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The Efficacy of International Human Rights Instruments in Democracies
The promising case of Australia

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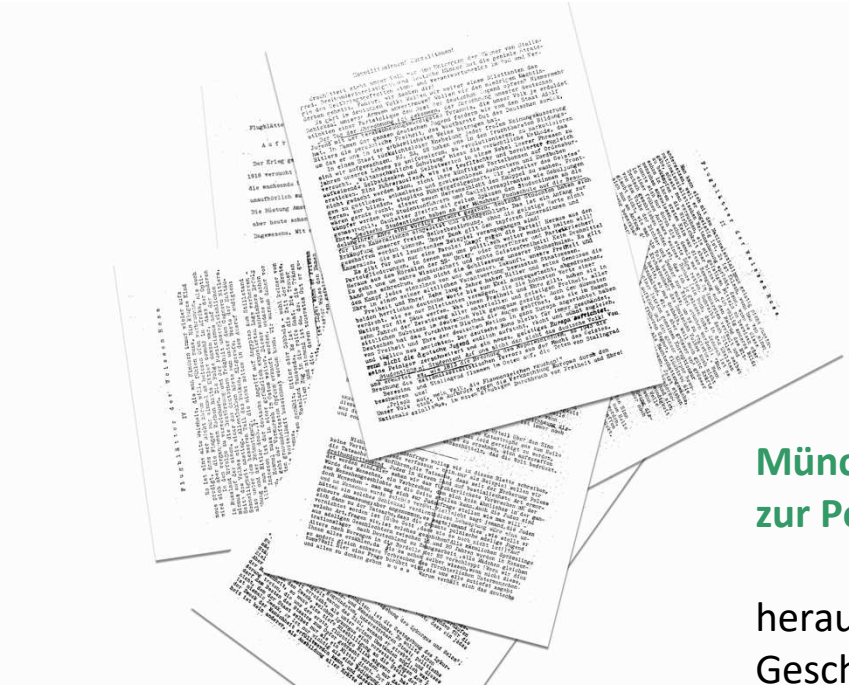

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The Efficacy of International Human Rights Instruments in Democracies – The promising case of Australia.

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Prof. Dr. Bernhard Zangl
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1. Introduction

"[A]lmost all nations observe almost all principles of international law and almost all of their obligations almost all of the time." (Henkin, 1979, p. 47). Just like many human rights scholars, Louis Henkin, Law Expert on this topic, is optimistic about the protection of basic rights. Despite the missing clarity on the definition of the term 'almost', any empirical evidence for this statement is lacking. Watching the news creates quite a different picture and insights from respective non-governmental organisations (NGOs) point in the same direction. In just the last three years, the exercise of torture was reported in at least 141 countries (Amnesty International, 2020c), 3.2 million people in prison worldwide have not yet had a trial (Amnesty International, 2020a) and 70.8 million people have forcibly been displaced (Amnesty International, 2020b).

When thinking about human rights violations, pictures of torture taking place at conflict scenes far away from the Western world most commonly come to the imagination. However, unlawful treatment of citizens does not only occur far away; it is also present at our doorsteps. Even in democracies where citizens feel most protected against severe interventions of their basic rights, violations take place. In 2019, the European Court of Human Rights was for instance appealed 44,500 times (ECHR, 2020). Besides, caesura of asylum rights is reported in democratic and developed countries around the world, prominently among them in Australia (Amnesty International, 2016). This shows that while the existing literature has identified that democracies protect human rights better and comply more often with respective international obligations, they do not have a clean record either.

In past research, much attention has been paid to the differences between regime types in regard to rights protection and compliance. The focus was thereby placed on the human rights situation in illiberal or autocratic countries as their improvement was regarded most pressing. Evidence was obtained that little or no enhancement is achieved in abusive regimes through the ratification of international human rights treaties (Hafner-Burton & Tsutsui, 2007). In democracies, conversely, a negative correlation with human rights violations exists on average (e.g. Davenport & Armstrong, 2004). Therefore, respective research mostly ceased with the observation that

democracies are better compliers compared to autocracies. However, it does not signify human rights protection in democracies in all regards as demonstrated above. The concrete patterns of compliance among democracies have not yet received enough attention from scholars. Consequently, the thesis at hand questions these patterns and concretely asks: Do democracies comply with international human rights law? How do they comply and when?

The research question is relevant in two ways: Firstly, as human rights violations take place every day around the world, research concerned with containing such inhuman practises possesses clear, societal relevance. Up until now, international human rights treaties have been a prominent approach to elevate the protection of basic rights on a state level. Thus, this study deals with the compliance of democracies with human rights law in order to provide valuable insights for improving respect of rights around the world. If political researchers do not yet precisely understand the patterns of compliance among democracies, the prospects for ameliorating the human rights situation in autocratic regimes through such conventions are very scant.

Secondly, the research question is relevant from a theoretical perspective as it adds to the literature on compliance through its innovative theoretical assumptions. While a lot of extant literature generally deals with the effect of a democratic regime on human rights respect and compliance, only few scholars have looked into concrete democratic cases and assessed differing levels of compliance. Also, even though (rather sceptical) research exists on the effect of review mechanisms evaluating state compliance with international regulations, this is not yet investigated in regard to democracies. Furthermore, many research projects have only taken into account the effect of single individual treaties, traditionally the ICCPR (e.g. Keith, 1999). Thereby, studies deployed statistical analyses on the impact of human rights treaties on a rather big sample or group of countries, mostly reporting little evidence for change and not giving details about the individual patterns of influence (e.g. Hafner-Burton & Tsutsui, 2005). In order to fill these research gaps, this paper aims at answering the posed question by analysing only one country, but in all its complexity, taking into account the impact of all ratified UN human rights treaties.

The question of compliance of democracies with international human rights instruments will consequently be addressed in this thesis. The second chapter starts off by explaining the core concepts relevant to this paper. It then highlights the different theoretical assumptions for general human rights protection and identifies the reputational approach (Guzman, 2002, 2005, 2008) of institutionalism as the most suitable theory. Thus, three hypotheses are deduced from it, predicting that (1) compliance exists among democracies, (2) compliance differs dependent on the costs of the treaties, and (3) forthcoming reviews provoke greater efforts in compliance. The hypotheses are to be tested through a comprehensive quantitative and qualitative analysis of a single country. Australia is selected for this purpose as a difficult but compelling case. The empirical analysis in chapter four is divided into three sections each analysing one hypothesis. The data provides support for all of the deduced assumptions. The results are interpreted in chapter five as well as limitations and outlooks are displayed. Chapter six comprises concluding remarks for the thesis.

2. Human rights compliance in literature and theory

The present thesis is concerned with the compliance of democratic states with international human rights law. In order to address this question, the core concepts are explored in the first step. The main theories offering explanations for compliance with human rights are presented afterwards. The reputational argument is identified as the most suitable approach for the thesis. Consequently, hypotheses on the compliance patterns of democracies are deduced from the reputational argument.

2.1 Core concepts: Human rights and compliance

The concept of **human rights** refers to basic, fundamental rights applicable to every person derived from their human nature regardless of other conditions. Not much discourse exists regarding the definition of the term. A widely accepted phrasing is the one proposed by the United Nations (UN):

> "*Human rights are rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status. Human rights include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education, and many more. Everyone is entitled to these rights, without discrimination*." (United Nations, 2020a)

This definition is cited not only because it is broadly accepted but also due to the fact that the UN represents the most influential institution for human rights protection worldwide. The organisation has occupied a prominent role in establishing the respective legal framework for human rights. The first major achievement was accomplished on 10th December 1948 when the UN General Assembly proclaimed the Universal Declaration of Human Rights (UDHR; United Nations, 2020b). Since then, the UN has adopted the following nine human rights agreements as well as several optional protocols to them (OHCHR, 2012):

- The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)
- The International Covenant on Economic, Social and Cultural Rights (ICESCR)

- The International Covenant on Civil and Political Rights (ICCPR)
- The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
- The Convention on the Rights of the Child (CRC)
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICPMW)
- The Convention on the Rights of Persons with Disabilities (CRPD)
- The International Convention for the Protection of All Persons from Enforced Disappearance (ICED)

These obtain the concrete provisions translating the basic rights of the UDHR into treaties that become binding once ratified by a country. Accordingly, they are the ones that directly postulate measures for states and of which the implementation is monitored by the UN human rights apparatus and respective treaty bodies. This fact is substantial as governments are regarded liable for the task to guarantee basic rights to their citizens and are held responsible for it by International Human Rights Law. The treaties are later on used for the analysis of this thesis.

