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The Core Labour Standards of the International Labour Organization – Can Contemporary Compliance Theories Explain the Behaviour of States Towards the Norms?

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1 Introduction

The question of how a state should behave towards international norms has been discussed for centuries. The great Italian politician and philosopher Machiavelli once had a definite opinion on the matter: *"(A) prudent Prince neither can nor ought to keep his word when to keep it is hurtful to him and the causes which led him to pledge it are removed"*.¹ Since then, however, the world underwent a fundamental change of the perception of the significance of international treaties and the binding nature of international legal norms. On September 24, 2012, the world's leaders gathered at a high-level meeting at the United Nations headquarters in New York City to discuss the rule of law in international relations. Here, United Nations Secretary General Ban Ki-moon compared the rule of law to the rule of gravity, as it *"ensured the world to be grounded, so that order prevailed over chaos"*.² Yet, next to praising the essential significance of international law, the high states officials present at this meeting were also aware of the fact, that also today, international legal obligations are not always honoured by states. Here, the International Labour Organization (ILO)³ and its Core Labour Standards (CLS)⁴ present a good example. With its longstanding history and 185 member states, the International Labour Organization incorporates values and standards, that almost all states around the world seem to formally agree upon. In the 94 years since its foundation, the ILO adopted 189 Conventions and hundreds of recommendations. Among those, eight Conventions, that constitute the so-called CLS, stand out due to their special relevance and their impressively high ratification rates. Despite these favourable preconditions and an outstanding supervisory system, shocking news about harassments of union members or killed workers in factory fires⁵, make it obvious, that inhuman working conditions are still prevalent in many countries, that had actually pledged themselves to promoting decent work. So why did these states ratify these Conventions at all? Or to put the question more general: Why and when does non-compliance with international law occur? What are the motives of states to comply with certain international treaties while disregarding others?

¹ Machiavelli, Niccolò (1532 (2005)): *The Prince*; Prestwick House Literary Touchstone Classics, p.80

² United Nations (2012): *World Leaders Adopt Declaration Reaffirming Rule of Law as Foundation for Building Equitable State Relations, Just Societies*; Department of Public Information, News and Media Division; available at: <http://www.un.org/News/Press/docs//2012/ga11290.doc.htm> (last access: 05/01/13)

³ In this bachelor thesis, the abbreviation ILO will be used when referring to the International Labour Organization

⁴ In this bachelor thesis, the abbreviation CLS will be used when referring to the Core Labour Standards

⁵ See for example: Naundorf, Karen (18/09/07): *Gewerkschaften in Kolumbien: Wer stört, fliegt raus – oder stirbt*; Spiegel Online; available at: <http://www.spiegel.de/wirtschaft/gewerkschaften-in-kolumbien-wer-stoert-fliegt-raus-oder-stirbt-a-505829.html> (last access: 05/01/13); Bajaj, Vikas (25/11/12): *Fatal Fire in Bangladesh Highlights the Dangers Facing Garment Workers*, The New York Times; available at: <http://www.nytimes.com/2012/11/26/world/asia/bangladesh-fire-kills-more-than-100-and-injures-many.html> (last access: 05/01/13)

The aim to give an answer to these questions and explain states' motives behind their behaviour towards international legal norms, lies at the centre of a vivid academic date, that is especially characterized by the differing views of political and legal scholars of the 20th century. Although a variety of different theories arose, most still lack thorough empirical testing. While most authors undermine different parts of their theories with different, momentary applicable empirical events⁶, there is a lack of publications, that apply all aspects of one theory to one empirical phenomenon. Therefore, this bachelor thesis aims to contribute to closing the gap of empirical testing of prevailing compliance theories by applying selected theories to the highly interesting case of the ILO and its CLS.

In the first part of this bachelor thesis, the structure of the ILO, the content of the CLS and the organization's supervisory system will be introduced. Additionally, quantitative data on the status quo of ratification and compliance with the Core Labour Standards is provided, in order to draw an accurate picture of the ILO and states' behaviour towards its Conventions. After clarifying the concept of compliance in the ILO's context, the second part will display the most relevant theories on compliance from the 1990s onwards, to which I refer to as contemporary compliance theories. Next to providing an overview on the variety of prevailing theories, two well established theories, namely the managerial theory of Chayes and Chayes and the reputational theory of Guzman, are depicted in detail. Subsequently, they are applied to the case study of Bangladesh, in order to test their ability to explain the country's behaviour towards the ILO Convention on the freedom of association and protection of the right to organise, which the country had ratified in 1972. While it gets obvious, that both theories provide valuable insights to understanding the member state's behaviour, non of them is able to fully explain all relevant aspects. Thus, the results of the case study entails adjuvant findings for the academic debate on compliance. Moreover, from the outcomes of this analysis, useful conclusions for a more efficient structure of supervisory and enforcement mechanisms, that might enhance compliance with the CLS, can be drawn. Although a detailed discussion of these implications would go beyond the scope of this bachelor thesis, incentives for further research will be given in the conclusion.

⁶ See for example: Chayes, Abram, Chayes, Antonia H. (1993): On Compliance; in: *International Organization*, Vol. 47, No. 2, Downs, George W., Roake, David M., Barsom, Peter N. (1996): Is the good news about compliance good news about cooperation?; in: *International Organization* Vol. 50, Issue 3

2 The International Labour Organization and its Core Labour Standards

2.1 Composition and Functioning of the International Labour Organization (ILO)

The ILO's structure is marked by its three main organs: the Governing Body, the International Labour Office and the International Labour Conference.⁷

The Governing Body is the executive council of the ILO. It meets in Geneva, Switzerland, three times a year and consists of 56 delegates, who are elected every three years. According to Article 8 of the Constitution of the ILO, the Governing Body appoints the Director-General of the ILO.⁸ Moreover, it sets the agenda for all meetings of the International Labour Conference and administers the budget of the ILO.⁹ The International Labour Office, which is also located in Geneva, is the permanent secretariat and operational headquarter of the organization. It is conducted under the leadership of the Director-General of the ILO, who is elected for a five-year term.¹⁰ According to Article 10, the duties of the International Labour Office include the preparation of the Conference meetings, the support of member states by providing technical and legal assistance with the implementation of international labour standards as well as the issuing of publications on relevant topics.¹¹ The International Labour Conference is the legislative body of the organization. This "*world parliament of labour*"¹² meets once a year in Geneva. Next to its ability of admitting new members to the ILO, the International Labour Conference elects the Governing Body and approves the budget and programme draft provided by the latter.¹³ But first and foremost, international labour standards - in the form of international Conventions or Recommendations - are adopted in this central lawmaking body.¹⁴ The successful adoption of Recommendations and Conventions requires a majority of at least two-thirds of the attendant delegates¹⁵. While Recommendations are guidelines without any legal effect,¹⁶ Conventions create legal obligations for the member states, that ratified them. The ILO bodies are characterized by the organization's tripartite structure, which is unique at the international level.¹⁷ By adopting this special structure, the ILO aimed at promoting

⁷ To the International Labour Conference, it is often also referred to as the General Conference of the ILO. In this bachelor thesis, however, I will use the term International Labour Conference.

⁸ International Labour Office (2010): Constitution of the International Labour Organisation and selected texts, Article 8

⁹ Karns, Magaret, Mingst, Karen (2010): International Organizations – the Politics and Processes of Global Governance; p.80

¹⁰ Constitution of the International Labour Organization, Article 8 (1)

¹¹ Constitution of the International Labour Organization, Article 10 (1), (2)

¹² International Labour Organization (2011): World of Work - World Parliament of Work turns 100, p.3

¹³ Constitution of the International Labour Organization, Article 1 (4), Article 7 (2)

¹⁴ Constitution of the International Labour Organisation, Article 19

¹⁵ Constitution of the International Labour Organization, Article 19 (2)

¹⁶ They are primarily designed to support the member states to amend national labour standards with regard to policy, legislation and practice. For more information, see: International Labour Office (2006): Handbook of procedures relating to international labour Conventions and Recommendations, p.2

¹⁷ Kaufmann, Christine (2007): Globalisation and Labour Rights, p.50

open dialogues and reciprocal sympathy between the three parties of governments, employers and workers in order to achieve sustainable solutions.¹⁸ With regard to the International Labour Conference, the delegation of each member state consists of four representatives: two government officials, one delegate representing the employers as well as one representing the working people of the respective member state.¹⁹ The employer and worker delegates are hereby chosen in agreement with the most relevant national organizations of workers and employers. Of the 56 members of the Governing Body, 28 are government representatives, while the other 28 represent employers and workers and are elected by the employers' and workers' delegates to the International Labour Conference.²⁰ This structure also applies to the chairman of the Governing Body and its two deputies – one of them being a state official, the other two representing workers and employers respectively.²¹

2.2 The Core Labour Standards (CLS)

2.2.1 Special Character

In 1998, the International Labour Conference adopted the *"Declaration of Fundamental Principles and Rights at Work"* with an overwhelming majority.²² With the declaration, the ILO introduced a certain *"hierarchy of international labour standards"*²³, as it directed special attention to a group of seven Conventions. In 1999, an eighth Convention was added to this group of Conventions²⁴, that were characterized as "fundamental" as they represent universal human rights.²⁵ They embody four principles, namely the freedom of association and right to collective bargaining, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour as well as the elimination of discrimination in respect of employment and occupation.²⁶ The declaration makes these eight Conventions a quasi condition of membership, as Article 2 states, that all member states *"have an obligation, arising from the very fact of membership in the Organization, to respect, to promote and to realize"*²⁷. Although the declaration is not legally binding²⁸, the

¹⁸ International Labour Organization (2008): The ILO at a glance; p.3

¹⁹ Constitution of the International Labour Organization, Article 3 (1)

²⁰ Constitution of the International Labour Organization, Article 7 (1), (4)

²¹ Constitution of the International Labour Organization, Article 7 (7)

²² Bakvis, Peter, McCoy, Molli (2008): Core Labour Standards And International Organizations: What Inroads Has Labour Made?, Friedrich-Ebert-Stiftung, International Trade Union Cooperation, Briefing Papers No 6, 2008, p.1

²³ Helfer, Laurence R. (2006): Understanding Change in International Organizations: Globalization and Innovation in the ILO; Vanderbilt Law Review Vol. 59, No. 3, p. 708

²⁴ An overview on the eight fundamental Conventions can be found in the appendix I

²⁵ De la Cruz, Héctor B., von Potobsky, Geraldo, Swepston, Lee (1996): The International Labor Organization: The International Standards System and Basic Human Rights; Westview Press, Inc., Boulder; p.129

²⁶ International Labour Office (2003): The International Labour Organization's Fundamental Conventions; p.7

²⁷ ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, Article 2; in: International Labour Office (2003): The International Labour Organization's Fundamental Conventions, p.73

special standing of these eight Conventions can also be seen in the supervisory mechanisms of the ILO, which will be introduced in section 2.3. Another characteristic of the fundamental Conventions is, that in order to facilitate and encourage universal compliance with them, several fundamental Conventions contain flexibility clauses. These provisions are considerate of the low development status of some member states, that therefore face especial difficulties in implementing the content of the Conventions. The minimum age Convention C138, for example, allows countries to temporarily exclude certain categories of workers or whole sectors from the scope of the Convention.²⁹

2.2.2 Content

The effective erasure of forced or compulsory labour is regarded as a central cornerstone in achieving the ILO's overall goal of decent working conditions and global social justice. The first Convention on this topic was adopted in 1930 (C029), a time when many countries still bore traces of the age of colonization and certain forms of slavery were still prevalent, especially in non-metropolitan territories. Here, the member states obligated themselves to fully suppress the use of forced labour. The legal definition of the term forced labour is set forth in Article 2 (1) of the Convention C029 and encompasses "*all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily*".³⁰ It includes all kinds of labour in all industries, also in the informal³¹ sector.³² Certain types of work or services, that meet the just described characteristics of forced labour are explicitly excluded from the scope of the Convention: the fulfilment of a basic military service, the instruction of work in extreme national emergency situations or work assignments of lawfully convicted prisoners, for example in the context of community work.³³ In 1957, a second Convention on the topic was adopted in the background of the atrocities of the Second World War and the knowledge about political regimes, that systematically used forced labour to boost their economies.³⁴ With its ratification, the governments pledged themselves, among others, not to use forced labour

²⁸ López, Sergio, Ugarte, Sebastián (2010): Analysis and Critical Assessment of the Role Played by the International Labour Organisation in Developing and Securing Core Labour Standards; in: Panorama Socioeconómico; Año 28, No.41, p. 202

²⁹ International Labour Conference (1973): Minimum Age Convention, 1973; Articles 4,5

³⁰ International Labour Conference (1930): Forced Labour Convention, 1930; Article 2 (1)

³¹ The informal sector covers small-scale enterprises, that are not recognized, recorded or regulated by the public authorities. For more information, see: International Labour Office (2002): Decent work and the informal economy

³² International Labour Conference (2007): General Survey concerning the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105); pp. 19 - 20

³³ See: Article 2 (2), Forced Labour Convention, 1930; International Labour Conference (2007): General Survey concerning the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105); pp. 22 - 24

³⁴ De la Cruz, Héctor B., von Potobsky, Geraldo, Swepston, Lee (1996): The International Labor Organization: The International Standards System and Basic Human Rights, p. 132

"as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system".³⁵

Another central aim of the ILO is, that all children have the opportunity *"to develop physically and mentally to his or her full potential".³⁶* By adopting the Minimum Age Convention (C138) in June 1973, the ILO aimed at establishing a general minimum age requirement for admission to employment. Article 2 (1) of the Convention C138 prompts every member state to define a *"general minimum age for admission to employment or work within its territory".³⁷* The provision hereby includes contractual employments, informal or self-employed work or unpaid work in family businesses.³⁸ In general, the specified age should be equal or higher compared to the age of completion of compulsory school attendance and not allow admission to employment for children below the age of 15.³⁹ As until 1999, only 72 member states had ratified the Minimum Age Convention, the ILO undertook a new approach to direct the world's attention to this central topic. In 1999, the International Labour Conference adopted the Worst Forms of Child Labour Convention (C182).⁴⁰ This Convention lays its focus on the immediate prohibition on the most damaging and hazardous types of child labour and was adopted unanimously.⁴¹ Among others, all children below the age of 18 shall be protected from all forms of forced labour, slavery, trafficking, prostitution and pornography, as well as all illicit activities and work, that *"is likely to harm the health, safety or morals of children".⁴²* In both Conventions, the significance of a free access to basic education in the process of abolishing child labour is repeatedly emphasized.⁴³

The fundamental principle of the elimination of discrimination encompasses the Equal Remuneration Convention (C100) as well as the Discrimination Convention (C111), which is concerned with equality concerning opportunity and treatment in employment. Both, Convention C100 as well as Convention C111 apply to all workers and therefore allow no exclusions based on the nationality of the worker, the gender or other individual characteristics.⁴⁴ Convention C100, which was adopted in June 1951, sets general

