ABSTRACT

Title of Dissertation:	ANOTHER EMPTY PROMISE? STATES' COMMITMENT TO THE OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT
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The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) was established in 2002 to facilitate implementation of the Convention against Torture. Due to its regular visitations and national preventive mechanisms (NPMs), as well as increasing ratifications, the OPCAT has been regarded as a paradigm shift in the human rights arena. This dissertation study attempts to discover if states' commitment to the OPCAT is a sign of increased commitment to human rights or another empty promise. Empirical analyses of states' ratification of and compliance with the OPCAT provide evidence questioning the high expectations surrounding the treaty's ratification. First of all, the treaty terms of the OPCAT do not incur as high costs of commitment as expected. Human rights-violating countries have not been deterred from ratifying the treaty, indicating that they are not particularly concerned with potential costs of international

and domestic monitoring. Neither has states' commitment to the OPCAT functioned as a costly signaling. The cost-based theories are further challenged by empirical findings for regional clustering of commitment. Moreover, states' compliant behavior suggests that the treaty ratification does not guarantee compliance. Regarding the NPMs, about one-third of states parties have not complied with their obligation to designate or establish NPMs. Although most states parties have allowed the international monitoring body unhindered access to places of detention, institutional loopholes in the OPCAT permit states parties to offset the negative consequences of the international visiting program. About the half of states parties have not requested their reports by the international monitoring body to be publicly released, nor have they responded to their reports. The case of the Philippines illustrates that states' selective compliance or non-compliance with the OPCAT could undermine its effectiveness in preventing states' practice of torture. Overall, the treaty's innovative measures make states' commitment to the OPCAT more than another empty promise. However, ratification is not automatic proof of states' increased commitment to human rights. Therefore, the international community is strongly recommended to develop effective strategies encouraging states parties to implement the OPCAT rather than simply praise its increasing membership.

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List of Abbreviations

APT	Association for the Prevention of Torture
ASEAN	Association of the Southeast Asian Nations
CAT	UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CDDH	Steering Committee for Human Rights
CEDAW	UN Convention on the Elimination of All Forms of Discrimination against Women
CERD	UN Convention on the Elimination of All Forms of Racial Discrimination
CRC	UN Convention on the Rights of the Child
ECPT	European Convention for the Prevention of Torture
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
ICMRW	International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
ICRC	International Committee of the Red Cross
IGO	Inter-governmental Organizations
INGO	International non-governmental Organization
NGO	Non-governmental organizations
NPMs	National Preventive Mechanisms
OECD	Organization for Economic Cooperation and Development
ODA	Official Development Assistance
OHCHR	United Nations Office of the High Commissioner for Human Rights
OPCAT	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
RUD	Reservation, Understanding and Declaration
SCAT	Swiss Committee against Torture
SPT	Subcommittee on Prevention of Torture
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNHCHR	United Nations High Commissioner for Human Rights
UNTAC	United Nations Transitional Authority in Cambodia
US	United States

Chapter 1: Introduction

At its fifty-seventh session on 18 December 2002, the General Assembly of the United Nations (UN) adopted the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT, or Protocol). It was created to strengthen the existing anti-torture treaty, the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) by allowing independent international and national experts to conduct regular visits to places of detention within the states parties and obliging them to designate or establish national preventive mechanisms (NPMs). The establishment of the Protocol was a part of the ongoing global effort to legalize international human rights while responding to growing criticism of the CAT and other human rights treaties for their ineffective promotion of global human rights.

1.1 Increasing Ratification

The international community has supported the adoption of the Protocol and its entry into force while encouraging its ratification by non-member states. Louise Arbour, the UN High Commissioner for Human Rights, welcomed the entry into force of the OPCAT, claiming that it is truly a milestone in the world's fight against torture and impunity and that it is a fundamental safeguard providing fuller means to make the

promise of the CAT a practical reality.[1] The UN Special Rapporteur on Torture, Manfred Nowak, stated that the OPCAT is the most important development for the effective prevention of torture at the universal level.[2] The International Committee of the Red Cross (ICRC) also made a statement in 2006 that the entry into force of the Protocol would have a significant impact on the respect for the life and dignity of persons deprived of their liberty.[3] In his message on the 10th anniversary of the OPCAT, UN Secretary-General Ban Ki-moon stated that the establishment of the OPCAT is a paradigm shift in the human rights arena, providing a new mandate and mechanism for preventing torture. While praising its increasing membership over the decade, he urged those countries outside the Protocol to ratify it with haste.[4]

There have indeed been increasing ratifications of the OPCAT over the last decade. Figure 1 presents cumulative ratifications of the Protocol, indicating that the OPCAT has been ratified faster than the CAT. On average, there are 5.8 OPCAT ratifications per year, higher than 4.9 CAT ratifications per year. As of January 2018, there are 75 signatories and 87 states parties to the Protocol. The most recent

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[1] "Landmark new protocol to enhance UN anti-torture treaty enters into force," *UN News,* June 22, 2006, https://news.un.org/en/story/2006/06/183482-landmark-new-protocol-enhance-un-anti-torture-treaty-enters-force.

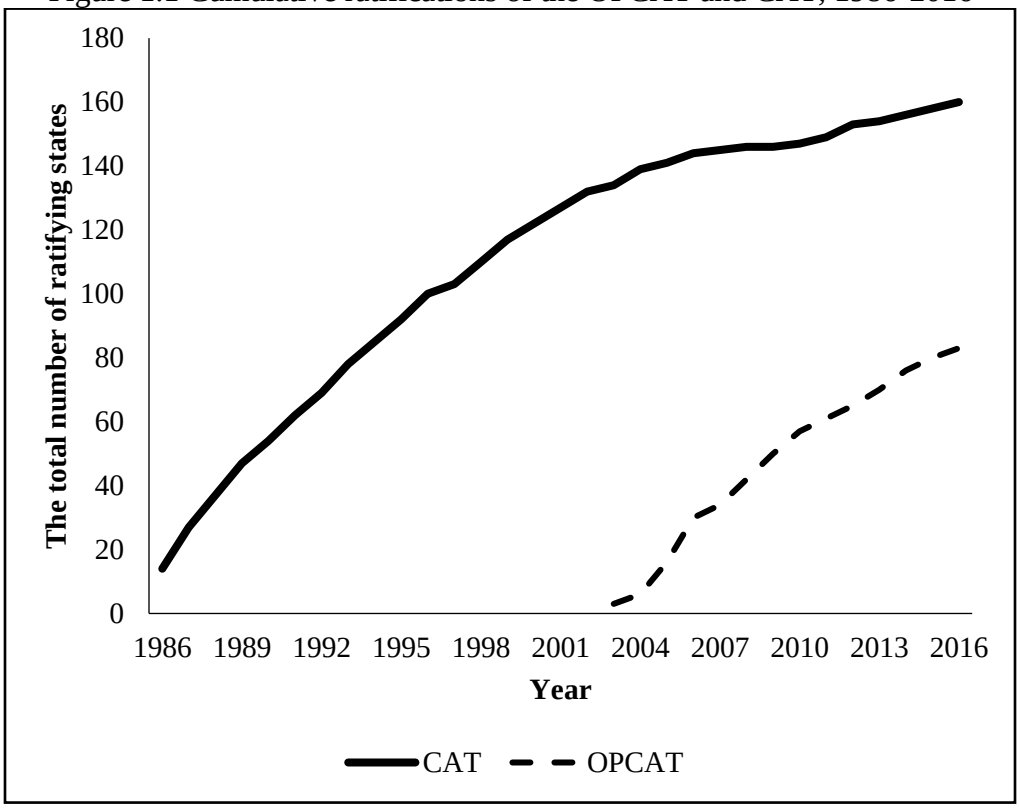
[2] "Recommendations to OSCE Human Dimension Implementation Meeting: Prevention of Torture," *Association of Prevention of Torture*, October 6, 2006, HDMI.NGO/626/06 https://www.osce.org/odihr/22030?download=true.

[3] "17 October Statement on Concerning the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment," *The International Committee of the Red Cross (ICRC)*, https://www.icrc.org/eng/resources/documents/statement/united-nations-statement-171006.htm.

[4] "17 November 2016 Message of the Secretary-General of the United Nations on 10th anniversary of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment and Punishment," *The United Nations Office at Geneva*, https://www.unog.ch/80256EE600583A0B/(httpPages)/5963F1D53864932DC125806E0055A6E9?OpenDocument&year=2013.

ratification was from the State of Palestine on 5 December 2017. Given that only the states parties to the CAT are eligible for membership in the OPCAT, 54 percent of states parties to the CAT also committed to the Protocol.

Figure 1.1 Cumulative ratifications of the OPCAT and CAT, 1986-2016



1.2 Research Puzzles and Arguments

Despite the increasing count of OPCAT ratification, with the international praise for states' commitment, no one has answered the fundamental questions: Does OPCAT commitment indicate states' higher degree of commitment to anti-torture and human rights norms? Why do states further ratify the OPCAT? Do they comply with the treaty terms? To put it simply, is OPCAT commitment a sign of increased commitment to human rights or another empty promise?

These research questions have important implications for the ability of the global human rights community to promote human rights norms around the world. If the ratification of the OPCAT does not indicate a state's increased commitment to human rights norms, adding one more international human rights treaty to the existing set of legal documents will not make as substantial of a difference as expected. Rather, there would always be an unbridged and widening gap between ongoing international legalization of human rights and non-improvement of human rights around the world (Helfer 2002). If this is the case, it is important not to merely celebrate governments' ratification of the Protocol and not to expect better human rights protection to follow automatically.

By the contrast, if the ratification of the Protocol displays an increased commitment to international human rights standards, one would consider the establishment of the OPCAT as an important contribution to the existing human rights treaty system. With more optional protocols to human rights treaties and increased ratifications by states, one could determine that the international human rights regime has reinforced itself and evolved from a declaratory to an implementation regime. Therefore it is important to understand states' commitment to the OPCAT by discussing why states ratify the Protocol and whether and how they comply with its treaty terms.

Despite a growing academic interest in international human rights law, there have been few studies in the existing literature on human rights treaties that investigate states' commitment to the OPCAT. The literature has not paid much attention to the new human rights institution. Most studies on human rights laws have

only examined a commitment to and effectiveness of original human rights treaties, not optional protocols. We do not have a comprehensive and systemic empirical analysis about states' ratification of and compliance with the OPCAT. For instance, the United States (US) ratified the CAT in 1994 but has failed to ratify its optional protocol while the Philippines ratified the both of them in 1986 and 2012, respectively. The existing studies cannot explain why the Philippines additionally committed to the OPCAT which would invite stronger monitoring and require a designation or an establishment of NPMs. It is also counter-intuitive that the US which is a human rights advocating country has not ratified the OPCAT. Neither is it clear whether the Philippines is willing to comply with the OPCAT. Without understanding states' OPCAT ratification and compliance behavior, it is hard to adjudicate whether the OPCAT is merely an additional human rights treaty a state can additionally afford with little concern over potential costs of commitment or whether it is something value-added for the effectiveness of the global human rights treaty system.

