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## **Patchwork compliance: political dialogues about contested human rights**

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# **Unraveling the patchwork: political dialogue as a theoretical model**

## 2.1 Introduction

This chapter develops the political dialogue model to explain how state decision-makers decide on compliance. This model enables us to gain insight into how these decision-makers mediate between divergent normative pressures from international and domestic communities. It outlines how they can try to mediate between these pressures, attempt to reconcile them, and find or create consensus. It demonstrates how they can shape decision-making processes over human rights compliance in such a way that an outcome becomes possible that is acceptable to the parties at all levels involved – even if the parties' respective demands were very disparate at the beginning.<sup>67</sup> As such, the political dialogue model helps us understand why and how decision-makers deal with competing pressures to comply and violate. As a result, this theoretical model sheds light on why leaders choose certain articles to comply with, while others are ignored, violated, or implemented only up to a certain extent.

## 2.2 The logic of the political dialogue model

The model is built on current thinking on international norms, the cultural mismatch hypothesis, and norm contestation.<sup>68</sup> It follows the logic of the two-level game and adds to it insights on the influence of international and domestic norms on decision-makers.<sup>69</sup>

The logic of the two-level game is a useful starting point to bring together international and domestic level explanations of state compliance. On the one hand, international level explanations focus mostly on the domain of inter-state relations. On the other, domestic level explanations focus mostly on the domestic society, culture and political institutions of individual states.<sup>70</sup> The two-level game instead outlines the way in which domestic politics and international relations are interconnected and inseparable. It allows for the understanding that individual decision-makers are constrained and enabled by domestic and international communities at the same time. Moreover, it highlights how political dialogues and negotiations do not proceed in a linear fashion from one level to the next, but instead occur simultaneously. What happens at one level of the negotiation directly influences the other. This makes decision-making a process of strategic interaction in which state actors “simultaneously try to take account of, and influence, the expected reactions” of both

67 Putnam, 1988; Evans et al. 1993

68 Zimmerman, 2016

69 See for examples of the first: Putnam, 1988; Evans et al. 1993; Boyer, 2000; Schoppa, 1993, 1997; Feliu, 2003; Lantis, 2006; Li, 2005; Mo, 1995; Patterson, 1997; Shamir & Shikaki, 2005. See for examples of the latter: Acharya, 2004; Bob, 2012; Bloomfield & Scott, 2017; Cardenas, 2010; Checkel, 2005; Coleman, 1994; Cortell & Davis, 2000, 2005; Deitelhof & Zimmermann, 2013; Goodman & Jinks, 2013; Katzenstein, 1996; Risse & Sikkink, 2013; Simmons, 2009; Smith, 2013; Tannenwald, 2007; Thomas, 2001, 2005; Wiener, 2004, 2014; Zwingel, 2012; Zimmermann, 2014

70 Evans et al., 1993:5

domestic and international audiences.<sup>71</sup> What is more, individual decision-makers actively use strategies to make decisions possible that were previously considered impossible at one or both levels. Particularly when the demands and needs of different communities are a mismatch, a space of autonomy opens up in which state decision-makers can act to reconcile them. That space provides them with strategic opportunities, as well as strategic dilemmas.<sup>72</sup>

This understanding of state decision-makers as both constrained and enabled by two levels at the same time has proven useful for analysing international treaty ratification, including human rights treaties.<sup>73</sup> This project argues that compliance with human rights can also be best understood as a two-level dialogue, because decision-makers need to account for both international and domestic communities' demands and preferences. It is only when these match that decision-makers can make accepted and therefore effective changes to national legislation. In the case of human rights compliance, this means that any changes to national legislation need to be accepted by the international human rights community as a move towards compliance, and at the domestic level as – at the very least – a move not violating domestic norms. To use the classic metaphor of the two-level game; state decision-makers need to make that one good move on two very different chess boards.<sup>74</sup>

However, at each of these two levels, states can be part of more than just one community, each with their own norms.<sup>75</sup> At the international level, consider for instance the international community of Arab states, sharing Arab-Islamic norms, or the international community of democratic states, sharing democratic norms.<sup>76</sup> A state can be part of, and can identify with both of these international communities at the same time. When the norms of two international communities are considered a mismatch, it complicates decisions on compliance, as one and the same decision needs to be recognized simultaneously as a move towards human rights compliance, and as not breaching the norms of a second international community's norms.

But a state is part of a domestic society as well.<sup>77</sup> And just as there are different international communities, there can be different domestic communities as well, and all these communities also have their own specific norms.<sup>78</sup> This means that one decision on human rights needs be recognized not only by several international communities as – at the least – not violating their respective norms, but also by several domestic communities. Consequently, the classic two-level metaphor in which a decision-maker plays at two chess

71 Evans et al., 1993:15; Feliu, 2003:143

72 Feliu, 2003; Putnam, 1988:460

73 Lantis, 2006; Martin & Sikkink, 1993; Feliu, 2003

74 Putnam, 1988

75 Thomas, 2001:14

76 Philips, 2012; Barnett, 1998

77 Thomas, 2001:14

78 Coleman, 1990; Ellickson, 1992; Knight, 1992; North, 1990; Ostrom, 2000

boards simultaneously is further complicated; it is about making that one good move at four, or more, international and domestic chess boards.