³⁵ International Labour Conference (1957): Abolition of Forced Labour Convention, 1957; Article 1 (a)

³⁶ International Labour Office (2003): The International Labour Organization's Fundamental Conventions, p.43

³⁷ International Labour Conference (1973): Minimum Age Convention, 1973, Article 2 (1)

³⁸ International Labour Conference (2012): General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008, p. 148

³⁹ International Labour Conference (1973): Minimum Age Convention, 1973, Article 2 (1), (3)

⁴⁰ Dennis, Michael J. (1999): The ILO Convention on the Worst Forms of Child Labor; in: The American Journal of International Law, Vol. 93, No. 4, p.943

⁴¹ International Labour Conference (2012): General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008, p.187

⁴² International Labour Conference (1999): Worst Forms of Child Labour Convention, 1999; Article 3

⁴³ Minimum Age Convention, 1973, Article 2 (3), Worst Forms of Child Labour Convention, 1999; Article 7 (c), Article 8

⁴⁴ International Labour Conference (2012): General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008, pp.275,276, 308

standards for the equal payment of male and female workers for "*work of equal value*".⁴⁵ The concept of equal remuneration for work of equal value requires the member states to identify the relative value of different occupations and compare the wage, salary and any additional payments received in connection with the respective employment.⁴⁶ Convention C111, on the other hand, aims at abolishing discrimination "*on the basis of race, colour sex, religion, political opinion, national extraction or social origin*" or any other unjustified distinction at the workplace.⁴⁷

The last principle, that lies "*at the heart of the ILO's purpose*"⁴⁸ is the freedom of association and the right to collective bargaining. The functioning of the ILO's tripartite structure would not be possible without the existence of freely established and independent workers' and employers' organizations. Especially the Freedom of Association and Protection of the Right to Organize Convention from 1948 (C087) is seen as central, as it entails the prerequisites for collective bargaining, which is protected by Convention C098.⁴⁹ Article 2 of the Convention C087 states, that all workers and employers "*shall have the right to establish and (...) to join organisations of their own choosing without previous authorisation*".⁵⁰ Furthermore, governments have no right to interfere in organisational issues of the organisations, to influence the elections of representatives or to dissolve or suspend the organisations. The Convention allows for restrictions only with respect to the police and armed forces.⁵¹ Therefore, the rights of this Convention apply to all workers and employers in the private industry, as well as to those in public services.⁵² Convention C098 from 1949, on the other hand, explicitly excludes public officials.⁵³ For the rest of the workers and employers, it prompts governments to establish "*adequate protection against acts of anti-union discrimination*"⁵⁴ as well as to "*encourage and promote*"⁵⁵ negotiations between employers and workers regarding wages, working hours and other terms of employment.

⁴⁵ International Labour Conference (1951): Equal Remuneration Convention, 1951, Article 1 (b)

⁴⁶ International Labour Conference (1951): Equal Remuneration Convention, 1951, Article 2; International Labour Conference (2012): General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008, pp.281, 282

⁴⁷ International Labour Conference (1958): Discrimination (Employment and Occupation) Convention, 1958, Article 1

⁴⁸ López, Sergio, Ugarte, Sebastián (2010): Analysis and Critical Assessment of the Role Played by the International Labour Organisation in Developing and Securing Core Labour Standards, p.202

⁴⁹ *ibid.*

⁵⁰ International Labour Conference (1948): Freedom of Association and Protection of the Right to Organize Convention, 1948, Article 2

⁵¹ Freedom of Association and Protection of the Right to Organize Convention, 1948, Articles 3, 4, 9

⁵² De la Cruz, Héctor B., von Potobsky, Geraldo, Swepston, Lee (1996): The International Labor Organization: The International Standards System and Basic Human Rights, p. 182

⁵³ International Labour Conference (1949): Right to Organise and Collective Bargaining Convention, 1949; Article 6

⁵⁴ International Labour Conference (1949): Right to Organise and Collective Bargaining Convention, 1949; Article 1 (1)

⁵⁵ International Labour Conference (1949): Right to Organise and Collective Bargaining Convention, 1949; Article 4

2.3 The Supervisory System of the ILO

The structure and complexity of the ILO's supervisory system is unique. Many scholars refer to it as "*the most effective*"⁵⁶ and "*the most venerable*"⁵⁷ monitoring system at the international level. It applies to all member states after the formal ratification of a Convention.⁵⁸ Next to a regular system of supervision, there are also three special procedures following representations or complaints filed by workers' unions, employers' organizations or other member states.

All member states have to submit regular reports, in which they inform the ILO about the measures taken and the progress achieved towards full compliance with the Convention.⁵⁹ In the first year after a Convention entered into force, the member states have to provide a detailed report, which has to provide information on all relevant national laws, the authorities, that are responsible for enforcing those laws, limitations to the scope of the application and statistical data.⁶⁰ In the subsequent years, shorter, simplified reports are sufficient.⁶¹ The member states have to forward all reports to the workers' and employers' representatives, who have the right to critically comment on the content of the documents.⁶² Those reports and comments are then reviewed by the *Committee of Experts on the Application of Conventions and Recommendations*, which consists of 20 qualified jurists from different geographical regions and legal systems. After their analysis, the Committee can pronounce an *observation* or a *direct request* to the government of the concerned member state.⁶³ With a direct request, the Committee of Experts prompts the respective member state to provide supplementary information on a point of interest, for example on the technical implementation of a provision of the Convention. Observations, in turn, mostly express the Committee's discontent with a significant and permanent failure to meet the obligations of the Convention. They are published in the yearly report of the Committee of Experts, which is sent to the Governing Body for transmission to the International Labour Conference. Topics of especial interest or concern may be discussed in the next meeting of the International Labour Conference, which augments the pressure on non-complying

⁵⁶ Van Dervort, Thomas R. (1998): *International Law and Organization: An Introduction*; Sage Publications, p.214

⁵⁷ Weisband, Edward (2000): *Discursive Multilateralism: Global Benchmarks, Shame and Learning in the ILO Labor Standards Monitoring Regime*; in: *International Studies Quarterly* No.44, p.644

⁵⁸ Constitution of the International Labour Organization, Article 19 (5d)

⁵⁹ Constitution of the International Labour Organization, Article 22

⁶⁰ International Labour Office (2006): *Handbook of procedures relating to international labour Conventions and Recommendation*; p.24

⁶¹ International Labour Office (2006): *Handbook of procedures relating to international labour Conventions and Recommendation*; p.20

⁶² Constitution of the International Labour Organization, Article 23 (2); López, Sergio, Ugarte, Sebastián (2010): *Analysis and Critical Assessment of the Role Played by the International Labour Organisation in Developing and Securing Core Labour Standards*; in: *Panorama Socioeconómico*; Año 28, No.41, p.203

⁶³ International Labour Standards Department (2008): *Guide to International Labour Standards*; p.261

member states.⁶⁴ The annual report of the Committee of Experts, in turn, is analysed by the *Conference Committee on the Application of Standards*. This tripartite Committee offers a forum for state officials, employers and workers to meet and discuss the requests, observations and other recommendations made by the Committee of Experts.⁶⁵ The results of the Conference Committee's work are summarized in its report to the International Labour Conference. This report also includes discussions on individual cases and draws the attention of the Conference to serious failures of compliance. It is sent to the member states, which are expected to consider the advice of the Conference Committee in their further proceedings.⁶⁶

The first special procedure, which is based on Articles 24 and 25 of the ILO Constitution, deals with the examination of *representations*. A representation can be made by any national or international association of employers or workers and expresses the concern, that a member state has failed to comply with provisions of a ratified Convention.⁶⁷ After the reception of an admissible representation, the Governing Body sets up a tripartite committee to examine the matter. After a thorough investigation, during which the committee requests written statements or personal appearances of government representatives of the concerned member state, the tripartite committee submits its conclusions and recommendations to the Governing Body, which will finally decide on the further proceedings and whether the recommendation will be published.⁶⁸

The second special procedure concerns *complaints* about the insufficient compliance of a member state with a ratified Convention and is based on Articles 26 to 34 of the ILO Constitution. Complaints can be filed by member states, delegates or the Governing Body.⁶⁹ Once a complaint is received, it is transferred to the *Commission of Inquiry*.⁷⁰ This Commission consists of three members and investigates the complaint by reviewing documents, hearing witnesses or by on-site inspections in the concerned member state.⁷¹ Within a period of three months, the two parties to the conflict decide whether they accept

⁶⁴ International Labour Office (2006): Handbook of procedures relating to international labour Conventions and Recommendation; p.37

⁶⁵ International Labour Office (2011): The Committee on the Application of Standards of the International Labour Conference, p.1

⁶⁶ International Labour Office (2006): Handbook of procedures relating to international labour Conventions and Recommendation; p.40

⁶⁷ International Labour Standards Department (2008): Guide to International Labour Standards; p.265

⁶⁸ International Labour Office (2006): Handbook of procedures relating to international labour Conventions and Recommendation; pp.48,49; Constitution of the International Labour Organization, Article 25

⁶⁹ International Labour Standards Department (2008): Guide to International Labour Standards; p.268

⁷⁰ Constitution of the International Labour Organization, Article 26 (2),(3)

⁷¹ International Labour Standards Department (2008): Guide to International Labour Standards; p.268

the proposals of the Commission of Inquiry or not. If no agreement is reached, the case may be referred to the *International Court of Justice* for a final decision.⁷²

The third special procedure was established in 1950 by a decision of the Governing Body and deals with *complaints regarding the freedom of association*. Here, complaints can be filed against any member state, regardless of whether it has ratified the Conventions on the topic or not.⁷³ When the International Labour Office receives a complaint, it is examined by the tripartite *Governing Body Committee on Freedom of Association*. Similarly to the other special procedures, the concerned member state is prompted to comment on the accuses made. But even if the government ignores these requests, the Committee continues to examine the case by reviewing documents and hearing witnesses.⁷⁴

Next to these versatile supervisory mechanisms and complaint procedures, the ILO also offers different forms of technical assistance. The member states have the possibility to ask for advice or get concrete solutions for legislative and practical problems, that impede full compliance with a Convention, by contacting the numerous ILO offices around the world.⁷⁵

2.4 Status Quo: Ratifications and Compliance

Despite impressively high numbers of ratifications, none of the eight fundamental Conventions has been ratified by all 185 member states. The Worst Forms of Child Labour Convention C182 and the Forced Labour Convention C029 have the highest rate of ratification. With 175 ratifications, these two conventions were signed by almost 95 % of the member states of the ILO. The fact, that Convention C182 achieved this impressive amount of ratification in little more than ten years, makes it by far the most successful example of the ILO's work.⁷⁶ The Freedom of Association and Protection of the Right to Organize Convention C087, on the other hand, is the fundamental Convention with the lowest ratification rate. 34 states refused to ratify the Convention, among those China, India and the United States of America.⁷⁷ Five member states of the ILO – namely the Marshall Islands, the Maldives, Palau, South Sudan and Tuvalu - have ratified none of the eight fundamental Conventions. 136 member states have ratified all eight fundamental

⁷² Constitution of the International Labour Organization, Article 29 (2), Article 31

⁷³ Romano, Cesare P. (1996): The ILO System of Supervision and Compliance Control: A Review and Lessons for Multilateral Environmental Agreements; p.16

⁷⁴ See: International Labour Office (2006): Handbook of procedures relating to international labour Conventions and Recommendation; pp.50-52

⁷⁵ International Labour Organization (n.d.): Technical assistance and training; available at: <http://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/technical-assistance-and-training/lang--en/index.htm> (last access: 05/01/13)

⁷⁶ *ibid*

⁷⁷ See appendix I. Here, information about the number of ratifications of the fundamental Conventions is provided.

Conventions, among those all member countries of the European Union, but also developing countries such as Cambodia, the Democratic Republic of Congo or Haiti.⁷⁸

In the appendix, an overview on the number of complaints, representations and observations received by the different member states during the last three years (2009 – 2011) is provided. Altogether, the ILO Committee on the Application of Standards adopted an impressive amount of 1184 observations on the applications of the eight fundamental Conventions. Here, most observations concerned the Convention C098 and C087. Only three representations were filed, two against Cuba and one against Japan. Out of the 76 complaints, 73 referred to the Convention C087 on the freedom of association. In twelve cases, complaints were filed against member states, that did not ratify the Convention C087. The table, however, should not be interpreted in the way, that all countries, that did receive complaints or observations are in total non-compliance with a Convention.

The general definition of compliance, that is applied in this bachelor thesis is the one of Raustiala and Slaughter, who state, that compliance is a *"state of conformity or identity between an actor's behavior and a specified rule"*⁷⁹. This definition is agnostic in the sense, that it does not necessarily establish a causal relationship between the rule itself and the state of conformity with it.⁸⁰ An ILO Convention, however, consists of numerous different rules. While a state may be in compliance with certain parts of the Convention, it can be non-complying with other parts. Therefore, it is essential to notice, that the concept of compliance with regard to an ILO Convention is not a binary variable but rather a continuous concept. Next to the poles of complete non-compliance and full compliance with a Convention, there are many possible intermediate levels of compliance. If a state obtains a high or low level of compliance with a Convention, does not hinge on the number of single provisions of the Convention, that it is in compliance with, but on the fact, if it is in compliance with the most central provisions of the Convention. A central provision of a Convention shall be defined as a provision, that reflects the core purpose and aims of the Convention. States, that implemented central parts of ratified Conventions in law and practice show a high level of compliance, even though minor contradictions to the content of a Conventions might still exist in law or practice. States, that failed to implement central provisions of the Convention, as there are opposed national laws or there is a lack of sufficient enforcement mechanisms, on the other hand, have a low level of compliance. A lack of legislation on a topic does not necessarily affect the country's level of compliance, as compliance can also be ensured through practical measures. If a country has national laws on labour rights, however, that entail unjustifiable restrictions or limitations to these

⁷⁸ See appendix II

⁷⁹ Raustiala, Kal, Slaughter, Anne-Marie (2002): International Law, International Relations and Compliance; in: Carlnaes, Walter, Risse, Thomas, Simmons, Beth (eds.) (2002): The Handbook of International Relations, Sage Publications, p.539

⁸⁰ *ibid.*

rights, it can be said, that the country has a low level of compliance or is non-compliant in central parts. An example here would be the legislation of Bangladesh, which will be addressed in the case study in section 4.