Focusing on states' ratification of and compliance with the OPCAT, this dissertation attempts to provide empirical evidence that the high expectation about states' ratification of the OPCAT and its implication for the human rights treaty system and human rights promotion needs a cautious re-examination and re-evaluation. There should be reservations to the claim that the OPCAT ratification is a sign of states' increased commitment to human rights. First of all, despite its innovative instruments – international visiting and NPMs mechanisms, institutional designs of the Protocol allow states parties to avoid compliance with some of the

treaty terms, not to mention its lack of enforcement mechanism. Second, these institutional loopholes invite human rights-violating countries to ratify the treaty with fewer concerns about their potential costs of treaty commitment. Instead, some factors such as a common law system or weak commitment to the CAT increase costs of adjustment, decreasing the probability of states participating in the Protocol. These findings suggest that the OPCAT commitment may not raise the costs of ratification as much as those who have high hopes for the OPCAT expect. Third, analyses of states parties' compliant behavior regarding the visiting and NPMs provisions provide additional evidence that treaty ratification does not guarantee compliance. Although most states parties appear to cooperate in terms of allowing an unhindered access to places for monitoring and persons for an interview, about the half of states parties do not allow the report after an international visit to be made public while also not responding to the report. Regarding the NPMs obligation, some of states parties, about one third, have not complied with the NPMs requirement. The case of the Philippines illustrates that the government ratified the OPCAT, received domestic and international credit while selectively complying with the international visiting program, and did not comply with the NPMs obligation. Fourth, it is therefore important to pay more attention to how the OPCAT is implemented before hailing the ratification as a triumph of global human rights norms or focusing on the total number of ratifications. In this regard, this study suggests that evaluating the effectiveness of the OPCAT commitment in preventing torture and promoting human rights requires a better understanding of how the two mechanisms separately or synergistically work in the future. Given this early stage of operation and implementation of the OPCAT, it

would be premature to make a conclusive remark on the effectiveness of the Protocol. However, the current picture of ratification and compliant behavior provides a nuanced evidence that it is neither another empty promise, nor automatic proof of increased commitment to human rights. The international human rights community is strongly recommended to focus on how to ensure that 'making promises' becomes 'keeping promises' by considering the institutional design of the treaty and strategies to effectively implement the Protocol rather than merely applauding its establishment and its increasing membership.

1.3 Organization of Analysis

This study consists of five main chapters. In Chapter 2, I provide background on the OPCAT as well as the CAT. I focus on why the international community created the OPCAT and what treaty terms it entails. Chapter 3 establishes a theoretical framework to understand states' commitment to the OPCAT. I provide screening, signaling and regional perspectives from the existing literature on states' treaty commitment and draw a set of testable hypotheses on ratification and compliance. In Chapter 4, quantitative analyses are conducted to identify determinants of the OPCAT ratification and evaluate which perspective has more explanatory power. The following chapter then examines states' compliance with the treaty terms by focusing on states' obligation to cooperate with the international visiting body and establish or designate NPMs. In this fifth chapter, I present descriptive statistics and illustrative cases. Chapter 6 investigates two cases of OPCAT ratification and compliance – the Philippines and the United States – to provide confirmatory evidence to support my

findings in the previous chapters while suggesting elements that are under-examined in the quantitative analyses in this study. Finally, the concluding chapter re-visits my findings and arguments while providing implications for the literature as well as new directions for future studies.

Chapter 2: Establishment of the OPCAT

Human rights remained largely irrelevant in world politics or regarded as an internal affair in the first half of the 20th century. After witnessing cruelties and atrocities committed by states against individuals or groups of people during World War II, most of whom were nationals, protecting human rights became an important international topic. Since international military tribunals held in Nuremberg and Tokyo to bring charges against those who committed crimes against humanity during the war, initial international efforts to mainstream human rights in world politics culminated in the adoption of the Universal Declaration on Human Rights (UDHR) on 10 December 1948. Its Preamble stipulates, "Recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world."[5] Article 1 declares that "all human begins are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."[6]

Since this declaratory but first authoritative international human rights document, there have been follow-up measures to legalize human rights in international politics. In 1966 two legally binding international covenants were adopted by the UN General Assembly. One is the International Covenant on Civil and

[5] UN Universal Declaration on Human Rights, GA Res 217A (III), adopted 10 December 1948 (UDHR), Preamble.
[6] Ibid, Article 1.

Political Rights (ICCPR) while another is the International Covenant on Economic, Social and Cultural Rights (ICESCR). The two treaties developed most of the rights enshrined in the UDHR and made states responsible under the international human rights law for their human rights behavior. Since then, the body of international human rights law has continued to grow and evolve. More focused and specialized human rights treaties have been drafted and adopted by the UN General Assembly that address a variety of human rights concerns regarding racial discrimination, enforced disappearances, disabilities and human rights group such as women, children, migrants, minorities and indigenous people. The CAT is one of these international human rights instruments that specifically addresses torture while the OPCAT is an additional institution to strengthen and implement the CAT.

2.1 Prohibition of the Torture and the CAT

The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) was one of the single-issue international human rights treaties, specifically addressing states' practices of torture. Given that there have been philosophical and practical debates over the definition and extent of human rights, anti-torture as one of the fundamental rights, often referred to as physical integrity rights, has been less controversial than other specific human rights issues such as political, economic or cultural rights.[7] The CAT has been regarded as

[7] Murray et al. (2011) mention that "the existence of a general obligation under international law not to subject anyone to torture, or cruel, inhuman, or degrading treatment or punishment is beyond doubt." See *The Optional Protocol to the UN Convention against Torture* (Murray et al 2011), p.1.

one of seven core UN-based international human rights treaties together with the ICCPR, the ICESCR, the UN Convention on the Rights of the Child (CRC), the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the UN Convention on the Elimination of All Forms of Racial Discrimination (CERD), and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICMRW).

Like other human rights treaties, the CAT was not created overnight. Its establishment can be traced back to early efforts to prohibit torture in the years following the end of World War II. Article 5 of the UDHR, Article 3 of the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, and Article 7 of the ICCPR all provide that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.[8] On 9 December 1975, there was an adoption of the UN Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by the UN General Assembly.[9] Based on a text which was discussed at the 5th UN Congress on Crime Prevention which criminalized acts of torture, the Declaration facilitated the drafting of the CAT by the international community in order to "make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world."[10]

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[8] UDHR, Article 5; Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, 1950, ETS No. 5, Article 3; International Covenant on Civil and Political Rights, GA Res 2200A (XXI), adopted 16 December 1966, Article 7.
[9] Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, GA Res 3452 (XXX), adopted 9 December 1975 (Declaration against Torture).
[10] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, GA Res A/RES/39/46, adopted 10 December 1984, Preamble.

The CAT was adopted and opened for signature, ratification and accession by the UN General Assembly on 10 December 1984. In accordance with Article 27 (1), after the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession, the CAT came into effect on 26 June 1987. Article 1 of the CAT provides that the term "torture" means "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."[11]

Article 2 calls for states parties to the CAT to "take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction."[12] It clearly states that no exceptional circumstances whatsoever, whether a state of war or a threat of war, domestic political unrest or other public emergency, may be invoked as a justification of torture. Article 4 requires states parties to make torture illegal under their domestic criminal laws.[13] Article 5 through 8 address an issue of extradition of suspected torturers, providing that "any state party in whose territory a person alleged to have committed any offense referred to in Article 4 is present shall take him into custody or take other

[11] Ibid, Article 1.
[12] Ibid, Article 2.
[13] Ibid, Article 4.

legal measures to ensure his presence."[14] Under these rules of the CAT, Augusto Pinochet, the former Chilean dictator who allegedly committed human rights violations, was arrested and detained by British and Spanish courts when traveling to London for his medical treatment.[15]

In accordance with Article 17, the CAT established a monitoring committee, the Committee against Torture (Committee) which consists of 10 experts in the field of human rights elected by states parties.[16] After ratification, a state party is required to report its treaty implementation progress to the Committee. The first report should be submitted within one year after the entry into force of the CAT for the state party concerned. Then every four years supplementary reports should be submitted to the Committee on any new measures taken. Article 20 provides that the Committee is allowed to initiate an investigation in cooperation with that state party concerned into allegations of torture if there is credible evidence of systemic abuses. The proceedings of the Committee such as making an inquiry, examining the findings and making suggestions shall remain confidential and seek the cooperation of the state party concerned.

It is important to understand that there are articles of the CAT, which are subject to optional declaration by state parties. First, a state party may declare under Article 21 that it "recognizes the competence of the Committee to receive and consider communications to the effect that a state party claims that another state party

[14] Ibid, Article 6.
[15] Amnesty International, "How General Pinochet's detention changed the meaning of justice." 16 October 2013. https://www.amnesty.org/en/latest/news/2013/10/how-general-pinochets-detention-changed-meaning-justice/
[16] CAT, Article 17.

is not fulfilling its obligations under the Convention."[17] The inter-state communication shall not be received and dealt with by the Committee when it concerns a state party which has not made such a declaration. Article 22 is another optional mechanism which allows a state party to recognize the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a state party of the CAT.[18] This individual communication mechanism was particularly designed to empower individuals or groups within its jurisdiction to bring a charge against the state party concerned. If a state party does not make a declaration on Article 21 and 22 when ratifying the CAT, it is not legally bounded by either of those mechanisms.

Another feature of the CAT is that states can make reservation, understanding, and declaration (RUD) to avoid legal responsibility for specific provisions. For instance, Article 28 legitimizes a state party to declare that it does not recognize the competence of the Committee provided for in Article 20.[19] As an example, China made a reservation that the Chinese government does not recognize the competence of the Committee against Torture as provided for in Article 20 of the Convention. By doing so, China opted out of the inquiry procedure. China also made another reservation that it does not consider itself bound by paragraph 1 of Article 30 which addresses resolving any dispute between two or more states parties regarding the interpretation or application of the CAT through the International Court of Justice

[17] Ibid, Article 21.
[18] Ibid, Article 22.
[19] Ibid, Article 28 (1).

(ICJ). Article 31 provides that states parties can withdraw RUDs by notification to the Secretary-General of the United Nations.[20]

2.2 Origin, Creation and Development of the OPCAT

2.2.1 Origin of the OPCAT

From its inception, the OPCAT was rooted in the belief that visits to places of detention by independent observers can prevent or lessen torture because the use of torture is most likely to occur in places out of public view. This idea goes back to Jean-Jacques Gautier, a retired Swiss banker who founded the Swiss Committee against Torture (SCAT) in 1977, known today as the Association for the Prevention of Torture (APT). He proposed an international body which would have the right to make unannounced visits to places of detention and make recommendations to the state concerned for the prevention of torture and ill-treatment. The SCAT served as a platform to promote an international convention to prohibit the use of torture while using Gautier's ideas to draft the 'Convention Concerning the Treatment of Prisoners Deprived of their Liberty.'

In March 1980, Costa Rica took the initiative and formally submitted to the UN a draft Optional Protocol to the Convention against Torture. The draft contains essential elements of the OPCAT as finally adopted, including regular visits to states parties by an international body, the formation of the Committee, and after-visit report and recommendations. However, negotiations over the Optional Protocol

[20] Ibid, Article 28 (2).

within the UN system were postponed until the establishment of the CAT some years later. This was in part because two different approaches were in play in the late 1970s and early 1980s: the first approach criminalizing the use of torture, tabled by the Swedish and International Association of Penal Law drafts, was taken as a priority and eventually adopted into the CAT, while the second, Gautier-inspired approach could not garner sufficient support at the country level.