When all these different norms match, extensive compliance with international human rights norms does not need to be a very difficult decision from a normative perspective. It is likely that the human rights norms will be recognized as matching the norms of all different communities. In such cases, and all other things being equal, we would expect higher levels of compliance. The difficulty of extensive compliance arises when norms are considered a mismatch, because it is not likely that decisions to increase compliance with contested human rights will be accepted by the other communities. If this is indeed the case, we should expect to see that the presence of such communities is related to lower levels of compliance in practice. This leads to the first proposition of this project:

Proposition 1 (Quantitative): The larger the presence of communities adhering to norms that are a mismatch with human rights, the lower the level of compliance.

## 2.3 Key actors

The central actors in the political dialogue model are those who have the final say over compliance with human rights treaties, called state decision-makers. Depending on the political system these can be a government, a president, a monarch, and so on. These actors have a key position in the dialogue, because they are in the position of dealing with interactions from all different international and domestic communities and make the decisions on domestic legislation, and thus compliance.<sup>79</sup> By focusing on state decision-makers, the theoretical model enables analysis of other state-related institutions, particularly parliament and political parties, as voices representing domestic communities.

The model works on the assumption that decision-makers, in principle, aim to make a decision that is acceptable to the domestic and international constituents they are most vulnerable to, because they want to maintain their position of power.<sup>80</sup> Therefore, decision-makers are interested in finding or creating consensus before deciding on compliance. This will then prevent negative sanctions such as naming-and-shaming by the international community or by leading states within that community.<sup>81</sup> In addition, communities' norms also shape decision-makers' own identities and belief systems through internalization. When internalized, norms shape decision-maker's policy preferences.<sup>82</sup> In this way, a state

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79 Mastanduno et al., 1989

80 Mastanduno et al., 1989

81 The space of acceptability is a direct adaption of Putnam's win-sets. See Putnam 1988, Evans et al., 1993.

82 Checkel, 1997; Risse, 2009; Klotz, 1996:9; March & Olson, 1987; Turner, 1991:5; Coleman, 1990:293; Hooghe, 2005:865; Greenhill, 2010; Hawkins, 2004; Goodman & Jinks, 2013:3; Checkel, 2005; Kratochwil, 1989

decision-maker might want to comply with certain norms, even when it is difficult to do so.<sup>83</sup> However, when state decision-makers have internalized certain norms, it does not mean they can freely pursue the implementation of those norms, as they are still part of different communities.

Different communities can try to influence decision-makers' choices by creating deterrents and incentives.<sup>84</sup> When norms mismatch, one community might provide incentives to make a certain decision, while the other community is simultaneously expected to sanction or punish the state leader for that same decision. In addition, the knowledge state decision-makers have of the different communities' norms, and the expectation they have of the communities' sanctions, already work as a constraint or incentive in their decision-making process. This knowledge can even make certain options 'unthinkable', for instance, when a norm is as strong as a taboo.<sup>85</sup> This highlights another assumption of the political dialogue as a theoretical model: that different international and domestic communities prefer the decision-maker to protect or implement their respective norms, or as a minimum, not to violate them.

Communities can participate in a dialogue process, for example through their formal representatives in parliament or in political committees, or through informal representatives or leaders who are invited to the dialogue.<sup>86</sup> They can also exert outside pressure to start or influence a political dialogue as norm entrepreneurs. Entrepreneurs can be part of the international human rights community and encourage compliance from non-compliant decision-makers.<sup>87</sup> Their strategies to induce change include persuasion,<sup>88</sup> naming and shaming,<sup>89</sup> translation and vernacularization.<sup>90</sup>

In contrast with such human rights norm entrepreneurs, other types of norm entrepreneurs can advocate the normative status quo over normative change, and demand protection of the norms that human rights entrepreneurs are trying to change.<sup>91</sup> They can work from the domestic level, but they can also be part of a second international community.<sup>92</sup> Like human rights entrepreneurs, they can be part of civil society, international organizations, or religious movements. They can use some of the human rights entrepreneurs' strategies,

83 Coleman, 1993; Cooter, 2000:17

84 Checkel, 1997; Cortell & Davis, 1996; Moravcsik, 1995; March & Olsen, 1987:23

85 Tannenwald, 2007.

86 See for instance Lupu, 2015. Even though Yonatan Lupu generally regards legislative veto players, such as the legislative opposition, as supportive of human rights treaties, I expect they can also exert their legislative power to obstruct compliance with human rights when they support mismatching norms.