3 Theories of Compliance with Norms in International Relations

The origins of the academic debate about the relevance of international law and explanations for states' compliance with it date back to the 1940s. During the Cold War era, compliance theory was characterized by the debate between realist political scientists and historians such as Morgenthau, Kennan and Schwarzenberger, who were sceptical about an exogenous influence of international law on states and legal scholars such as McDougal, Falk or Henkin, who all advocated the relevance of international law.⁸¹ From the 1990s onwards, the two disciplines of International Relations and International Law began to interact and scholars from both disciplines increasingly collaborated on the topic.⁸² This resulted in today's great variety of competing theories, that all aim to explain states' behaviour towards norms in international relations. Not all of the prevailing theories, however, meet the requirements of an expedient theory. Next to explaining compliance with international law, a comprehensive compliance theory should also elucidate situations of non-compliance.⁸³ Furthermore, the theory should make an assumption, whether there is a causal relationship between the normative character of an international obligation and the compliance of states, which means that the existence of international law *per se* has a behavioural impact on states, or not. If such a causal relationship was identified, the theory should additionally explain, *how* international norms manage to influence states' behaviour towards compliance.⁸⁴

3.1 Overview of Existing Theories

So far, there is no unisonous categorization of the different existing theories on the topic.⁸⁵ Burgstaller identifies three basic models by distinguishing realist, institutionalist and normative theories.⁸⁶ Koh, on the other hand, differentiates between a rationalistic instrumentalist approach, a liberal one and a constructivist strand.⁸⁷ By separating interest-

⁸¹ Raustiala, Karl, Slaughter, Anne-Marie (2002): International Law, International Relations and Compliance; p.540; Hoder, Lukas (2010): Is there a theory of international legal compliance?: Introduction, annotated bibliography and the examination of approaches; ECPR Graduate Conference Paper; p.2;

⁸² Koh, Harold H. (1997): Why Do Nations Obey International Law?; in: The Yale Law Journal, Vol. 106, No. 8; p. 2632

⁸³ Burgstaller, Markus (2005): Theories of Compliance with International Law; Martinus Nijhoff Publishers, Leiden, p.103

⁸⁴ *ibid.*

⁸⁵ Raustiala, Kal, Slaughter, Anne-Marie (2002): International Law, International Relations and Compliance; p.539

⁸⁶ Burgstaller, Markus (2005): Theories of Compliance with International Law; p.95

⁸⁷ Koh, Harold H. (1997): Why Do Nations Obey International Law?; in: The Yale Law Journal, Vol.106, No.8, p.2632

based models from norm-based models, Hathaway identified two broad veins.⁸⁸ This rather simplistic differentiation nicely captures the existence of two opposed background assumptions on the behaviour of states, that root in the differing perceptions of states of the classic International Relations theories: The first assumption would be, that the behaviour of states is led by their national self-interests. Here, rational and self-serving states calculate the gains or losses of complying with an international agreement. In the end, they will only comply if it benefits them. Therefore, international norms have no direct impact on the behaviour of states. The second assumption, on the other hand, assumes, that states feel moral obligations and have a natural instinct to comply with international agreements. If they do not comply, it is not a matter of opposed self-interest but can be explained by various, justifiable reasons such as a lack of resources or because states think the norms are unfair. In the following, Hathaway's distinction of interest-based and norm-based theories will be retained to briefly introduce the most relevant theories of both strands.

3.1.1 Norm-Based Approaches

A first example of a norm-based theory is Thomas M. Franck's legitimacy theory.⁸⁹ According to Franck, states comply with international norms, whenever the norms are perceived as having a high degree of legitimacy. In order for legitimacy to exist, a norm has to be established "*in accordance with generally accepted principles of right process*".⁹⁰ In Franck's theory, legitimacy is modelled as a continuous concept with the two poles of being completely illegitimate and being entirely legitimate. Legitimacy causes states to comply with norms, as it "*exerts a pull toward compliance*"⁹¹ on states. The intensity of this compliance-pull, however, is positively correlated with the perceived degree of legitimacy of the norms – if a norm is appraised as highly legitimate, the pull is very strong. On the other hand, if the legitimacy of a norm is controversial, states experience no - or a relatively weak - impulse to comply with the norm. Therefore, also compliance is a matter of degree.⁹² Pursuant to Franck, states determine the level of legitimacy of a norm by considering four characteristics: determinacy, symbolic validation, coherence as well as adherence.⁹³ Determinacy describes the level of transparency and lucidity of a norm. A norm, that is enunciated in a clear and unequivocal manner, which leaves no room for misinterpretations of the norms content and aim, encourages states to comply with it.⁹⁴ Symbolic validation

⁸⁸ Hathaway, Oona A. (2005): *Between Power and Principle: An Integrated Theory of International Law*; Chicago Law Review, Vol. 71, p.475

⁸⁹ Franck, Thomas M. (1990): *The Power of Legitimacy Among Nations*, Oxford University Press, New York; Franck, Thomas M. (1995): *Fairness in International Law and Institutions*, Oxford University Press, New York

⁹⁰ Franck, Thomas M. (1990): *The Power of Legitimacy Among Nations*, p.24

⁹¹ Franck, Thomas M. (1990): *The Power of Legitimacy Among Nations*, p.24

⁹² Burgstaller, Markus (2005): *Theories of Compliance with International Law*; p.113

⁹³ Franck, Thomas M. (1995): *Fairness in International Law and Institutions*, p.30

⁹⁴ Franck, Thomas M. (1995): *Fairness in International Law and Institutions*, pp.30,31

describes the communication of authority through well-established, consistent procedures.⁹⁵ States rather comply with norms, that are regarded as being of essential significance and emanated from a traditionally respected, valid process. A norm can signal its righteous origin by using cues, such as rituals, pedigrees or emblems.⁹⁶ Coherence means, that a rule is general and applied in a consistent manner, that treats equal cases equally. When states feel, that a norm is just in the sense, that it follows strict principles and does not enable any wrongful exceptions from the scope of application of the norm, they are rather willing to comply with it. Contrariwise, if a norm is unprincipled or contradicts other established rules in the international legal system, it will be categorized as illegitimate and there will be no compliance with it.⁹⁷ The last factor, that affects the degree of legitimacy of a norm, is adherence. Adherence describes the connection between a single norm and the set of secondary rules of process, that structure the establishment, interpretation and application of the norm.⁹⁸ According to Franck, rules are rather complied within a sophisticated international community, that not only creates primary norms of obligations but backs those norms with an institutional framework of secondary rules, that allows for the enforcement and advancement of the primary norms.⁹⁹ Among others, a main point of criticism of Franck's legitimacy theory is, that his argumentation is circular. While legitimacy exerts a compliance-pull, the strength of the compliance pull also measures the degree of legitimacy of a norm.¹⁰⁰ Moreover, Franck does not elaborate on the reasons, why and how legitimacy is able to influence the behaviour of states. Therefore, the assumption, that legitimacy is the crucial factor for compliance, remains unsubstantiated. Furthermore, the model does not provide explanations for empirical examples, where states changed their behaviour with a norm from compliance to non-compliance.¹⁰¹

The legal scholar Harold Koh developed the so-called transnational legal process theory. Koh aims to explain *obedience* of states with international norms, which describes a state of compliance, that is not motivated by anticipation of enforcement but due to the fact, that norms are incorporated into the domestic legal systems of the states and are herewith becoming part of a state's "*internal value set*".¹⁰² Repeated compliance results in "*habitual*

⁹⁵ Raustiala, Kal, Slaughter, Anne-Marie (2002): International Law, International Relations and Compliance; p.541

⁹⁶ Franck, Thomas M. (1995): Fairness in International Law and Institutions, pp.34,35

⁹⁷ Franck, Thomas M. (1995): Fairness in International Law and Institutions, pp.38-41

⁹⁸ Franck, Thomas M. (1990): The Power of Legitimacy Among Nations, p.184

⁹⁹ Burgstaller, Markus (2005): Theories of Compliance with International Law; p.117

¹⁰⁰ Raustiala, Kal, Slaughter, Anne-Marie (2002): International Law, International Relations and Compliance; p.541; Keohane, Robert O. (1997): International Relations and International Law: Two Optics; Harvard Journal of International Law, Vol.38, No.2, p.493

¹⁰¹ Guzman, Andrew T. (2002): A Compliance – Based Theory of International Law; in: California Law Review, No. 90, pp.1834,1835

¹⁰² Koh, Harold H. (1997): Why Do Nations Obey International Law?; in: The Yale Law Journal, Vol. 106, No. 8; p. 2603

*obedience*¹⁰³ with international norms. Pursuant to Koh, the transnational legal process, that leads to the incorporation of a norm, "*is normative, dynamic, and constitutive*".¹⁰⁴ The repetition of this process leads to the emergence of regular patterns of behaviour and will eventually shape national interests and identities. Koh differentiates three sequential phases of the transnational legal process: interaction, interpretation and finally internalization. At first, the transnational actors of states, such as private companies, individuals or non-governmental organizations, initiate an interaction on a certain topic with one another. This interaction at the international level leads to the emergence and interpretation of norms, which are then internalized and incorporated into the domestic legal system. With this last step of internalization, obedience - and therefore also compliance - with the norm is achieved.¹⁰⁵ Raustiala and Slaughter criticize Koh's approach as it fails to address situations of non-compliance.¹⁰⁶ Another point of criticism is, that the theory provides no explanation for how the process of internalization of international norms is conducted. Therefore, the theory lacks an answer to the question of why international norms should be internalized when they are in conflict with the self-interest of the state.¹⁰⁷ A third theory on the norm-based side of compliance theories is the one from Abram and Antonia Chayes. In my point of view, their managerial theory is the most convincing one of this strand due to its ability to not only address situations of compliance but to also explain non-compliance with international legal norms. It will be discussed in the following section and is subsequently applied to the case study of Bangladesh in section 4.

3.1.2 Interest-Based Approaches

Downs, Rocke and Barsoom criticized norm-based theories for their inability to fully explain states' motives for acts of non-compliance with international norms. Therefore, they presented their own approach, which is often referred to as enforcement theory.¹⁰⁸ The cooperation of states at the international level is modelled using a game-theoretic approach. Here, a state's strategy is to maximize its payoffs by pursuing national interests, which are shaped by the economic and political aims of domestic interest groups. In the authors' point of view, the possibility of enforcement of international norms, via sanctions and punishment for non-compliance, is therefore the crucial factor for compliance. A state will comply with an international norm, if the anticipated net benefit of non-compliance is not positive, which means that the gains of a state from the violation of the norm are not

¹⁰³ Koh, Harold H. (1997): Why Do Nations Obey International Law?; p. 2646

¹⁰⁴ *ibid.*

¹⁰⁵ Hoder, Lukas (2010): Is there a theory of international legal compliance?: Introduction, annotated bibliography and the examination of approaches; pp.7,8

¹⁰⁶ Raustiala, Kal, Slaughter, Anne-Marie (2002): International Law, International Relations and Compliance; p.544

¹⁰⁷ Guzman, Andrew T. (2002): A Compliance – Based Theory of International Law; pp.1835,1836

¹⁰⁸ See for example: Raustiala, Kal, Slaughter, Anne-Marie (2002): International Law, International Relations and Compliance; p.543

exceeding the costs of the violation. A negative net benefit of non-compliance can be ensured by establishing adequate punishment strategies.¹⁰⁹ Here, Downs, Rocke and Barsoom emphasize that the decisive variable for compliance of states is the adequate extent of enforcement – the concrete form of the punishment system, for example whether centralized or decentralized measures are used, is rather irrelevant.¹¹⁰ The authors also introduce the term "depth" with regard to international treaties, in order to describe the extent, to which it prompts behavioural change from the states, in the sense of that the treaty *"requires states to depart from what they would have done in its absence"*.¹¹¹ A rather deep international treaty needs stricter sanctions, as the gains from cooperation – and therefore also those from defiance – grow with the depth of the treaty.¹¹² One stated point of criticism concerning the enforcement theory is, that the authors do not comment on the possibility, that preferences of potential defectors could change during repeated interaction.¹¹³ Furthermore, the difficulties of the establishment of effective sanctions, especially in a multilateral setting, are not addressed.¹¹⁴

Jack Goldsmith and Eric Posner established a rather critical theory of international law.¹¹⁵ The authors see international law as being highly limited in its ability to change the behaviour of states, as there are no moral obligations, which could states cause to comply with international law.¹¹⁶ International law is rather *"a product of, and bounded by, state interests and the distribution of power."*¹¹⁷ Goldsmith and Posner also use a game-theoretic model and differentiate - depending on the topic and the political dimension of the topic - between cooperative and non-cooperative games, such as the well-known prisoners' dilemma game and coordination games.¹¹⁸ With regard to coordination games, where all would profit from behaving equally, the main achievement of international law is, that it *"provides a focal point for coordination"* and is herewith able to augment the probability of a

¹⁰⁹ Downs, George W., Rocke, David M., Barsoom, Peter N. (1996): Is the good news about compliance good news about cooperation?; in: International Organization Vol. 50, Issue 3; pp.384,385

¹¹⁰ Downs, George W., Rocke, David M., Barsoom, Peter N. (1996): Is the good news about compliance good news about cooperation?; in: International Organization Vol. 50, Issue 3; pp.386,387

¹¹¹ Downs, George W., Rocke, David M., Barsoom, Peter N. (1996): Is the good news about compliance good news about cooperation?; in: International Organization Vol. 50, Issue 3; p.383

¹¹² Raustiala, Kal, Slaughter, Anne-Marie (2002): International Law, International Relations and Compliance; p.543

¹¹³ Johnston, Alastair Iain (2003): The Social Effects of International Institutions on Domestic (Foreign Policy) Actors; in: Drezner, Daniel W. (2003): Locating the Proper Authorities – The Interaction of Domestic and International Institutions, The University of Michigan Press, p.186

¹¹⁴ Guzman discusses the free-rider problem concerning the establishment of sanctions in a multilateral setting; See: Guzman, Andrew T. (2002): A Compliance – Based Theory of International Law; in: California Law Review, Vol. 90; p.1869

¹¹⁵ Goldsmith, Jack, Posner, Eric A. (2006): The Limits of International Law; Oxford University Press

¹¹⁶ Goldsmith, Jack, Posner, Eric A. (2006): The New International Law Scholarship; Georgia Journal of International and Comparative Law, Vol. 34; p.463

¹¹⁷ Goldsmith, Jack, Posner, Eric A. (2006): The New International Law Scholarship; p.468

¹¹⁸ For a detailed introduction to game theory, see for example: Osborne, Martin J. (2003): An Introduction to Game Theory; Oxford University Press,

successful cooperation between states.¹¹⁹ Concerning a prisoners' dilemma, negotiations at the international level and the emergence of international norms can help to realize the cooperative solution.¹²⁰ This clarifies, that notwithstanding their point of view, that international legal norms do not act as "*exogenous force(s) on state behavior*"¹²¹, Goldsmith and Posner are of the opinion that international law is not irrelevant. Yet, international norms are drafted by states and therefore only emerge, if the participating states expect positive gains from the cooperation. When the situation changes, for example due to new developments regarding domestic politics or economic or technological progress, international law changes, as states aim to adapt it to the new circumstances. Non-compliance occurs, when states expect not to benefit from compliance any more. When calculating the gains and losses from compliance, states consider the direct benefits and costs from complying but also take into account the indirect negative consequences of non-compliance, such as retaliation or reputational loss. Just as the other presented theories on compliance, also Goldsmith and Posner's approach provoked criticism. Raustiala animadverts, that Goldsmith and Posner's rational-choice theory is "*mainstream*"¹²², as it strongly assembles already existing international relations literature. Buchanan challenges the claim, that there exist no moral obligations to comply with international law. In his point of view, states represent individuals, which do have a moral sense. Therefore, states cannot entirely ignore the moral side to international law.¹²³

Andrew Guzman, on the other hand, criticises, that the authors do not put enough emphasize on the impact of reputational consequences. In his own reputational theory, which I will present in the following section, he urges, that the fear of direct and reputational sanctions strongly affects state behaviour towards international norms. As this theory offers valuable insights concerning the behaviour of states towards international legal norms, it will be applied to the case study of Bangladesh.