Meanwhile, the original ideas were realized on a regional level when the European Convention for the Prevention of Torture (ECPT) was established in 1987. The drafting process was initiated by an 'Introductory Memorandum' submitted by Noel Berrier, the Chair of the Legal Affairs Committee of the Council of Europe, suggesting that such a system of international monitoring should be adopted at a regional level "without waiting for the proposal to be implemented at the world level."[21] The Committee of Ministers requested its Steering Committee for Human Rights (CDDH) to consider a draft convention. In 1986, the CDDH finalized the draft of the convention, which was adopted by the Council of Ministers on 26 June 1987. The ECPT and its Committee had a major influence on the debates concerning the OPCAT and its institutional design and eventual adoption.[22]

Costa Rica again volunteered to sponsor a new proposal for the Optional Protocol and formally submitted the updated draft to the UN Commission on Human Rights for its consideration in 1991. In the following year, the UN Commission on Human Rights agreed to establish an open-ended working group, composed of

[21] Berrier Report, Council of Europe Doc AS/Jur (33) 18 of 9 September 1981, para 13.
[22] The ECPT established a European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment which shall make a visit to any place within the jurisdiction of a state party where persons are deprived of their liberty by a public authority.

delegations of state representatives, to draft the optional protocol to the CAT and ultimately submit it to the UN General Assembly for its formal adoption.[23] After a 10-year process of negotiation within the working group, the Optional Protocol to the CAT was finally adopted on 18 December 2002 at the fifty-seventh session of the General Assembly of the United Nations with 127 votes in favor, four against, and 42 abstentions.[24]

2.2.2 Debates on the OPCAT Drafts

Before discussing the text of the OPCAT, it is important to understand the debates concerning it. There was a view that the international visiting body would be overly intrusive and its work should be confidential and limited. In 2001, on behalf of the Group of Latin American and Caribbean States, Mexico submitted a different proposal, suggesting that the focus of the Optional Protocol should be upon the role played by countries, not international bodies. According to its draft, visits should be carried out by national bodies. Despite criticisms from NGOs and some state representatives, the idea of national monitoring was introduced into negotiations when Sweden, on behalf of the EU, submitted alternative proposals that incorporated the idea of a national preventive mechanism as a subsidiary role.[25] With the three

[23] Inter-American Institute of Human Rights. *Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: A Manual for Prevention.*
[24] UN. Doc. A/RES/57/199. 18 December 2002.
[25] The Mexican draft was partly conceived as a way to resolve a deadlock in negotiations over how intrusive the international body could be. Its focus on the NPMs was initially considered by some as a tactic to diminish the importance and need for an international visiting mechanism. Others considered that there would be an important role by both international

different drafts from Costa Rica, Mexico and the EU, the two-pillar system – international visit and national preventive mechanism – was finally agreed upon.

There were several points of disagreement in the drafting process. The most controversial point concerns the international visiting program which would worry some states over infringement on state sovereignty. Indeed the Costa Rica draft contained some balance between international monitoring and state sovereignty. For instance, the international bodies would be allowed to visit any places of detention. However, their subsequent work, such as creating reports and making recommendations, would remain confidential. Likewise, although international bodies' access can be delayed under very exceptional circumstances, those reports can also be made public by the Subcommittee if needed under exceptional circumstances. Despite these balances set out in the Costa Rica draft, it remained to be answered how much national authorities could control the activities of the international visit mechanisms.

Several debatable points are worth noting here. The term 'visit' was discussed during the seventh and eighth sessions of the Working Group because there was a need to make a distinction between missions and visits. Some states suggested that the Subcommittee would conduct missions which would include visits to particular places of detention. It was argued that missions would not require prior consent from the state concerned, whereas visits might be subject to restrictions imposed by the state party concerned. The debate generated controversies over whether or not the

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and national mechanisms which can mutually reinforce each other. See Murray et al., pp. 55-56.

Subcommittee could enter the state and visit any places without prior consent from the state, or enter the state but require permission to visit certain places.

There were also concerns regarding that the Subcommittee might frequently make ad-hoc visits to a particular region or country, leaving the majority of states parties untouched and that criterion for making an ad-hoc visit can be partial and subjective. Other debates also emerged concerning the adoption of SPT reports, the nature of the recommendations by the Subcommittee, and circumstances where the SPT report might be made public without the consent of the state.[26] A discussion on reservations also displayed similar disagreements because some states like the United States (US) regarded the inclusion of reservations clauses as a non-negotiable element, while others excluded the possibility of reservations due to the importance of the subject matter.

2.2.3 Text of the OPCAT

The text of OPCAT has a total of eight parts, including the preamble.[27] The preamble of the OPCAT provides rationales for its establishment. First, states parties to the Protocol reaffirm that "torture and other cruel, inhuman or degrading treatment or punishment constitute serious violations of human rights," and also that they are convinced that "further measures are necessary to achieve the purposes of the CAT and to strengthen the protection of persons deprived of their liberty against torture and other inhuman or degrading treatment or punishment."[28] It also recalls that

[26] Murray et al., pp. 36-37.
[27] The full text of the OPCAT is provided in the Appendices.
[28] OPCAT, Preamble

"Articles 2 and 16 of the CAT oblige each state party to take effective measures to prevent acts of torture and other cruel, inhuman or degrading treatment or punishment in any territory under its jurisdiction." The preamble also recalls that the 1993 World Conference on Human Rights, held in Vienna, Austria, suggested international efforts to prevent torture and adoption of an optional protocol to the CAT to establish a preventive system of regular visits to places of detention.

The first part of the OPCAT provides general principles. Article 1 of the Protocol stipulates its purpose, stating that "the objective of the present Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty to prevent torture and other cruel, inhuman or degrading treatment or punishment."[29] Article 2 of the OPCAT refers to the establishment of the Subcommittee on Prevention of Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment of the Committee against Torture (SPT or Subcommittee) while Article 3 states that visiting bodies at the domestic level shall be set up, designated or maintained.[30] Article 4 (1) provides that each state party shall allow visits by the SPT or national bodies to any place under its jurisdiction and control where persons are or may be deprived of their liberty. Article 4 (2) defines the terms such that "deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which person is not permitted to leave at will by order of any judicial, administrative or other authority."[31]

[29] Ibid, Article 1.
[30] Ibid, Article 2 and 3.
[31] Ibid, Article 4 (1) and 4 (2).

Part II details issues regarding establishing the SPT. The SPT would consist of 10 nationals from states parties to the Protocol. The Subcommittee's numbers can be increased to 25 after the fiftieth ratification of or accession to the OPCAT.[32] Each state party can nominate up to two candidates including at least one candidate having the nationality of the nominating state party.[33] By secret ballot, states parties elect the members of the SPT. Those who obtain the largest number of votes and an absolute majority of the votes would be elected to the Subcommittee.[34] Those elected members have a term of four years with eligibility for re-election if re-nominated. According to Article 10, the SPT's decisions would be made by a majority vote of the members present while half of the members plus one constitute a quorum.[35]

The next part provides articles on the mandate of the Subcommittee. Article 11 provides that the SPT shall "visit the places referred to in article 4 and make recommendations to states parties concerning the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment."[36] The SPT may also help states parties to establish the NPMs and strengthen their capacity and mandate while advising and assisting the NPMs to increase their capacity. States parties to the Protocol should receive the SPT, grant it access to places of detention, and provide all relevant information the SPT may request to evaluate the needs and measures to strengthen the protection of persons deprived of their liberty against torture. States parties should also encourage and

[32] Ibid, Article 5 (1).
[33] Ibid, Article 6. According to Article 6 (2), if a state party nominates a national of another state party, there is a need for consent from that state party.
[34] Ibid, Article 7.
[35] Ibid, Article 10 (2).
[36] Ibid, Article 11.

facilitate contacts between the SPT and NPMs while examining the recommendations of the SPT and entering into dialogue with it on possible implementation measures.[37]

Article 13 and 14 specifically address the SPT visiting program. The SPT would notify states parties so that they may make the necessary practical arrangements for the visits to be conducted, after consultations.[38] The visits would be conducted by at least two members of the SPT and by experts if needed, selected from a roster of experts prepared by proposals made by the states parties, the Office of the UN High Commissioner for Human Rights and the UN Centre for International Crime Prevention. The SPT may propose a short follow-up visit after a regular visit if it considers it appropriate. Meanwhile, Article 14 provides that states parties would allow for unrestricted access to all places of and information about detention and facilities.[39] The SPT would also be granted liberty to choose places and an opportunity to have private interviews with the persons deprived of their liberty in detentions and facilities. Objection to a visit to a particular place of detention may be made only on urgent and compelling grounds of national defense, public safety, natural disaster or serious disorder in the place to be visited. The existence of a declared state of emergency shall not be invoked as a reason to object to a visit.[40]

After the visit, the SPT shall communicate its recommendations and observations confidentially to the state party and the NPMs if relevant.[41] Only upon request by the state party would the SPT report as well as comments of the state

[37] Ibid, Article 12.
[38] Ibid, Article 13.
[39] Ibid, Article 14 (1).
[40] Ibid, Article 14 (2).
[41] Ibid, Article 16 (1).

party, be made public. There is a possibility of the SPT report being available to the public when a state party concerned refuses to cooperate with the SPT. At the request of the SPT, the Committee (of the CAT) may decide by majority vote to publish the SPT report.[42] As of January 2018, there was no case of SPT report publication by the Committee without the consent of a state party.

Part IV contains articles 17 through 23, regarding the NPMs. Article 17 provides that "Each state party shall maintain, designate or establish, at the latest one year after the entry into force of the present Protocol or of its ratification or accession, one or several independent national preventive mechanism for the prevention of torture at that domestic level."[43] States parties should guarantee the functional independence of NPMs and their personnel.[44] According to Article 19, the NPMs are granted, at a minimum, the power to "regularly examine the treatment of the persons deprived of liberty in places of detention," "make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of liberty," and "submit proposals and observations concerning existing or draft legislation."[45] States parties are obliged to grant the NPMs access to all places of detention and facilities as well as all information concerning the number of persons deprived of their liberty in places of detention, places and location, and treatment of those persons and conditions of detention.[46] The NPMs should be granted an

[42] Ibid, Article 16 (4).
[43] Ibid, Article 17.
[44] Ibid, Article 18 (1).
[45] Ibid, Article 19.
[46] Ibid, Article 20.

opportunity to have private interviews with the persons deprived of their liberty and liberty to choose the locations of their visits.

Part V addresses declaration. Article 24 provides that states parties can make a declaration postponing the implementation of their obligation under either Part III or Part IV.[47] This postponement is only valid for a maximum of three years. However, the Committee may extend that period for an additional two years after due representations by the state party and consultation with the Subcommittee.[48]

The rest of the treaty from Article 25 through Article 37 addresses financial and final provisions. A noteworthy feature in Part VII is Article 30 which provides that "no reservations shall be made to the present Protocol.[49] The 1969 Vienna Convention on the Law of Treaties defines a reservation as "a unilateral statement, however phrased or named, made by a state, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State."[50] The use of reservation by states has often been criticized as an intentional attempt to avoid a specific legal binding when they ratify international human rights treaties (Hill 2015; Neumayer 2007; Ziemele and Liede 2013). While the CAT allows the use of reservations by states, the OPCAT does not allow states to enter into a reservation.

[47] Ibid, Article 24 (1).
[48] Ibid, Article 24 (2).
[49] Ibid, Article 30.
[50] The Vienna Convention on the Law of Treaties (1969), Article 2.

Chapter 3: Theories of States' Ratification of and Compliance with the OPCAT

There has been a growing body of literature on international human rights agreements, centering on two big questions: why states ratify them and whether they comply with them. This chapter consists of three sections. I first emphasize some challenges of theorizing about state behavior regarding human rights treaties by considering particular characteristics of human rights agreements which deal with non-material rights issues and aim to regulate domestic behavior. Then, building on the existing literature, I provide three different theories of states' ratification of the OPCAT: screening, signaling and regional perspective. The third part also lays out a theoretical framework to explain whether and how states comply with the OPCAT. A quantitative analysis of states' commitment is conducted in Chapter 4 while Chapter 5 empirically analyzes states' compliant behavior. Cases on the Philippines and the US are then further examined in Chapter 6.

3.1 International Agreements on Human Rights as Non-material and Domestic Issue

It is important to emphasize that the human rights agreements address non-material issues about rights and mainly aim to regulate states' behavior at home. These characteristics make the questions of why commit and comply with the human rights

treaties more puzzling from a realist or functionalist viewpoint, while rendering theorizing about them to be a more challenging task.