The second key concept of this thesis is **compliance** which is conventionally understood as conformity with some kind of regulation. As Oran Young (1979) phrased it, it refers to the "degree to which state behavior conforms to what an agreement prescribes or proscribes" (p. 104). In this thesis, the conformity refers particularly to human rights legislation. Compliance, therefore, stands for conformity of a state with regulations of international human rights law that the state has previously agreed to and is thus applicable in the country. To put it the other way around, Chayes and Chayes state that "noncompliance is the premeditated and deliberate violation of a treaty obligation" (1993, p. 187).

It is critical to distinguish between compliance with a treaty and its effect(iveness). While compliance targets the general fulfilment of obligations, it neglects whether states made changes over time or already met all provisions from the beginning. The interrogation of the effect of a treaty, by contrast, is directed to the changes

provoked exclusively by the agreement at hand. In this manner, full compliance lies less in the focus than a pre-post-comparison or the development since the law was in place. Therefore, compliance with human rights law does not automatically involve improvement in the human rights situation. Although the two are typically interconnected, it is, for example, possible that a state fulfils all clauses of a treaty, but the de facto situation does not enhance due to the failure of the treaty makers to formulate effective requirements (Hathaway, 2002, p. 1965). Although both concepts seem worth analyzing, this thesis will specifically focus on compliance with international human rights instruments instead of their effect.

2.2 Theories on human rights and compliance

All of the four leading theoretical schools of International Relations offer explanations and predictions on compliance with human rights and the respective law. The differing theories produce varying anticipations for human rights treaties and also distinct empirical findings. In order to comprehend the state of research, it is pivotal to provide an overview of the dominant theories. Thus, their key assumptions are assessed in the following, and their explanatory potential is consequently discussed in order to identify the most fitting approach for the research question at hand.

To start off with, **liberalism** (e.g. Simmons, 2000, 2008, 2009) argues that the domestic arrangements of states matter as to whether they respect human rights and comply with the respective instruments. A strong civil society is, for instance, a factor that enhances compliance, and supporting evidence has been reported (e.g. Moravcsik, 1995; Neumayer, 2005). Similarly, transnational activist networks composed of a variety of NGOs and other civil society actors can increase compliance by enabling the bypassing of governments and creating international attention and pressure. Evidence was provided by case studies in Latin America (Lutz & Sikkink, 2000; Martin & Sikkink, 1993; Sikkink, 1993). Another factor altering the expectations in compliance with international law is the presence of robust legal domestic institutions (Moravcsik, 1995).

The most prominent liberal assumption insists that democracies are more protective of human rights than autocracies (e.g. tested by Davenport, 1995, 1999; Davenport

& Armstrong, 2004; Fein, 1995; Harff, 2003; Henderson, 1993; King, 1998; Poe & Tate, 1994; Poe, Tate, & Keith, 1999; Regan & Henderson, 2002). This is anticipated as democratic political leaders, on one hand, are more restricted in the use of violent means against their citizens by democratic institutions. On the other hand, democracies possess a broader range of measures for conflict resolution and democratic socialisation tends to disapprove of violence as a means for it (Poe et al., 1999, p. 293). Not only state repression is estimated to occur less often in democracies, but liberalists expect them to be likelier to comply with international law, as well and have provided empirical evidence for the claim (e.g. Gaubatz, 1996; Mansfield, Milner, & Rosendorff, 2002; Neumayer, 2005). A study by Jana Von Stein (2016) has, for example, demonstrated that the ratification of the Minimum Age Convention against child labour caused improvement in this domain among democracies while autocracies have often ratified but seldomly complied with the treaty. Alternatively, scholars have argued that it is rather the transition to democracy (Simmons, 2008) or the rule of law principle (Simmons, 2000) that make the real difference.

While liberalism has paid extensive attention to democracies already and offers some accurate explanations for the compliance of this regime type, the theory nevertheless does not seem optimal for the purpose of this thesis. The approach offers explanations solely based on the domestic political system. Ergo, it provides insights into the variation between countries or overtime in one state due to different institutional arrangements. However, liberalism does not give so much information on the compliance patterns of a specific country. Concretely, it does not reveal why the same country at the same time should respect one treaty while neglecting another one since the democratic arrangement stays controlled. As this thesis is concerned with finding out more about individual compliance patterns of democracies, exactly this explanatory potential is needed. Liberalism cannot offer this and will therefore not be used for testing the research question at hand.

A second perspective is provided by **constructivism** whose exponents are overall very optimistic about the spread of and compliance with human rights around the world (Henkin, 1979). As common values shape state preferences according to the theory, international organisations as well as other actors like NGOs can establish norms and teach state leaders to respect both rights and law (Finnemore, 1996). This happens

through socialisation processes enabled by the dialogue on human rights which leads to the emergence and establishment of common virtues and consequently creates pressure to comply (Abbott & Snidal, 2000).

As socialisation endures, time remains a crucial factor for the measurable success of international law in the constructivist view. Chayes and Chayes (1993) stated "that there will be a considerable time lag after the treaty is concluded before some or all of the parties can bring themselves into compliance." (p.195). In accordance, studies that tried to find enhancement in the same year or one year after ratification of international human rights treaties have failed to do so (Hafner-Burton, 2005; Keith, 1999; Neumayer, 2005). However, research that tested compliance in regard to the years passed since the treaties came into force has not found any empirical support either (Hafner-Burton & Tsutsui, 2005).

By assuming that human rights represent internationally established norms that shape state behaviour, constructivism offers a valuable explanation for the respect of rights even if costs seem to prevail benefits. This represents a domain in which other theories based on the premise of rational actors traditionally perform poorly. Constructivism has less potential for expounding situations in which states do not comply with rights. As human rights are seen as universal norms, only competing values could explain non-conformity with them. These clashing norms, however, do not seem to exist for human rights. Thus, constructivist scholars have paid only little attention to such cases (Liese, 2006, pp. 45-47). Since a theoretical frame is needed to potentially offer insights for both compliance and non-compliance, constructivism does not seem adequate for the present research.

As a third approach, the **realist perspective** (e.g. Goldsmith & Posner, 1999, 2005; Krasner, 1993) assumes international treaties to make no difference. States act according to their national considerations and interests instead of non-binding international law. They operate within an anarchic system in which a monopoly of power is vacant. Hence, no principal authority is able to enforce international regulations. As states do not fear sanctions, no need evolves to alter domestic politics. In fact, realists deem the relationship to be upside down: international treaties mirror states' interests. These interests are responsible for either the protection or violation of human

rights. As political leaders are assumed to be rational actors, they follow their interests when deciding to oppress their people. This means that they do not necessarily enjoy the imprisonment of political rivals or other repressive actions, but that they deploy them as effective tools to reach their goal, for example when perceiving threats to their authority (see Gurr, 1986; Poe et al., 1999).

Goldsmith and Posner (1999, 2005) introduce the four mechanisms of coincidence of interest, cooperation, coercion and coordination which make for improvement in human rights. These strategies are not imposed by international law but by other mostly powerful states if these means serve their interests. Evidence for the imposition of human rights by other states has for example been found in regard to the US and Latin America (Schoultz, 2014). As a consequence, states only sign and ratify international treaties they assume to cause greater benefits than costs (e.g., consisting of pressure from another state). Due to their weak enforcement, the costs of joining UN human rights instruments are low. This applies explicitly to liberal democracies as they typically already act according to the principles of such treaties. Benefits arise as states nevertheless hope for some improvement of human rights in other states. Additionally, critique for a country's human rights practice may be less noisy when there is at least oral commitment to the rights. Based on realist assumptions, scholars have managed to explain cases of selective or weak human rights protection (e.g. Evans, 1996; Krasner, 1993). In addition, Cardenas (2007) showed that international pressure for human rights protection leads to the ratification of corresponding treaties rather than a decrease in rights violations.

Despite its explanatory potential in scenarios, when human rights are disregarded, realism cannot explain cases in which countries defend rights without the prospect of benefits. The realist perspective is additionally not appropriate for this research because human rights respect is argued not to be influenced by international law but only by the actions of other states. This thesis does, however, aim at investigating the human rights situation in regard to compliance with respective instruments and not evaluate the mechanisms or strategies deployed by other countries. The realist approach offers therefore limited explanatory potential for the question at hand.