3.2 Managerial Theory

Antonia and Abram Chayes first introduced the managerial theory in their paper "On Compliance" in 1993. This norm-based theory of compliance hinges on the background assumption, that states have "*a propensity to comply*"¹²⁴ with international law.

In the first part of the paper, the authors substantiate their assumption, that states generally want to comply with international legal norms, by elaborating on the reasons behind it. The

¹¹⁹ Goldsmith, Jack, Posner, Eric A. (2006): *The New International Law Scholarship*; p.466

¹²⁰ Goldsmith, Jack, Posner, Eric A. (2006): *The New International Law Scholarship*, p.467

¹²¹ Goldsmith, Jack, Posner, Eric A. (2006): *The New International Law Scholarship*, p.467

¹²² Raustiala, Kal (2006): *Refining the Limits of International Law*; Georgia Journal of International and Comparative Law Vol. 34, p.424

¹²³ Buchanan, Allen (2006): *Democracy and the Commitment to International Law*; Georgia Journal of International and Comparative Law Vol. 34; pp.312,313

¹²⁴ Chayes, Abram, Chayes, Antonia H. (1993): *On Compliance*; in: *International Organization*, Vol. 47, No. 2.; p.176

second part of the paper is concerned with explaining situations of non-compliance. These mostly unintended deviances from international legal obligations derive from three circumstances: ambiguity, capability and a temporal dimension. In the third part, which is not central to this analysis, the authors define their concept of an acceptable level of compliance, as they argue that the strict aspiration of perfect compliance from all members of a treaty regime is not reasonable. They differentiate between technical infringements, that do not threaten the existence of the concerned regime and are therefore tolerable and violations, that endanger the regime as a whole and thus have to be restrained.¹²⁵ In the following, the reasons for compliance and non-compliance put forward by the Chayeses' managerial approach will be depicted in detail.

According to the authors, the assumption of the interest-based vein of compliance theories, that states just comply with international law, when it is in their interest to do so, is neither a statement based on empirical facts, nor does it meet the requirements of a testable hypothesis. Correspondingly, however, there is also no way to doubtlessly validate the assumption, that states generally tend to comply with international law, as empirical proof can be found for both, the interest-based as well as the norm-based point of view.¹²⁶ Therefore, the authors put considerable emphasis on substantiating, why they think, that a normative background assumption of states willing to comply is more profitable for explaining compliance with international treaties.

The first argument in favour of their background assumption is based on efficiency calculations of states. Policy decisions are costly, as they require precedent analyses of the situation and herewith burn up governmental resources. As these resources are scarce, governments will only question previously made decisions, if the circumstances leading to these decisions have fundamentally changed.¹²⁷ Hence, *"efficiency dictates considerable policy continuity"*.¹²⁸ Instead of constantly recalculating decisions, states will prefer to follow an established rule. In regard to a ratified Convention of the ILO this means, that the normal and efficient reaction of a state would be to aim to comply with it.

The second argument of Antonia and Abram Chayes is, that the voluntary character of international treaties implies, that states only become a part of it, if it lies in their national interest to do so. These national interests are not fixed, ex-ante defined facts but evolve during the drafting of a treaty, as there, states *"explore, redefine, and sometimes discover their interests."*¹²⁹ The managerial approach does not see states as unitary actors but recognizes, that there are different national agencies and bureaucratic entities involved in

¹²⁵ Chayes, Abram, Chayes, Antonia H. (1993): On Compliance; pp. 200,201

¹²⁶ Chayes, Abram, Chayes, Antonia H. (1993): On Compliance; pp. 176,177

¹²⁷ Chayes, Abram, Chayes, Antonia H. (1993): On Compliance; pp.178,179

¹²⁸ Chayes, Abram, Chayes, Antonia H. (1993): On Compliance; p.178

¹²⁹ Chayes, Abram, Chayes, Antonia H. (1993): On Compliance; p.180

the preparation of a national position on the topic at the national level. They all have their own positions and agendas. Thus, a national position and a state's interests in a certain topic are not pre-existent but shaped in these internal interactions, which thoroughly consider the state's options at a long-term point of view¹³⁰. During the subsequent international negotiations of the treaty, states have the opportunity to influence the content and exact wording of a treaty by persuading other states of their line of argument. Ultimately, the final draft of a treaty reflects a compromise of the interests of all participating states. By having the chance to form coalitions, Chayes and Chayes stress, that also small states have the opportunity to block or alter positions brought forward by stronger states.¹³¹ Problems could arise, when a state's national position on the topic changed between the time of the negotiations and the final adoption of the treaty or when states, that could only add little to the final draft, show their disappointment by opposing the final treaty. The authors reply by stating, that "*the very act of making commitments*"¹³² causes a state to tend to comply, as it is aware of the compliance expectation of other states. Furthermore, treaties are not static but can be modified and adjusted consonant to changed interests of the involved states.¹³³ Additionally, when states have very oppositional views on a topic, the expected result is also not widely spread non – compliance with an adopted treaty. Instead, the states are already aware of that problem at the negotiation stage and draft a rather general treaty on a "*lowest-common-denominator*"¹³⁴ basis, which could be amended in the future.

The third argument put forward by the authors relies on the normative character of an international obligation. The fundamental and unchallenged principle, that paved the way for today's broad international cooperation, is the norm *pacta sunt servanda*, which means that treaties must be honoured.¹³⁵ Just like individuals usually obey the legal norms of their country, states also feel an obligation to comply with international law. This can be derived from the accuracy and precision, that characterizes the negotiations on international treaties. If states did not intend for international legal norms to be obeyed, high state officials and government members would not spend such an remarkable amount of time negotiating and debating even tiny details of international law.¹³⁶ Another reinforcing factor is, that democracies, that are built on the principles of good governance and the rule of law,

¹³⁰ Chayes, Abram, Chayes, Antonia H. (1993): On Compliance; pp.180,181

¹³¹ Chayes, Abram, Chayes, Antonia H. (1993): On Compliance; pp.182,183

¹³² Chayes, Abram, Chayes, Antonia H. (1993): On Compliance; p.184

¹³³ Chayes, Abram, Chayes, Antonia H. (1993): On Compliance; p.185

¹³⁴ Chayes, Abram, Chayes, Antonia H. (1993): On Compliance; p.184

¹³⁵ Chayes, Abram, Chayes, Antonia H. (1993): On Compliance; p.185

¹³⁶ Chayes, Abram, Chayes, Antonia H. (1993): On Compliance; p.186

radiate credibility when also acting in accordance with these principles at the international level.¹³⁷

Regarding situations of non-compliance, Antonia and Abram Chayes argue, that most of the time, breaches of international obligations are not the deliberate and intended choice of states. Although such "*wilful flouting*"¹³⁸ might occur at times, when governments want to appease the international community by entering a treaty but have no intention to comply with it afterwards, it remains exceptional.

One of the three justifiable reasons for most cases of non-compliance is ambiguity of the treaty language, that arises from a vague formulation of central treaty provisions. On the other hand, however, also overly detailed phrasing can hamper compliant behaviour of states. Vague formulations occur, when the participating parties to the treaty negotiations could agree upon a precise solution and therefore chose a wording, that leaves room for individual interpretation. Unfortunately, this might lead to a "*zone of ambiguity*", where it is difficult for states to identify the lines between compliant and non-compliant behaviour.¹³⁹

Sometimes, the drafting parties do not anticipate an important case of application, for which the treaty then lacks clear instructions. Likewise, also an excessively complex, convoluted treaty can prove problematic, as it also contains the danger of implicitly excluding relevant areas of application by explicitly enumeration its areas of application.¹⁴⁰ While at the national level, those interpretative problems could simply be solved by the ruling of a court, in international relations, there is no final authority, that clarifies the correct interpretation of the norm.

Another cause of non-compliance are capability limits of a state. The formal legislative and administrative process following the ratification of a treaty requires a functioning bureaucratic structure, fiscal resources as well as versed experts, that take care about the technical implementation. If a state does not meet these requirements, such a "*deficit in domestic regulatory capacity*"¹⁴¹ can debar states from complying with their international obligations. Especially developing countries are therefore dependent on international technical assistance, that assists these states to build up an effective enforcement system.¹⁴²

The last cause of non-compliance, that Chayes and Chayes address, is that international legal obligations, which demand a significant change of behaviour from states, require a considerable amount of time to be implemented, leading to a time lag between the

¹³⁷ Chayes, Abram, Chayes, Antonia H. (1993): On Compliance; p.187

¹³⁸ Chayes, Abram, Chayes, Antonia H. (1993): On Compliance; p.188

¹³⁹ Chayes, Abram, Chayes, Antonia H. (1993): On Compliance; pp. 188,189

¹⁴⁰ Chayes, Abram, Chayes, Antonia H. (1993): On Compliance; p.189

¹⁴¹ Chayes, Abram, Chayes, Antonia H. (1993): On Compliance; p.194

¹⁴² *ibid.*

ratification of a treaty and the earliest possible date of compliance.¹⁴³ The ILO reacts to this time lag problem by providing transitional arrangements in many of its Conventions, that allow states to implement incremental changes over a determined period of time instead of demanding ad hoc compliance. One example for such a transitional clause would be Article 1 of the Forced Labour Convention (C029), where a period of five years at most is granted, in which forced labour may still be used as an exceptional measure for public purposes.¹⁴⁴ In summary, the arguments put forward by the authors to underpin their background assumption of states' general willingness to comply as well as those explaining mostly involuntary breaches of international obligations make it obvious, that the Chayeses' managerial approach opposes coercive military or trade sanctions but rather favours supportive measures in terms of technical assistance and persuasion to enhance compliance.¹⁴⁵

3.3 Reputational Theory

In his paper *"A Compliance-Based Theory of International Law"*, Andrew T. Guzman develops a theory of compliance with international law, which is centred on the assumption, that states are rational actors, that pursue their national interests. The self-interest of a state is an exogenous, given variable, as Guzman makes no assumption on how a state identifies its national goals. A state's decision whether to comply with an international obligation¹⁴⁶ can be affected by international law in two ways: by possible direct sanctions for non-compliance or by reputational damages, that a breach of an international obligations might entail.¹⁴⁷ In the first part of the paper, Guzman designs a single period one-shot game, where a state decides whether to comply or not. In this setting, which is based upon the neorealist view of international relations, international law is irrelevant. In the second part, however, Guzman relaxes the assumption of a single period and now analyses an infinitely repeated game. Here, international law is able to affect state behaviour in the previously described way. Although Guzman's game-theoretic illustrations use a bilateral setting with only two states being involved, his core statements of an rationally calculating state, that considers possible sanctions and reputational consequences of its behaviour, can easily be applied to the multilateral context. In the following, Guzman's assumption of irrelevance of international law in a single period game will be briefly introduced before elaborating on the assumed influence of international law in an infinitely repeated setting.

¹⁴³ Chayes, Abram, Chayes, Antonia H. (1993): On Compliance; p.195

¹⁴⁴ Article 1 (2), (3), Forced Labour Convention, 1930

¹⁴⁵ Chayes, Abram, Chayes, Antonia H. (1993): On Compliance; p.205

¹⁴⁶ According to Guzman, the term international obligations encompasses treaties, informal agreements and any other form of promises. See: Guzman, Andrew T. (2002): A Compliance – Based Theory of International Law; p.1847

¹⁴⁷ Guzman, Andrew T. (2002): A Compliance – Based Theory of International Law; in: California Law Review, Vol .90; p.1841

In order to show, that international law has no influence on state behaviour in a game, that is repeated finitely, Guzman analyses two distinct situations. These two game situations have different payoffs for compliance and non-compliance and therefore result in different dominant strategies for the players. The first situation represents a simple prisoner's dilemma, that is displayed in the appendix (figure III). Here, it is the dominant strategy for each country to renege on the agreement.¹⁴⁸ This gets obvious when analysing the given payoffs of the game: If country 1 assumes, that country 2 will comply, it is better for country 1 to violate the agreement as the payoff of 6 in the case of defection is higher than 5, which country 1 would get if it complied. The same results can be derived for the assumption, that country 2 violates the law and for the strategic calculations of country 2 based on the anticipated behaviour of country 1. Therefore, the resulting Nash equilibrium is, that both states do not comply. The inefficiency of this outcome can be seen in the fact, that the two countries would both have had higher benefits if they had complied. Contrariwise, one could also imagine a situation, where it is the dominant strategy for both countries to comply. This setting is also illustrated in the appendix (figure IV). Here, compliance occurs because it entails higher gains for a state, regardless of what the other state does.¹⁴⁹ In both situations, however, international law does not influence the strategy of a state because the assumption of a single period impedes, that the countries consider sanctions or reputational consequences, that would alter the payoffs in future replays.¹⁵⁰ This neorealist view of irrelevance of international law, however, could not explain why countries spend a considerable amount of resources to negotiate and participate in treaties.¹⁵¹

If an infinitely repeated game is assumed, international law is able to influence the behaviour of states by altering the payoffs through the threat of sanctions and reputational losses and hereby changing the equilibrium of the game.¹⁵² In this model, states decide in a first period, whether to enter the international legal obligation or not. Then, they decide in each subsequent period whether to comply with it or not. If the payoffs turned out to constitute a game, in which compliance is the dominant strategy, international law would, once again, have no impact as states comply with the obligation voluntarily. In the case of a prisoner's dilemma, however, compliance will only occur, if international law manages to

¹⁴⁸ Guzman, Andrew T. (2002): *A Compliance – Based Theory of International Law*, p.1842

¹⁴⁹ Guzman, Andrew T. (2002): *A Compliance – Based Theory of International Law*; p. 1843

¹⁵⁰ In a domestic setting, however, the cooperative solution of a one-shot game could be realized. Here, effective enforcement mechanisms exist as individuals can sue defecting business partners, which enables immediate sanctions for non-compliant behaviour. These immediate and inescapable punishments are included in the pay-off calculations ab initio. At the international level, no supranational authority exists that could immediately punish deviators. See: Guzman, Andrew T. (2002): *A Compliance – Based Theory of International Law*, pp. 1844, 1845

¹⁵¹ Guzman, Andrew T. (2002): *A Compliance – Based Theory of International Law*; p. 1844

¹⁵² Guzman, Andrew T. (2002): *A Compliance – Based Theory of International Law*; pp. 1844, 1845

alter the payoffs of the participating countries in a way, that makes compliance the dominant strategy.¹⁵³

