition, but a repeal of section 59 of the Crimes Act 1961 which provided a defence for parents charged with assaulting their children to use reasonable force for the purpose of correction. The legislative change was initiated by the MP Bradford (Green Party). She announced her private members Bill on 6 October 2003, 3 days after the CRC Committee adopted the COs. Bradford explicitly stated that she was "stirred into political action by the recommendations that the UN Committee on the Rights of the Child made on two occasions" (Wood et al. 2008: 204). The COs of the CRC Committee were not sufficient in themselves to realize the legislative change. A comprehensive and detailed study of 2008 about the issue concluded that the eventual repeal was due to "rich combination of influences that helped to bring about the eventual change" (Wood et al. 2008: 33). Crucial was the advocacy of the Children's Commissioner and NGOs like End Physical Punishment of Children (EPOCH), UNICEF and Save the Children. There were regular exchanges between Bradford and child advocates and children's NGOs, some of which also acted as advisors to her. This lobby already started before the COs 1997 and continued until 2007 when the Act was adopted after a lengthy and complex political and legislative process. The reason that it took more than 4 years before the Act was adopted was because of the heavy opposition from Christian lobby groups and large parts of the population who feared that repeal would seriously undermine the authority and autonomy of parents and give children an excuse to misbehave (Wood et al. 2008: 55 and 57). In such a polarized environment, the COs eventually helped -amongst many other factors- to tilt the balance in favor of the children's rights minded proponents of repeal. The COs were an (international) endorsement and support for them. It gave them an additional level of legitimacy and as a justification for change. The CRC and the COs were also considered useful instruments for advocates to hang their arguments on and gave them a strong position to discuss and advocate the matter with Ministers.

The third example of an effective CO is the recommendation of the CRC Committee to Finland to establish a separate Children's Ombudsman (CRC 1996: para. 1027). In 2000, the government expressed the view that it was "unlikely, in the current political atmosphere, that a separate Children's Ombudsman would be created," especially because there was no budget for it (UN Doc. 2000: para. 43). Nonetheless, a new government "arrived at a significant milestone in 2003" by including the establishment of a separate Ombudsman as one of the objectives in its Government Programme of 24 June 2003 (UN Doc 2003: para. 37). The Children's Ombudsman took office on 1 September 2005. What was the role of the COs in this change in the position of the government? It is important to note that there had already been a discussion in Finland about the matter since the 1980s. It had especially been on the political agenda since 1995, prior to the COs 1996 (Niemi 2003: 36). This means that the COs primarily coincided with the will and needs at the national level. The COs played a strong role among many other factors by increasing the pressure and by helping proponents in national discussions with an extra argument. In that way, the COs gave a final or extra

push and, hence, sped up the process. One important factor was the role of NGOs who repeated and, hence, kept the issue on the agenda.

The three examples show that effective COs have not been a sufficient cause on their own to instigate a change in policy or legislation. Rather, COs have almost always been a contributory cause among many other factors that jointly had an effect (Cohn 1991: 297; Kälin 2012: 64). This means that COs hardly do any "heavy lifting." This does, however, not mean that they are merely epiphenomenal. COs have had an intensifying or catalyst effect, whereby they supported, strengthened or legitimized the arguments of domestic actors. COs have in this way supported or given extra strength to a certain direction and have pushed or accelerated a certain political process. The examples also show that an important precondition for the "landing" of the COs is the existence of a political momentum in the form of an on-going national debate. In addition, the concerns in the COs should resonate with the activities, interests and claims of some domestic actors. Domestic actors play an essential role in the political or legal process which leads to the COs' effectiveness.