In **institutionalism** – like in realism – states are perceived as rational actors. But in contrary to the previous approach, institutionalist scholars place a focus on the interdependence of states rather than the anarchy of the international sphere. Institutionalists also base their theory on interests; they see the chance of institutions lowering transaction costs between states and, thus, make cooperation reachable (Keohane & Nye, 1973). International politics can be understood as a type of gameplay in which trust and allocation of resources make a difference in whether cooperation takes place or not. The interest constellations are decisive and seem especially weak in the realm of human rights as the anticipated benefits are low (Moravcsik, 2000).

Andrew Guzman (2002, 2005) extends the institutionalist assumptions by the factor of reputation as an additional element influencing a state's interest. According to him, reputational concerns might motivate a state to comply, while other non-reputational interests may support the choice not to comply which create a payoff. The author solves this competition of interests as follows:

> "*Suppose now that the state's non-reputational payoffs give it an incentive to play "defect," creating tension between the two sources of payoffs. The state will play "comply" if and only if the reputational payoffs it would receive are sufficiently large to trump the non-reputational payoffs*." (Guzman, 2005, p. 384)

The benefits arising from compliance as well as the impact of reputation on cooperation possibilities are tested and supported by a variety of scholars (e.g. Downs & Jones, 2002; Hillebrecht, 2012; Salonen & Wiberg, 1987). Overall, the reputational argument offers explanations for a wide scope of cases as it is possible to comment on compliant as well as non-compliant state behaviour. As reputational and non-reputational interests play a role in the theory, it provides detailed interpretation possibilities not only on the large scale of countries but also in regard to single cases. Not only inter-state but also intra-state comparison is enabled. Consequently, the institutionalist reputation theory will be adduced as the theoretical framework for the analysis.

2.3 Institutionalist assumptions on human rights compliance

Having assessed the explanatory potential and shortcomings of the theories on compliance regarding the case of democracies, the reputational approach was identified as the most suitable one for this research question. The theory will now be described in more detail in order to deduce respective hypotheses.

As explained in the previous chapter, the reputational argument represents an extension of the institutionalist theory in International Relations. Andrew Guzman (2002, 2005, 2008) is the most prominent spokesperson of this approach and postulates his arguments as a direct counter draft to Goldsmith and Posner's realist ideas. In contrary to them, Guzman provides an optimistic prospect to compliance with international human rights law. The factor of reputation is added to the considerations of a state whether to comply and influences respective trade-offs. Reputation may in this context be understood as a state's reputational history to conform with international law and "consists of judgements about the state's past behavior and predictions made about future compliance based on that behavior" (Guzman, 2008, p. 33). A 'good' reputation represents that a state undertakes its responsibility for international agreements. The image of a reliable partner evolves, and other states[1] may choose this country over other ones for further cooperation. Reputational damage, on the other hand, refers to the costs a state has to carry if it chooses not to comply and therefore becomes a less important partner on the international stage.

A state's reputational history matters as reputation does not form on the basis of a single decision but originates from the pattern of compliance or non-compliance. If a state A has continuously decided not to comply in the past, a single compliance act will not eradicate the previous shortcomings. Instead, the state's reputation cannot be damaged as it is already 'bad'. This makes further compliance less likely and reputation can thus reproduce itself. As an opposing example, a state B that has always respected international law receives benefits by new cooperation being less costly. The incentives for state B are greater to comply with any upcoming regulation due to

[1] Scholars have argued that a state is not only concerned with its reputation among other states, but also among the transnational civil society (see Price, 2003). As the two forms of reputation motivate states in the same way and thus produce similar assumptions, it is only drawn on the reputation among other states for this thesis since this is the more prominent argument as deployed by Guzman.

the fact that it can lose credibility among its partners or deter new partners by violating international rules. Liberal democracies do generally have a better record in compliance (Leeds, 1999; Martin, 2000) as their domestic institutions ensure adherence to international commitments more effectively than other states. Thus, they usually have a good reputation history and are regarded as credible partners. Consequently, reputation damage would be severe in cases of non-compliance, whereas the incentives for compliant behaviour are high. This may apply to all international treaties, including the ones regarding human rights. Therefore, considering the negative effects of non-compliance on their reputational history, the first hypothesis assumes democracies to mostly conform with human rights law.

> *H1: A liberal democracy will comply with the majority of principles of the international human rights treaties it has committed to.*

Besides reputation effects, other motives of states are also taken into consideration by this approach. Reputational and non-reputational interests can be in competition. If the reputation-unrelated costs are particularly high, reputation can become of secondary significance. This may make sense as reputation only conveys benefits to a certain degree and the reputation history has built throughout decades. A single act is unlikely to change credibility completely. Hence, non-compliance may also occur occasionally among liberal democracies if non-reputational costs are high. The costs of compliance with international human rights treaties are generally limited among democracies. They respect the underlying values and often already protect the corresponding rules within their territory. In many cases, human rights are implemented in domestic constitutions or other legislation, and protection is reviewed by national institutions like courts. Such domestic arrangements decrease the costs of entering new human rights agreements to a minimum. Nevertheless, situations can exist in which international human rights laws are particularly demanding or domestic arrangements differ from the regulations of the UN treaties. Such situations can result in higher costs of compliance even for democracies which may lead to a worse performance regarding specific treaties or provisions. Hence, as a second hypothesis, it is assumed that democracies comply less with treaties that are costly to implement than with regulation being less demanding to fulfil.

H2: Compliance of democracies with UN human rights treaties will vary between specific instruments dependent on their non-reputational costs.

The compliance or non-compliance with specific treaties can only have an effect on the reputation of a state when it is known among the international community. If a state has ratified a treaty but does not follow its principles and reporting is lacking, the credibility does not diminish. Therefore, the existence of review mechanisms is especially important. As liberal democracies are concerned with their reputation, they will try to avoid negative coverage on their compliance with international regulations. Thus, they may make increased efforts to comply just before they are reviewed. Summarizing, democracies are afraid of negative reviews on their compliance as this involves reputation costs and states will, thus, take compliance measures increasingly before reports on their compliance are due.

H3: Democracies will make greater efforts for compliance in the light of an upcoming review.

These three hypotheses will be consequently tested in this thesis. The case selection and the deployed research design for assessing the deduced assumptions are elaborated on in the following chapter.

3. Research design

Space for further research was identified previously in this thesis regarding the compliance patterns of democracies with international human rights instruments. In order to assess this question, an in-depth analysis of a single case is conducted determining different compliance patterns with the UN human rights treaties. Australia is selected as a difficult but interesting case for liberal democracies. Afterwards, the specific data, operationalisation and research methods are laid out.

3.1 The case of Australia

When trying to find a suitable case to evaluate the compliance with international human rights instruments in democracies, it is important to be aware of what is meant by the term 'democracy'. In this paper, the focus is placed on full democracies also described as polyarchies (Dahl, 1973) or liberal, consolidated or embedded democracies (Merkel, 2010). This is necessary as the selected democracy must fulfil the preconditions of the deduced hypotheses. According to the Polity V Index (Marshall & Gurr, 2020), 32 full democracies existed in 2018 having received ten out of ten points. When selecting a specific democracy from that pool, it is important to consider other possible influences on the human rights situation of the country except the UN instruments. While Europe is highly democratised, these states do not seem the best choice for evaluation as the European Human Rights Regime possesses its own protection mechanisms and a comparatively very effective monitoring and sanctioning apparatus. Therefore, the human rights situation is more likely to be influenced by the European Human Rights instruments than by the ones of the UN. Instead, a state should be picked that is not impacted by human rights regulations of other organisations. Additionally, it is useful to focus on a country that has some record of human rights violations as this enables comparisons between instruments linked to the second hypothesis cornering the variation in costs.

Having these conditions in mind, Australia seems an adequate choice. It is not a member of any major regional organisation with a human rights regime. Besides, it faces ongoing critique for violating human rights in regards to asylum seekers and the Indigenous population (Amnesty International, 2019). Additionally, it is not an easy

case since Australia is the only liberal democracy that does not possess a constitutional human rights catalogue. Furthermore, international law cannot be directly translated into Australian legislation which las led to the fact that the voluntarily undertaken international obligations cannot be asserted by the citizens before any national court (Evatt, 2003, pp. 43-44). If despite these factors, compliance with the UN human rights instruments exists in Australia, it may be assumed that the results apply to other liberal democracies with better rights enforcement as well.