Guzman makes the assumption, that states only conclude treaties with states, that have a good reputation. A country loses its good reputation, as soon as it violates an international obligation.¹⁵⁴ The payoffs of this infinitely repeated game are displayed in the appendix (figure V), but Guzman's detailed mathematical derivation will only be discussed to the extent, that is necessary to understand the essential message of his model. Guzman's core statement is, that due to the infinity of the game, states take into account future payoffs, which depend on their behaviour in previous periods. A state is aware, that if it violates the agreement once, it can never become part of it again, as the agreement as well as the good reputation of the state are destroyed. If both countries comply, they both get a payoff of 5 in the current and each future period, if both violate the agreement, the agreement is broken and they get a lower payoff of 3 in this and all future periods.¹⁵⁵ Gains in future periods are discounted by the rate r , in order to ascertain their present value. A high r means, that the state is rather impatient and values the gains it gets today much more than gains, which it expects to receive a couple of years from now. If a country violates the agreement in the current period, while the other complies, it gets a one-time payoff of 6, but in all future periods to come it just gets the low payoff of 3. A country, that complies with the agreement in the current period, while the other country cheats, just gets a payoff of 2 and a payoff of 3 in the future. The efficient equilibrium, where both states comply, can be achieved, if both countries have a sufficiently low discount rate r ¹⁵⁶, which means that they attach enough importance to the future consequences of their behaviour.¹⁵⁷

The reputational effect, however, is not always strong enough to alter state behaviour. Due to this and to the fact, that the dynamic nature of state preferences can rapidly alter the payoffs of a state, situations of non-compliance occur.¹⁵⁸ The magnitude of the reputational effect of defection hinges on various factors: For one, the relevance of reputation varies between states.¹⁵⁹ Although having a good reputation is generally beneficial for states, as it enables them to profit from a variety of potential agreements with other states, not every state wants to build up a strong reputation by honouring international agreements. Some states have no interest in accumulating "*reputational capital*"¹⁶⁰, as they prefer immediate short-term gains to long-term benefits, which could only be received through a stable,

¹⁵³ Guzman, Andrew T. (2002): A Compliance – Based Theory of International Law, p. 1847

¹⁵⁴ Guzman, Andrew T. (2002): A Compliance – Based Theory of International Law, p. 1847

¹⁵⁵ Guzman, Andrew T. (2002): A Compliance – Based Theory of International Law, pp. 1847, 1848

¹⁵⁶ In the appendix, I calculated the exact value of r : for assured compliance, r has to be less than 2 ($r < 2$).

¹⁵⁷ Guzman, Andrew T. (2002): A Compliance – Based Theory of International Law, pp. 1848, 1849

¹⁵⁸ Guzman, Andrew T. (2002): A Compliance – Based Theory of International Law, pp. 1853

¹⁵⁹ Guzman, Andrew T. (2002): A Compliance – Based Theory of International Law, p. 1849

¹⁶⁰ Guzman, Andrew T. (2002): A Compliance – Based Theory of International Law, p. 1850

cooperative relationship with other states.¹⁶¹ Second, especially in highly sensitive policy fields, such as decisions regarding war or peace or other security issues, the effect of reputation is rather negligible. When the stakes of a policy decision and herewith the possible gains and losses attached to it are very high, a country is unlikely to be influenced by the reputational consequences of the action, as even the complete loss of reputation would represent a relatively small additional cost.¹⁶² Third, the reputational consequences of non-compliance also depend on the "*nature of the violation*"¹⁶³. If, for example, the violation does not cause any harm to other involved states or is rather technical, the reputational consequences will be small. The same applies to cases, where the state has justifiable reasons for violating the agreement or if the other states did not even realize, that a violation occurred.¹⁶⁴ On the other hand, states can also suffer reputational losses for implicit obligations or obligations, it is not a part of. Here, Guzman presents the example of the Basle Accord, which is expected to be universally accepted, also from those countries that did not sign it.¹⁶⁵

Next to reputational consequences, also direct sanctions are able to influence state behaviour. Due to the difficulty of imposing direct sanctions at the international level, however, the previously described reputational effects are more relevant.¹⁶⁶ Guzman defines the term sanctions includes "*all costs associated*"¹⁶⁷ with non-compliance, such as economic punishment or retaliation of other states. If states are able to credibly threaten other states with such sanctions, they are more efficient than reputational measures and lead to optimal compliance¹⁶⁸ with an international obligation.¹⁶⁹ Most of the time, sanctions represent retaliatory measures, such as the imposition of trade restrictions as an answer to newly adopted trade tariffs of a certain state. Sometimes, punitive sanctions such as embargos are imposed, which next to punishing the offending state also lead to a higher overall compliance as the threat of punishment is now credible.¹⁷⁰ In general, however, sanctions are easier to conduct in bilateral situations than in a multilateral context. In a multilateral agreement, the free rider problem might occur, as all countries benefit from the sanctions, that one country imposes on an offender, which leads to inefficiently low use of

¹⁶¹ *ibid.*

¹⁶² Guzman, Andrew T. (2002): A Compliance – Based Theory of International Law, pp. 1883, 1884

¹⁶³ Guzman, Andrew T. (2002): A Compliance – Based Theory of International Law, p. 1861

¹⁶⁴ Guzman, Andrew T. (2002): A Compliance – Based Theory of International Law, pp. 1862, 1863

¹⁶⁵ Guzman, Andrew T. (2002): A Compliance – Based Theory of International Law, p. 1864

¹⁶⁶ Guzman, Andrew T. (2002): A Compliance – Based Theory of International Law, 1865

¹⁶⁷ Guzman, Andrew T. (2002): A Compliance – Based Theory of International Law, p. 1845

¹⁶⁸ According to Guzman, "optimal compliance" is achieved, when only efficient violations of the obligation occur. Efficient violations are characterized by the fact, that the benefits of defection exceed the benefits of compliance. See: Guzman, Andrew T. (2002): A Compliance – Based Theory of International Law, p. 1866

¹⁶⁹ Guzman, Andrew T. (2002): A Compliance – Based Theory of International Law, p. 1866

¹⁷⁰ Guzman, Andrew T. (2002): A Compliance – Based Theory of International Law, p. 1868

sanctions.¹⁷¹ On the other hand, multilateral organisations hold the advantage, that states can easier be persuaded to voluntarily accept sanctions or to undertake actions to atone for their failures, as otherwise, they might face expulsion.¹⁷²

In summary, Guzman's theory draws a picture of international law, that is more likely to influence states' behaviour in policy fields, where states frequently interact and that are not considered as "high stake" policy fields. Here, reputational consequences and the threat of sanctions can alter the cost-benefit analysis of states in a way, that compliance becomes the optimal strategy.

4 Case Study: Bangladesh

4.1 General Information and Overview on the Compliance Situation

The People's Republic of Bangladesh was founded in 1971 after gaining independence from West Pakistan. After a short period of democratic rule (1971 – 1975), Bangladesh was governed by a military regime until 1990.¹⁷³ Since then, the multiparty democratic rule was only disrupted between 2007 and 2008, when a "*military - backed caretaker government*"¹⁷⁴ was established in order to calm the riots and political unrest in the country. Since 2009, Bangladesh's parliamentary democracy is led by president Zillur Rahman and prime minister Sheik Hasina Wajed. The general elections leading to the victory of an alliance led by Sheik Hasina Wajed's party Awami League in December 2008, were considered as free and fair. Besides a violent rebellion of the border security force in early 2009, the last years were marked by increased political stability and calmness.¹⁷⁵

Yet, according to the 2011 report of the non-governmental organization *Freedom House*, the country still struggles with fostering its democratic structures and building up an administration, that is entirely based on good governance, the rule of law and respect for human rights.¹⁷⁶ The political work is furthermore constricted by the deep-rooted enmity between the two main political parties Awami League and the Bangladesh Nationalist Party (BNP) and their leaders, Sheik Hasina Wajed and Khaleda Zia.¹⁷⁷ Wide spread corruption and the misuse of state resources in the country are seen as one of the most essential

¹⁷¹ Guzman, Andrew T. (2002): A Compliance – Based Theory of International Law, p. 1869

¹⁷² Guzman, Andrew T. (2002): A Compliance – Based Theory of International Law, pp.1871,1872

¹⁷³ Bertelsmann Stiftung (2012): Bangladesh Country Report, p.3

¹⁷⁴ *ibid.*

¹⁷⁵ Bertelsmann Stiftung (2012): Bangladesh Country Report, p.4

¹⁷⁶ Freedom House (2011): Countries at the Crossroads, Bangladesh: <http://www.freedomhouse.org/report/countries-crossroads/2011/bangladesh>

¹⁷⁷ Bertelsmann Stiftung (2012): Bangladesh Country Report, p.7

impediments to sustainable developmental progress.¹⁷⁸ The United Nations Human Development Index currently ranks Bangladesh at position 146 out of 187 countries.¹⁷⁹ Despite Bangladesh's unfavourable climate conditions and recurring natural catastrophes, Bangladesh experienced a steady growth rate of its gross domestic product (GDP)¹⁸⁰ in the last decades. Since 2000, Bangladesh's economy constantly grew with a positive rate between 4,4 % and 6,7%.¹⁸¹ In 2011, the GDP per capita was 743 US Dollar, while in 2001, it was only 356 US Dollar.¹⁸² The country's economy heavily depends on its export sector. Here, Bangladesh's top performing sector is the textile industry with its main export goods of knitwear, woven garments and jute goods.¹⁸³ The roots of the country's export – oriented economic policy dates back to the 1980s, when the former leader General Ziaur Rahman opened the country to foreign trade relations and promoted foreign investments of industrialized countries.¹⁸⁴ Today, Bangladesh's main export partners are the United States of America, Canada, Germany, the United Kingdom and other European states.¹⁸⁵ Bangladesh joined the ILO in 1972. Since then, it has ratified seven of the eight fundamental Conventions, that together build the Core Labour Standards. It did not ratify the fundamental Convention C138, which defines a minimum age for employment. Furthermore, Bangladesh ratified two of the four governance Conventions and 24 of the 177 technical Conventions.¹⁸⁶ The fundamental Convention on the freedom to association and the right to organise (C087), on which the focus of this chapter is laid on, was ratified in 1972. From the start of Bangladesh's membership in the ILO, there were cooperative signals from the state. An ILO office was opened in Dhaka in 1973 and since then, numerous technical cooperation projects were conducted in the framework of the ILO's Decent Work Country Programme (DWCP) for Bangladesh, that all aimed to enhance working conditions and social protection in the country, in order to ensure full compliance with the Core Labour Standards.¹⁸⁷ Until today, however, serious violations of the ratified fundamental Conventions are prevalent. The International Trade Union Confederation

¹⁷⁸ Bertelsmann Stiftung (2012): Bangladesh Country Report, p.4

¹⁷⁹ United Nations Development Programme (2011): Human Development Report 2011; p.133

¹⁸⁰ In the following, I will use the abbreviation GDP when referring to the Gross Domestic Product

¹⁸¹ Worldbank (n.d.): World Development Indicators, Data for Bangladesh, GDP growth (annual %); available at: http://databank.worldbank.org/ddp/home.do?Step=2&id=4&hActiveDimensionId=WDI_Series (last access: 02/01/13)

¹⁸² Worldbank (n.d.): World Development Indicators, Data for Bangladesh, GDP per capita (current US \$)

¹⁸³ Dhaka Chamber of Commerce & Industry (n.d.): Major Product – Wise Export from Bangladesh; http://www.datacraftbd.com/dcci/index.php/home/Major_Export_Items (last access: 02/01/13)

¹⁸⁴ Bertelsmann Stiftung (2012): Bangladesh Country Report, p.3

¹⁸⁵ United Nations (n.d.): UN Data, Bangladesh Trade Profile; available at: <http://data.un.org/CountryProfile.aspx?crName=Bangladesh#Trade> (last access: 03/01/13); For more detailed information on Bangladesh's trade with the European Union, see also: European Commission (2012): EU Bilateral Trade and Trade with the World, Bangladesh – Trade Statistics

¹⁸⁶ International Labour Organization (n.d.) : Ratifications for Bangladesh, Normlex; available at: http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103500 (last access: 31/12/12)

¹⁸⁷ International Labour Office (2008): Decent Work Country Programme Bangladesh 2006 - 2009; pp.3-5

(ITUC) lamented in its most recent country report, that neither in law nor practice, the Convention C087 on the freedom of association and the right to organise is adequately implemented.¹⁸⁸ Also the ILO repeatedly called the government's attention to deficits in Bangladesh's compliance strategy. The ILO's supervisory bodies published observations in 2009, 2010 as well as 2011.¹⁸⁹ Furthermore, the Bangladesh Cha - Sramik Union of tea workers filed a complaint due to violent suppressions of demonstrations and state interferences in the election of union officials by using the ILO's special procedure for freedom of association cases in early 2010.¹⁹⁰

The main points of criticism with respect to the Convention C087 are, that the registration of unions is hampered by overly complex procedures and is often denied by the responsible authorities.¹⁹¹ Although Article 38 of Bangladesh's Constitution states, that *"every citizen shall have the right to form associations or unions"*¹⁹², this right is constricted by various legal limitations and so far, the government made no serious attempts to achieve significant improvements. The new Bangladesh Labour Act from 2006, which was originally expected to improve former legislation on the topic, contained even more restrictions. Among others, it excludes many categories of workers from the right to organise or establish workers' organisations.¹⁹³ According to section 179 (2) of the Labour Act, a union is not entitled to registration *"unless it has a minimum membership of thirty percent of the total workers employed in the establishment"*¹⁹⁴ - if it falls below this percentage, it can be deregistered.¹⁹⁵ A maximum of three trade unions may be registered at a company and workers are not allowed to join more than one trade union – otherwise they face imprisonment.¹⁹⁶ These and numerous other provisions of the Labour Act are in clear contradiction to the purpose and content of Convention C087.