One question is whether mobilization is always a necessary condition. Has there been instances in which governments have acted upon the COs in the absence of (significant) domestic mobilization? This only happened in a few cases when implementation of COs had only limited financial implications. The effectiveness of such COs was frequently the result of endeavors of individual government officials based on their personal preferences. Officials sometimes used the COs as an additional argument or justification to convince their minister or parliament of the necessity of change. The endeavors of officials only bore results in the absence of public attention when there was no or hardly any domestic opposition. Individual government officials were hardly in a position to "decide" a national debate when the government, parliament or public opinion was against change. One example is the abolishment of the possibility of imposing a life imprisonment on minors in the Netherlands in 2005 (CRC 2004: para. 59). One government official interviewed, who was closely involved in the drafting of the bill, stated that the legislative amendment was a clear result of the COs. The official argued that it was the official's personal initiative to take up this issue. The official perceived political room for this proposal and anticipated that both the responsible minister and parliament would agree with it. The interviewed official argued that agreement would have been easy to secure because life imprisonment of minors was a relative non-issue in the Netherlands and had never been applied in practice. The interviewed official saw implementation of these COs primarily as a symbolic act without actual (political) costs and consequences. Another example is the criminalization of torture in Finland. On 1 January 2010, new penal provisions entered into force with that included a separate punishable offence for torture. This issue was considered a relative non-issue and of "symbolic value" rather than something which would amount to a real change requiring considerable (additional) resources (UN Doc. 2005: para. 4). A related matter is whether domestic mobilization has always been sufficient. This is certainly not the case, nor does mobilization always result in (the desired) policy change in line with the COs. Lobby and advocacy has obviously not always been successful and has not led to legislative, policy or any other measures each time. Examples include several COs in relation to the asylum legislation and procedure in the three countries, even though these COs have been used quite frequently in the lobby of NGOs and by predominantly left-wing and green MPs.

The pertinent question that remains to be answered is whether the difference in the effectiveness of COs of the six treaty bodies could be explained on the basis of different levels of domestic and transnational mobilization. It was argued in section 6.1 that reputational and legitimacy-based explanations cannot account for this variance in the effectiveness of COs. Rather, it is the mechanism of domestic and transnational mobilization that is determinative. There has been more mobilization and lobby of domestic actors in relation to the CRC Committee than the other treaty bodies. In the Netherlands there were, for example, 56 parliamentary minutes in which MPs referred to the COs of the CRC Committee, while the COs of the other five treaty bodies together were mentioned in only 44 min (Krommendijk 2014a: 218 and 256). Media coverage of the reporting process under the CRC has also been significantly higher in the Netherlands than any of the other five treaty bodies. 37 of the 97 articles referring to the reporting process under the six treaties dealt with the CRC (Krommendijk 2014a: 256). In addition, the strongest and most active NGOs with respect to reporting in the Netherlands were children's rights NGOs. A similar picture can be sketched for New Zealand and Finland. In all three countries, there have been large coalitions of children's rights NGOs having an interest in and focusing on the reporting process under the CRC. These NGOs have been more professional and better funded than many of the other domestic human rights NGOs. They have deliberately used reporting and COs to inform their advocacy and to support their arguments. What's more, in New Zealand and Finland there has also been a Children's Ombudsman who has been closely involved in the reporting process and the monitoring of the implementation of COs. Both Ombudsmen have used the COs as an important part of their advocacy and lobby work. A similar picture can be sketched for the mobilization in relation to the CEDAW Committee, which is slightly less than that in relation to the CRC Committee (Krommendijk 2014a: 255–257 and 369–372). By contrast, mobilization on the basis of the COs of the other four treaty bodies, and especially the HRC and CESCR, has been considerably lower in the three countries (Krommendijk 2014a: 369–372).

The finding that domestic mobilization in the three established democracies primarily exists in relation to the COs of the CRC Committee, and to a lesser extent the COs of the CEDAW Committee, suggests that the rights of innocent or vulnerable people may be more of an issue in established liberal democracies than elsewhere in the world. This is also visible in Table 3 indicating that the effectiveness of COs related was highly concentrated around two human rights issues: rights of the child (CRC) and, to a lesser extent, discrimination against women (CEDAW). It could be argued that in other types of countries other human rights treaties or issues receive more attention. Further research is necessary to establish whether this is indeed the case. The limited evidence available so far indicates that the CRC has had more effects than other treaties in some countries (Simmons 2009, 357–358). This illustrates that children's rights are generally easier to get around and have a built-in pressure group (children), on behalf of whom many professional NGOs operate. Children's rights are also seen as less controversial, at least in principle and on an abstract level.