87 Finnemore & Sikkink, 1998

88 Goodman & Jinks, 2013; Hawkins, 2004.

89 DeMeritt, 2012; Lebovic & Voeten, 2006; 2009; Murdie & Davis, 2012; Murdie & Peksen, 2014; Peterson et al., 2016; Terman & Voeten, 2017.

90 Zwingel, 2012, Merry, 2009.

91 Bloomfield & Scott, 2017:230

92 Importantly, they are from a different community to the entrepreneurs (Acharya, 2017). This makes them a different type of actor to those who try to challenge norms from within, which is often the type of actor investigated in the literature on norm collision (e.g. Wiener, 2008; 2017)



such as persuasion and naming and shaming of state decision-makers.<sup>93</sup> But because they defend the normative status quo, they also have some tools that are available uniquely to them. For instance, they can try to delay or frustrate attempts at a political dialogue.<sup>94</sup> They can play on the ‘fears of the unknown’ of what would happen if trusted norms changed, and in this way mobilize an otherwise passive community. On the whole, such entrepreneurs enjoy an inherent advantage, simply because their aim is often to stop change.<sup>95</sup>

## 2.4 Starting a dialogue

Decision-makers are likely to start a political dialogue when they want or see the need to comply with international human rights norms. This is dependent on two conditions.

### Norm monitoring

The first condition that determines whether or not state decision-makers see the need to move towards compliance is how often and how extensively a state is evaluated by other members in the community on its compliance record. When a human rights norm is closely monitored, non-compliance is likely to be noticed by other members of the community. Consequently, states cannot easily maintain the status quo without being sanctioned for violation through, for example, naming and shaming by human rights norm entrepreneurs or other members from within the community.<sup>96</sup> Evidence suggests that states are especially keen to avoid naming-and-shaming by key allies or states that are leading members of an international community.<sup>97</sup> A human rights norm is considered to be closely monitored when the monitoring process is institutionalized by the respective UN Committees and other human rights bodies such as the Human Rights Council, takes place at regular intervals, and when the norm is actively reinforced through additional declarations and resolutions. And, finally, when other members of the international community – such as NGOs and individual (powerful) states – actively track compliance with the human rights norms. This concept of norm monitoring, and the other following central concepts, will be further operationalized in the empirical chapters.

### Vulnerability

Motivations to comply with international human rights norms are also strongly dependent on how vulnerable a state is to the community advocating those norms. It matters whether strong states, such as China or the USA, or economically weaker states, such

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93 Adachi, in Bloomfield & Scott, 2017; Bob, in Bloomfield & Scott, 2017

94 Adachi, in Bloomfield & Scott, 2017; Bloomfield, in Bloomfield & Scott, 2017; Clapton in Bloomfield & Scott, 2017; Zahava in Bloomfield & Scott, 2017

95 Bloomfield & Scott, 2017; 241

96 Ellickson, 1991:124; Hafner-Burton, 2008; Lebovic & Voeten, 2006; Murdie & Peksen, 2014; Lebovic & Voeten, 2009; Barry et al., 2013

97 Terman & Voeten, 2017

as the Philippines or Guatemala, are pushed to comply.<sup>98</sup> Economically strong states can resist or fight off external pressures easier than weaker states.<sup>99</sup> Rich and strong states are better able to bear the potential costs of non-compliance and their ability to survive is comparatively independent compared to that of weak and poor states. They will therefore be less vulnerable to demands to comply with community norms.<sup>100</sup> In addition, strong states that can draw on soft power and social legitimacy from established counter-frames can also more easily fight off pressures to comply. The Asian values debate, for example, demonstrates that states such as China command considerable legitimacy within the Asian international community, and are able to establish a successful counter-discourse against pressures to comply with human rights.<sup>101</sup>

On the other hand, small and poor countries with an interest in belonging to the international human rights community and a dependency on trade and aid flows are much more vulnerable to demands to comply.<sup>102</sup> Such states are more likely to want to avoid pressures or sanctions, and are more likely to need the positive rewards that can come with compliance. When states are vulnerable, pressures to comply are effective because decision-makers need to avoid costly sanctions or to reap the benefits of compliance. Especially weaker states with little social legitimacy within international communities are vulnerable to pressures to comply. For such states, the application of social pressure to comply is effective, because actors care about their standing in the community and need to be recognized as a member of that community.<sup>103</sup> They need to be seen as a complying state, as their reputation and the social status within the human rights community depends on their respect for the community's norms.<sup>104</sup>

### **Necessary and sufficient conditions**

Both scope conditions, human rights monitoring and vulnerability, are necessary for state decision-makers to start a political dialogue. Individually, these conditions are not sufficient. For instance, if a human rights norm is monitored extensively, but the decision-maker is not vulnerable to the human rights community, it is unlikely she will see the need to respond to pressures to comply. However, the two scope conditions together are necessary and sufficient for a state decision-maker to initiate the dialogue. If a human rights norm is monitored extensively, and the decision-maker is vulnerable to the human rights community, it will become too difficult to maintain the status quo.