¹⁸⁸ International Trade Union Confederation (2012): Internationally Recognised Core Labour Standards in Bangladesh – Report for the WTO General Council Review of the Trade Policies of Bangladesh; p.1 (executive summary)

¹⁸⁹ International Labour Organization (n.d.): Normlex, Supervising the application of International Labour Standards for Bangladesh, years 2009-2011; available at: http://www.ilo.org/dyn/normlex/en/f?p=1000:11110:0::NO:11110:P11110_COUNTRY_ID,P11110_CONTEXT:103500,SC (last access: 03/01/13)

¹⁹⁰ International Labour Organization (n.d.): Normlex, Freedom of Association Cases Bangladesh, case no.2765; available at: <http://www.ilo.org/dyn/normlex/en/f?p=1000:20060:0:FIND:NO::> (last access: 03/01/13)

¹⁹¹ International Trade Union Confederation (2012): Internationally Recognised Core Labour Standards in Bangladesh – Report for the WTO General Council Review of the Trade Policies of Bangladesh; p.3

¹⁹² The Constitution of the People's Republic of Bangladesh, Article 38; see: Bangladesh Parliament (2004): The Constitution of the People's Republic of Bangladesh; available at: http://bdlaws.minlaw.gov.bd/pdf_part.php?id=367&vol=15&search=1972 (last access: 04/01/13)

¹⁹³ Observation (CEACR), adopted in 2011, Freedom of Association and Protection of Right to Organise Convention, 1948 (No.87) – Bangladesh; See: International Labour Conference (2012): Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1A), pp. 68,69

¹⁹⁴ Bangladesh Labour Act, 2006, Section 179 (2); see: Bangladesh Employers' Federation (2009): A Handbook on the Bangladesh Labour Act, 2006; ReMiSi Publishers, p.83

¹⁹⁵ Bangladesh Labour Act, 2006, Section 190 (1f)

¹⁹⁶ Bangladesh Labour Act, 2006, Sections 179 (5), 193, 300

Also the special labour legislation in the country's Export Processing Zones (EPZ)¹⁹⁷ is a point of discontent.¹⁹⁸ Workers in these eight zones fall under a separate legislation and are therefore exempted from the application of the Labour Act and other general labour laws. In 2010, the EZP Workers' Association and Industrial Relations Act from 2004 was amended due to pressure from the ILO. The newly introduced EPZ Workers' Welfare Society and Industrial Relations Act 2010 (EWSIRA), however, contained no considerable improvements for the rights of workers in the EPZ as the ILO noted "*with deep regret*"¹⁹⁹. Per industrial unit, only one "Workers' Welfare Society" may exist.²⁰⁰ In order to establish such an union, 30 % of the workers have to ask for it. Then, the head of the Bangladesh Export Processing Zones Authority (BEPZA)²⁰¹ conducts a referendum in the respective establishment and only if more than 50 % of all workers participate in it and an absolute majority of the participating workers is in favour of the establishment of the "Workers' Welfare Society", the head of the BEPZA authorises it. Furthermore, the head of the BEPZA regulates the electoral procedure for the union's representatives and has to give his approval, if the union wants to receive external funds. The union can be disestablished if at least 30 % of the workers, regardless of whether they are members or not, request it and in this case, may not be re-established for one year. Furthermore, according to section 46 of the EWSIRA, industrial action is strictly forbidden until 31 October 2013.²⁰² In the future, the government of Bangladesh plans to expand the concept of EPZ and to install more of these free trade zones in the country.²⁰³

Yet, Bangladesh's compliance problems go beyond inadequate legal protection of workers as the – as previously seen mostly insufficient – legislation is also not effectively enforced. The most recent complaint of the tea worker's Bangladesh Cha – Sramik Union, for example, offers a good example. Here, the union claims, that trade union leaders were removed from office without any reason and that subsequent, peaceful demonstrations were violently suppressed by police forces, which both not only contradicts the provisions of

¹⁹⁷ In the following, I will use the abbreviation EPZ, when referring to a country's Export Processing Zones

¹⁹⁸ Observation (CEACR), adopted in 2011, Freedom of Association and Protection of Right to Organise Convention, 1948 (No.87) – Bangladesh; See: International Labour Conference (2012): Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1A), p. 67

¹⁹⁹ Observation (CEACR), adopted in 2011, Freedom of Association and Protection of Right to Organise Convention, 1948 (No.87) – Bangladesh; See: International Labour Conference (2012): Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1A), p. 67

²⁰⁰ *ibid.*

²⁰¹ In the following, I will use the abbreviation BEPZA, when referring to the Bangladesh Export Processing Zones Authority

²⁰² Observation (CEACR), adopted in 2011, Freedom of Association and Protection of Right to Organise Convention, 1948 (No.87) – Bangladesh; See: International Labour Conference (2012): Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1A), p. 68

²⁰³ Bangladesh Export Processing Zones Authority (2008): Export Processing Zones (EZP) in Bangladesh: An Attractive Investment Destination, p.9

Convention C087 but also national law.²⁰⁴ Furthermore, in practice, regular intimidations of union activists occur, as they are sued, dismissed or confronted with other threats by their employers. This "*strong anti-union culture*"²⁰⁵ in Bangladesh makes it highly difficult to achieve the legal minimum requirements for the registration of a union.²⁰⁶

Weighing up the empirical facts, Bangladesh's behaviour towards international obligations arising from the ratified ILO Convention C087 seems ambivalent. On the one hand, Bangladesh accepts and supports the presence of ILO advisors and other international organizations in the country, that aim to improve the working conditions of the population. Furthermore, the government repeatedly assures, that "*it is fully aware and committed to freedom of association*".²⁰⁷ On the other hand, so far, Bangladesh has failed to implement central parts of the Convention C087 into its national laws and provides no effective enforcement mechanisms for existing laws on workers' rights. In the following, the managerial theory from Abram and Antonia Chayes as well as Guzman's reputational theory will be applied in order to examine their ability to explain Bangladesh's behaviour towards the ILO Convention C087.

4.2 Application of the Managerial Theory

According to the Chayeses' managerial theory, states generally want to comply with their international legal obligations. The stated reasons behind that background assumption also apply here. Although Bangladesh had no opportunity to contribute to the original draft of the Convention, as it was already adapted by the International Labour Conference in 1948 – at a time, when Bangladesh was not yet a member of the Organization - the country voluntarily chose to become a part of the Convention. With the ratification act, Bangladesh made a normatively binding commitment, that should motivate the state to comply with the Convention's provision. Bangladesh's present failure to fully comply with the Convention C087 in law and practice, on the other hand, should then be explainable by either an unclear formulation of the Conventions, Bangladesh's inability to comply due a lack of resources or the fact, that there was simply not enough time to achieve full compliance since the ratification date.

²⁰⁴ International Labour Organization (2010): Normlex, Case No. 2765 (Bangladesh), Bangladesh Cha-Sramik Union (BCSU); available at: http://www.ilo.org/dyn/normlex/en/f?p=1000:50001:0::NO:50001:P50001_COMPLAINT_FILE_ID:2897966 (last access: 05/01/13)

²⁰⁵ International Trade Union Confederation (2012): Internationally Recognised Core Labour Standards in Bangladesh – Report for the WTO General Council Review of the Trade Policies of Bangladesh; p.6

²⁰⁶ International Trade Union Confederation (2012): Internationally Recognised Core Labour Standards in Bangladesh – Report for the WTO General Council Review of the Trade Policies of Bangladesh; pp. 7,8

²⁰⁷ Observation (CEACR), adopted in 2011, Freedom of Association and Protection of Right to Organise Convention, 1948 (No.87) – Bangladesh; See: International Labour Conference (2012): Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1A), p.66

The first argument of Chayes and Chayes, that non-compliance may be attributed to an ambiguous phrasing of the provisions of the Convention C087, is ineligible in this case. Other member states of the ILO, such as Finland, are in full compliance with the Convention. This serves as a first indicator, that there can be no general ambiguity to the Convention. Secondly, even if Bengali legislators experienced problems with understanding and interpreting the provisions of the Convention, they could have sought for technical and legal assistance of the ILO. Thirdly, in its numerous observations and direct requests, the ILO has depicted in detail, which of Bangladesh's national laws are contradictory to the Convention and how they should be altered.

Before addressing the seemingly plausible reason of a lack of regulatory capacity, the inaptitude of the temporal dimension justification, is explained. Bangladesh ratified the Convention C087 in 1972, right after becoming a member of the organisation. Since then, 40 years have passed. Even though the country experienced significant political upheavals and economic difficulties during that time, at least legal compliance with the norms should have been possible. The adoption of the new Labour Code in 2006 or the new EZP legislation in 2010 showed, that the country has functioning legislative procedures.

The argument, that Bangladesh's non-compliance is caused by a lack of resources, needs to be addressed in detail. On the one hand, Bangladesh's low development status and the widespread corruption in the country might indeed complicate a smooth collaboration between the different national authorities, that are responsible for implementing the Convention's content. The low educational standard in the country might lead to a scarcity of competent administrators and legal experts. Furthermore, a lack of fiscal resources might impede a thorough analysis of the working conditions in different sectors of the economy and the realisation of regular inspections of enterprises. And even if the government was able to finance those inspections, the problem of corrupt public servants and police members would seriously confine their effectivity. Here, however, it is essential to differ legal compliance from problems, that might occur in regard of the practical enforcement of laws on workers' rights. Bangladesh's long-term failure to amend its national laws cannot be justified by its low development status, that led to a scarcity of competent legal experts or administrators. Like previously mentioned, the ILO offers extensive technical assistance to its members in order to ensure the conformity of the national laws with the Convention. Practical enforcement of existing legal provisions, on the other hand, can indeed be severely hampered by the country's problems of corruption, badly appointed government agencies, too few labour courts and an overall lack of fiscal resources. Also the ILO experts, that reviewed the latest "Decent Work Country Programme" for Bangladesh, came to the conclusion, that the state has *"insufficient institutional capacity to enforce labour laws*

and policies".²⁰⁸ However, they also stated, that "(t)he Government has not revised its overall labour policy for nearly 30 years"²⁰⁹, which indicates, that not institutional capacity problems, but also insufficient political will – which the managerial approach does not address – accounts for Bangladesh's low compliance status with the Convention C087. This can also be seen in the government's reaction to the accusations of the Bangladesh Cha – Sramik Union. Instead of coordinating a thorough and independent investigation of the events, it fully denied, that any violent abolition of worker's demonstrations through police forces might have occurred.²¹⁰ Summing up, the Chayeses' approach is therefore only partially able to explain Bangladesh's failure to fully comply with the Convention C087.

4.3 Application of the Reputational Theory

Guzman's theory assumes, that states conduct a cost-benefit analysis and decide on this basis, whether to comply with an international legal obligation or not. As the case of the ILO Convention presents an "infinitely repeated game" in the sense, that it establishes long-term commitments between - especially in the area of trade - frequently interacting states, Bangladesh should consider possible direct sanctions and reputational consequences of non-compliance. Bangladesh's cost-benefit analysis obviously came to the conclusion, that the costs of not complying with central parts of the ratified Convention C087 do not exceed the benefits of doing so. In order to analyse the explanatory power of Guzman's approach, these costs and benefits have to be determined and the possible existence of reputational consequences and direct sanctions in this case have to be analysed.

The domestic costs of not adequately safeguarding the worker's rights to form unions and demonstrate for their rights are the danger of social upheavals and an increasingly frustrated working force. The widespread poverty in the country, however, debilitates the bargaining power of the workers, as the loss of the employment would have devastating consequences for the workers and their families. Also incidences like imprisonments or murders of union activists and violent police actions intimidate workers and deter them from large scale protests. Therefore, the domestic costs of a non-complying are rather low.

The international costs of non-compliance with the Convention contain reputational damages and possible trade sanctions by the country's main trade partners. As previously mentioned, among the top importers of Bangladesh's export products are the United States, Germany, the United Kingdom and other European countries. All of these countries are also ILO members and except for the United States, that did not ratify the Convention C087, all

²⁰⁸ Dunn, Karen, Mondal, Abdul Hye (2011): Report on the Review of the Decent Work Country Programme Bangladesh 2006-2009; p.5

²⁰⁹ *ibid.*

²¹⁰ International Labour Organization (2010): Normlex, Case No. 2765 (Bangladesh), Bangladesh Cha-Sramik Union (BCSU); available at: http://www.ilo.org/dyn/normlex/en/f?p=1000:50001:0::NO:50001:P50001_COMPLAINT_FILE_ID:2897966 (last access: 05/01/13)

of them show high compliance levels with the Convention C087. They are highly stable parliamentary democracies, that set a high value on human rights, social justice and decent working conditions. Especially in recent years, there was also an increased public awareness in these countries of Bangladesh's poor working conditions and the repression of union's in the country. A review of the news coverage on the topic for example in Germany shows, that clothing manufacturers such as H&M, Adidas or C&A, were denounced for producing there and therefore profiting from the exploitative working conditions in the country.²¹¹ This led to exerted incentives of the concerned companies to polish up their reputation by establishing codes of conduct and providing more transparency about their supplying factories. H&M, for example, explicitly refers to the ILO's fundamental Contentions in its code of conduct and published its global supply chain in an annual sustainability report.²¹² This public outrage about Bangladesh's labour policy and Western companies, that profit from these inhuman conditions, however, did not affect the bilateral economic and political relations between Bangladesh and its Western trading partners. Although politicians and diplomats of Bangladesh's main trading partners did express their concern about working conditions in Bangladesh²¹³, the governments did not take measures to limit imports from Bangladesh, nor did they prompt their companies to suspend production in the country until national laws on workers' rights are improved. Bangladesh's exports to the United States and the European Union constantly increased during the last years.²¹⁴ Regarding the United States, US imports from Bangladesh rose by 13,2% from 2010 to 2011.²¹⁵ Also foreign direct investment in Bangladesh increased with an impressive rate of 25 % from 910 Million US Dollar in 2010 to 1,13 Billion US Dollar in 2011, especially due to new investments in the garment sector.²¹⁶

Next to a lack of significant reputational consequences, Bangladesh does not have to fear any direct sanctions. Due to its low development status, Bangladesh does not face any trade restrictions from the European Union. The European Union's Everything But Arms

²¹¹ See for example: Financial Times Deutschland (25/11/12): Feuer in Bangladesh - C&A ließ in abgebrannter Textilfabrik produzieren; available at: <http://www.ftd.de/politik/international/feuer-in-bangladesch-c-a-liess-in-abgebrannter-textilfabrik-produzieren/70121953.html> (last access: 06/01/13); Focus Online (24/10/12): Ausbeutung in Kambodscha – Vorwürfe gegen H&M: 14,50 Euro für 70 Stunden Arbeit; available at: http://www.focus.de/finanzen/news/unternehmen/ausbeutung-in-kambodscha-vorwuerfe-gegen-hundm-14-50-euro-fuer-70-stunden-arbeit_aid_845748.html (last access: 06/01/13)

²¹² H&M (n.d.): Code of Conduct; available at: <http://about.hm.com/content/hm/AboutSection/en/About/Sustainability/Commitments/Responsible-Partners/Code-of-Conduct.html> (last access: 06/01/13)

²¹³ See for example: The Daily Star (07/06/12): Mozena fears 'perfect storm' in garment sector; available at: <http://www.thedailystar.net/newDesign/news-details.php?nid=237309> (last access: 06/01/13)

²¹⁴ European Commission (2012): EU Bilateral Trade and Trade with the World, Bangladesh – Trade Statistics;

²¹⁵ Office of the United States Trade Representative (n.d.): Bangladesh; available at: <http://www.ustr.gov/countries-regions/south-central-asia/bangladesh> (last access: 06/01/13)

²¹⁶ Chowdhury, Abdur R. (10/07/12): Connecting the Dots – FDI in Bangladesh, The Daily Star (online); available at: <http://www.thedailystar.net/newDesign/news-details.php?nid=241435> (last access: 06/01/13)

(EBA) Agreement provides "*quota-free access to the EU market*".²¹⁷ Regarding the United States, Bangladesh is part of the Generalized System of Preferences (GSP) Program, which invites US investors to produce in Bangladesh and guarantees Bangladesh a duty-free import of selected goods into the United States.²¹⁸ Summarizing, it gets obvious, that Bangladesh's violation of its obligation under ILO Convention C087 did not result in any quantifiable reputational losses or direct political or economic sanctions.