The observed variance in domestic and transnational mobilization also implies that there is not a strong relation between the legitimacy and reputation of the treaty bodies and the level of mobilization, contrary to the expectation formulated at the end of section 2.2.2. As said before, there has almost been no mobilization on the basis of the HRC even though this treaty body enjoys the most solid reputation of the six treaty

bodies. By contrast, the greatest level of mobilization existed on the basis of the COs of the CRC Committee, which enjoyed considerably less legitimacy in the eyes of government officials than the HRC. Some anecdotal evidence was, however, found in support of this relationship when comparing the mobilization in relation to the six UN human rights treaties with several Council of Europe mechanisms. The ECtHR, the European Committee on the Prevention of Torture (ECPT) and the European Commission against Racism and Intolerance (ECRI) were seen by Dutch government officials and other domestic actors as more legitimate than the UN treaty bodies. Partly because of this, there has been greater domestic mobilization in the Netherlands in relation to these regional human rights monitoring bodies (Krommendijk 2014a, 113–114, 137 and 209–210). Future research should examine this relationship between the legitimacy and reputation of international (human rights) monitoring bodies and mobilization in more detail.

Hypothesis 2 expected that the greater the level of domestic or transnational mobilization, the higher the effectiveness of COs. This article found empirical support for this hypothesis. The dominant mechanism explaining the effectiveness of most of the COs in the three established democracies is indeed the lobby and advocacy of domestic and transnational actors.

## 7 Conclusion

This article showed that there is a general propensity in the Netherlands, New Zealand and Finland not to take measures as a result of the COs. This does, however, not mean that the COs have remained completely ineffective. There have seen several COs in the three countries that were important factors contributing to policy or legislative change. The effectiveness of most of the COs can primarily be explained by domestic actors who have both pressed and persuaded the government to act upon the COs. This corresponds to the recent conclusion of Hafner-Burton that international laws and procedures must "creep into domestic affairs [and] be taken up by local advocates" in order to be effective (Hafner-Burton 2013: 11). When this happens, the COs can play a valuable role and contribute to policy or legislative change or any other measures. COs can give strength to the arguments and demands of domestic actors in persuading governments to change their policy or legislation. COs can thus act, in the words of Simmons and Dai, as a valuable tool or focal point which supports domestic mobilization (Simmons 2009: 135; Dai 2013: 96).

This article showed that here were hardly any effective COs in the three established democracies which could (solely) be explained on the basis of reputational and legitimacy-based arguments. This fits well into the (empirical) literature on this matter which found that policy change through persuasion alone has hardly occurred in practice (March and Olsen 1998: 952–953; Kelley 2004: 430; Neumayer 2005: 930; Risse and Ropp 2013: 14). The treaty bodies generally have a bad reputation in the eyes of government officials. The treaty bodies' negative reputation and limited legitimacy has enabled government officials to ignore or explicitly reject COs. Some of the COs of the Committee Against Torture have, however, escaped this unfortunate fate. This difference can be explained by the clearly delimited and restricted nature of the treaty and issue area, which is also rather "technical." In addition, partly because of these

different features, some government officials have also been more willing to learn from the Committee Against Torture.

Be that as it may, COs have not solely remained "paper pushing" documents, because there have been several COs which have been a contributory - and sometimes even a decisive- factor contributing to legislative and policy change. At the same time, COs have not been "policy prompting," because there have hardly been any measures that would not have come about without COs and which were only taken because of the COs. Rather, COs constitute "practical props" which can give extra strength or legitimacy to the arguments and demands of domestic actors when they are advocating for policy or legislative change.