It is difficult for those who describe world politics as realpolitik to answer why states participate in and comply with the human rights agreements.[51] From the realists' point of view, human rights agreements do not address national security or economic well-being, and thus neither participation in nor compliance with them can be defined in terms of core national interests. Likewise, how foreign citizens are treated in their homes should not be a central issue to states' foreign policy objectives, and thus should not draw the attention of other states. Given that those international treaties may impose restrictions on tools of their statecraft and domestic policy-making, it is logical that states should not sign them in the first place. These expectations about state behavior regarding human rights treaties have puzzled scholars of international relations who, through a realist lens, try to explain the creation and development of the human rights treaty system with increasing ratifications by states around the globe.

Some realists use terms like coercion or hegemonic imposition to account for states' behavior in the area of human rights. They suggest that great powers tend to externalize their ideology and norms through institutionalization while pressuring other states to comply with those norms (Goldsmith and Posner 2005). However, this explanation contradicts the history of the Cold War. There is ample evidence that human rights were often undermined by great powers' geopolitical and security concerns (Forsythe 2006; Donnelly 2007). The United States (US), described as one

[51] See Hans Peter Schmitz and Kathryn Sikkink, "International Human Rights," Carlsnaes, Risse, and Simmons eds., *Handbook of International Relations* (2002).

of the human rights-advocating states and a hegemonic state, often failed to set human rights as a foreign policy priority. In 1994, for instance, US President Bill Clinton renounced his linkage policy of the Most Favored Nation trading status to China's human rights, which symbolized the incongruence between the rhetorical usage of human rights and the practice of foreign policy (Mann and Mann 2000). Regarding the use of coercion, it is hard to say that the US has coerced others into ratifying the human rights treaties. Rather, it often exerts its influence to dilute the impact of treaties or refuse to ratify them. An acute example is an American approach toward the Rome Statute in 1998 which established the International Criminal Court (ICC). Not only did the US not ratify the Rome Statute, but it also pressured its signatories to sign a non-surrender agreement that would exempt Americans under the jurisdiction of the Court.[52] The US was concerned about the negative consequence of the ICC on American counter-terrorism and military operations abroad (Kissinger 2001).[53] It indicates that coercion or hegemonic imposition is not an adequate factor that explains states' behavior regarding the human rights treaties.

For these reasons, a realist's approach to explaining states' commitment to human rights agreements has not been favored in the literature. A few studies discussing the realist's framework deserve to be noted here. Using the world systems theory, Wotipka and Tsutsui (2008) tested coercion propositions that core countries in the world system, or aid recipient countries, are more likely to ratify human rights

[52] The Clinton administration originally signed the Rome Statute in 2000 but the Bush administration sent a note to the Secretary-General of the UN in 2002, informing him that the US does not intend to ratify the treaty and does not recognize any obligation toward it.
[53] Henry Kissinger expressed a skeptical view of the role of the ICC, arguing that US officials involved in the NATO air campaign in Kosovo could face international prosecution.

treaties. Analyzing states' ratification of several key human rights treaties such as CERD, CRC, CAT, ICCPR, ICESCR, and CEDAW, they found no evidence in support of the coercion hypotheses (Wotipka and Tsutsui 2008).[54] More recently, Schneider and Urpelainen (2013) brought power politics back when explaining states' ratification of international treaties. Focusing on the Cartagena Protocol, which addresses environmental standards and rules, they argue that it causes an international distributional conflict between great powers, influencing third parties' ratification decisions, depending on their reliance on the clashing giants (Schneider and Urpelainen 2013). It is however still uncertain whether their theory can be appropriately applied to international human rights treaties because it is hardly a distributional conflict between major powers in a material sense. It is more likely that major powers opt themselves out of human right treaties rather than fighting for influence with a committed intention to ratify.

States' ratifications of international human rights agreements have also puzzled those who suggest that international institutions help states cooperate. A conventional understanding of international institutions is that they serve as mechanisms to reduce transaction costs and uncertainty while providing information (Keohane 1984). These functions lengthen a shadow of the future, incentivizing states to join international institutions on behalf of their own interests. By contrast, human rights agreements do not produce material and mutual interests, unlike trade or

[54] Beside their results of null findings regarding the coercion hypotheses, they do not delve into a theoretical discussion about why core states or foreign aid recipients are more likely to ratify the human rights treaties. They assume human rights as one of ideologies of the core countries in a world system like trade liberalization or non-proliferation. As I previously explained, this assumption fails to understand the particularistic natures of human rights treaties and deserves more scrutiny for its validity.

investment treaties. What would a state party to ICCPR expect to gain materially from another state's ratification of it? States' participation in human rights treaties hardly produces tangible benefits for others. If there are few mutual and tangible gains to be realized, states have very few reasons to enter into cooperation in the first place. From this functional perspective, it is hard to predict whether or not states will ratify and implement human rights treaties, knowing that there would be no mutual and material benefits.

It is also uncertain whether the concept of reciprocity, often suggested in the literature on how international institutions work, can be used to explain state behavior regarding the international human rights treaties. Taking a rationalist' approach, Guzman explains that reciprocity is one of the mechanisms that make an international law function effectively and thus invite states to participate (Guzman 2002, 2008). In response to a violation of an international treaty by Canada, for instance, the US would decide not to comply with that treaty. Guzman also acknowledges, however, that it is hard to apply the reciprocity mechanism to international human rights treaties.[55] Canada's violation of the CAT would not necessarily invite torture practices by the US against its citizens. A threat by Canada to terminate its compliance with the CAT also has nothing to do with compliance by the US. Likewise, Canada's compliance with the OPCAT would not substantially promote compliant behavior of the US at home.[56]

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[55] Andrew T. Guzman, *How International Law Works* (2008). p. 45.

[56] Guzman (2008) proposes that retaliation and reputation are other mechanisms to encourage states' compliance with international agreements. The retaliation mechanism is less explicable for states' participation and compliance with international agreements in the area of human rights due to the lack of enforcement capacity of human rights treaties. It is more feasible to suggest that states are concerned about their reputation when they fail to comply

In sum, the creation and development of international human rights agreements as well as states' ratification and compliant behavior have continued to be a source of theoretical debate. The nature of self-binding, domestic regulation, and non-material rights issues make scholars of international relations transcend the approaches by realists or functionalists, and instead pay more attention to varying domestic factors influencing states' decision to ratify or comply with human rights treaties. The next two sections provide theoretical frameworks to examine states' commitment to and compliance with the OPCAT.

3.2 Theories of States' Ratification of the OPCAT

The difficulties in applying general theories of states' participation in international institutions to states' commitment to human rights agreements have led scholars to suggest varying theories to explain the question of why states commit to international human rights treaties. Unfortunately, there is no consensus on states' motivations behind ratification. Another layer of the theoretical challenge comes from an under-examination of the OPCAT. Building on the existing scholarship and focusing on implications of the existing approaches toward the OPCAT commitment, I provide three perspectives on states' commitment to the Protocol – screening, signaling, and regional theories with a set of testable hypotheses. An empirical analysis in Chapter 4

with human rights treaties. However, to my knowledge, there are very few studies empirically showing that states avoid joining human rights treaties primarily due to concerns over their reputation and the possibility of non-compliance.

adjudicates which perspective has more explanatory power while Chapter 6 provides case studies on the Philippines and the US.

3.2.1 Screening Perspective

A screening perspective proposes that states are less likely to ratify an international human rights treaty if costs of ratification are high enough. The key question is what the costs of ratification are and when the costs make states decide not to enter into an agreement in the first place. In this section, focusing on three sources of ratification costs – the treaty terms of the OPCAT, adjustment, and a degree of CAT commitment– I provide explanations of how these varying costs of ratification interact with international and domestic factors influencing state decision (not) to ratify the Protocol.

Treaty Terms

This section proposes that costs associated with the legal obligations of the OPCAT incur substantial costs of ratification that deter states from committing themselves to the Protocol. The first focus is on the stronger monitoring mechanism of the OPCAT. Recall that Article 2 of the OPCAT establishes the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture (SPT or Subcommittee). The SPT may undertake regular visits to states parties, during which it may visit any place where persons are or may be deprived of their liberty. For instance, the SPT visited Paraguay in 2009 and published a report with recommendations to improve legal and institutional

frameworks to implement the CAT and OPCAT fully.[57] More recently, in May 2015, the SPT was tasked with visiting prisons, police stations, military detention facilities, correctional/rehabilitation facilities, and psychiatric hospitals in the Philippines to assess the treatment of detainees and patients.[58] As of January 2018, the SPT has visited approximately 63 countries.[59]

Regular visits by the international body offer a stark contrast to the original treaty under which its treaty body, the Committee against Torture (Committee), is not allowed to visit a place of a state party without cooperation and consent from states parties. Under the CAT, states parties are only obliged to implement measures to prevent torture and submit periodic reports on their implementation of those measure. By contrast, the OPCAT empowers international actors and the treaty body to access local police stations, prisons, detention centers and social care institutions. This access enables them to gather more accurate information and open state leaders to domestic and global monitoring and inspection. State leaders who systematically employ a method of torture as a repressive tool would then become more vulnerable to on-site inspections, which may reveal more human rights violations and even uncover leaders' direct or indirect involvement in torture and crimes against humanity. Furthermore, according to Article 14, a state party cannot object to international visits except in such cases where there are urgent and compelling

[57] Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to the Republic of Paraguay.
[58] http://globalnation.inquirer.net/123285/un-body-to-visit-ph-check-for-cases-of-torture
[59] For a list the SPT's visit dates and countries, see the website of the Office of the United Nations High Commissioner for Human Rights, http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/CountryVisits.aspx?SortOrder=Chronological

grounds of national defense, public safety, natural disaster, or serious disorder. It would thus make it difficult for states parties to refuse those inspections without legitimate reasons, especially if doing so would attract domestic and international criticism.

State leaders are likely to be concerned with any exposure to the domestic and international audience of any problems with domestic human rights conditions uncovered by the SPT visit. First of all, domestic oppositions and civil society can be further mobilized by the SPT visit and reports, invigorating their campaigns for pro-human rights political and judicial reforms. States' commitment to human rights treaties may bring domestic mobilization effects (Simmons 2009). Where fact-findings are difficult, and the government often controls the media, visits by the international monitoring body can make domestic actors' claims over human rights violations by the government more legitimate. State leaders may encounter growing domestic criticism and may lose political leverage over their opponents at home. Furthermore, the SPT visit internationalizes domestic human rights situations. The whole process of the SPT visit, report, replies by the state party, and possibly follow-up visits by the SPT is carried out beyond domestic politics. Transnational advocacy groups for human rights such as Amnesty International or the Human Rights Watch can also use tactics of naming and shaming to pressure the government concerned to address the situations. Although it is sometimes mixed and conditional on other factors, the literature on naming and shaming reports the effects of this strategy on

states behavior (Lebovic and Voeten 2006, 2009; A. M. Murdie and Davis 2012; A. Murdie and Peksen 2014; Hafner-Burton 2008; Franklin 2008).[60]

Furthermore, state leaders' concerns about the exposure of poor human rights conditions to the international and domestic audience can be aggravated by the legal obligation of the OPCAT to set up, designate, or maintain at the domestic level visiting bodies for the prevention of torture.[61] The state party should guarantee the independence of these preventive mechanisms and make available resources for the functioning of the institutions.[62] They are granted the power to regularly examine the treatment of the persons deprived of their liberty in places of detention, make recommendations for improving their treatments and conditions, and submit proposals and observations concerning existing or draft legislation.[63] These national prevention mechanisms should be implemented within one year after the entry into force of the protocol, or after its ratification. Although Article 24 allows states parties to make a declaration of postponing implementation of their obligations regarding establishing national preventive measures, this postponement will be valid for a maximum of three years with an additional two years extension after due representations made by a state party and after consultation with the SPT.