If norm monitoring and vulnerability indeed have this role, we can expect that the relation

98 Risse & Sikkink, 2013:20

99 Risse & Sikkink, 2013:20

100 Risse & Sikkink, 2013:20

101 Brems, 2004; Greenhill, 2010; Risse & Sikkink, 2013:21

102 Risse & Sikkink, 2013; Zimmerman, 2016:101

103 Risse & Sikkink, 2013:21

104 Hirschmann, 2019; Risse & Sikkink, 2013

between mismatching norms and compliance with closely monitored human rights is mediated by vulnerability. That takes us to the second proposition of this project:

Proposition 2 (Quantitative): The relation between mismatching norms and compliance with closely monitored human rights is mediated by international vulnerability; when a state is vulnerable to the international human rights community, the relation between mismatching norms and compliance with strongly monitored norms is weaker, as compared to states that are less vulnerable.

Testing the first two quantitative propositions allows us to investigate the relation between the presence of normatively mismatching communities, compliance with closely monitored human rights, and international vulnerability. However, these quantitative tests do not provide evidence that these conditions actually lead to a political dialogue, as also other mechanisms could play a role. Therefore, a third qualitative proposition is needed:

Proposition 3 (Qualitative): When decision-makers are vulnerable to the human rights community and the human rights norms are closely monitored, they start a political dialogue to make a decision on compliance possible.

## 2.5 Space to create consensus

State decision-makers are likely to initiate a political dialogue under the scope conditions of monitoring and vulnerability. Yet, once that dialogue is initiated, the space that they have to create consensus can vary widely depending on the point in time and country in question. This space is influenced by two path-shaping conditions: firstly, how vulnerable decision-makers are to communities other than the human rights community, and secondly, how specific those communities' norms are.

### **Vulnerability to other communities**

Generally speaking, the more vulnerable decision-makers are to other communities adhering to norms that are considered a mismatch with human rights, the less space they have in the dialogue to create consensus and push in favor of achieving a higher level of compliance.<sup>105</sup> Such communities can exist at both international and domestic levels. Vulnerability to domestic communities works slightly differently than international vulnerability, due to the nature of the relation between state decision-makers and the communities they govern. In many contexts, domestic communities usually have at least some political leverage over governments, because the latter want to stay in office by making and implementing

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105 Putnam, 1988:449

laws that are supported. Yet these domestic structures and therefore decision-makers' vulnerability vary significantly across the world.<sup>106</sup>

At the high end of this scale of domestic vulnerability we find the type of political systems in which domestic individuals and groups are accorded a central role in political-decision-making. In such bottom-up systems, it is often societal pressure that leads to changes in policies and legislation. It is therefore crucial for political decision-makers to be perceived as responsive to communities' demands. Decision-making is politicized, and the range of actors that can try to influence the process is broad.<sup>107</sup> Moreover, decision-makers can be punished relatively easily for creating policies or laws that are not in line with communities' norms and demands by way of, for example, losing support in democratic referenda or elections.<sup>108</sup>

At the low level of vulnerability, there are political systems in which state decision-makers sit completely apart from, and exercise a significant level of control over, society.<sup>109</sup> In such top-down systems, decision-making is centralized and not politicized. The range of actors that can influence that process is very limited, or even non-existent. Decision-makers cannot be ousted from power when they make laws or policies that are not in line with domestic communities' demands.

High vulnerability is institutionalized in democratic systems, and in comparison, it is lower in non-democratic regimes. However, state decision-makers of non-democratic governments can also be vulnerable to specific domestic communities or their representatives, in particular when those communities have veto power over political decisions, or have the power to mobilize large segments of the population in protests.<sup>110</sup> Consider, for example, those non-democratic regimes that experience social unrest and protests that threaten the position of a decision-maker, making them vulnerable and under pressure to take domestic communities' demands into account.<sup>111</sup>

### **Norm specificity**

Alongside vulnerabilities to other communities, the specificity of these communities' norms also has an influence on the space state decision-makers have to create consensus on compliance.<sup>112</sup> Norm specificity is about how well a norm is defined and understood by the members of the community, and thus how unambiguously said community defines the conduct or behavior it requires, authorizes, or proscribes.<sup>113</sup>

106 Checkel, 1999; Dai, 2005:364

107 Checkel, 1999:89

108 Checkel, 1999; Putnam, 1988:448

109 Checkel, 1999:89

110 Cardenas, 2007: 12; De Mesquita et al, 2005; Mo, 1995; Lupu, 2015

111 Gurowitz, 1999; Risse & Sikkink, 2013

112 Putnam, 1988:445; Legro, 1998

113 Cristhof, 2014; Abbott et al. 2000

Norm specificity influences the space decision-makers have to create consensus, because norms can be redefined, reinterpreted, traded off, and changed in the course of a dialogue.<sup>114</sup> Norms that are not highly specified leave an interpretative scope that can be used to debate, contend and re-interpret them.<sup>115</sup> Consequently, such norms grant decision-makers space to find or build consensus in a dialogue. On the other hand, norms that are highly specified clearly outline the limits of the desired behavior. As such, only limited discussion or reinterpretation is possible. Therefore, such norms limit the possibilities of finding consensus when there is a mismatch.