**Acknowledgments** This article is part of a PhD project (2009–2014) which culminated in a book (Krommendijk 2014a). The author wishes to thank the peer reviewers, the various participants of workshops and conferences in St. Gallen, Oslo and Copenhagen as well as Valentina Carraro, Thomas Conzelmann, Xinyuan Dai, Claudia Engelmann, Birsen Erdogan, Daniel Hill, Courtney Hillebrecht, Yonathan Lupu, Ellen Mastenbroek, René Rouwette, Theresa Squatrito, Andreas von Staden and Anna van der Vleuten for their valuable comments on earlier drafts.



## References

Alston, P. (1989). *Initial report on enhancing the long-term effectiveness of the United Nations human rights treaty system.* UN Doc. A/44/668.

Alston, P., & Crawford, J. (Eds.). (2000). *The future of UN human rights treaty monitoring*. Cambridge: Cambridge University Press.

Alter, K. J. (2011). Tipping the balance: international courts and the construction of international and domestic politics. *Cambridge Yearbook of European Legal Studies, 13*, 1–21.

Alvarez, J. E. (1991). Book review essay. The quest for legitimacy: an examination of the power of legitimacy among nations by Thomas M. Franck. *International Law and Politics, 24*, 199–267.

Anagnostou, D. (2010). Does European human rights law matter? Implementation and domestic impact of Strasbourg Court judgments on minority-related policies. *The International Journal of Human Rights, 14*(5), 721–743.

Bayefsky, A. F. (Ed.). (2000). *The UN human rights system in the 21st century*. The Hague: Kluwer.

Börzel, T. A., & Risse, T. (2000). When Europe hits home: Europeanization and domestic change. *European Integration Online Papers, 4*(15), 1–13.

Brewster, R. (2009). Unpacking the state's reputation. *Harvard International Law Journal, 50*(2), 231–269.

Brewster, R. (2013). Reputation in international relations and international law theory. In J. Dunoff & M. Pollack (Eds.), *Synthesizing insights from International Law and International Relations* (pp. 524–543). Cambridge: Cambridge University Press.

Brunnée, J., & Toope, S. J. (2013). Constructivism and international law. In J. Dunoff & M. Pollack (Eds.), *Synthesizing insights from International Law and International Relations* (pp. 119–145). Cambridge: Cambridge University Press.

CAT (2009). *Concluding observations of the Committee Against Torture: New Zealand.* UN Doc. CAT/C/NZL/CO/5.

CERD (2004). *Concluding observations of the Committee on the Elimination of Racial Discrimination: the Netherlands*. UN Doc. CERD/C/NLD/CO/17-18.

CESCR (2008). *Concluding observations of the Committee on Economic, Social and Cultural Rights: the Netherlands*. UN Doc. E/C.12/FIN/CO/5.