The benefits of non-compliance, on the other hand, are mainly of financial nature. Bangladesh's economic progress in the last decades was significantly based on the success of its export-oriented textile industry. With a great amount of workers, that are willing to work for an extremely low wage, Bangladesh was able to attract many foreign companies with its unprecedentedly low production costs. The country's eight EPZs, which were established in the 1980s, offer further amenities for foreign investors. In these free trade zones, imports of raw materials are duty free and export goods are not liable to tax.²¹⁹ If production costs in Bangladesh went up, it would have to be expected, that many foreign investors would leave the country and many of the Western companies, that are currently producing their clothes in Bangladesh, would look for supplying factories in other countries, such as Cambodia or Pakistan, which presents a serious threat to Bangladesh's economy. If workers were able to freely associate and form unions without interference, they would be able to organise their interests and be able to formulate concrete demands, such as higher wages, reasonable working hours or higher security standards in their workplaces. If peaceful demonstrations and strikes were possible, those demands could not be ignored in the long run and at least slow improvements of working conditions would be likely to occur. This, in turn, would lead to increased production costs and therefore less attractive investment and production conditions in Bangladesh. Thus, the government of Bangladesh has high benefits from its non-compliance with Convention C087.

Taken together, the analysed costs and benefits of non-complying with the Convention are able to explain Bangladesh's low compliance status. As the analysis is mainly based on economic indicators, however, Guzman's theory does not include certain factors, such as the difficulties, that root in the low development status of Bangladesh. Therefore, it is also not able to cover all possibly relevant aspects. Summarizing, the conclusion can be drawn, that while Guzman's theory has difficulties to capture reasons of non-compliance, that are beyond the country's direct sphere of influence, the managerial approach has shortcomings

²¹⁷ Bhattacharya, Debapriya, Rahman, Mustafizur, Raihan, Ananya (2004): The EU-EBA Initiative: Market Access Implications and Potential Benefits for Bangladesh; Centre for Policy Dialogue, Occasional Paper No.43, p.5

²¹⁸ United States Department of State (2012): U.S. Relations with Bangladesh; available at: <http://www.state.gov/r/pa/ei/bgn/3452.htm> (last access: 07/01/13)

²¹⁹ Dowla, Asif (1997): Export Processing Zones in Bangladesh: The Economic Impact; Asian Survey Vol. 37 No. 6, p.561

in that it does not take into consideration conscious decisions of non-compliance of states, for example due to economic benefits.

5 Conclusion

The presented case of the ILO and its Core Labour Standards in this bachelor thesis illustrated, that although being of essential importance - especially in the area of human rights - international law still faces severe difficulties regarding states' behaviour towards it. Despite the facts, that there is an impressively high numbers of ratifications of the CLS and the ILO's supervisory system is widely regarded as being exceptionally versatile, violations of the Conventions are still prevalent in many countries. In order to enhance legal compliance with the ILO's fundamental Conventions, it is of essential importance to conduct research on the motives behind states' behaviour towards these norms. Here, the numerous existing theories on the topic offer a variety of different approaches. By applying two of the most prominent contemporary compliance theories, this bachelor thesis gave first insights into the motives, that might be relevant to an ILO member state in its decision whether to comply with ratified ILO Conventions or not. Nevertheless, it is obvious, that one case study can never grasp all relevant aspects. Therefore, the examination of further case studies and the application of other theories to the case of the ILO would certainly prove useful in order to fully comprehend states' compliance decisions. In a subsequent step, it might additionally be possible to use this knowledge about states' motives regarding compliance for improving the supervisory and enforcement mechanisms of the CLS.

With respect to the presented case study, the managerial theory of Chayes and Chayes illustrated, that low developed countries such as Bangladesh certainly face higher obstacles to comply with international treaties like the ILO Convention C087, than well developed countries. In an unconsolidated institutional setting with problems such as corruption, misallocations of fiscal resources and a low general education level, significant changes of national legislation and fundamental reforms of the administrative structure are surely much harder to accomplish than in a highly stable democracy. On the other hand, however, the government's refusal to fundamentally revise its labour policy also indicated a lack of political will. Guzman's reputational theory then revealed the economic benefits of non-compliance. This leads to the conclusion, that a better regulation for the implementation of trade sanctions might prove useful. In general, there are two ways, through which trade sanctions could be realized in cases of non-compliance: Bilateral trade agreements could entail provisions, that impose automatic trade sanctions, whenever severe violations of ratified labour rights Conventions occur. Here, however, the implementation of trade sanctions strongly hinges on the bilateral interests between the two concerned countries. While in the case of Myanmar, state imposed forced labour led to the imposition of trade

sanctions by the United States and the European Union²²⁰, the presented case study showed, that the option of trade sanctions was not considered by Bangladesh's main trading partners - despite a broad public awareness of Bangladesh's violations of ratified ILO Conventions. Thus, this approach would not necessarily lead to overall improvements and is therefore insufficient. The second way would be the inclusion of the ILO's fundamental Conventions into the body of rules of the World Trade Organization. This approach is much more promising. So far, however, this intensely debated proposal floundered on the resistance of developing countries, that argue, that this measure is based on protectionist considerations of industrialized countries and would impede development. Many empirical studies, however, indicated, that long-term development indicators and the level of compliance with the CLS in a country are positively related.²²¹ A "social clause" in the World Trade Organization would entail the benefit, that developing countries would be freed of the risk, that an improvement of the CLS in the country leads to comparative disadvantages in the sense, that the country becomes less appealing for foreign investors, who then simply have the opportunity to move on to cheaper countries. If the CLS were part of the World Trade Organization's set of rules, all 157 member states would automatically be affected and thus, the possibilities for foreign investors to find cheaper alternatives would be significantly reduced. Therefore, further attempts to convince the opponents of this proposal of its benefits should be conducted in order to enhance the probability, that one day, global compliance with these truly fundamental Conventions might be achieved.

²²⁰ Chow-Ewing, Michael (2007): First Do No Harm: Myanmar Trade Sanctions and Human Rights; *Northwestern Journal of International Human Rights*, Vol. 5, Issue 2; pp.156, 159

²²¹ See for example: Bazillier, Rémi (2007): Core Labour Standards and Development: Impact on long-term income; available at: http://remi.bazillier.free.fr/FULLVERSION_clsdev_Worlddev_07.pdf (last access: 06/01/13)

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untry=BGD&series=&period=](http://databank.worldbank.org/ddp/editReport?REQUEST_SOURCE=search&CNO=2&country=BGD&series=&period=) (last access: 02/01/13)

Worldbank (n.d.): World Development Indicators, Data for Chile; available at:
[http://databank.worldbank.org/ddp/editReport?REQUEST_SOURCE=search&CNO=2&co
untry=CHL&series=&period=](http://databank.worldbank.org/ddp/editReport?REQUEST_SOURCE=search&CNO=2&country=CHL&series=&period=) (last access: 04/01/13)

Appendix

I Overview on the eight Fundamental Conventions

| Abbreviation | Title of the Convention | Year of Adoption | Ratifications |
|--------------|---|------------------|---------------|
| C029 | Forced Labour Convention | 1930 | 175 |
| C087 | Freedom of Association and Protection of the Right to Organize Convention | 1948 | 151 |
| C098 | Right to Organise and Collective Bargaining Convention | 1949 | 161 |
| C100 | Equal Remuneration Convention | 1951 | 169 |
| C105 | Abolition of Forced Labour Convention | 1957 | 172 |
| C111 | Discrimination (Employment and Occupation) Convention | 1958 | 170 |
| C138 | Minimum Age Convention | 1973 | 163 |
| C182 | Worst Forms of Child Labour Convention | 1999 | 175 |

Source: International Labour Organization (n.d.): Ratification by Convention; available at: <http://www.ilo.org/dyn/normlex/en/f?p=1000:12001:0::NO::> (last access: 06/01/13)

II Observations, representations and complaints during the last three years (2009 – 2011)

| # | Member State | Member Since | C029 | C087 | C098 | C100 | C105 | C111 | C138 | C182 |
|----|--------------------------------|------------------------|-------|------------|-------|-------|-------|-------|-------|-------|
| 1 | Afghanistan | 1934 | n.r. | n.r. | n.r. | O,O,O | O,O | O,O,O | | |
| 2 | Albania | 1991 (also: 1920-1967) | | C,O,O | O,O | O | | O | O | O |
| 3 | Algeria | 1962 | O,O,O | C,O,O | | | O,O | O,O | O | O |
| 4 | Angola | 1976 | | | O,O | O,O | | O,O | | O |
| 5 | Antigua and Barbuda | 1982 | | O,O | | | | O | O,O | |
| 6 | Argentina | 1919 | O,O | C,O,O,O | | | | O,O | O | O |
| 7 | Armenia | 1992 | | | | O | | | | |
| 8 | Australia | 1919 | O,O | C,O,O | O,O | O | | O,O | n.r. | |
| 9 | Austria | 1947 (also: 1919-1938) | O | | | O | | | O | |
| 10 | Azerbaijan | 1992 | O | O,O | O,O | O | | O | O | |
| 11 | Bahamas | 1976 | | O,O | O | | O,O | | | |
| 12 | Bahrain | 1977 | | n.r. (C) | n.r. | n.r. | | C,O | | O |
| 13 | Bangladesh | 1972 | O | C,O,O,O | O,O | O | O | O | n.r. | |
| 14 | Barbados | 1967 | | O,O,O | O,O,O | | | O | | |
| 15 | Belarus | 1954 | | O,O,O | O,O,O | | | | | |
| 16 | Belgium | 1919 | | O,O,O | | | | | O | |
| 17 | Belize | 1981 | | O,O | O,O | | O,O | | | |
| 18 | Benin | 1960 | O,O | C,O,O | O | | O | | | |
| 19 | Plurinational State of Bolivia | 1919 | | C,O,O | O,O | O,O | O,O | O,O | O | O |
| 20 | Bosnia and Herzegovina | 1993 | | C,O,O | O | | | O | | |
| 21 | Botswana | 1978 | | C,O,O,O | O,O,O | | | O,O | | O |
| 22 | Brazil | 1919 | O,O | n.r. (C) | O,O | | | O | O,O | O,O |
| 23 | Brunei Darussalam | 2007 | n.r. | n.r. | n.r. | n.r. | n.r. | n.r. | | |
| 24 | Bulgaria | 1920 | | C,O,O,O | O,O,O | | | O,O | | O |
| 25 | Burkina Faso | 1960 | | O,O,O | O,O,O | O,O | | | | O,O |
| 26 | Burundi | 1963 | O,O | O,O,O | O,O,O | O,O,O | | O,O,O | O,O | O,O |
| 27 | Cambodia | 1969 | | C,O,O,O | O,O,O | O | | | | O |
| 28 | Cameroon | 1960 | O,O,O | C,O,O | O,O | O | O,O | O,O | O | O |
| 29 | Canada | 1919 | | C,O,O | n.r. | O | | O,O | n.r. | |
| 30 | Cape Verde | 1979 | | | O,O,O | | | | | |
| 31 | Central African Republic | 1960 | O,O | O,O | O,O | O,O | O,O,O | | O,O,O | O,O,O |
| 32 | Chad | 1960 | O,O,O | O,O | O,O | | | O,O | | O,O,O |
| 33 | Chile | 1919 | | C,O,O | O,O | O,O | | O | | |
| 34 | China | 1919 | n.r. | n.r. | n.r. | O | n.r. | | O | O |
| 35 | Colombia | 1919 | | C,O,O | O,O | O,O | | O,O | O | O |
| 36 | Comoros | 1978 | | | O,O | O,O,O | | O,O | | |
| 37 | Congo | 1960 | O,O,O | O,O,O | O | | | | O | O,O,O |
| 38 | Costa Rica | 1944 (also: 1920-1927) | | C,O,O | O,O | O | | O,O | O | O |
| 39 | Croatia | 1992 | | O,O,O | O,O,O | | | O,O,O | O | |
| 40 | Cuba | 1919 | R | O,O | O | O | R | | | n.r. |
| 41 | Cyprus | 1960 | | | | O | | | | O |
| 42 | Czech Republic | 1993 (also: 1919-1993) | | | O,O,O | | | O,O | | O |
| 43 | Côte d'Ivoire | 1960 | | O | | | | O,O,O | O | O |
| 44 | Democratic Rep. of the Congo | 1960 | O,O,O | C,O,O,O | O,O,O | O,O,O | | O,O,O | | O,O |
| 45 | Denmark | 1919 | | O,O | O | | | | | |
| 46 | Djibouti | 1978 | | C,O,O,O | O,O,O | O,O,O | | | | |
| 47 | Dominica | 1982 | O,O,O | O | | | | | O,O,O | |
| 48 | Dominican Republic | 1924 | | C,O,O | O,O | O,O | | O | O | O |
| 49 | Ecuador | 1934 | | C,O,O | O,O | | O,O | O,O | O | O |
| 50 | Egypt | 1936 | O | O,O,O | O,O,O | O | O | | O,O | O |