The last feature is Article 30, which stipulates that no reservations shall be made to the Protocol. Article 19 to 21 of the 1969 Vienna Convention on the Law of

[60] Hafner-Burton (2008) argued that although the strategy of naming and shaming does not improve human rights records, it may bring some political and institutional changes. Lebovic and Voeten (2009) argued that the strategy has a negative effect on states' receipt of multilateral aid.
[61] Ibid. Article 3.
[62] Ibid. Article 18.
[63] Ibid. Article 19.

Treaties allows states to enter reservations unless they are refused by other states or contrary to the objective of the treaty in question. On the one hand, reservation creates flexibility in human rights treaties so that a state party can have an adjustment or transition period for implementation. Therefore, states who take human rights seriously might want to use reservations (Neumayer 2007). On the other hand, however, states' use of reservations in human rights treaties is often criticized as an intentional attempt to avoid a specific legal obligation (Hill 2015). As I explain later, reservations create a varying degree of commitment to human rights treaties. If no reservation is permitted, a state party would expect a similar level of commitment to legal obligations. In this sense, the no-reservation provision of the OPCAT can be viewed as a powerful instrument to lock in states' commitment to anti-torture norms and practices.

Considering all these features of the OPCAT – the SPT visit and national preventive mechanisms with the no-reservation provision – there would be a lower chance of ratifying the OPCAT in the first place for states with poor human rights records. This would be in stark contrast to states' commitment to the CAT in the sense that empirical studies found no inverse relationship between states' usage of torture and probability of the CAT commitment (Hathaway 2007; Vreeland 2008; Hafner-Burton and Tsutsui 2007). In other words, the CAT does not guarantee that states with poor human rights records are afraid of the consequence of ratification and thus remain outside of the treaty. These studies found that even the worst torturers in the world have ratified the CAT. If the OPCAT provides evidence that countries frequently using torture as a repressive tool are afraid of committing themselves to

the protocol due to the costs of ratification, it indicates that ratification of optional protocols is not cheap talk at all, but rather the OPCAT has a distinctive characteristic compared to other human rights agreements, including the CAT in particular.[64] This logic suggests the first hypothesis:

H1a: States with more frequent violation of human rights are less likely to ratify the OPCAT.

On the face of it, it is certain that the OPCAT contains the stronger monitoring mechanism and specifically obligates states to set up a domestic preventive institution, both of which would make state leaders with poor human rights records less eager and more cautious to sign and ratify the OPCAT. However, it is also legitimate to question whether or not these costs of ratification should be *sufficient* to make human rights violators decide not to ratify the OPCAT.

There is a skeptical perspective which supposes that states' commitment to the OPCAT does not yield substantial costs and is thus not very different from when states sign other human rights agreements, including the CAT. Indeed, there has been a growing skeptical perspective on human rights treaties with empirical observations of frequent non-compliance with human rights agreements. This perspective raises the fundamental question of whether states are concerned with costs of ratification

[64] The International Criminal Court (ICC) is regarded as one of the few human rights institutions that have some forms of enforcement. Chapman and Chaudoin (2013) find that states concerned with the future ICC actions are less likely to ratify the Rome Statute (Chapman and Chaudoin 2013). Their study indicates the screening perspective examined in this section.

when deciding to ratify or not. If states are gravely concerned with risks of ratification and subsequent consequences of non-compliance, they will not ratify the treaties in the first place. Once ratified, they are more likely to comply with the treaty terms. However, co-existences between ratification and non-compliance has been consistently reported in the literature (Keith 1999; Hafner-Burton and Tsutsui 2007; Vreeland 2008; Hathaway 2007). Scholars have been baffled by the fact that even states with the worst human rights records also ratified some human rights treaties. Moreover, it has been noted that reservations are strategically used by states to eschew a particular obligation (Hill 2015).

This perspective suggests the idea that the OPCAT is no different from other human rights treaties regarding ex-post costs of ratification. Ex-post costs are defined as costs incurred when violating a treaty after ratification, while ex-ante costs refer to anticipated costs of drafting, signing, ratifying, or implementing the treaty. Countries with poor human rights records may see costs of ratification substantial only if there are large ex-post costs. In other words, state leaders with poor human rights practices would be more worried about costs of non-compliance and human rights violations than anticipated costs of implementation. This perspective points out the institutional loopholes of the OPCAT as well as the problem of a lack of enforcement.

First, institutional loopholes make state leaders expect that ex-post costs of OPCAT commitment are not substantial, thus not deterring human rights violators from entering into the OPCAT in the first place. Above all, the stronger monitoring mechanism of the OPCAT has its limitation. Although the SPT can make a regular visit to the member states without their consent, the SPT has to work closely with the

governmental officials in a host country. The host government can object to a visit to a particular place on urgent and compelling grounds of national defense, public safety, natural disaster, or serious disorder in the place to be visited. Moreover, the report after the SPT visit remains confidential if the host country does not consent to its publication. It can be a serious limitation of the Protocol in a sense that findings and recommendation by the SPT cannot be shared with relevant stakeholders such as the human rights advocacy groups, the media, and the general public. When state leaders are concerned with a potential international and domestic backlash after a release of the findings by the SPT, they are willing to keep those reports confidential. Although the OPCAT does contain a mechanism for the SPT to publicly release those reports, this is feasible only when states parties refuse to cooperate with the SPT or fail to take steps to improve human rights situations in the light of recommendations by the SPT.

Furthermore, regarding the legal obligation to establish or designate an NPM, a fundamental limitation of the OPCAT comes from the absence of enforcement mechanisms. States parties to the Protocol are given a year after ratification to establish the NPM. A maximum of three years is also permissible if a state party declares the postponement of NPM requirement when the Protocol is signed. It may allow states some time to review and go through the domestic legal process required to implement that treaty term. But it is also feasible that it simply allows states to delay their legal obligation. The fundamental problem is the absence of institutional measures to enforce a state party to fulfill its legal obligation to designate or establish the NPM. In this regard, the skeptics consider states' commitment to the OPCAT to

be cheap talk or an empty promise mainly due to the lack of a capacity to enforce treaty terms on the states parties.

H1b: States with more frequent violation of human rights are not less likely to ratify the OPCAT.

Implementation, integration, and adjustment

It may not be surprising to suppose that human rights violators eschew human rights treaties. However, there are rights-respecting countries that are still hesitant to commit themselves to human rights agreements. For example, the United States has not ratified the Convention on the Rights of the Child since its entry into force in 1990. It is hardly that the US government is concerned with its records on children's rights. Nor is that the government is unwilling to comply with the treaty terms. Rather, the costs of implementation and integration prevent the country from signing and ratifying the treaty. Besides the costs emanating from the treaty terms, there are domestic political and institutional difficulties and challenges that make some states reluctant to ratify the human rights treaties.

First of all, there are costs relevant to political constraints over human rights policy changes. To make international treaties binding, they should be ratified through domestic processes which are legal and legitimate (Simmons 2009). Domestic ratification processes vary across countries. Some countries legitimize a head of state to negotiate, sign, and ratify an international agreement, while others put more institutional constraints on the executive, such as a simple majority vote in a

unicameral legislature, bicameral approval, or by supermajorities. Other than the number of independent veto points over policy outcomes, it is also important to look into the distribution of actor preferences. These different political constraints could affect the treaty commitment decision. If domestic ratification hurdles are high, governments may expect domestic political opposition and institutional challenges, preventing them from submitting an externally negotiated agreement for ratification. Therefore, we expect that a government is less likely to ratify the OPCAT if a domestic ratification hurdle is high.

H2: States with more political constraints are less likely to ratify the OPCAT.

The second type of costs involves integrating an international treaty into a domestic legal system. Studies show that countries with a common law system tend to be reluctant to ratify human rights treaties due to adjustment and uncertainty costs (Simmons 2009; Goodliffe and Hawkins 2006). Unlike civil law systems which are built on the civil code, common law systems are evolutionary, based on judge-made law through precedent. Externally-formulated human rights treaties can be easily viewed as foreign and unfit to common law systems and can bring actual resistance from legal practitioners. Moreover, judges in common law systems are more independent with greater power to interpret rules compared to judges in civil law systems. Therefore there is a greater chance that external treaty obligations would not be interpreted in a way that the governments expected. From the perspective of the government, it is then more difficult to predict the consequences of treaty

commitment in a common law system. The greater uncertainty may make states less likely to commit to human rights treaties in the first place or more likely to enter into reservations. In the case of the OPCAT, common law systems may prevent states from ratifying it since they cannot legitimately use reservation.

H3: States with common law systems are less likely to ratify the OPCAT.

Domestic enforcement

Studies have contended that domestic judicial independence discourages states from ratifying human rights treaties (Courtenay R. Conrad 2012; Powell and Staton 2009). State leaders are more concerned with the costs of ratification if there is a greater possibility of government officials or themselves being charged with a violation. In a similar vein, governments are more likely to enter reservations when judiciaries are likely to enforce treaty-based obligations (Hill 2015). With regard to the OPCAT, it is more likely that an independent judiciary decreases the probability of commitment to the OPCAT.

H4: States with an independent judiciary are less likely to ratify the OPCAT.

CAT Commitment level

A state leader ratifies the OPCAT in the context of his or her commitment to the CAT. It is in part because only ratifiers of the CAT are eligible to join the OPCAT. Although it is possible for a state to ratify both of them at the same time, this is rare.

This eligibility indicates that states' commitment to the OPCAT should be understood in the context of their level of commitment to the CAT. Costs of ratifying the OPCAT may depend on how ratification of the OPCAT is related to the previous commitment to the CAT. The existing literature has not fully considered this relationship between the original treaties and their optional protocols. A few studies regarded the optional protocols as separate treaties from the original ones while treating them as another dependent variable in their statistical models (Cole 2005; Hathaway 2007; B. A. Simmons 2009). Understanding why states decide to *further* commit to the optional protocols requires us to explore how previous commitments to the original treaties are made and how they may affect the further decision to participate in another legal institution with potentially greater costs of ratification.

It is important to note that the decision is not dichotomous – ratify or not ratify – when state leaders decide to participate in international human rights regime, including the CAT. There are varying levels of commitment that states leaders can choose. The existing literature on human rights treaty commitment has not paid sufficient attention to the fact that states enter human rights regimes with different degrees of commitment (Cole 2005; Hill 2015). Reservations, understanding, and declarations (RUDs) are measures that allow states to display different degrees of commitment. In particular, reservations are designed to reject any obligation to rise above existing laws and practices. Reservations are acts of non-consent to particular treaty terms (J. Goldsmith 2005). For instance, China made reservations, stating that "the Chinese government does not recognize the competence of the Committee against Torture as provided for in article 20 of the Convention." With this reservation

made, the Committee would not be able to investigate torture practices in China and make suggestions to the Chinese government. Moreover, the CAT contains Article 21 and 22, which are legally binding only when states parties make a declaration. These clauses addressing state and individual communications with the Committee serve as optional commitments states parties can choose to make when signing.

When state leaders decide whether or not to increase their levels of commitment to human rights by further signing optional protocols, they need to consider the costs incurred from a gap between their level of CAT commitment and new potential commitment to the OPCAT. If they previously had a weak commitment to the CAT because they did not adopt reservations or make further commitments to the Article 21 and 22, states may incur greater costs with OPCAT ratification compared to states that ratified the CAT without reservations and with an optional commitment to Article 21 and 22. Even before considering whether or not to commit to the OPCAT, they may first consider an option of increasing their levels of commitment to the CAT if necessary. It would be an easier and less costly way of increasing their level of commitment to anti-torture and human rights norms.[65] Therefore, this perspective predicts that states with a lower level of commitment to the CAT are less likely to consider the further commitment to the OPCAT due to greater costs of making an additional commitment to the Protocol.

[65] There have been actual cases of states making declarations on Article 21 and/or 22 years after they initially signed and ratified the CAT. Australia signed and ratified the CAT respectively in 1985 and 1989. Four years later, the Australian government made a declaration on both Article 21 and 22 in 1993 by recognizing the competence of the Committee to receive and consider communications from states parties or individuals about alleged non-compliance with the treaty terms.