Charters, C., & Erueti, A. (2005). Report from the inside: the CERD Committee's review of the Foreshore and Seabed Act 2004. *Victoria University of Wellington Law Review, 36*, 257–288.
Checkel, J. T. (2001). Why comply? Social learning and European identity change. *International Organization, 55*(3), 553–588.
Cichowski, R. A. (2006). Introduction. Courts, democracy, and governance. *Comparative Political Studies, 39*(1), 3–21.
Cohen, S. (1996). Government responses to human rights reports: claims, denials, and counterclaims. *Human Rights Quarterly, 18*(3), 517–543.
Cohn, C. (1991). The early harvest: domestic legal changes related to the Human Rights Committee and the Covenant on Civil and Political Rights. *Human Rights Quarterly, 13*(3), 295–321.
Conant, L. (2006). Individuals, courts, and the development of European social rights. *Comparative Political Studies, 39*(1), 76–100.
Connors, J. (2000). An analysis and evaluation of the system of state reporting. In A. F. Bayefsky (Ed.), *The UN human rights system in the 21st century* (pp. 3–21). The Hague: Kluwer.
CRC (1996). *Concluding observations of the Committee on the Rights of the Child: Finland*. UN Doc. CRC A/51/41.
CRC (2003). *Concluding observations of the Committee on the Rights of the Child: New Zealand*. UN Doc. CRC/C/15/Add.216.
CRC (2004). *Concluding observations of the Committee on the Rights of the Child: the Netherlands*. UN Doc. CRC/C/15/Add.227.
Dai, X. (2005). Why comply? The domestic constituency mechanism. *International Organization, 59*, 363–398.
Dai, X. (2013). The "compliance gap" and the efficacy of international human rights institutions. In T. Risse, S. C. Ropp, & K. Sikkink (Eds.), *The persistent power of human rights. From commitment to compliance* (pp. 85–102). Cambridge: Cambridge University Press.
Downs, G. W., & Jones, M. A. (2002). Reputation, compliance, and international law. *The Journal of Legal Studies, 31*(1), 95–114.
Downs, G. W., Rocke, D. M., & Barsoom, P. N. (1996). Is the good news about compliance good news about cooperation? *International Organization, 50*(3), 379–406.
Falkner, G., Treib, O., Hartlapp, M., & Leiber, S. (2005). *Complying with Europe. EU harmonization and soft law in the member states*. Cambridge: Cambridge University Press.
Fisher, R. (1981). *Improving compliance with international law*. Charlottesville: University of Virginia Press.
Franck, T. M. (1990). *The power of legitimacy and institutions*. New York: Oxford University Press.
Gaer, F. D. (2011). Implementing treaty body recommendations: Establishing better follow-up procedures. In M. C. Bassiouni & W. A. Schabas (Eds.), *New challenges for the UN human rights machinery* (pp. 107–121). Antwerpen: Interesentia.
Gibson, J. L., & Caldeira, G. A. (1995). The legitimacy of transnational legal institutions: compliance, support, and the European Court of Justice. *American Journal of Political Science, 39*(2), 459–489.
Goodman, R., & Jinks, D. (2008). Incomplete internalization and compliance with human rights law. *The European Journal of International Law, 19*(4), 725–748.
Gourevitch, P. (1978). The second image reversed: the international sources of domestic politics. *International Organization, 32*(4), 881–912.
Guzman, A. T. (2008). *How international law works*. New York: Oxford University Press.
Hafner-Burton, E. M. (2013). *Making human rights a reality*. Princeton and Oxford: Princeton University Press.
Hafner-Burton, E. M., & Tsutsui, K. (2005). Human rights in a globalizing world: the paradox of empty promises. *American Journal of Sociology, 110*(5), 1373–1411.
Hathaway, O. A. (2002). Do human rights treaties make a difference? *Yale Law Journal, 111*, 1935–2042.
Hawkins, D., & Jacoby, W. (2010). Partial compliance: a comparison of the European and Inter-American Courts of Human Rights. *Journal of International Law and International Relations, 6*(1), 35–85.
Helfer, L. R., & Slaughter, A. M. (1997). Toward a theory of effective supranational adjudication. *Yale Law Journal, 107*(2), 273–391.
Heyns, C., & Viljoen, F. (2001). The impact of the United Nations human rights treaties on the domestic level. *Human Rights Quarterly, 23*, 483–535.
Hill, D. (2010). Estimating the effects of human rights treaties on state behavior. *Journal of Politics, 72*, 1161–1174.
Hillebrecht, C. (2014a). *Domestic politics and international human rights tribunals. The problem of compliance*. Cambridge: Cambridge University Press.

Hillebrecht, C. (2014b). The power of human rights tribunals: compliance with the European Court of Human Rights and domestic policy change. *European Journal of International Relations*, *forthcoming*.

Hurd, I. (1999). Legitimacy and authority in international politics. *International Organization, 53*(2), 379–408.

Kälin, W. (2012). Examination of state reports. In H. Keller & G. Ulfstein (Eds.), *UN human rights treaty bodies. Law and legitimacy* (pp. 16–72). Cambridge: Cambridge University Press.

Keck, M. E., & Sikkink, K. (1999). Transnational advocacy networks in international and regional politics. *UNESCO*, 89–101.

Keller, H., & Stone Sweet, A. (2008). *A Europe of Rights. The impact of the ECHR on National Legal Systems*. Oxford: Oxford University Press.