Finally, the case seems interesting and is suitable for analysis as there has not yet been a similar study looking at the human rights compliance of Australia in such detail. Some single pieces of international human rights law and their implementation in Australia were interrogated by scholars including for example the ICESCR, the ICCPR and human rights law regarding refugees (Hearn & Eastman, 2000; Mapulanga-Hulston & Harpur, 2009; Saul, 2013; Watkins, 2017). Nevertheless, a comprehensive view on the compliance of Australia with the various human rights treaties is missing.

3.2 Methodology and data

The following analysis will predominantly use qualitative means. For the qualitative content analyses, the documentation of the Universal Periodic Review (UPR) is used. The UPR was established in 2006 by General Assembly resolution A/RES/60/251. It represents a procedure of independent investigation on the "fulfilment by each State of its human rights obligations and commitments" (General Assembly resultion 60/251, 2006, p. 3) conducted in all of the 193 member states regardless of their ratification of the respective instruments. Australia has been subject to two monitoring cycles in 2010 and 2014 until now. The national reports on Australia by the UPR will be used as data for the qualitative assessment and are retrieved from the web page of the Human Rights Council[2]. These reports are considered suitable for the analysis as they contain information from three different sources: the state under review, UN organs such as treaty bodies and expert platforms, and domestic stakeholders like NGOs and national human rights institutions (UN Human Rights Council,

[2] https://www.ohchr.org/EN/HRBodies/UPR/Pages/AUIndex.aspx

n.d.). Based on the different points of view on the country's human rights situation, the UPR is seen to be the best source for attaining a complete picture.

In the following chapter, the analysis will be conducted through the separate testing of all three hypotheses by deploying slightly different research designs. The second and third hypotheses are investigated through qualitative means only. For the evaluation of H2 only two treaties that are divergent in their costs are picked in order to trace variation in compliance. The third assumption is tested by looking at the pattern of compliance in regard to all seven, applicable human rights treaties (see figure 1).

International treaty	**Abbreviation**	**Year of ratification in Australia**
The International Convention on the Elimination of All Forms of Racial Discrimination	ICERD	1975
The International Covenant on Economic, Social and Cultural Rights	ICESCR	1975
The International Covenant on Civil and Political Rights	ICCPR	1980
The Convention on the Elimination of All Forms of Discrimination against Women	CEDAW	1983
The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	CAT	1989
The Convention on the Rights of the Child	CRC	1990
The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families	ICPMW	Not ratified
The Convention on the Rights of Persons with Disabilities	CRPD	2008
The International Convention for the Protection of All Persons from Enforced Disappearance	ICED	Not ratified

Figure 1: International human rights treaties and their ratification status in Australia

The analysis of H1 stands out methodologically as it will contain quantitative elements besides the qualitative content analysis. All UN human rights treaties ratified by Australia will be analysed in terms of compliance from a quantitative and qualitative point of view. For the quantitative discovery, a specific indicator is deployed for each treaty. Human rights indicators can generally be understood "as indicators that are linked to human rights treaty standards, and that measure the extent to which duty-bearers are fulfilling their obligations and rights-holders enjoying their rights" (de Beco, 2008, p. 24). In this paper, the focus will be placed on the first part: compliance with the actual treaty content. Thus, indicators are chosen to determine the

rights situation representing the key obligations contained in the agreements. The indicators' implications for compliance are discussed on the basis of Australia's most recent score in the light of the highest and lowest possible outcome. The scores are set into context by a qualitative content analysis in order to identify general compliance or non-compliance. The indices used for each treaty can be derived from figure 2.

Treaty	Indicator	Conception and dimensions measured
ICERD	Migrant Integration Policy Index (MIPEX; Huddleston, Bilgili, Joki, & Vankova, 2015)	Policies of integration of migrants regarding basic rights, equal opportunities and a secure future
ICESCR	Labour rights in law and practice (Center for Global Workers' Rights, 2017)	Protection and violations of labour rights in law and practice
ICCPR	Latent human rights protection scores (Fariss, 2019)	Physical integrity and political rights combined from nine different datasets
CEDAW	Gender Inequality Index (GII; UNDP, 2018)	Gender inequality in the three domains reproductive health, empowerment and work
CAT	Physical integrity score from the CIRI dataset (Cingranelli, Richards, & Clay, 2014)	State violence of citizens' physical integrity: torture, extrajudicial killings, political imprisonment and disappearance
CRC	KidsRights Index (KidsRights Foundation, 2020)	Respect of children's rights in the five domains life, health, education, protection and Enabling Environment for Child Rights
CRPD	World Disability Data (WORLD Policy Center, 2017)	Constitutional and legal recognition of equal rights for disabled people, inclusive education, non-discrimination at work, state assistance

Figure 2: Respective indicators for each UN human rights treaty ratified in Australia

The assignment of specific indicators to the treaties brings an important asset to the literature on human rights compliance as many scholars have based their analyses only on political repression and civil liberties which seems to make sense for the effect of the ICCPR and the CAT. But for treaties concentrating on other rights such as social and cultural ones, the indicator appears to be less suitable. As the indicators are supposed to measure compliance, no development over time or comparison between before and after the ratification is necessary. Thus, only the most recent score available for Australia is adduced. For the purpose of measuring compliance, both the

legal situation as well as the de facto situation are important to consider. Additionally, the human rights treaties at hand cover whole population groups or wide human rights topics inheriting manifold facets. Hence, all of the datasets are indices that are comprised of different dimensions. A specific index is selected trying to capture the key aspect or general aim of each treaty. In order to see whether conformity is in place, the scores are reported in comparison to the minimum and maximum score and their meaning in regard to compliance is consequently discussed.

4. Empirical analysis

For the analysis, the individual hypotheses are addressed separately using suitable human rights treaties and adequate – quantitative and/or qualitative – data. The hypotheses will be addressed in the order they were deduced in the second chapter.

4.1 The overall compliance of Australia with UN human rights treaties

The first hypothesis contains the assumption of overall compliant behaviour of democracies with the human rights treaties they ratified. It is to be tested by looking at all UN human rights covenants and conventions applicable to Australia. All quantitative indicators and Australia's scores are shown in figure 3. The implications of the numbers for compliance are consequently discussed and set into context by the qualitative analysis of the UPR.

Treaty	**Indicator**	**Worst possible score**	**Best possible score**	**Australia's score**
ICERD	MIPEX (Huddleston et al., 2015)	0	100	66
ICESCR	Labour rights in law and practice (Center for Global Workers' Rights, 2017)	10	0	4.52
ICCPR	Latent human rights protection scores (Fariss, 2019)	-3.8	5.4	1.75
CEDAW	GII (UNDP, 2018)	1	0	0.103
CAT	Physical integrity score from CIRI (Cingranelli et al., 2014)	0	8	7
CRC	KidsRights Index (KidsRights Foundation, 2020)	0	1	0.583
CRPD	World Disability Data (WORLD Policy Center, 2017)	1	5	3.636*

Figure 3: Indicators of Australia's compliance with the UN human rights treaties
*Annotation: * Own calculation of average score*

First of all, each value of Australia lays in the upper half of the index scale signifying better performance than the average or respectively the fixed midpoint of the scale. This already gives a hint about the rights situation in Australia. Some scores fall very short of the best possible score while others are closer to the medium. Thus, the data is to be discussed in terms of its explanatory power for compliance standards.

Firstly, the MIPEX is used for the assessment of racial discrimination as the focus of the **ICERD**. Australia receives 66 out of 100 points. This score alone does not provide

much information on compliance. However, the MIPEX 2015 clusters the rated countries in six groups: favourable, slightly favourable, halfway favourable, slightly unfavourable, unfavourable and critically unfavourable. In 2014[3], Australia belonged to the slightly favourable nations, the second-best group. The countries in this category are characterised by the comprehensive integration of migrants, but the failure of policies to tackle the condition that migrants are seen as foreigners instead of equal citizens (MIPEX, 2020b). Being classified as a slightly favourable country in terms of the migrant policy, general compliance with the ICERD may be assumed as the inclusion of ethnic minorities such as migrants represents the core of the convention.