An indicator of a norm's specificity is whether the boundaries of the norms are very clear to the members of a community, or whether they are subject to arguments and debate.<sup>116</sup> At the lowest levels of norm specificity, members of a community are not in agreement at all regarding where the boundaries of violation of the norm lie. Discussion about the correct interpretation of the norm is common.<sup>117</sup> At the highest levels, we find highly specified norms. For such norms, it is clear to the members of a community which types of behavior are compliant and which a violation of the norm. There is no, or only very limited discussion possible on where those boundaries are, and violation is sure to be sanctioned by community members.<sup>118</sup> In the case of a taboo, it is even unthinkable for community members to open up a discussion about the norm, let alone take a decision that violates it.<sup>119</sup> Together, vulnerability to other communities and norm specificity determine state decision-makers' space to create consensus on compliance in political dialogues.

## 2.6 Consensus-creating strategies

Within the space that is shaped by vulnerabilities to other communities and their respective norms, state decision-makers can use different strategies to create consensus. These strategies help to identify or create agreement, or consensus, that will allow decision-makers to make a decision on compliance that is acceptable to the different communities. These strategies, and how they are affected by the path-shaping conditions of vulnerability and norm specificity, are discussed below.<sup>120</sup>

### Participant selection

The outcome of any political dialogue depends, crucially, on which actors are motivated

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114 Fraser, 2019:982; Kratochwil, 1989: 10

115 Fraser, 2019:982

116 Legro, 1997; Crischof, 2014

117 Abbott et al. 2000; Legro, 1997

118 Legro, 1998:34

119 Tannenwald, 2007

120 These are based on insights from the two-level game and expanded and further refined by constructivist insights on the influence of norms: see, for example, Hawkins, 2004; Putnam, 1998; Evans et al., 1993

and allowed to participate.<sup>121</sup> Therefore, decision-makers that seek to increase compliance with international human rights norms can benefit from carefully selecting the actors that take part in the process. For example, they can select actors from communities that they expect are, in principle, willing to consider reform, instead of selecting the hardliners or 'hawks' of that community.<sup>122</sup>

In addition to selecting 'doves' over 'hawks', state decision-makers can also increase the number of possible outcomes by expanding the number of participants. For example, by including more bureaucratic agencies, senior party leadership, interest groups, and activating a previously uninformed and uninterested audience, via methods such as media attention.<sup>123</sup> However, especially when there is a normative mismatch that involves a taboo-like norm, a lot of domestic interest and media attention seems more likely to decrease the number of potential outcomes. It is likely to further complicate a decision-maker's attempts to create consensus, and thus makes it harder to make a decision that is in line with a human rights norm. It will likely be easier if the dialogue takes place within a small group who are, in principle, willing to seek consensus.

In addition, the options for decision-makers to use participant selection as a strategy much depends on their vulnerability to domestic communities. For example, in a fully authoritarian regime with limited presence of veto communities, decision-makers can choose if and who gets a voice, as well as where and when, for instance by allowing only representatives of certain communities access to the decision-making process, or by limiting freedom of expression on certain topics but not others. In its most extreme form, participant selection can thus result in repression of communities or their representatives. Conversely, in a state where there is a strong presence of veto communities or in a fully democratic state, it will be much harder for decision-makers to control and select who participates in the decision-making process. State leaders who are very vulnerable to other communities are more restricted in selecting the participants of a dialogue, but can still use that restriction strategically. It creates a so-called tied-hands effect, and could make an insufficient increase in compliance more acceptable to the human rights community as it appears to be beyond the decision-makers' control.<sup>124</sup>

### Topic selection

After the participants are selected, one way to create consensus is to select the topics that are discussed by the participants and set a carefully designed agenda. This strategy is most strongly affected by the norms' specificity. The knowledge a state decision-maker has of the different communities' norms in part determines which topics can be discussed in the

121 Schoppa, 1993:371

122 Putnam, 1988

123 Schoppa, 1993:371

124 Evans et al, 1993.

political dialogue. Knowledge of those norms can make certain options 'unthinkable' to be opened up for discussion, particularly when those norms are highly specified or include taboos.<sup>125</sup> When decision-makers want to move to compliance, they will therefore discard the topics on which they expect consensus will never be possible. At the same time, they might identify topics on which they expect a consensus might be created through the use of other strategies such as persuasion and side payments or trading.