Keller, H., & Ulfstein, G. (2012). Conclusions. In H. Keller & G. Ulfstein (Eds.), *UN human rights treaty bodies. Law and legitimacy* (pp. 414–425). Cambridge: Cambridge University Press.

Kelley, J. (2004). International actors on the domestic scene: membership conditionality and socialization by international institutions. *International Organization, 58*, 425–457.

Keohane, R. O. (1997). International relations and international law: two optics. *Harvard International Law Journal, 38*(2), 487–502.

Koh, H. H. (1997). Why do nations obey international law? *Yale Law Journal, 106*, 2599–2659.

Krommendijk, J. (2012a). The (Non) Implementation of Recommendations of the Committee on the Elimination of Racial Discrimination in the Netherlands Explained. *Perspectives on European Politics and Society, 13*(4), 462–479.

Krommendijk, J. (2012b). Can Mr. Zaoui freely cross the Foreshore and Seabed? The effectiveness of UN human rights monitoring mechanisms in New Zealand. *Victoria University of Wellington Law Review, 43*(4), 579–616.

Krommendijk, J. (2014a). *The domestic impact and effectiveness of the process of state reporting under UN human rights treaties in the Netherlands, New Zealand and Finland. Paper-pushing or policy prompting?* Antwerp: Intersentia.

Krommendijk, J. (2014b). Finnish exceptionalism at play? The effectiveness of the recommendations of UN human rights treaty bodies in Finland. *Nordic Journal of Human Rights, 32*(1), 18–43.

Landman, T. (2009). Social science methods and human rights. In F. Coomans, F. Grunfeld, & M. T. Kamminga (Eds.), *Methods of human rights research*. Antwerp: Intersentia.

Langford, M. (2010). Refraction? The constitutional-regional variable and the domestic effects of international human rights treaties, *unpublished conference paper*.

Leblanc, L., Huibregtse, A., & Meister, T. (2010). Compliance with the reporting requirements of human tights conventions. *International Journal of Human Rights, 14*(5), 789–807.

Lupu, Y. (2013). The informative power of treaty commitment: using the spatial model to address selection effects. *American Journal of Political Science, 57*(4), 912–925.

MacKay, D. (1999). The UN Covenants and the Human Rights Committee. *Victoria University of Wellington Law Review, 29*(1), 11–18.

March, J. G., & Olsen, J. P. (1998). The institutional dynamics of international political orders. *International Organization, 52*(4), 943–969.

Martin, L. L. (2013). Against compliance. In J. Dunoff & M. Pollack (Eds.), *Synthesizing insights from international law and international relations* (pp. 591–610). Cambridge: Cambridge University Press.

Mitchell, R. B. (1994). Regime design matters: intentional oil pollution and treaty compliance. *International Organization, 48*(3), 425–458.

Moravcsik, A. (1995). Explaining international human rights regimes: liberal theory and Western Europe. *European Journal of International Relations, 1*(2), 157–189.

MSD (2011). *Debrief on New Zealand's examination before the United Nations Committee on the Rights of the Child*. 3 February 2011, A5296830.

MWA (2008). *Overview of the recommendations of the Committee on the Elimination of Discrimination Against Women*. 31 March 2008, PIN-02-2007.

Neumayer, E. (2005). Do international human rights treaties improve respect for human rights? *Journal of Conflict Resolution, 49*(6), 925–953.

Niemi, H. (2003). national implementation of findings by United Nations human rights treaty bodies: a comparative study. *Research reports Åbo Akademi University,* 20.

O'Flaherty, M., & O'Brien, C. (2007). Reform of UN human rights treaty monitoring bodies: a critique of the concept paper on the High Commissioner's proposal for a unified standing treaty body. *Human Rights Law Review, 7*(1), 141–172.

Pillay, N. (2012). *Strengthening the United Nations human rights treaty body system. A report by the United Nations High Commissioner for Human Rights.*

Putnam, R. D. (1988). Diplomacy and domestic politics: the logic of two-level games. *International Organization, 42*(3), 427–460.