This view is partly backed by qualitative data. The UPR points out that there have been efforts in fighting racial discrimination e.g., by the adoption of the *Racial Discrimination Act 1975.* The chapter on 'Multiculturalism and combating racism' in the first cycle report positively stresses the existing ethic heterogeneity in Australia and the commitment to the inclusion and equal opportunities of citizens born overseas. Nevertheless, the Indigenous population represents an ethnic group that is especially prone to discrimination in Australia. The UPR reports provide a detailed description of the disadvantages Aboriginal and Torres Strait Islander people face, such as lower standards of education, more violence and abuse, a higher incidence of committing crimes and poorer health. All in all, "Many Indigenous peoples in Australia face significant disadvantage." (UN Human Rights Council, 2010, p. 10). Thus, compliance with the ICERD is not fully reached as Australia has not managed "guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms" (ICERD, Art. 2.2) as demanded by the ICERD – at least not for the Indigenous population. The quantitative and qualitative results converge as compliance is not present regarding the Aboriginal and Torres Strait Islander people. However, they were not included in the MIPEX as the index only looks at ethnic minorities of migrants and not at indigenous minority groups.

Regarding the **ICESCR**, Australia has received a score of 4.52 in Labour rights in law and practice which is located slightly in the upper half of the scale. Being very close to the average, compliance cannot be seen as indicated. The used index does not

[3] During the finalization of the thesis new MIPEX data became available assigning Australia a place in the Top 10 most favourable countries for migrants (MIPEX, 2020a).

contain such explicitly described categories as the MIPEX, but also differentiates between better and worse performance of the countries on a seven-level colour scheme. Australia falls in the third-best of the seven divisions indicating labour rights that are slightly favourable.

The qualitative data is by contrast more positive about Australia's compliance with the ICESCR. Its provisions are discussed under the chapters 'Right to work', 'Right to social security', 'Right to health' and 'Right to adequate housing' in the first UPR cycle. Despite representing major domains of rights, they only fill two pages. In the national report of the second cycle, the right to work and health are not even assessed any more. This seems to be due to the fact that these rights are considered as already sufficiently guaranteed since it is stated that "Efforts to secure the right to work and to ensure fair working conditions have played an important part" (UN Human Rights Council, 2010, p. 18). It is also reported that Australia has a comprehensive social security and public health system. The information gathered from both cycles of the UPR suggests that there are no major issues concerning the rights of the ICESCR in Australia and compliance is present. Bringing together quantitative and qualitative results, compliance seems to be mainly present, but the optimal rights situation is not yet accomplished.

Australia has received 1.75 points in the Latent Human Rights Protection Scores which were chosen to indicate the compliance with the **ICCPR**. The index does not offer differentiation between groups of states. The zero is, however, set as the average score of all countries. Thus, a score above zero depicts a surpassing human rights performance. While the index does not allow the off-handed interpretation of Australian compliance with the ICCPR, the high score demonstrates altogether good performance.

The UPR supports the affirmative perspective on the protection of civil and political rights. The first cycle report identifies already high standards in the protection of political rights: The death penalty was already abolished before the ratification, fair trial and rule of law are present. Despite the already high conformity, some new bills and state initiatives are mentioned in this regard that were still passed or announced in the recent years such as legislation prohibiting the reintroduction of the death

sentence or the installation of a new Independent National Security Legislation Monitor. Furthermore, in the second cycle, it is stated that "The Australian Government is focussed on advancing civil and political rights. This includes advancing measures to protect freedom of speech, freedom of religion and other common law rights and liberties that have not been given sufficient focus domestically in recent years." (UN Human Rights Council, 2015, p. 2). In summary, both data sources report the political rights situation to be good; no areas of concern are indicated, and compliance, hence, exists.

With 0.103 in the GII, used for the assessment of the **CEDAW**, Australia achieves a very good rating. The GII score is not calculated relative to the scores of the other countries, but "0" represents complete gender equality while "1" stands for maximum poor performance. As Australia's score of 0.103 falls very close to the optimum, the achievement of gender-equal policies and situation as demanded by the CEDAW is standing to reason.

The qualitative data points in a similar direction. After ratification of CEDAW**,** Australia immediately took measures to ensure compliance by passing the *Sexual Discrimination Act* in 1984. This act can be regarded as a direct enactment of the CEDAW as one of its objectives is "to give effect to certain provisions of the Convention on the Elimination of All Forms of Discrimination Against Women and to provisions of other relevant international instruments" (Part I, 3(a)). While stressing the improvements and efforts in fighting female discrimination and enhancing political participation of women, economic equality remains a point for further engagement according to the first national report: "Improving women's economic outcomes is critical to gender equality. In Australia, women's earnings are still, on average, below those of men." (UN Human Rights Council, 2010, p. 12). This problem was in fact attempted to be tackled in the meantime before the second review cycle as a national pay equity campaign was initiated in 2014. Awareness-raising can of course only be seen as the first move for change but is, nevertheless, a step in addressing the female rights issue pointed out by the UPR. Therefore, quantitative and qualitative data indicate that compliance is present in regard to most areas of living of women, whereas economic equality is not yet fully achieved.

The physical integrity scores extracted from the CIRI dataset are used for the investigation of compliance regarding the **CAT**. The score is composed of four dimensions that are evaluated and ranked with a 0, 1 or 2 while the higher number identifies the better performance. The four dimensions added up, each country receives a summary score between 0 and 8. Australia's latest score is at 7 which means that it received the optimal points for three of the four aspects showing good respect for citizen's integrity rights. However, it only received 1 out of 2 points regarding the torture situation.

Surprisingly, the rights of the CAT are merely mentioned in Australia's first national report of the UPR. The unique action presented in the first report concerns the amendment in 2010 of division 274 on torture to the *Criminal Code Act 1995*. The topic receives slightly more attention in the second review cycle. The report illustrates compliant prevention of torture in the management of the use of force by the police, the treatment of prisoners and the regulations on extradition. The lacking ratification of the Optional Protocol of the CAT remains a shortcoming. The sparse information provided on this human rights issue serves as an indication that compliance cannot be unsatisfactory because otherwise, this important domain would have received far greater attention. A farther-reaching conclusion cannot be drawn due to the limited qualitative insights.

Investigating compliance with the **CRC**, Australia attains a score of 0.583 in the KidsRights Index. Thereby, it is rated close to the medium mark although still in the upper half. Thus, the state falls in the second-best of five colour-schemed clusters. Taking a closer look at the individual categories of which the index is composed, it becomes clear that Australia performs poorly in one dimension while receiving high scores in the other four categories. In the domains of life, healthcare, education and protection of children, Australia attains ratings of at least 0.977 and is flagged with the most favourable of the five colour schemes. On the contrary, Australia only obtains 0.071 points in the newly introduced dimension 'Enabling Environment for Child Rights'. This shortcoming cannot be neglected as the domain aims at measuring the implementation of the key principles of the CRC and draws on the Concluding Observations of the CRC Committee for its classification (Arts, Webbink, & Jong, 2020, pp. 9-10). Consequently, the indicator shows that while the general situation of children

is favourable regarding their life, health, education and protection, the rights environment demanded by the CRC is not yet present.

The UPR seems more satisfied with Australia's performance regarding children's rights as both cycles highlight the achievements in protecting children and providing for their special needs. The rights of children appear as an area of continuous efforts and improvements as there is, for example, a National Framework for Protecting Australia's Children 2009-2020 or a National Early Childhood Development Strategy. The report outlining the latter refers specifically to the CRC when explaining why a strategy for children is necessary (Council of Australian Governments, 2009, p. 7). The second review cycle further stresses the achievements of the recent initiatives and files some new plans decided upon by Australia in the meantime. The information of the UPR on this treaty points in the direction of compliance as no major shortcoming has been acknowledged. This contradicts the quantitative finding. Variance exists between the conclusion of the CRC committee and the UPR as the latter states that "The rights of children play an important part in the development and application of family law." (UN Human Rights Council, 2010, p. 14). This contradiction cannot be resolved in this thesis and the results for compliance with the CRC remain twofold.

Lastly looking at the **CRPD**, Australia obtains 3.636 points on average of the WORLD Disability Data being close to the medium. The dataset does not offer a general classification of the countries which can be explained as it does not provide a summary score for countries but only ratings for the specific categories. Therefore, the average score is drawn from own calculations. Australia reaches the highest number of points in most of the policy areas in regard to disability rights, whereas it performs poorly in the section regarding constitutional rights. This is not a fundamental problem, as it has already been pointed out that Australia does not possess a constitutional bill of rights and only very few basic rights and freedoms are guaranteed by the constitution while most rights are codified in *Common Law*. Hence, the best possible rating for all the other indicators except one[4] is of greater significance for this research than the

[4] Australia has received 3 point out of 5 for the financial support for families of children with a handicap.

constitutional dimension. This hints towards preponderant compliance with the CRPD.