H5: States with a lower level of commitment to the CAT are less likely to ratify the OPCAT.

3.2.2 Signaling Perspective

While costs of ratifying the OPCAT deter a certain group of states from ratifying it, there are other groups of states willing to bear the costs of ratification to send a costly signal to the domestic and international audience about their commitment to global human rights norms. Costly signaling is one of the important mechanisms through which international institutions can effectively work and thereby provide a rationale for states to join them.[66] States can credibly commit themselves to an agreement or agreed-upon behavior by incurring ex-post costs when they renege. Alternatively, they can also credibly communicate with each other by sinking costs that other insincere states are not willing to bear. The costly signaling framework has been used to analyze a diverse set of international institutions from the United Nations Security Council, international election monitoring, and investment treaties to the International Monetary Fund status (Thompson 2006; Haftel 2010; Fang and Owen 2011; Hyde 2011).[67]

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[66] There is a theoretical distinction between two ideal types of costly signaling – commitment and signaling. Commitment as tying hands serves as an instrument to solve time-inconsistency problems, while signaling is a mechanism by which actors can send credible signals by sinking costs that other actors who are inhospitable to an agreement or cooperative behavior are unwilling to bear (Fearon 1997). See Morrow's studies on alliance from the signaling perspective (Morrow 1994).

[67] See Schultz (1998) and Martin (2005) for domestic institutions as costly signaling devices. Schultz argues that domestic opposition can be used to send credible signals in international crises because domestic political competition helps reveal information about state's resolve (Schultz 1998). Martin suggests that US presidents take a form of treaties rather than executive agreements when they negotiate and reach an agreement with their foreign counterparts because ratification of a formal treaty, which should go through congressional

Ratification of the OPCAT can also be understood as costly signaling for some state leaders. Already explained above, the OPCAT contains a stronger monitoring system which allows for a regular visit by the SPT. Moreover, the Protocol requires states parties to set up, within a specified time frame after ratification, a national preventive institution also tasked with monitoring of torture or inhuman treatment. The Protocol's measure disallowing states parties to make reservations furthermore prevents them from ratifying the protocol while intentionally eschewing their legal obligations on a particular clause. These substantial costs of ratifying the OPCAT make signaling more credible than when states ratify the CAT or other original human rights treaties. If there are no or few costs involved, it would not be a credible signal because those who are not willing to bear the costs can also take the same action. Then the act of signaling would convey no information about the intent of signalers because no one would regard the action as trustworthy or sincere.

There are two caveats to consider in the costly signaling framework. First, not all states would ratify the OPCAT for costly signaling. For example, those states with good human rights conditions would not need to send a costly signal of their intention to support global human rights norm. Because they support global human rights norms and anticipate low costs of adjustment and implementation, they would be willing to ratify the Protocol. Second, ratifying the OPCAT is not the only way to send a costly signal. The OPCAT is only one of the signaling devices that state

review and approval, is costly and time-consuming (Martin 2005). By voluntarily taking ex-ante costs, treaties can serve as more effective signaling of US president's commitment to international agreements.

leaders can consider. Other international institutions or domestic political or legal measures can also be utilized, or sometimes prioritized over commitment to the OPCAT, for the same signaling purpose. If a state wants to signal its commitment to democratic rule, ratification of the OPCAT or other human rights agreements would be just one among different methods available. Holding a fair and free democratic election in the presence of international election monitors might also be a way to send a costly signal. Creating national human rights institutions can be another measure for the same signaling purpose. Therefore these considerations suggest that it is important to specify conditions under which state leaders find ratification of the OPCAT as a useful tool for costly signaling. I suggest two propositions regarding when states may want to use the OPCAT as a costly signaling device.

Signaling for Political Gains

This approach suggests that states in the process of democratization would consider the OPCAT as a costly signaling tool to show domestic voters and international observers their commitment to democracy and human rights. Political leaders in democratizing states are more vulnerable to political, economic, and social unrest than leaders in established democratic or authoritarian states. A high level of political uncertainty necessitates that leaders find a way to increase their political support by sending a strong signal to a domestic audience suspicious of leaders' intents to consolidate democratic rule and human rights. Although there are domestic measures leaders can use, such as political or judicial reform, unstable and inefficient domestic institutions would not be able to send sufficient costly signaling to either the domestic

or international audience. In this context, ratifying international treaties on human rights would have a great signaling value for displaying leaders' commitments to democracy and human rights. Commitment to human rights agreements will show that their commitments are serious rather than tentative or preliminary (Goldsmith and Posner 2005). Moreover, hands tied by international human rights treaties, leaders in transitional states are able to lock in domestic political reforms, assuring the domestic audience that there is no quick means of return to a nondemocratic political system (Moravcsik 2000).

Empirical studies have supported the proposition that democratizing states' commitment to international institutions is a means by which they can credibly display their intent to promote human rights and democracy. A few studies explained that transitional states are more likely to pay non-trivial costs of participating in international institutions in order to make a credible commitment (B. A. Simmons 2009; B. A. Simmons and Danner 2010). Among a variety of international institutions, democratizing states are more likely to participate in economic and standards-based international institutions, including human rights ones, in order to make a credible commitment (Mansfield and Pevehouse 2008). It was also found that democratizing states tend to join human rights institutions that impose greater constraints on state sovereignty (Hafner-Burton, Mansfield, and Pevehouse 2015). These scholarly findings collectively suggest that the OPCAT commitment can also be understood as costly signaling since the Protocol carries heavier weight than other human rights agreements regarding potential costs associated with ratification.

There is an additional reason why states wanting to signal would be more willing to ratify the Protocol. Once the OPCAT comes in for ratification, it is unlikely that commitment to the CAT would send a costly signal in the same way it does when there is no Protocol. It is because states' commitment to the CAT, not the OPCAT, does not represent their highest level of commitment to human rights norms. As long as the OPCAT with a heavier legal obligation exists, the costly signaling value depends much more on whether a state can ratify the Protocol or not. Therefore those democratizing states who want to strengthen their signals should have more incentives to ratify the OPCAT.

H6: The probability of the OPCAT commitment increases if a state is in the democratization process.

Signaling for Economic Gains

Other than political gains, the signaling perspective suggests that there is a set of states that ratify the OPCAT as a costly signal to gain international economic benefits. By ratifying human rights agreements, states attempt to show the international audience, including trade partners, aid donors, and private investors their commitment to democracy, human rights, and the rule of law despite potential costs of ratification. By sending the costly signal, they expect to gain economic benefits regarding international trade, foreign investment or foreign aid.

The link between human rights agreements and economic benefits is not new. There have been studies in the literature arguing that there is a material benefit to

ratification of human rights agreements (Goodliffe et al. 2012; Baird 2011; Hathaway 2002a, 2007; Boockmann 2001; Smith-Cannoy 2012; Oberdorster 2008; Goldsmith and Posner 2005). Hathaway (2007) mentioned that states join treaties, hoping to attract tangible economic benefits such as international trade, foreign investment, and international aid. Goldsmith and Posner (2005) suggested that pressures from western states linking treaty ratification to aid and other tangible benefits motivate developing states to sign human rights treaties. Focusing on International Labor Organization conventions, Boockman (2001) found that a decision to ratify them was influenced by states' desire to receive more international aid. In a similar vein, Smith-Cannoy (2012) also argued that states ratify human rights agreements that allow for individual communication to cope with their economic crises. These economic motivations were also found in states' commitment to the Rome Statute that established the International Criminal Court (Goodliffe et al. 2012). More recently, Lupu (2014) investigated a wider set of universal treaties and found that states' economic interests consistently show their preference for commitment to universal treaties on non-economic issues such as human rights as well as economic ones (Lupu 2014).

From this signaling perspective, the OPCAT should have a greater signaling value for a country to gain economic benefits.[68] If the OPCAT incurs substantial costs of ratification, its ratification should send foreign economic partners or aid donors a greater resolve and intent to institute democracy, human rights and the rule of law.

[68] Despite the findings on economic incentives to ratify human rights treaties, the relationship is not without questions on empirical grounds. Nielson and Simmons (2015) found no evidence to support the hypotheses for economic benefits when states ratify the ICCPR or CAT. In an earlier study, Neumayer (2003) argued that donor countries do not consistently reward respect for human rights in their foreign aid allocation, implying that ratification behavior is even less influential in donors' aid allocation decisions.

Therefore, it is expected that the more dependent on international trade, investment, or foreign aid, the more likely a state is to ratify the OPCAT.

H7: States are more likely to ratify the OPCAT if their economies are more reliant on international economic benefits.

3.2.3 Regional Perspective

The two perspectives explained above propose that state leaders rationally decide whether to ratify human rights treaties while expecting to either avoid or utilize the costs of ratification. Their ratification decision, mostly influenced by domestic factors, is made independent of one another. By contrast, a regional perspective suggests that treaty ratification should be understood at a regional level, not a nation-state level. Hafner-Burton and Ron (2007) in their introductory essay also emphasize a cross-regional variation of states' human rights behavior (Hafner-Burton and Ron 2007, 2009). In particular, imitation and regional human rights institutions play a role in causing a regional clustering of ratification. Taking a normative approach, this section proposes the perspective that states' participation in the OPCAT is influenced by neighboring states' ratification and regional human rights institutions.

Constructivists contend that human rights treaty ratification is neither coerced by hegemonic or great powers nor voluntarily agreed among states on behalf of their self-interests (Schmitz and Sikkink 2002). Among a varied set of constructivists' approaches, a world society approach suggests that ratification of human rights is a part of 'world culture.' It suggests that the ratification of human rights agreements is

influenced by factors and processes at a global level, not at a nation-state level. This is in stark contrast to the two perspectives explored in the previous sections that focus on the domestic environment. Meyer, Boli, Thomas, and Ramirez (1997) understand a nation-state as a worldwide institution constructed by worldwide cultural and associational processes (Meyer et al. 1997). They expect nation states to exhibit a great deal of isomorphism in order to be internationally recognized and legitimized. That is, regarding their structures, institutions, and policies, 'scripts' of world culture are likely to emerge. From constitutional forms to economic, environmental, and welfare policies, there is a series of model behavior accepted and encouraged worldwide. Human rights is one of the areas where the world society has witnessed an isomorphic change. The triumph of political liberalism and democratic ideas and institutions over the past decades only reinforced the endorsement of international human rights. With the development of global human rights norms and institutions, ratifying the human rights treaties, in particular, represents one of the ritualized and socialized behaviors for states in the world society. Ratification is not a logic of consequentialism but is understood by states as what they are supposed to do (Wotipka and Tsutsui 2008). With an increasing number of states following suit, the act of ratification becomes an expected and appropriate behavior. There would be high normative pressures because non-ratifiers would be spotlighted and interpreted as "bad" or "undesirable."

It is important to note that this behavioral convergence: human rights treaty ratification does not necessarily indicate an automatic internalization of human rights norms or socialization. It could still be regarded as a tactical or rational response to

normative pressure. Constructivists regard human rights treaty ratification as an initial stage of norm internalization and socialization in a long-term and evolutionary development. Risse-Kappen, Ropp, and Sikkink (1999), who proposed a spiral model of adopting international human rights norms, acknowledged that human rights treaty ratification could be a tactical concession by governments in response to complaints by domestic and transnational groups about repressive tactics (Risse, Ropp, and Sikkink 1999). With ratification, international human rights norms are domestically institutionalized, and discursive practices take place, eventually leading to rule-consistent behavior. Iain Johnston, in his socialization theory, also argued that mimicking is one of three micro-processes of socialization that is less direct compared to other forms, social influence and persuasion. Mimicking occurs when a novice initially copies behavioral norms of the group to navigate through an uncertain environment (Johnston 2014). In a social and normative structure in which the protection of human rights is perceived to be important as a governmental responsibility, the ratification of human rights treaties indicates mimicking of the adoption of international human rights norms.