Raustiala, K. (2000). Compliance and effectiveness in international regulatory cooperation. *Case Western Reserve Journal of International Law, 32*, 387–440.

Raustiala, K., & Slaughter, A. M. (2002). International law, international relations and compliance. In W. Carlsnaes, T. Risse, & B. Simmons (Eds.), *Handbook of international relations* (pp. 538–558). London: Sage Publications.

Reiding, H. (2007). *The Netherlands and the development of international human rights instruments*. Antwerp: Intersentia.

Risse, T., & Ropp, S. C. (2013). Introduction and overview. In T. Risse, S. C. Ropp, & K. Sikkink (Eds.), *The persistent power of human rights. From commitment to compliance*. Cambridge: Cambridge University Press.

Risse, T., & Sikkink, K. (1999). The socialization of international human rights norms into domestic practices: Introduction. In T. Risse, S. C. Ropp, & K. Sikkink (Eds.), *The power of human rights: International norms and domestic change* (pp. 1–38). Cambridge: Cambridge University Press.

Schimmelfennig, F. (2005). Strategic calculation and international socialization: membership incentives, party constellations, and sustained compliance in Central and Eastern Europe. *International Organization, 59*, 827–860.

Schimmelfennig, F., & Sedelmeier, U. (2004). Governance by conditionality: EU rule transfer to the candidate countries of Central and Eastern Europe. *Journal of European Public Policy, 11*(4), 669–687.

Schmidt, M. G. (2001). Follow-up procedures to individual complaints and periodic state reporting mechanisms. In G. Alfredsson Grimheden, J., Ramcharan, B.G., & Zayas, A. (Eds.), *International human rights monitoring mechanisms. Essays in honour of Jakob Th. Möller* (pp. 201–215). The Hague: Kluwer.

Schmidt, M. G., Bayefsky, A. F., & Rodley, N. (1997). Does the United Nations human rights program make a difference? *Proceedings of the Annual Meeting (American Society of International Law),* 461–75.

Schrag, C. (2010). The quest for EU legitimacy: how to study a never-ending crisis. *Perspectives on Europe, 40*(2), 27–34.

Sharman, J. C. (2007). Rationalist and constructivist perspectives on reputation. *Political Studies, 55*(1), 20–37.

Simmons, B. (2009). *Mobilizing for human rights. International law in domestic politics*. Cambridge: Cambridge University Press.

Steiner, H. J. (2000). Individual claims in a world of massive violations: What role for the Human Rights Committee. In P. Alston & J. Crawford (Eds.), *The future of UN human rights treaty monitoring* (pp. 15–53). Cambridge: Cambridge University Press.

Sverdrup, U. (2004). Compliance and conflict management in the European Union: Nordic exceptionalism. *Scandinavian Political Studies, 27*(1), 23–43.

The Economist Intelligence Unit (2013). *Democracy index 2012. Democracy at a standstill.*

TK (2009/10). 31839, nr. 54.

Trimble, P. R. (1990). International law, world order, and critical legal studies. *Stanford Law Review, 42*(3), 811–845.

UN Doc. (2000). *Summary record of the 643rd meeting of the Committee on the Rights of the Child: Finland.* UN Doc. CRC/C/SR.643.

UN Doc. (2003). *Third periodic report: Finland.* UN Doc. CRC/C/129/Add.5.

UN Doc. (2005). *Summary record of the 650th meeting of the Committee Against Torture: Finland.* UN Doc. CAT/C/SR.650.

UN Doc. (2008). *Third periodic report: the Netherlands*. CRC/C/NLD/3.

Von Staden, A. (2009). *Shaping human rights policy in liberal democracies. Assessing and explaining compliance with the judgments of the European Court of Human Rights*. Princeton: Princeton University.

Wood, B., Hassall, I., & Hook (2008). *Unreasonable Force. New Zealand's journey towards banning the physical punishment of children*. Wellington: Save the Children.