In addition, decision-makers' vulnerability also determines the extent to which topic selection can be used in favor of compliance. Especially when veto communities that have highly specified norms are involved, it becomes much harder to push for an increase in compliance, as it is possible that many topics constitute red lines and are therefore off the table.

### **Persuasion**

State decision-makers can persuade participants in a dialogue to accept options they initially might have considered undesirable. Through persuasion, participants weigh a particular message or argument, and become convinced to change their mind on the subject. In this way, participants can be convinced of the appropriateness of a new norm, and accept its truth or validity.<sup>126</sup>

On the one hand, persuasion can be a powerful tool, as successful arguments can change the most fundamental beliefs.<sup>127</sup> Finding consensus then becomes much easier, as, at least for the participants in the dialogue, there is no longer a mismatch between the norms under discussion. On the other hand, the power of persuasion is often bound by the specificity of existing norms. These norms provide the frame in which new arguments and attempts on persuasion are given meaning.<sup>128</sup> Consequently, an individual might only become convinced of the validity of the argument if she has not previously internalized highly specified or taboo-like norms that are a mismatch with human rights.<sup>129</sup>

In addition, the opportunity to use persuasion as an effective strategy to create consensus is also likely to be shaped by the degree to which the state decision-makers are vulnerable to the communities involved. Persuasion is most likely to occur in a dialogue when there is relative equality among the participants. When there is no such equality, because some communities' representatives have a stronger say in the dialogue than others or have a higher position of authority, it is less likely for the participants to be able to persuade, or be persuaded, about new ideas and norms.<sup>130</sup>

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125 Tannenwald, 2007

126 Goodman & Jinks, 2013:24; Kratochwil, 1989

127 Checkel, 2005:26

128 Kratochwil, 1989:10

129 Coleman 1993; Hooghe 2005

130 Hawkins, 2004:785

## Reverberation

A strategy similar to persuasion is reverberation.<sup>131</sup> Whereas, however, persuasion is directed at the individuals participating in the dialogue, reverberation means convincing their community of the international human rights norm. Through reverberation, communities' perception of the norm that is discussed can be altered. By persuading those communities of the norm's legitimacy or value, decision-makers' space to create consensus is increased as more options become acceptable. State decision-makers can try to persuade communities to accept an international norm by starting up advocacy campaigns or setting up broad social reform programs.<sup>132</sup> But as well as to deploying these tactics themselves, state decision-makers can also choose to allow their international partners to persuade domestic communities. They can allow other countries, for instance, to give funding to domestic human rights entrepreneurs, to 'woo' opinion leaders or to support political parties in favor of their plans, or they can block funding to norm entrepreneurs from countries whose influence they want to limit.<sup>133</sup>

Reverberation occurs from the international level to the domestic level. Consequently, the effect is determined by whether communities have already internalized many highly specified mismatching norms. It is much harder to change communities' minds on taboo-like norms as compared to a loosely specified norm that is a mismatch with human rights. In addition, options for reverberation are affected by decision-makers' domestic vulnerability. The more authoritarian a state is, the more options state leaders have to deploy reverberation tactics. In a fully authoritarian regime with few veto communities, decision-makers can instigate social reform programs, control the information their society receives through media censorship, determine which entrepreneurs are funded by international communities and which are not, and even prohibit the formation of groups that may wish to mobilize against their plans. Conversely, in a fully democratic state, it will be much harder for decision-makers to control reverberation attempts.

## Side payments and trading

Finally, state decision-makers can use side payments during the dialogue process to forge consensus. A decision-maker can tempt participants to accept certain options by offering something valuable in return. The use of side payments or tit-for-tat trading does not reconcile any mismatching norms in the short term. Rather, a trade is made between giving up something that is considered valuable – precisely because communities prefer a mismatching norm – and getting something else in return for it. Therefore, this type of trade is made in full recognition of the normative mismatch.

The use of side payments is affected by both a leader's vulnerability and the specificity of

131 Putnam, 1988; Schoppa 1993

132 Moravcsik, 1993:24

133 Putnam, 1988:454; Schoppa 1993; Moravcsik, 1993:29



the other norm. As side payments are relatively costly compared with other strategies such as persuasion, they are most likely to be made only when they are absolutely necessary. That is to say, when certain communities' approval is pivotal to making a decision on compliance possible. That means we can expect side payments to be made by vulnerable decision-makers to communities with veto power.<sup>134</sup>

A norm's specificity affects this strategy as well, as the more specified a norm is, the costlier it becomes for a participant to break with it and accept normative change. Consequently, it is likely that side payments are more often used when discussing less specified norms, and not for highly specified taboo-like norms.

