Generating Executive Incentives: The Role of Domestic Judicial Power in International Human Rights Court Effectiveness

Jillienne Haglund

Postdoctoral Research Associate
Washington University in St. Louis

Oct. 11, 2014
An Example from the Inter-American Court
Research Question

To what extent do adverse decisions made by international human rights courts influence respect for rights?
Research Question

- To what extent do adverse decisions made by international human rights courts influence respect for rights?
- The conventional wisdom holds that international human rights legal commitments have little influence on state behavior.
Research Question

- To what extent do adverse decisions made by international human rights courts influence respect for rights?
- The conventional wisdom holds that international human rights legal commitments have little influence on state behavior.
- Recent work highlights the wide variation in state response to international legal commitments as mediated by domestic institutions.
International court judges aim to maintain or enhance legitimacy of the international court.
Why Focus on Domestic Politics?

- International court judges aim to maintain or enhance legitimacy of the international court.
  - Like all courts, international courts lack enforcement capability and must rely on other actors to implement decisions.
Why Focus on Domestic Politics?

- International court judges aim to maintain or enhance legitimacy of the international court.
  - Like all courts, international courts lack enforcement capability and must rely on other actors to implement decisions.

Theory needs to focus on domestic actors: the executive and other actors who could threaten the executive’s hold on power.
Threats to Political Survival: Executive Incentives

The executive influences international court effectiveness via:

- Future respect for rights

Incentives to evade international court ruling:

- Material costs
- Loss of power
- Loss of political allies
Threats to Political Survival: Executive Incentives

- The executive influences international court effectiveness via:
  - Future respect for rights
  - Incentives to evade international court ruling:
    - Material costs
    - Loss of power
    - Loss of political allies
The executive influences international court effectiveness via:
- Future respect for rights
The executive influences international court effectiveness via:
- Future respect for rights
- Incentives to evade international court ruling:
The executive influences international court effectiveness via:
- Future respect for rights
- Incentives to evade international court ruling:
  - Material costs
The executive influences international court effectiveness via:
- Future respect for rights

Incentives to evade international court ruling:
- Material costs
- Loss of power
The executive influences international court effectiveness via:
- Future respect for rights

Incentives to evade international court ruling:
- Material costs
- Loss of power
- Loss of political allies
Indirect Threats to Political Survival: Executive Incentives

Why does the executive adhere to adverse international court decision?

Executive behaves in expectation of implementation by other actors.

Domestic Actor Implementation Efforts → International/Domestic Pressure → Executive Respect for Rights
Why does the executive adhere to adverse international court decision?
Indirect Threats to Political Survival: Executive Incentives

- Why does the executive adhere to adverse international court decision?
- Executive behaves in expectation of implementation by other actors.
*Indirect* Threats to Political Survival: Executive Incentives

- Why does the executive adhere to adverse international court decision?
- Executive behaves in expectation of implementation by other actors.
  - Domestic Actor Implementation Efforts $\rightarrow$ International/Domestic Pressure $\rightarrow$ Executive Respect for Rights
Indirect Threats to Political Survival: Executive Incentives

- Why does the executive adhere to adverse international court decision?
- Executive behaves in expectation of implementation by other actors.
  - **Domestic Actor Implementation Efforts** → International/Domestic Pressure → Executive Respect for Rights
Indirect Threats to Political Survival: Executive Incentives

- Why does the executive adhere to adverse international court decision?
- Executive behaves in expectation of implementation by other actors.
  - Domestic Actor Implementation Efforts $\rightarrow$ International/Domestic Pressure $\rightarrow$ Executive Respect for Rights
Indirect Threats to Political Survival: Executive Incentives

Why does the executive adhere to adverse international court decision?

Executive behaves in expectation of implementation by other actors.

- Domestic Actor Implementation Efforts → International/Domestic Pressure → Executive Respect for Rights
Domestic Judicial Power?

- Extent to which domestic judiciary influences executive incentives depends on ...
Domestic Judicial Power?

- Extent to which domestic judiciary influences executive incentives depends on . . .
- Domestic Judicial Power (autonomous and effective)
Domestic Judicial Power?

- Extent to which domestic judiciary influences executive incentives depends on...
- Domestic Judicial Power (autonomous and effective)
  - Concern for public support
Domestic Judicial Power?

- Extent to which domestic judiciary influences executive incentives depends on . . .
- Domestic Judicial Power (autonomous and effective)
  - Concern for public support
  - Overcomes procedural difficulties
Domestic Judicial Power?