The qualitative material mostly supports this result. The general stance of people with disabilities as fostered by the CRPD is valued in Australia according to the UPR which states that "Persons with disabilities are highly valued members of Australian communities and workplaces and make a positive contribution to Australian society" (UN Human Rights Council, 2010, p. 12). Respective legislation to address discrimination against people with handicaps was already passed in 1992 with the *Disability Discrimination Act,* and a major reform took place with the National Disability Strategy 2010-2020. Nevertheless, the report recognizes the existence "of challenges in enjoying their rights on an equal basis with others" (UN Human Rights Council, 2010, p. 12). But instead of elaborating on specific shortcomings, it is referred to the development of a comprehensive policy framework in Australia which also includes the new national strategy mentioned above. Thus, compliance does not yet seem to have been fully achieved, but in progression which is why the tone of the UPR in the respective chapters appears positive. Linking the quantitative and qualitative perspective, overall compliance with the CRPD seems to be present whereas some challenges remain.

In summary, both quantitative and qualitative data have shown an overall high standard of compliance in Australia. For all treaties, hints were found pointing in the direction of a good compliance record on the whole while also minor shortcomings exist. The most problematic human rights domain seems to be the racial discrimination as the Indigenous population is especially at risk of discriminatory practises.

4.2 The variation of compliance between human rights realms

In the following, the second hypothesis postulating variation between different fields of human rights dependent on their non-reputational costs is assessed. The compliance with the ICERD as an assumed costly area and the ICCPR covering a less costly human rights domain are compared. The necessary efforts for implementing the treaties are contrasted, and Australia's conformity subsequently analysed.

Cost assessment of the ICERD and the ICCPR

The ICERD is considered to contain more non-reputational costs for compliance than the ICCPR. A primary reason for this assumption is the divergence in the recognition of the specific human rights domain in the Australian constitution when it was adopted in 1900. The Australian constitution does not contain a bill of rights and only very few human rights are guaranteed on a constitutional basis. These include the right to acquisition of property "on just terms" (section 51 (xxxi)), the right to trial by a jury (section 80), the principle of non-discrimination (section 99) and the independent exercise of religion (section 116) (French, 2015). Additionally, the freedom of political communication was judicially derived from the constitution. The guarantees of rights directly named in the constitution or indirectly drawn from it, are prominently allocated within the political and civil rights and freedoms as well as social and economic rights. It is commonly regarded that the general rights protected in Australia are similar to the principles and regulations of the ICCPR and ICESCR (Bailey, 1990). So, human rights protection in the domains of these two treaties does inherit very few costs of implementation as the principles were already existent before the ratification of the international covenants and stipulated in the highest national law.

In contrast to that, the recognition of ethnic minorities was not part of the constitution when it came into force. The first electoral system can be considered deeply racially discriminating as Aboriginal, Asian, African and Pacific Islander people were excluded from voting unless special entitlement on the State level was present (Costar, 2018). The minority of Aboriginal and Torres Strait Islander people seems to be exceptionally at risk for human rights violations and their preconditions were particularly low before the ICERD came into force. When Australia ratified the convention, the Indigenous population had only achieved the right to vote 13 years previous and they still represented an exemption from compulsory voting. Hence, legal distinctions had been in place between ethnic minorities before Australia was a party to the treaty and the eradication of such discrepancy was needed to comply. As more legal measures were missing in the Australian system regarding the ICERD and the change of consequent practises was necessary, the implementation contained more actual costs than of the ICCPR. Subsequently, the compliance with these two treaties differing in costs is assessed to test the second hypothesis.

Compliance with the ICERD

As the first treaty ratified by Australia in 1975, the ICERD obligates all treaty parties to establish a legal framework for the effective fight of racial discrimination and calls for "special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms" (ICERD, Art. 2.2). As shown above, this represents a condition that was not in place at the time of ratification. Since then, there have been efforts by Australia to address racial discrimination as pointed out by the UPR national reports. The first step towards eliminating respective legal gaps was executed by the adoption of the *Racial Discrimination Act 1975* in the same year as the ratification of the ICERD. This act represents a direct enactment of the ICERD into national legislation fulfilling article 2.1d which is calling upon the parties to "prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization." Another important step towards compliance was taken in 1993 with the adoption of the *Native Title Act 1993* directly aimed at the non-discrimination of the native population. There have been additional efforts to enhance this human rights domain at the end of the 2000s. Important to mention is the affirmation of Australia to the *Declaration on the Rights of Indigenous Peoples* in 2009. Other key efforts include the formal apology of the Australian Government to the Indigenous people and the 'Stolen generation', the *National Indigenous Law and Justice Framework* from 2009 and the 2010 reinstatement of the *Racial Discrimination Act 1975*.

Besides the general efforts valued by the UN report, challenges remain regarding the dealing with the Indigenous population in Australia. Out of the 24 pages of the national report of the first UPR cycle, two of them focus particularly on Indigenous Australians representing a special section separate from the part on combating racism. These two pages do not only list improvements made but also identify still existing discriminatory practises and structures within Australia. For example, it is pointed out that "Many Indigenous peoples in Australia face significant disadvantage" (UN Human Rights Council, 2010, p. 10), and life expectancy as well as infant mortality are significantly worse for people with an indigenous background.

Overall, racial discrimination seems to be a crucial point for human rights improvements according to the UPR. In the first review cycle, two of the eight identified priorities for domestic implementation of human rights particularly focus on the rights of the Indigenous minorities. As there was large space for improvement in this domain, also major advancement could be seen since the ratification. Though, complete compliance could not be reached as severe problems regarding the situation of Indigenous Australians remain.

Compliance with the ICCPR

Primary political and civil rights were already in place in Australia before the ratification of the ICCPR. Accordingly, the first UPR cycle national report identifies already high standards of political rights protection: The death penalty was already abolished before the ratification, fair trial and rule of law are present. The implementation of the rights of the ICCPR fill about three pages in the first cycle. However, most of the information regarding the right to life is more connected to the provisions of the CAT and the ICED that is not ratified by Australia. Within the field of religious freedoms, no shortcomings are identified but additional efforts mentioned in order to counteract stereotypes and foster social inclusion of all religious groups in the country. In the second cycle, this domain is not even covered any more indicating no summons to change by the UN. Concerning the section on justice, Australia's performance in fair jurisdiction is reported to be satisfactory as the rule of law principle is implemented, the power of the executive branch restricted and just trial practises enforced. No remaining challenges are included in the first report. The second documentation does not incorporate any general principles regarding fair legal procedures or similar human rights fields. In lieu, recent financial investments of the Australian government are highlighted. This illustrates the state's interest in further improvement given account by the plans to invest billions of dollars into legal assistance for enhancing just jurisdiction. In the second cycle report, the self-declared focus of the Australian Government on further enhancing civil and political rights is pointed out. The political rights situation is, hence, considered to not face any mentionable challenges and Australia's compliance with the treaty.

To sum up, the conformity varies between the ICCPR and the ICERD. While no defects are reported regarding the ICCPR, the UN calls for changes in the dealing with the Indigenous population in order to reach compliance with the ICERD. This corresponds with the expected impact of implementation costs. The fulfilment of the ICCPR was easier as most rights were already guaranteed and enacted in the country. As opposed to this, the costs for translating the legislation of the ICERD into domestic practise required greater efforts and the implementation is not yet concluded since discriminatory structures are still in place. Thus, the analysis of the compliance with the two treaties supports H2 arguing that non-reputational costs play a role for democracies in whether they comply or not.

4.3 The effect of reviews on human rights compliance

For testing the third hypothesis on the impact of upcoming reviews, all human rights treaties applicable to Australia are qualitatively assessed in regard to noticeable changes just before the publication of the first cycle national report of the UPR in 2010. The first cycle is of interest as it represents the first human rights evaluation for Australia in all domains. It takes a look at a broad time span covering the human rights development since the ratification of the respective treaties and even beyond while consecutive review cycles only cover the few years since the previous review. In the following, the human rights treaties will be listed in chronological order of their ratification and explored whether the upcoming UPR cycle report was accompanied by greater efforts for compliance.