| | | | | | | | | | | |
|-----|----------------------------------|------------------------|-------|------------|-------|-------|-------|-------|-------|-------|
| 51 | El Salvador | 1948 (also: 1919-1939) | | C,O | O | | | O | O | O |
| 52 | Equatorial Guinea | 1981 | | O,O,O | O,O,O | | | | | |
| 53 | Eritrea | 1993 | | | O,O,O | | | | O | n.r. |
| 54 | Estonia | 1992 (also: 1921-1992) | | O,O | | | | | | |
| 55 | Ethiopia | 1923 | | O,O,O | O,O | | | O,O,O | O,O,O | |
| 56 | Fiji | 1974 | | C,O,O | O,O | O | | O,O | | |
| 57 | Finland | 1920 | | | | O | | | | |
| 58 | France | 1919 | | C | | | | O,O | | |
| 59 | Gabon | 1960 | | C,O,O | | | O | | | O |
| 60 | Gambia | 1995 | | | O,O | | | O,O | | |
| 61 | Georgia | 1993 | | O,O | O,O | O,O | | O,O | O | |
| 62 | Germany | 1951 (also: 1919-1935) | O | C,O,O | O,O | | | | | |
| 63 | Ghana | 1957 | | | O,O | O,O | O,O,O | | | |
| 64 | Greece | 1919 | O | C,O,O | O,O,O | O,O | O,O | O,O | O | |
| 65 | Grenada | 1979 | | | | O,O | | | | |
| 66 | Guatemala | 1945 (also: 1919-1938) | O | C,O,O,O | C,O,O | O,O | O,O | O,O | O | O |
| 67 | Guinea | 1959 | | C,O,O,O | O,O,O | | | O,O,O | | |
| 68 | Guinea Bissau | 1977 | | n.r. | O,O,O | | | | | |
| 69 | Guyana | 1966 | O,O,O | O,O,O | O,O,O | O,O,O | | O,O,O | | |
| 70 | Haiti | 1919 | O,O | O,O | O,O | | | | | O,O |
| 71 | Honduras | 1955 (also: 1919-1938) | | C,O,O | O,O | O,O | | O | O | O |
| 72 | Hungary | 1922 | O,O | C | O,O | | | | | |
| 73 | Iceland | 1945 | | | O,O | | | | | |
| 74 | India | 1919 | O,O | n.r. (C) | n.r. | O | | O | n.r. | n.r. |
| 75 | Indonesia | 1950 | O | O,O | O,O | O,O | O | O,O | O | O |
| 76 | Islamic Republic of Iran | 1919 | | n.r. (C) | n.r. | | | O,O | n.r. | |
| 77 | Iraq | 1932 | | n.r. (C) | O,O | O,O | | | | |
| 78 | Ireland | 1923 | | C | | | | O,O,O | | |
| 79 | Israel | 1949 | | | | | | O | | |
| 80 | Italy | 1945 (also: 1919-1939) | | C | | | | | | |
| 81 | Jamaica | 1962 | O | O,O | O,O | O,O,O | O | | | O |
| 82 | Japan | 1951 (also: 1919-1940) | O | C,O,O | O,O | R,O | n.r. | n.r. | | |
| 83 | Jordan | 1956 | | n.r. (C) | O,O | O,O | | O,O | O | |
| 84 | Kazakhstan | 1993 | | O,O | O,O | O,O,O | | O,O,O | | |
| 85 | Kenya | 1964 | O,O,O | n.r. | O | | O,O,O | O,O | O,O | |
| 86 | Kiribati | 2000 | | C,O,O | O,O | | O | | | |
| 87 | Republic of Korea | 1991 | n.r. | n.r. (C) | n.r. | O | n.r. | O | | |
| 88 | Kuwait | 1961 | O,O | O | O | n.r. | O,O | O,O | O,O | |
| 89 | Kyrgyzstan | 1992 | | | | | | | | O,O |
| 90 | Lao People's Democratic Republic | 1964 | O | n.r. | n.r. | | n.r. | | | |
| 91 | Latvia | 1991 (also: 1921-1991) | | | O | | | O | | |
| 92 | Lebanon | 1948 | O,O | n.r. (C) | | O,O | | O,O | O,O | O,O |
| 93 | Lesotho | 1980 (also: 1966-1971) | | O | O | | | O | O,O | O,O |
| 94 | Liberia | 1919 | O,O | O,O | O,O,O | n.r. | O,O | | n.r. | |
| 95 | Libya | 1952 | | | O | | O,O | O | | |
| 96 | Lithuania | 1991 (also: 1921-1991) | | C,O | | O,O | | O | | |
| 97 | Luxembourg | 1920 | | | | | | | | |
| 98 | Madagascar | 1960 | | O | O | O,O | | O | O,O | O |
| 99 | Malawi | 1965 | | O,O | O,O | O,O | | O,O | O,O,O | O |
| 100 | Malaysia | 1957 | | n.r. (C) | O | O,O | d. | n.r. | O,O | O,O |
| 101 | Maldives | 2009 | n.r. | n.r. | n.r. | n.r. | n.r. | n.r. | n.r. | n.r. |
| 102 | Mali | 1960 | | C,O | O | | | | O | O,O |
| 103 | Malta | 1965 | | O,O,O | O,O,O | | | O | | |
| 104 | Marshall Islands | 2007 | n.r. | n.r. | n.r. | n.r. | n.r. | n.r. | n.r. | n.r. |
| 105 | Mauritania | 1961 | O | O | | O | | O | O,O | O,O |
| 106 | Mauritius | 1969 | | C,O | O | | O,O | | O,O | |
| 107 | Mexico | 1931 | O | C,O | n.r. | O,O | | O | n.r. | O,O |
| 108 | Republic of Moldova | 1992 | | O | O | | O,O | O,O | | |
| 109 | Mongolia | 1968 | | | | O | | | O,O | |
| 110 | Montenegro | 2006 | | C | | | | | | |
| 111 | Morocco | 1956 | O | n.r. | | O | | O | O,O | O,O,O |
| 112 | Mozambique | 1976 | | O | | O,O | | | | O,O |
| 113 | Myanmar | 1948 | O,O,O | C,O,O,O | n.r. | n.r. | n.r. | n.r. | n.r. | n.r. |
| 114 | Namibia | 1978 | | O | O,O | | | O,O | | O |
| 115 | Nepal | 1966 | | n.r. | O | O | | O | | |

| | | | | | | | | | | |
|-----|---|------------------------|-------|------------|-------|-------|-------|-------|-------|-------|
| 116 | Netherlands | 1919 | | C | O | O | | O | | O |
| 117 | New Zealand | 1919 | | n.r. | | O,O | | O,O | n.r. | O,O |
| 118 | Nicaragua | 1957 (also: 1919-1938) | | C,O,O | O,O | | O | O | O,O | O,O |
| 119 | Niger | 1961 | O | O | O | | | | O,O | O,O |
| 120 | Nigeria | 1960 | | O,O,O | O,O,O | | O,O,O | O,O | | |
| 121 | Norway | 1919 | | C | | | | | | |
| 122 | Oman | 1994 | | n.r. | n.r. | n.r. | | n.r. | | O,O |
| 123 | Pakistan | 1947 | O,O,O | C,O,O,O | O,O,O | O,O,O | O,O,O | O,O,O | O,O | O,O,O |
| 124 | Palau | 2012 | n.r. | n.r. | n.r. | n.r. | n.r. | n.r. | n.r. | n.r. |
| 125 | Panama | 1919 | | C,O,O,O | O,O | O,O | | O,O | O,O | O,O |
| 126 | Papua New Guinea | 1976 | O | | O | | O,O,O | O | O | O,O |
| 127 | Paraguay | 1956 (also: 1919-1937) | O | C,O,O | O,O | | | | | O,O |
| 128 | Peru | 1919 | O | C,O | O | O | | O,O | O | O,O |
| 129 | Philippines | 1948 | | C,O,O | O,O | O | O | O | O,O | O,O |
| 130 | Poland | 1919 | | C,O | O | | | | | |
| 131 | Portugal | 1919 | | C | O | | | | | |
| 132 | Qatar | 1972 | | n.r. (C) | n.r. | n.r. | | O | | |
| 133 | Romania | 1956 (also: 1919-1942) | | O | O,O | O | | O,O | O,O | |
| 134 | Russian Federation | 1954 (also: 1934-1940) | O | C,O | O | O,O | | O,O,O | O | O |
| 135 | Rwanda | 1962 | | O,O,O | O,O,O | O,O,O | | O,O,O | | |
| 136 | Saint Kitts and Nevis | 1996 | | | O | | | | | |
| 137 | Saint Lucia | 1980 | | O,O | | O,O | | | n.r. | |
| 138 | Saint Vincent and the Grenadines | 1995 | | | | | O | | | |
| 139 | Samoa | 2005 | | | O | | | | | |
| 140 | San Marino | 1982 | | | | | | | | |
| 141 | Sao Tome and Principe | 1982 | | O,O,O | O,O,O | | | | | |
| 142 | Saudi Arabia | 1976 | O | n.r. | n.r. | O | | O | n.r. | O,O |
| 143 | Senegal | 1960 | | O | | | O,O | O | O,O,O | O,O,O |
| 144 | Serbia | 2000 | | O | O | | | O,O | | |
| 145 | Seychelles | 1977 | | O | O | | | | | |
| 146 | Sierra Leone | 1961 | O,O,O | | O,O | | | O,O,O | | |
| 147 | Singapore | 1965 | O,O | n.r. | | | d. | n.r. | | |
| 148 | Slovakia | 1993 (also: 1919-1993) | | | | O,O,O | | O,O | | |
| 149 | Slovenia | 1992 | | | O | | | | | |
| 150 | Solomon Islands | 1984 | | | | | | | n.r. | |
| 151 | Somalia | 1960 | | n.r. | n.r. | n.r. | | | n.r. | n.r. |
| 152 | South Africa | 1994 (also: 1919-1966) | | O | | O,O | | O | O | O |
| 153 | South Sudan | 2012 | n.r. | n.r. | n.r. | n.r. | n.r. | n.r. | n.r. | n.r. |
| 154 | Spain | 1956 (also: 1919-1941) | | C,O | | | | O | O | O |
| 155 | Sri Lanka | 1948 | O | C,O | O | O | | O | O | O,O |
| 156 | Sudan | 1956 | O,O | n.r. | O | | O | O,O | | O,O |
| 157 | Suriname | 1976 | | | | n.r. | | n.r. | n.r. | O |
| 158 | Swaziland | 1975 | O,O | C,O,O,O | O | | | O | O | |
| 159 | Sweden | 1919 | | O | O | O | | O | | |
| 160 | Switzerland | 1919 | | | O | | | O | | O,O |
| 161 | Syrian Arab Republic | 1947 | O,O | O | O | O,O | O | O | O | |
| 162 | Tajikistan | 1993 | | | | | | O | O | |
| 163 | United Republic of Tanzania | 1962 | O | O,O | O,O | | O | O | | O,O |
| 164 | Thailand | 1919 | O,O | n.r. (C) | n.r. | O | O,O,O | n.r. | | O,O,O |
| 165 | The former Yugoslav Republic of Macedonia | 1993 | | C,O | O | | | O | | O |
| 166 | Timor-Leste | 2003 | | | | n.r. | n.r. | n.r. | n.r. | |
| 167 | Togo | 1960 | O | O,O | O,O | | | | O,O | O,O |
| 168 | Trinidad and Tobago | 1963 | | O | O,O | O,O | O,O | O,O | | |
| 169 | Tunisia | 1956 | | C,O,O | | | | O,O,O | | |
| 170 | Turkey | 1932 | O,O | C,O,O,O | O,O | O,O | O,O | O,O | O,O,O | O,O,O |
| 171 | Turkmenistan | 1993 | | | | | | | | |
| 172 | Tuvalu | 2008 | n.r. | n.r. | n.r. | n.r. | n.r. | n.r. | n.r. | n.r. |
| 173 | Uganda | 1963 | O,O,O | | O,O,O | | O,O,O | | O | O,O,O |
| 174 | Ukraine | 1954 | | C,O | O | O | | O | O | O |
| 175 | United Arab Emirates | 1972 | | n.r. | n.r. | | | | O,O | O,O |
| 176 | United Kingdom | 1919 | O,O | C,O,O | O | | | O | | |

| | | | | | | | | | | |
|-----|----------------------------------|-----------------------------------|------|------------|------|------|-------|-------|-------|-------|
| 177 | United States | 1980 (also: 1934-1977) | n.r. | n.r. (C) | n.r. | n.r. | O | n.r. | n.r. | O |
| 178 | Uruguay | 1919 | | C | O,O | O | | O,O | | O |
| 179 | Uzbekistan | 1992 | | n.r. | O | | O,O,O | | | O,O,O |
| 180 | Vanuatu | 2003 | | | | | | | n.r. | |
| 181 | Bolivarian Republic of Venezuela | 1958 (also: 1919-1957) | | c,o,o | O | | | O,O | O,O | O,O |
| 182 | Viet Nam | 1992 (also: 1950-1976, 1980-1985) | | n.r. | n.r. | O,O | n.r. | O,O | | |
| 183 | Yemen | 1965 | | O,O | O,O | | | O,O,O | | |
| 184 | Zambia | 1964 | O | O,O | O,O | | | | O,O | O,O |
| 185 | Zimbabwe | 1980 | | C,O,O | C,O | | O | | O,O,O | O,O |

Source: *International Labour Organization (n.d.): Supervision by country; available at: <http://www.ilo.org/dyn/normlex/en/f?p=1000:11000:0::NO::> (last access: 07/01/13)*

III Finitely repeated Prisoner's Dilemma

Country 2

| | | | |
|-----------|---------|-------------|---------------------|
| Country 1 | | Comply | Violate |
| | Comply | 5,5 | 2, <u>6</u> |
| | Violate | <u>6</u> ,2 | <u>3</u> , <u>3</u> |

Note: the underlined numbers mark the optimal behaviour of one country based on the assumption of a distinct behaviour of the other country.

Source: *Slightly modified illustration of Guzman, Andrew T. (2002): A Compliance – Based Theory of International Law; in: California Law Review, Vol. 90; p.1842, Figure A*

IV Compliance as dominant strategy

Country 2

| | | | |
|-----------|---------|-----------------------|-------------|
| Country 1 | | Comply | Violate |
| | Comply | <u>10</u> , <u>10</u> | <u>6</u> ,8 |
| | Violate | 8, <u>6</u> | 4,4 |

Note: the underlined numbers mark the optimal behaviour of one country based on the assumption of a distinct behaviour of the other country.

Source: *Slightly modified illustration of Guzman, Andrew T. (2002): A Compliance – Based Theory of International Law; in: California Law Review, Vol. 90; p.1843, Figure B*

V Infinitely repeated Prisoner's Dilemma with Reputational Effects

| | | Country 2 | |
|-----------|---------|-----------------|----------------|
| | | | |
| Country 1 | | Comply | Violate |
| | Comply | 5R , 5R | 3R – 1, 3 + 3R |
| | Violate | 3 + 3R , 3R - 1 | 3R , 3R |

Mathematical Derivation:

$R = (1 + r) / r \rightarrow R > 1$ (with r being the discount rate, $r > 0$)

$$5R = 5 + 5 / (1+r) + 5 / (1+r)^2 + \dots$$

$$3R = 3 + 3 / (1+r) + 3 / (1+r)^2 + \dots$$

$$3 + 3R = 6 + 3 / (1+r) + 3 / (1+r)^2 + \dots = 3 + 3 + 3 / (1+r) + 3 / (1+r)^2 + \dots$$

$$3R - 1 = 2 + 3 / (1+r) + 3 / (1+r)^2 + \dots = -1 + 3 + 3 / (1+r) + 3 / (1+r)^2 + \dots$$

General Formula for the present value of a perpetual annuity:

$$x + x / (1+r) + x / (1+r)^2 + \dots = \sum_{n=1}^{\infty} x/(1+r)^n \rightarrow \text{Present value} = (x / r) * (1+r) = x*((1+r)/r) = x*R$$

A State will comply, when:

$$5R > 3 + 3R$$

$$\rightarrow R > 3/2$$

$$(1+r)/r > 3/2$$

$$\rightarrow r < 2$$

Source: Slightly modified illustration of Guzman, Andrew T. (2002): A Compliance – Based Theory of International Law; in: California Law Review, Vol. 90; p.1843, Figure C; own calculations based on formula from Berk, Jonathan, DeMarzo, Peter (2011): Grundlagen der Finanzwirtschaft; Pearson Education, Inc, p.124

Eigenständigkeitserklärung

Hiermit erkläre ich, dass ich die Arbeit selbstständig und ohne Benutzung anderer als der angegebenen Quellen und Hilfsmittel angefertigt habe.

München, den 11.01.2013