Table 1 below summarizes these different types of strategies, and their relationship to decision-makers' vulnerability to other communities and their norms' specificity.

Table 1: Space to create consensus with available strategies

Vulnerability to other communities		
Norm specificity	Low	High
	(A) Considerable space to use different strategies to create consensus on compliance.	(B) Moderate space to use different strategies to create consensus on compliance.
	Possible strategies include: -Participant selection -Topic selection -Persuasion -Reverberation -Side payments	Possible strategies include: -Topic selection -Reverberation -Side payments
	High (C) Moderate space to use different strategies to create consensus on compliance.  Possible strategy: -Participant selection	(D) Very limited space to use different strategies to create consensus on compliance.  No possible strategies expected.

The possibility to move towards compliance with the help of these strategies as determined by vulnerability and norm specificity is summed up in the following proposition:

Proposition 4 (Qualitative): In cases where the related communities' norms are not specified, decision-makers whose vulnerability to other communities is low have considerable space to use different strategies to find or create consensus when the communities' norms and human rights are a mismatch. Decision-makers who are very vulnerable to other communities whose norms are highly specified have very limited space to use different strategies to find or create consensus.

134 Lupu 2015

## 2.7 Patchwork compliance

The use of – or restrictions to using – these strategies eventually results in patchwork compliance. State decision-makers can make a whole range of different choices beyond simply deciding whether or not to comply. Each treaty contains many different topics and articles with which states can comply in different gradations. Discussing these different choices on compliance in political dialogues results in widely varying patchworks of compliance; states implement some articles but ignore others, comply with a range of articles extensively, comply only up to certain extent to some, and openly violate others.<sup>135</sup> The strategies used and trade-offs made in political dialogues might make human rights compliance acceptable to the different communities involved, but it also makes full compliance highly unlikely to occur.<sup>136</sup>

To clarify that compliance in fact contains many different choices, it helps to understand it as a two-dimensional concept. These two dimensions, range and degree, are shown in the figure below.

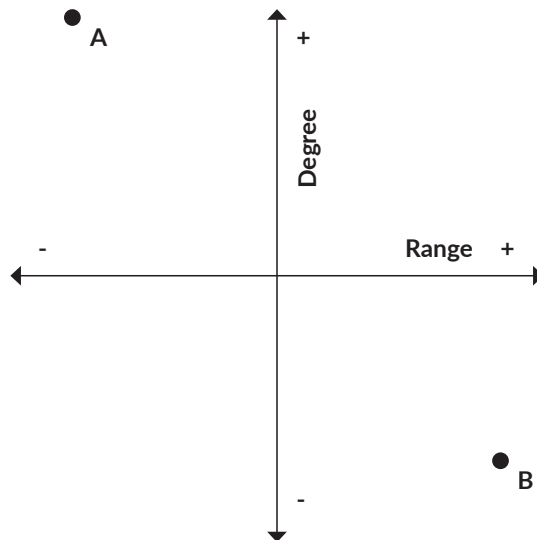


Figure 1: Range and degree of compliance

The range of compliance refers to the number of the articles and sub-articles of a human rights treaty that a state has implemented as law in national legislation. The second dimension, the degree of compliance, relates to the measures taken to ensure effectiveness

135 Cardenas, 2007; Fraser, 2019; Hawkins & Jacoby, 2010; Hillebrecht, 2014:1108; Zimmerman, 2017

136 Fraser, 2019:982

of one specific (sub-)article in practice. Judging what is an increase in degree and range of compliance is often different for each treaty, but there are some choices that are similar across treaties. Actions such as ratifying a treaty and lifting reservations can be considered as an increase in the range of compliance. Any action or new policy that effectively ensures individuals can make better use of their rights constitutes an increase in the degree of compliance.

For example, in Figure 1, State A is depicted as having a very low range of compliance along the horizontal axis. This could mean, for instance, that this state has implemented Article 7 of the CEDAW (women's right to participate in politics) in national legislation, but did not implement many of the other CEDAW articles. However, State A does have a large degree of compliance on the vertical axis. That means it might have only implemented a law on women's political participation, but has done so to a large degree – for instance by adopting a quota of 40% for women in its national parliament. State B, on the other hand, is depicted as having a very high range of compliance. This could mean, for instance, that it has implemented many articles of the treaty in domestic legislation, and has placed few or no reservations. However, State B also has a very low degree of compliance. That means, for instance, that this country's women have a lot of rights on paper, but that the state has done nothing to make sure women can also enjoy all these rights. State B would have, for instance, a law granting women the right to political participation, but have few or no women in parliament and no measures in place to increase their numbers.