Finnemore and Sikkink (1998) provides a similar story of treaty ratification in their accounts of international norm dynamics. An international norm, embodied in an international treaty in many cases, emerges as a new idea or behavior is proposed by norm entrepreneurs (Finnemore and Sikkink 1998). After the norm emergence, norm cascade occurs after a critical mass of relevant state actors adopt. This second stage is facilitated by a combination of pressure for conformity, a desire for international legitimation, and self-esteem for state leaders. It indicates that there are a group of

states who espouse international human rights norms and encourage others to ratify human rights treaties while other states are more likely to be norm followers. Norm bandwagon does not necessarily require norm internalization, the last stage where conformance with the norm becomes automatic. This patterned life cycle of the international norm suggests that states' ratification of human rights treaties reflects imitation or mimicking of behavior.[69]

Therefore, the normative perspective, the ratification of the OPCAT is driven by mimicking and imitation of expected and appropriate behavior. The degree of the normative pressure is not uniform across the globe. The macro-sociological perspective explored above does not provide an adequate account of why some states do not ratify human rights treaties and why some ratify them earlier than others. The key question is how much the normative pressure influences states' decision (not) to ratify the human rights treaties. Under what conditions would be states pressured to ratify the human rights treaties? Two factors have frequently been discussed in the literature: neighboring countries and regional human rights institutions.

Neighboring states' ratification

[69] Other than the area of human rights, imitation or mimicking behavior has been also discussed in the literature with a more rationalist approach. Elkins, Guzman, and Simmons (2006) argued that signing bilateral investment treaties spread due to an international competition among developing counties for foreign direct investment (Elkins, Guzman, and Simmons 2006). When competitors have signed the treaties, potential hosts are more likely to do the same due to their concerns over the disadvantages of not sending the same signal. Hyde (2011) similarly explains a diffusion of international election monitors, suggesting that inviting an international election monitor is a signaling act for political leaders in democratizing states (Hyde 2011).

First of all, it is geographical proximity that likely influences states' behavior. A common identity and culture are likely to be shared among states in close geographical proximity. Close contacts and exchanges would reinforce the similarities in ideas and practices, facilitating diffusion of international norms across the region (Cardenas 2004). In the literature on diffusion, geographical clustering has been found in the case of democracy and national human rights institutions (Gleditsch and Ward 2006; Pegram 2010; Wotipka and Tsutsui 2008; Neumayer 2008). Gleditsch and Ward (2006) suggested that democratic political institutions in a given country are more likely to emerge as neighbors democratize (Gleditsch and Ward 2006). This is because autocratic leaders who are initially reluctant to initiate democratic reforms may be more likely to do so if they observe that their neighboring countries' experiences show that costs and consequences of reforms may not be as bad as they had feared. Pegram (2010) also reported a diffusion of national human rights institutions that displays a regional pattern. Studies on human rights treaty ratification similarly suggested that imitation often comes from neighboring states (Wotipka and Ramirez 2008) while consistently reporting this type of imitation effect (Cole 2005; Simmons 2009).

Regarding the OPCAT, I would expect the similar effect. As more neighboring countries ratify the Protocol, states are more encouraged to follow suit and decide to commit to the treaty. Above all, there would be a spotlight effect if a country had not yet ratified the OPCAT while many of its neighbors had already done so. Neighboring countries easily become reference groups, making non-ratification more noticeable. Social pressures can become stronger because domestic opposition

and transnational advocacy networks can be mobilized around campaigns for the OPCAT commitment. Human rights-violating countries that receive pressure from neighbors' ratification would be incentivized to use the OPCAT ratification as a type of social camouflage (Simmons 2009).

H8: A country is more likely to ratify the OPCAT if more neighboring countries have already ratified it.

Regional human rights regime

The second regional aspect affecting treaty ratification involves regional human rights institutions. With the development of global human rights institutions, regional human rights mechanisms have evolved and been innovated over the past decades. Taking Europe, the region with the most advanced regional human rights systems as an example, there are multiple layers of regional human rights mechanisms with different functions. The European Convention for the Protection of Human Rights and Fundamental Freedoms, established in 1954, has provided a normative core, promoted the legitimization of human rights discourse within the region, and provided a focus for non-governmental activities at both the domestic and regional levels. The Council of Europe has played a role of setting human rights standards in the region (Shelton and Carozza 2013). The European Commission of Human Rights investigated and publicized human rights concerns in a particular state in the region or throughout the region. The European Court of Human Rights exercises mandatory

jurisdiction and its decisions generate binding legal obligations for states.[70] The European Network of National Human Rights Institutions helps regional states establish national human rights institutes and coordinate the exchange of information and good practices between members.

However, Europe is not the standard for other regions. It has the most dynamic and institutionalized regional human rights systems. The Americas have comparable regional institutions such as the American Declaration of the Rights and Duties of Man, the Inter-American Commission on Human Rights, and the Inter-American Court of Human Rights, with fewer enforcement mechanisms. The African regime, including the African Charter on Human and Peoples' Rights, the African Commission on Human Rights and African Court of Peoples' and Human Rights, is much weaker than its American and European counterparts (Donnelly 2007). Asia and the Middle East have the weakest regional human rights mechanisms. Donnelly categorizes different levels of regional mechanisms into declaratory, promotional, implementation, and enforcement regimes (Donnelly 1986). Using his criteria, Europe has an enforcement regime while the Arab Middle East has a weak declaratory regime, and there is no regime in Asia.[71]

These varying levels of regional human rights regimes would affect states' decision to participate in international human rights agreements. States in a more

[70] Donnelly (2001) emphasized its adoption of the principle of evolutive interpretation. This means that treaty provisions are interpreted in a way that reflects current understandings and practices (Donnelly 2007).

[71] To note a recent development in Asia, the Association of Southeast Asian Nations (ASEAN) established the ASEAN Intergovernmental Commission on Human Rights in 2009. The Commission drafted the ASEAN Human Rights Declaration, which was adopted by ASEAN member states in 2012. The Declaration can be regarded as a weak declaratory regime.

advanced regional human rights regime would face greater normative pressure to ratify the OPCAT from regional states, inter-governmental organizations, and regional and domestic advocacy groups. Keck and Sikkink identify how transnational advocacy groups can influence states' human rights behavior at both the international and regional levels (Keck and Sikkink 1998, 1999). State leaders situated in a highly institutionalized region would regard commitment to the OPCAT as another appropriate behavior and find it compliant with the regional standards of human rights norms and practices. By contrast, a weak regional human rights system does not provide the same amount of normative and political pressure on states in the region. Human rights do not significantly influence mainstream national discourse; similarly, domestic and regional human rights NGOs are less influential in policy-making processes and change.

In particular, it is noteworthy that Europe has a regional counterpart to the OPCAT. As examined in Chapter 2, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ECPT) was adopted by the member states of the Council of Europe in 1987. The overall functions of the ECPT are comparable to the OPCAT except a legal obligation to set up or designate a national preventive mechanism. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment is permitted to visit any place within the jurisdiction of each state party where persons are deprived of their liberty. Like the OPCAT, a report on the facts found during the visit and recommendations can also be drawn. Therefore, countries that already ratified the European anti-torture convention would see the OPCAT ratification as less foreign

compared to other countries that did not ratify the regional anti-torture treaty. The familiarity with the visiting program of the OPCAT and reporting would make states parties to the ECPT less concerned about potential risks of OPCAT commitment while promoting their commitment to anti-torture norms at an international level.

H9: The probability of ratifying the OPCAT increases if there exists a stronger regional human rights institution.

3.3 Theories of States' Compliance with the OPCAT

This section explores theoretical frameworks to examine compliance with the OPCAT. The OPCAT has two dimensions of compliant behavior: the regular visiting program and NPMs. Most studies on states' compliance with human rights treaties focus on whether or not treaty ratification has an independent effect on human rights practices. Regarding the OPCAT, there are some reservations about estimating the overall effect of the OPCAT commitment on practice of torture. First, compliance with treaty terms of the OPCAT does not guarantee a direct reduction in torture practices. The Protocol is specifically designed to implement the visiting program and NPMs rather than addressing and criminalizing a list of torture issues. As the title of the treaty reads, it is a supplementary device to 'prevent' torture. Above all, it is very difficult to observe whether torture is prevented, and if so whether it is mainly due to the OPCAT commitment. At best, the OPCAT commitment may have a less direct influence on states' practice of torture. It is more likely that intervening mechanisms of international visiting and NPMs matter most in estimating the effect of the OPCAT

on torture. Therefore this section focuses on whether and how states comply with the visiting program and NPMs obligation, rather than attempting to estimate their overall effectiveness. For this purpose, three theoretical perspectives on the OPCAT ratification are used to draw a set of hypotheses on states' compliant behavior. Chapter 5 provides a descriptive statistics to find evidence for/against the hypotheses.

3.3.1 Literature Review

Whether and why do states (not) comply with international human rights treaties? This question has been a focal point for discussion in the studies of international human rights law (Hafner-Burton, Victor, and Lupu 2012). On the one hand, a group of studies suggests that treaty ratification does not guarantee states' compliance with it (Hafner-Burton and Tsutsui 2007; Hathaway 2002b; Keith 1999; Smith-Cannoy 2012; Hafner-Burton 2005). In her early study, Keith (1999) finds no relationship between ratification of the political and civil rights treaty and human rights protection. Hathaway (2002) confirms Keith's findings by arguing that noncompliance with treaty obligations appears to be common, and that treaty ratification is associated with even worse human rights abuses. Hafner-Burton and Tsutsui (2007) present similar findings that treaty ratification is not positively associated with better human rights practices. Hafner-Burton (2005) argues that it is, rather, preferential trade agreements, not human rights treaties, that improve human rights behavior. Smith-Cannoy (2012), using matching techniques, likewise argues that the International Covenant for Civil and Political Rights and the Convention

against Torture are associated with worse human rights behavior. These studies indicate states' non-compliance with the treaties.

However, some studies report states' compliant behavior. Most of these studies suggest that compliant behavior – human rights protection – are conditional based on state-level characteristics (Cardenas 2010; Hafner-Burton and Tsutsui 2007; Landman 2006; Neumayer 2005; B. A. Simmons 2009; Cole 2012). Neumayer (2005b) argues that democratic countries with a strong civil society are more likely to comply with the human rights treaties. Hafner-Burton and Tsutsui (2005) similarly find that non-compliance is associated with participation in international human rights treaties when a state has a weak civil society. Cardenas (2010) adds national security threats, pro-violation constituencies, and the rules of exception to the list of factors that conditions states' compliant behavior. Cole (2012) suggests that states are more likely to comply with the human rights treaties when there is a stronger commitment that allows state communication and individual petition mechanisms.

Most of these studies have been correlational studies and have not explained how states become compliant. In this regard, Simmons' study (2009) is noteworthy because she focuses on domestic politics, suggesting three mechanisms through which compliance would be more likely to be observed. First, domestic actors – pro-human rights advocacy groups in particular – can be mobilized and motivated to demand more human rights policy reform after treaty ratification. The treaty terms of human rights agreements with which states parties are obligated to comply become a focal point for their campaigns. Second, human rights can become part of a national agenda, drawing much domestic and international attention. Third, individual

litigation at domestic courts may increase with the implementation of the treaty terms by the treaty's states parties and integration into their domestic judicial systems. Although Simmons' studies do not provide quantitative evidence for these three mechanisms, it is worth noting that there are studies to examine conditional factors or causal mechanisms in support for the effectiveness of international human rights law.