The first treaty is the **ICERD**. Despite the essential step towards racial non-discrimination represented by the *Racial Discrimination Act 1975* following the ratification of the ICERD, not many further important measures in this regard were reported by the UPR until the next century. The only considerable effort mentioned consisted of the *Native Title Act 1993*. Despite these two decisive legislative acts, the UPR cycle only refers to actions that were taken in recent years before the review in 2010. Important to mention is the affirmation of Australia to the *Declaration on the Rights of Indigenous Peoples* in 2009. Other pivotal efforts at the end of the 2000s include the formal apology of the Australian Government to the Indigenous people and the 'Stolen generation', the *National Indigenous Law and Justice Framework* from 2009 and the 2010

reinstatement of the *Racial Discrimination Act 1975*. Thus, the data displays that many efforts to enhance this human rights domain have been taken just before the first UPR cycle was due to be finished.

The measures to implement the social, economic and cultural rights provisions of the **ICESCR** in Australia do not fill much space in the UPR reports. This is due to the fact that these rights are considered as already sufficiently guaranteed since it is stated that "Efforts to secure the right to work and to ensure fair working conditions have played an important part in Australia's history." (UN Human Rights Council, 2010, p. 18). In this manner, it is for instance reported that Australia possesses comprehensive systems for safeguarding social security and public health. The information gathered from both cycles of the UPR suggests that there have not been identified any major issues concerning the rights of the ICESCR in Australia. Thus, not many initiatives in this regard are listed since the ratification of the ICESCR. Despite the introduction of Medicare, an Australian universal public health system, in 1984, the only measures mentioned were taken from 2008 onwards. It includes most prominently the *Fair Work Act 2009*. Other actions in this time horizon encompass the Government's white paper on homelessness and the consecutive National Partnership Agreement on people lacking shelter and the reform of Australia's health and hospitals system in 2010. Therefore, the few additional efforts referred to in the UPR national reports also fall in the time until the publication of the first UPR cycle in 2010. Thus, the data indicates that compliance was already good since the beginning, but further improvement were carried out before reviewing was due.

Like for the ICESCR, the rights of the **ICCPR** are already regarded sufficiently secured because the key principles are implemented in Australia and no severe shortcomings are diagnosed. Besides no need for extensive action, there were some new bills and state initiatives passed or announced right in the year 2010 of the first review. These actions include, for example, legislation prohibiting the reintroduction of the death sentence, the reassessment of the *Family Law Act 1975* regarding family violence and the installation of a new Independent National Security Legislation Monitor all taken in 2010.

When looking at women's rights tackled in the **CEDAW**, the *Sex Discrimination Act 1984* may be regarded as the first key achievement. Between this legislative act and 2009, not a single measure for women's rights or gender equality was reported to be adopted by the Australian government. Since then, actions have been taken or were announced shortly before the end of the first cycle. This includes the *Fair Work Act 2009* also containing provisions against sex- or gender-based discrimination at work and for equal remuneration of sexes as well as the first comprehensive Paid Parental Leave scheme. It points in the direction concerning a possible effect of the review mechanisms already displayed regarding political and civil freedoms. Efforts were not only made right before the first UPR cycle in 2010, but also in the meantime between the two cycles. While the first national report stressed the improvements in fighting discrimination due to gender or sex and in political participation of women, economic equality is mentioned as a point for further engagement: "Improving women's economic outcomes is critical to gender equality. In Australia, women's earnings are still, on average, below those of men." (UN Human Rights Council, 2010, p. 12). Initial steps in addressing this problem have been undertaken between the first and second review cycle by a national campaign of pay equity started in 2014. While awareness-raising does probably not suffice to close the gender pay gap, it nevertheless provides support of the assumed impact of reviewing on rights compliance in democracies.

The rights of the **CAT** are merely mentioned in Australia's first national report of the UPR. The most prominent achievements in this regard were conducted even before the ratification with the abolishment of the death penalty in 1973 (by the Commonwealth) and in 1986 (by all States). Since then, only two measures were reported in the first cycle national documentation: One was the amendment of division 274 on torture to the *Criminal Code Act 1995* added in 2010, the other consisted in new guidelines for the police cooperation with states where the death penalty could apply announced in 2009. The second report illustrates compliant prevention of torture in the management of the use of force by the police, the treatment of prisoners and the regulations on extradition. The fact that Australia is not a party to the Optional Protocol of the CAT is regarded as a deficiency. Nevertheless, the second report does not contain information on measures taken in the upcoming of the due date of the review. While the amendment of the *Criminal Code Act* in 2010 and the new police

cooperation guidelines from 2009 reported in the first cycle may indicate increased efforts before the review, too little information is provided to identify a pattern of enlarged initiatives or legislation passing before the reporting process.

When looking into both cycles of the UPR, the achievements of Australia with respect to the **CRC** are highlighted. At the first glance on the first national report, it is already noticeable that the essential steps for children's rights seem to have been made in recent years before the first UN review was published. The actions for children by Australia that are stressed in the UPR were primarily taken in the years 2006 to 2010. Especially 2009, the year right before the end of the first UPR cycle, has been packed with new initiatives for the younger population. The first National Framework for Protecting Australia's Children 2009-2020 has been announced by the Australian Government. In the same year, a National Early Childhood Development Strategy aiming for investments in the very first years of child development has been adopted by the Council of Australian Governments. The report on the development strategy particularly alludes to the CRC in the reasons why a strategy for children is required (Council of Australian Governments, 2009, p. 7). Additionally, the Australian Government officially apologised to child migrants in November 2009 who were dealt with under the historical child migrant schemes and may not have been adequately cared for. The second review cycle stressed the achievements of the recent initiatives and files some new plans and ambitions decided upon by Australia in the meantime. This includes a *Second Action Plan* (2012–2015), amendments in 2012 to the *Family Law Act*, a Royal Commission for Institutional Responses to Child Sexual Abuse set up in 2013 and the intention announced in 2015 to provide better services and enhanced access to them for disadvantaged and vulnerable children. The information on this treaty points in the direction of compliance provoked by upcoming human rights review.

When looking at the **CRPD**, respective legislation for non-discrimination for handicapped people was already adopted in 1992 with the *Disability Discrimination Act.* The major disability reform highlighted in both cycles of the UPR took, however, until 2010 when the *National Disability Strategy 2010-2020* came into force. It aims for improvement and equality for people with handicaps in a variety of spheres of life through an inclusive approach. This reform process was agreed upon shortly after the

ratification and right before the due date of the first UPR cycle, just like the new *Disability (Access to Premises — Buildings) Standards 2010* and the *Development for All: Towards a Disability Inclusive Australian Aid Program 2009-2014*. Also, right before the second UPR cycle report was due, an announcement of the Australian Government of higher spending on disability deployment was made. Like in the assessment of most previous UN human rights treaties, an effect of the upcoming review is revealed.

Having looked at the efforts of the Australian governments regarding all international human rights treaties applicable to the country, the UPR data supports hypothesis three. The findings show that there have been increased efforts and passing in respective legislation especially right before the first review cycle in 2010. While specific patterns before the review could not be demonstrated for all treaties due to insufficient coverage of the human rights domain (especially for the CAT), all sections show at least some effort right before the publication of the monitoring process. Thus, this thesis justifies the assumption that approaching review mechanisms have an impact on democracies' efforts in complying with international law.

To sum up the findings of the whole analysis, all three hypotheses were supported by the analysed data. Therefore, the findings provide support for the compliance of Australia with the UN human rights treaties as well as the effect of forthcoming reviews on the Australian efforts for compliance. Additionally, the assessment has shown that treaties with higher, non-reputational costs caused by missing domestic legislation matter. These implementation costs outweigh reputational benefits of compliance. Hence, conformity is lower concerning high-cost treaties.

5. Discussion

Following the empirical analysis, the findings will consequently be discussed and interpreted. Limitations of the thesis are displayed and outlooks for further research given.

5.1 Interpretation of the findings

In the previous analysis, support for all three hypotheses was found. H1 postulated that democracies possess an overall good record in compliance and respect the majority of human rights treaties they have ratified. This was found to be true for the case of Australia. The finding corresponds with the existing literature on democracies and compliance. It matches with other papers that have expected and shown higher compliance rates among democracies than among autocracies (Mansfield et al., 2002; Neumayer, 2005; Von Stein, 2016). Additionally, the thesis lines up with the studies that created a positive prospect regarding human rights treaties and compliance (Lutz & Sikkink, 2000; Risse, Ropp, & Sikkink, 2013).