Understanding compliance as a two-dimensional concept, including both range and degree, makes it possible to move beyond simplified dichotomous classifications of compliance versus violation. This paints a more accurate picture of the patchworks of compliance we see in practice. Also, it allows for building a better theory on compliance, and for investigating how state decision-makers choose to comply with some articles fully, up to a certain extent with others, and violate other parts at the same time. This brings us to the final proposition of this project:

Proposition 5 (Qualitative): Through political dialogues, decision-makers make an increase in the range or degree of compliance possible and acceptable despite initially mismatching norms. The more space they have to use different strategies, the higher the increase in range or degree of compliance.

## 2.8 Conclusion

Table 2 on the next page summarizes the pathway of the political dialogue, as discussed in this chapter. This pathway should be read as an iterative circle. Compliance is an ongoing process that starts from the moment of ratification. That means the pathway can be gone through many times, and the results of one dialogue are likely to feed into the next iteration. In addition, it is not a linear pathway. Dialogues can break down, or need to go back to previous steps, before – if at all – state decision-makers succeed in creating consensus and increasing compliance.

The scope conditions that trigger the dialogue are displayed in the bottom left-hand corner. When a state is vulnerable to the international community advocating human rights norms and those norms are closely monitored, state decision-makers need to move towards compliance to gain needed benefits, avoid sanctioning or secure the state's place as a member of the community. Yet, the presence of normatively mismatching communities (cause) requires a dialogue to create consensus first, so as to avoid similar sanctions from these communities. The space that leaders have to create or identify consensus in such a dialogue is shaped by their vulnerability to other communities, and the specificity of the respective communities' norms. These path-shaping conditions are displayed in the center bottom box.

Part 1 outlines the initiation of the dialogue. Once that has happened, decision-makers can start to seek or create consensus, for instance by way of persuasion or side payments (Part 2). If decision-makers succeed in identifying or creating less contested options, (Part 3), they can then make the decision to move towards compliance. Such a decision will be accepted by the communities involved, but – or therefore – will not be in full compliance with international human rights norms. Rather, it will result in a kind of patchwork compliance, by increasing the range or degree of compliance (outcome). This political dialogue enables state leaders to make a decision on compliance without causing strong resistance against international human rights norms, to gain benefits, or to avoid sanctioning. Yet, it will not result in a perfect compliance record.

The pathway for the political dialogue as presented in this chapter is meant as a theoretical model. By definition, such a pathway is a simplification of often complex and dynamic realities. It does not capture all of the complex realities out there, and it is therefore necessary to demarcate the universe of cases this model speaks to. This particular universe is limited by the cause and the two scope conditions of the pathway. First of all, the political dialogue model describes only those processes that are potentially ongoing in states that are part of international communities and/or govern domestic communities that adhere to

Table 2: Pathway of the political dialogue

	Cause	Part 1	Part 2	Part 3	Outcome
Theory	Presence of normative mismatch	Decision-makers start political dialogue	Decision-makers identify options for/create consensus	Decision-makers succeed in creating consensus	Patchwork compliance: decision-makers move towards limited increase in range or degree of compliance
Operationalization	Presence of communities adhering to norms that lead to opposing behavioral outcomes as compared to human rights norms.	Decision-makers call for a committee to discuss legislative or policy reform	Decision-makers use consensus-creating strategies: -participant selection -topic selection -persuasion -reverberation -side payments	Participants accept options previously not known or considered unacceptable.	Decision-makers implement new legislation or policies in line with the human rights treaty.
	<b>Scope conditions</b>				
	(i) Vulnerability to international human rights community (ii) Human rights monitoring				
	<b>Path-shaping conditions</b>				
	(i) Vulnerability to communities adhering to norms that are a mismatch with human rights (ii) Other communities' norm specificity				

norms that mismatch with human rights. It is therefore not applicable to countries without such connections. The second characteristic that defines the universe of cases to which this model speaks are states that have ratified closely-monitored human rights treaties. If states are connected to communities that adhere to norms that mismatch with human rights, but they have not ratified the latter, this model cannot be used to understand the decision this state makes regarding human rights. Finally, the third characteristic is vulnerability to the international human rights community. This is to say that political dialogue as a model can only apply to states that are vulnerable to this community. It cannot be used to understand the compliance record of other states.

### **Probing the pathway in practice**

The proposed pathway with related propositions presented in this chapter will be further explored in the following empirical chapters. The relation between the cause, outcome and scope conditions is first investigated in a quantitative analysis in Chapter 3. If the presence of a normative mismatch indeed leads to lower levels of compliance, that relation should first be visible in a quantitative study.

Testing these two propositions allows us to investigate the relation between the cause and outcome of the mechanism proposed in this chapter. However, these tests do not provide evidence for the pathway in between. Therefore, the separate steps of the dialogue are investigated in two qualitative case studies on the CEDAW and the ICCPR in Jordan. Chapter 4 discusses, first, the presence of the scope and path-shaping conditions for this case study. Chapter 5 and 6 then further test the propositions for the respective treaties.