- Extent to which domestic judiciary influences executive incentives depends on . . .
- Domestic Judicial Power (autonomous and effective)
  - Concern for public support
  - Overcomes procedural difficulties
  - Raises shaming costs for evasion
Domestic Judiciary Hypothesis: As domestic judicial power rises, the presence of adverse international court decisions that find human rights violations are more likely to improve domestic respect for human rights.
Domestic Judiciary Hypothesis: As domestic judicial power rises, the presence of adverse international court decisions that find human rights violations are more likely to improve domestic respect for human rights.

\[
\text{Respect for Rights} = \alpha + \beta_1 \text{International Court Judgment} \times \text{Domestic Judicial Power}_{t-2} + \beta_2 \text{International Court Judgment}_{t-2} + \beta_3 \text{Domestic Judicial Power}_{t-2} + z + u
\]
Hypothesis

- Domestic Judiciary Hypothesis: As domestic judicial power rises, the presence of adverse international court decisions that find human rights violations are more likely to improve domestic respect for human rights.

- Respect for Rights = $\alpha + \beta_1 \text{International Court Judgment} \times \text{Domestic Judicial Power}_{t-2} + \beta_2 \text{International Court Judgment}_{t-2} + \beta_3 \text{Domestic Judicial Power}_{t-2} + z + u$
Hypothesis

- Domestic Judiciary Hypothesis: As domestic judicial power rises, the presence of adverse international court decisions that find human rights violations are more likely to improve domestic respect for human rights.

- Respect for Rights = $\alpha + \beta_1 \text{International Court Judgment} \times \text{Domestic Judicial Power}_{t-2} + \beta_2 \text{International Court Judgment}_{t-2} + \beta_3 \text{Domestic Judicial Power}_{t-2} + z + u$
ECtHR judgments from 1981-2006 for all ECHR contracting parties (42 countries included) and IACtHR judgments only for those states under the compulsory jurisdiction of the IACtHR for the years 1989-2010 (21 countries included)
Research Design: Data and Model Choice

- ECtHR judgments from 1981-2006 for all ECHR contracting parties (42 countries included) and IACtHR judgments only for those states under the compulsory jurisdiction of the IACtHR for the years 1989-2010 (21 countries included)
- Bayesian hierarchical linear regression model
Dependent Variable

- International court effectiveness (respect for physical integrity rights)
Dependent Variable

- International court effectiveness (respect for physical integrity rights)
  - Physical Integrity Rights: includes torture, political imprisonment, extrajudicial killing, and disappearance; ranges from 0 to 8, with higher values indicating greater respect for rights (CIRI 2010).
Dependent Variable

- International court effectiveness (respect for physical integrity rights)
  - Physical Integrity Rights: includes torture, political imprisonment, extrajudicial killing, and disappearance; ranges from 0 to 8, with higher values indicating greater respect for rights (CIRI 2010).

- $InternationalCourtRuling_{t1} \rightarrow RespectforRights_{t2} \rightarrow Effectiveness = Respect_{t2} - Respect_{t1}$
Key Independent Variables

- *International court violation*: coded 1 for violations of physical integrity rights of the relevant articles of the ECHR and the ACHR
Key Independent Variables

- *International court violation*: coded 1 for violations of physical integrity rights of the relevant articles of the ECHR and the ACHR
- *Domestic Judicial Power*: latent variable capturing whether judge’s actions reflect autonomous and effective decision-making
Key Independent Variables

- **International court violation**: coded 1 for violations of physical integrity rights of the relevant articles of the ECHR and the ACHR
- **Domestic Judicial Power**: latent variable capturing whether judge’s actions reflect autonomous and effective decision-making
- **International Court Violation*Domestic Judicial Power**
Influence of Adverse International Court Judgment and Powerful Judiciary on Physical Integrity Rights

European Court of Human Rights

Parameter estimates shown as dots. Quantile-based 90 percent probability intervals shown as lines. Parameter estimates indicate the association between adverse ECtHR decision and physical integrity rights as domestic judicial power rises (from 0 to mean value of each country).
Influence of Adverse International Court Judgment and Powerful Judiciary on Physical Integrity Rights

Parameter estimates shown as dots. Quantile-based 90 percent probability intervals shown as lines. Parameter estimates indicate the association between adverse IACtHR decision and physical integrity rights as domestic judicial power rises (from 0 to mean value of each country).
Implications and Conclusions

Contrary to the conventional wisdom, both the ECtHR and the IACtHR influence state behavior.

Focus should be on the incentives of various actors within the state, most notably the executive, to adhere to adverse international court decisions.
Implications and Conclusions

- Contrary to the conventional wisdom, both the ECtHR and the IACtHR influence state behavior.
- Despite the great diversity in which these legal bodies operate, both the ECtHR and the IACtHR have similar influences on respect for rights.
Contrary to the conventional wisdom, both the ECtHR and the IACtHR influence state behavior.

Despite the great diversity in which these legal bodies operate, both the ECtHR and the IACtHR have similar influences on respect for rights.

Focus should be on the incentives of various actors within the state, most notably the executive, to adhere to adverse international court decisions.
Questions?