Besides the theoretical assumptions, the results regarding H1 match other findings on the difference between quantitative and qualitative methods. Although not having used statistical analysis, the quantitative indicators nevertheless produced partly different outcomes compared to the qualitative content analysis, as previously reported by other scholars (see Hafner-Burton & Ron, 2009). The qualitative analyses produced more positive outcomes concerning some treaties such as the ICESCR and the CRC than the quantitative ones. The divide has been explained among other factors by the different interpretation of findings (ebd., pp. 374-377) and diverging data deployment (ebd., pp. 377-383). By discussing compliance with the treaties from both perspectives, divergent findings could be recognised and set in context with each other. Hence, the combination of quantitative and qualitative elements enabled the production of more robust findings than would have been able otherwise.

The second hypothesis claimed non-reputational costs of treaties to make a difference regarding the compliance of democracies. The analysis has shown that different costs of implementation implied distinct levels of compliance in the comparison between the ICCPR and the ICERD. This finding bolsters H2. The outcome coincides with

the observation that compliance varies across issues or policy areas (Doyle & Luck, 2004). It also backs the often-heard argument of differing costs in this regard (Lucena Carneiro & Apolinário, 2016; Lutmar, Carneiro, & Mitchell, 2016) which matches the reputation theory. The finding adds to the literature by proving the impact of disparate implementation costs not between policy areas, but within the human rights domain concerning different treaties. Therefore, additional backing is provided for the theory enlarging the scope of the cost-related argument. Hence, support is administered that compliance is not a simple, direct consequence of treaty ratification among democracies. Different kinds of costs – reputational and non-reputational ones – matter and shape the individual compliance patterns.

H3 argued for increased compliance efforts among democracies before reviews were due to be published. The finding on this hypothesis backs the reputational assumption in a special way as no other motivation for compliance before the reviews seems to be imaginable than reputation. Although the findings are consistent with the theoretical expectation, they contradict previous research on the impact of review mechanisms on human rights. Scholars have formerly found a limited effect of the observation and recommendation mechanisms within the UN (e.g., Heyns & Viljoen, 2002; Krommendijk, 2014). The inconsistency of results can be explained as other researchers have typically looked at the developments after reviews were published, not before as well as having focused on the specific UN treaty monitoring bodies. As this thesis investigated the effect of upcoming reviews specifically on democracies, it provided a new differentiation of the argument based on reputation theory and thus produced different results than previous research. Additionally, the impact of the UPR was assessed instead of the traditionally interrogated treaty monitoring bodies. This may be of significance as Etone (2019) found the UPR to be more effective due to its universality. To conclude, the assessment of the effect of upcoming reviews exclusively on democracies based on reputational assumptions represents a new asset to the literature. As this thesis backed the conjecture with empirical evidence, it would be utile to further prove this linkage.

The analysis has provided more insights into patterns of compliance among democracies. Even if the concrete results only apply directly to Australia, they also enrich the knowledge about the compliance of democracies in general. Australia could be

seen as a rather difficult case because it possesses neither a constitutional bill of rights nor a possibility of direct enforcement of international law. This means that the legal commitments Australia has undertaken cannot be claimed by citizens before any Australian court. Based on the limited enforcement of rights, the likelihood of compliance with the UN human rights treaties was expected to be low compared to other democracies. As the data for Australia supports all hypotheses, it can be assumed that this may also be the case for democracies where rights enforcement is comparatively stronger. However, to expand the body of knowledge on compliance within democracies even further, additional case studies for other countries would be enriching, and a cross-country statistical analysis on the deduced hypotheses would allow conclusions with a broader scope.

5.2 Limitations

While the empirical analysis has produced evidence for all of the hypotheses, some limitations and shortcomings remain in the thesis that restrict the presented findings. The first limitation of this thesis lays in the fact that it does not allow the drawing of any causal links of the influence of human rights treaties. As the paper is concerned with compliance with these instruments, their impact is neither questioned nor analysed. Thus, this thesis can offer no insights into the question of whether human rights law leads to enhanced respect in the countries that have committed to it. In order to interrogate the effect of such treaties, a different research project would be needed that may use qualitative process tracing for its purpose. In this manner, the causality could be explored.

In addition, the quantitative indicators do not represent the ideal means for analysing compliance. While indices could be found that match the provisions of the treaties quite well, most of them are not exactly designed for measuring the compliance with such law. As it is challenging to exercise the distinction between compliance and non-compliance on this basis, the scores could only be used in connection with qualitative insights. A way to circumvent this problem might be by looking at the reported violations against the treaties. This approach was not used in the thesis as the data collection turned out to be challenging and the interference of compliance based on the number of field cases also remains difficult to draw. Nevertheless, through a research

project with a research design focussed explicitly on violation or case data, useful complementary findings to the analysis at hand could be gathered.

Another possible point of critique consists in the fact that the UPR was used as data for the qualitative analysis. As a secondary source, it possesses the merit of already only including the major achievements in human rights and not mentioning every legislative act, statement or announcement regardless of their scope and significance. This enables a more focussed qualitative analysis. The information from the national reports may, however, not be entirely unbiased. The criteria for which efforts are included in the reports are not disclosed by the UN. Hence, the findings especially for H3 on the effect of upcoming reviews should further be tested in ensuing research. For this purpose, it might be advantageous to assess the amount of respective legislation quantitatively over time and check for statistically significant increased adoption before the review.

While successive research could be drawn from the limitations of the thesis, the assets of this research project may also expand the validity of further studies. Quantitative and qualitative data are used and thus prevent the dilemma of differing outcomes due to the methodological approach as identified by Hafner-Burton and Ron (2009). Consecutive inquiries could also profit from the combination of quantitative and qualitative data. Lastly, the present paper utilises a different quantitative indicator adjusted to each international treaty. Previous literature has often only drawn on physical integrity or political repression data to analyse the human rights situation overall. While such data is fitting for the ICCPR and the CAT, it seems less suitable for measuring the rights situation of children. Future scholars could work further on the adjustment of such indicators and deploy them also for quantitative effects of human rights law.

6. Conclusion

Returning to Louis Henkin's quote from the beginning, it at least applies to Australia. This thesis has shown that the state observes almost all principles of international law and almost all of its obligations in the human rights domain almost all of the time. The present research gives a positive outlook for the efficacy of international human rights instruments. Since Australia as the chosen case example for democracies has demonstrated a good record of compliance with human rights regulations, there are also promising prospects for the general rights protection within democracies that have ratified respective UN instruments.

The research at hand has asked the question on the patterns of compliance of democracies with human rights law. It was drawn on the reputational argument of Guzman (2002, 2005, 2008) as an extension of institutionalism. Based on the approach that the reputational history and the advantages granted from a good reputation matter for states when deciding whether to comply or not, three hypotheses were deduced. Firstly, it was assumed that a democracy will comply with the majority of human rights law it has committed to. Secondly, non-reputational costs are still expected to play a role and cause divergent compliance in regard to different human rights treaties. Thirdly, review mechanisms were hypothesised to be linked with increased efforts for compliance.

Australia was selected as an interesting, yet difficult case for democracies. While the first hypothesis was analysed through the deployment of both quantitative indices for each treaty and qualitative means, the other two assumption were tested only qualitatively. The findings support all three hypotheses. Overall, compliance exists in Australia, albeit particularly the implementation of the ICERD on racial discrimination remains an issue for the Indigenous population. Costs for compliance also make a difference when comparing the two cost-diverging treaties on racial discrimination (ICERD) and on political rights (ICCPR). Thus, law that is less costly due to already existing domestic provisions is better complied with. Lastly, the analysis also provided backing for the assumed effect of forthcoming reviews. The data indicated increased efforts expressed by additional legislation and other actions for compliance before the Universal Periodic Review was due for Australia.

With these findings, the present thesis adds to the research on compliance with human rights provisions, especially to the literature based on Guzman's reputational approach. It further backs the optimistic view on human rights. Additionally, evidence is provided for the effect of upcoming review mechanisms which have not yet been fully explored by the scholars in this domain. Hence, this thesis brings new findings on compliance in Australia and democracies to the table, while opening contact points for further research that could validate the here drawn conclusions and expand its scope.

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