What would be expected from states regarding compliant behavior with the OPCAT? It is a new domain for examination, given that the OPCAT is generally understudied in the literature. Another problem in the literature is that there is only weak consideration of the connection between participation and compliance. Most of the studies only focus on either participation or compliance, resulting in a separate understanding and incorrect causal relations. Hafner-Burton (2012) identifies this shortcoming in the literature, suggesting that participation, process, and influence cannot be separately analyzed (Hafner-Burton 2012). Assuming that motivations behind participation in the OPCAT partially affect states' behavior regarding the OPCAT, I provide some accounts of states' compliant behavior, especially the visiting program and NPMs from the three perspectives examined above.

3.3.2 Three Perspectives on States' Compliant Behavior

First of all, the screening perspective proposes that costs of ratification deter states from entering into the agreement in the first place. In other words, states parties to the Protocol are likely to consist of a group of states expecting, ex-ante, that complying with the treaty would not be significantly costly. It indicates that states that would be constrained by the treaty are not likely to ratify it. Therefore, once joined, states are

expected to comply with the OPCAT. Due to insignificant costs of commitment, their compliance with the visiting program and NPMs requirement is more likely to follow. This insight brings attention to issues of endogeneity and selection bias, issues frequently ignored in studies on treaty compliance. Von Stein (2005) empirically presents that states' participation in Article VIII of the IMF Treaty, which requires their current account free from restrictions. After controlling for selection bias, she finds that unobservable factors that lead states to sign Article VIII significantly increase their propensity to engage in compliant behavior (von Stein 2005). In her other study on an international treaty prohibiting child labor, she similarly argues that states that permit child labor are deterred from ratification due to costs of ratification and fear of enforcement (von Stein 2016). Her studies show that the international legal obligation appears to have little constraining power independent of the factors that lead states to sign.[72] The screening perspective shares this line of logic, predicting that committed states are likely to allow the SPT unrestricted access and comply with the obligation to establish or designate NPMs.

H1: The screening perspective predicts that states parties to the OPCAT display a high rate of compliance with the SPT visiting – allowing unrestricted access to places where liberty is deprived – as well as the NPM requirement due to low costs of commitment.

[72] Judith Kelly (2007) presents contradicting evidence. She argues that when states that ratified the Rome Statute were pressured by the US to sign a bilateral non-surrender agreement, many of them refused to sign due to the moral value of the ICC (Kelley 2007). She suggests that international commitments have a constraining power.

One important behavior to note is whether or not states parties permit the SPT reports to be published. The SPT recommends the state party to release the SPT report. Confidentiality of the SPT report, however, is not regarded as non-compliance because it is released to the public only when the concerned state party requests its release. However, the publication of the report plays an important role. First of all, it provides fact-findings to international and domestic observers. Given that those places the SPT is allowed to visit are in general not easily observable by the public, the media, and outside human rights groups, information in the report may mobilize human rights advocacy groups and generate a focal point where human rights campaigns can concentrate. It is therefore expected that there may be some countries concerned with the publication of the SPT report that may decide to keep it confidential. Countries with relatively poor human rights would especially see the publication of the SPT report as undesirable and decide not to request its release while ensuring that it is not a breach of the Protocol.

H2: Committed countries with poor human rights are less likely to make the SPT report public.

Second, the signaling perspective explains the OPCAT commitment by focusing on its instrumental value as a signaling tool. Democratizing states are likely to ratify the OCPAT to lock in their institutional reforms in favor of democracy and human rights while signaling to the domestic and international audience their intent to uphold those values Countries in political transition would regard compliance with

the treaty as a necessary step to ensure that their act of signaling would continue to be credible to the domestic and international audience. If countries ratify a human rights treaty and violate it, their credibility can be tarnished quickly. In addition to ratification costs, it is more likely for human rights observers to see whether countries are willing to bear costs of implementation. Therefore it is more likely to be observed that democratizing states comply with both the visiting program and the NPM requirement.

H3: Democratizing countries are more likely to comply with the visiting program and the NPM requirement.

Lastly, the regional perspective suggests that social and normative pressures are greater when states are surrounded by OPCAT ratifiers or a stronger regional human rights regime, exerting influence on states' decision to participate in the OPCAT. A compliant behavior with the OPCAT can be expected when a state is situated in a highly advanced regional human rights regime. Hafner-Burton and Tsutsui (2005) suggest that a state that ratifies a human rights treaty due to a normative pressure rather than a sincere commitment to comply with it can also improve its human rights when there is a strong linkage to international and regional civil society (Hafner-Burton and Tsutsui 2005). Like the spiral model of norm adoption explained, states can be pressured to comply with the treaty terms.

H4: Countries in a region where stronger human rights institutions exist are more likely to comply with the visiting program and NPM requirement.

3.4 Summary

This chapter examines some theoretical discussions of why states ratify the OPCAT and whether and how the OPCAT commitment has an effect on states' human rights practices. First of all, the three perspectives of participation were discussed. The screening perspective posits that states are less likely to ratify the Protocol if there are substantial costs of ratification. According to the signaling perspective, the OPCAT commitment is regarded as costly signaling for states to gain political and economic benefits. Furthermore, the third theoretical framework expects the ratification of the OPCAT to be geographically clustered. The OPCAT commitment is understood as a response to social and normative pressures, variably influenced by neighboring states' ratifications and regional human rights institutions.

Based on these different explanations of states' ratification of the OPCAT, I also provided expectations about states' compliant behavior with the OPCAT, especially the visiting program and NPMs. The screening perspective expects that committed states would be compliant with the treaty obligations. Regarding the publication of the report, there may be a group of countries concerned with their human rights conditions that decides not to release the SPT report. The signaling theory predicts that democratizing states are likely to lock in their institutional reforms and are likely to see better compliant behavior. From the regional perspective, a stronger regional human rights regime would be expected to associate

with more compliant behavior. Chapter 4 provides a quantitative analysis of OPCAT commitment by testing a set of hypotheses from the theories explained above in this chapter while Chapter 5 provides descriptive statistics to present rudimentary findings regarding states' compliance with the OPCAT.

Chapter 4: Analysis of OPCAT Ratification

4.1 Research Design

I conduct an event history analysis, also called a survival or duration analysis, to examine the determinants of the OPCAT. One may consider estimation techniques such as logit or probit. It may be conceptually clear if I construct a binary dependent variable to simply capture whether a country ratifies the Protocol or not. However, this traditional approach does not consider the length of time leading up to the ratification. Countries have time-varying characteristics such as GDP, trade, rates of regional ratification, and human rights conditions that may affect the ratification decision. Logit or probit estimation techniques would not be the most suitable to control for those variables that change over time.

Event history models estimate a hazard rate, or a probability of an event occurring given that it has not already occurred (Mills 2011). In this analysis, ratification of the OPCAT is taken as the "event" to be studied. That is, my event history models estimate the conditional probability of ratification of the OPCAT or the probability of ratification given that a country has not already ratified it. More specifically, I use the Cox proportional hazards model. It assumes parameter stability over time, meaning that the effect of a change in a particular covariate remains constant, regardless of when in the process that change occurs (Box-Steffensmeier, Reiter, and Zorn 2003). This assumption has the advantage of allowing the hazard to be estimated without placing any parametric assumptions on the baseline.

If mathematically expressed, let T be a discrete random variable indicating the timing of the ratification. The hazard rate, H(t), has two components: a failure function, f(t), and a survival function, S(t). "Failure" in event history analysis is equivalent to ratification in my analysis. j is the year of ratification.

$$f(t) = \Pr(T = t_j)$$

S(t), the survival function, is the probability that a country has not ratified the OPCAT.

$$S(t) = \Pr(T \geq t_j) = \sum_{j=i} f(t_j)$$

H(t) is the hazard rate, which is a ratio of the probability of failure to the probability of survival, or the conditional probability of survival given that failure has not already occurred. The hazard rate is constructed by estimating the maximum likelihood that a country will ratify the OPCAT.

$$h(t_j) = \frac{f(t)}{S(t)} \; or \; h(t_j) = \Pr(T = t_j | T \geq t_j)$$

If time-varying variables, x_{it}, are included, it can be expressed:

$$h(t_j | x_{ij}) = \frac{f(t_j | x_{it})}{S(t_j | x_{it})}$$

My observations contain all countries in the world from 2003 to 2014. The periods are in years. The year 2003 is when the OPCAT was opened for signature,

ratification, and accession. The last year that data for explanatory variables are available is the year 2014.[73]

4.1.1 Dependent Variable: OPCAT Ratification

The dependent variable, *OPCAT ratification*, measures whether a state commits to the OPCAT in a given year. Only ratification or accession is of interest in this study. While states can sign the OPCAT, it is not legally binding. It only indicates a state's willingness to engage in discussions. As of January 2018, 14 countries had signed but not yet ratified the Protocol. In this analysis, those signatures are not regarded as a commitment to the Protocol.

Event history models use the duration of time before an event occurred. It can be either discrete or continuous. The dependent variable is set to zero until the year a state ratifies or accedes to the OPCAT. Then that state drops out of the data. Since our independent variables are available in a discrete annual format, time is measured in discrete form. I used the UN Treaty Collection, which provides information on UN-based multilateral treaties to code the year of ratification of the OPCAT for each country.[74] Appendix 2 provides ratification information on the OPCAT. The dependent variable in this study is lagged by one year to avoid a reverse causality, which means that the decision to ratify the Protocol in 2013 is influenced by factors

[73] Some independent variables have a shorter time period. For instance, CIRI Physical Integrity Rights index are not available from 2012 to 2014.
[74] United Nations Treaty Collection (Accessed on January 10, 2018) https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9-b&chapter=4&clang=_en.

in 2012. If a state ratified the Protocol on January 2013, it would be inaccurate to make a causal argument by using variables representing the entire year of 2013.

For the purpose of comparison, I also include a variable for states' commitment to the CAT. CAT commitment is measured and coded in the same way. It is a binary variable from a period of 1984 to 2014 and is also lagged by one year.

4.1.2 Independent Variables

Human Rights Practices

To test the first and one of the main hypotheses, I create four variables of human rights practices using different sources. First, using Cingranelli and Richards' (CIRI) data, I create a *physical integrity rights index*, which consists of torture, political imprisonment, extrajudicial killing, and disappearance. Each category ranges from 0 to 2, summed up to create the physical integrity rights index, ranging from 0 to 8 with a higher value indicating better physical integrity rights. The second human rights practices variable is a torture variable, the *torture index,* again from the CIRI data. Torture refers to "the purposeful inflicting of extreme pain, whether mental or physical, by government officials or by private individuals at the instigation of government officials."[75] A score of 0 indicates that torture was practiced frequently in a given year; a score 1 indicates that torture was practiced occasionally; and a score of 2 indicates that torture did not occur in a given year. The third variable is the *Freedom House index,* which measures political rights and civil liberties reported by

[75] See Short Variable Descriptions for Indicators in the Cingranelli-Richards (CIRI) Human Rights Dataset

the Freedom House.[76] It assigns a score of 2 for states' human rights status of Free, 1 for Partly Free and 0 for Not Free. *Political Terror Scale* is the fourth variable, capturing levels of political violence and terror in a given country and year. The variable is based on a 5-level "terror scale" originally developed by Freedom House. The scale ranges from 1 to 5. A value of 1 indicates "countries under a secure rule of law, people are not imprisoned for their views, and torture is rare or exceptional. Political murders are extremely rare," while a score of 5 indicates that "terror has expanded to the whole population and the leaders of these societies place no limit on the means or thoroughness with which they pursue personal or ideological goals."[77] A correlation matrix for these four variables is presented in Table 1.

Table 4.1. Correlations among human rights practices variables

	Physical integrity rights index	Torture index	Freedom House index	Political Terror Scale
Physical integrity rights index	1			
Torture index	0.74	1		
Freedom House index	0.53	0.37	1	
Political Terror Scale	-0.83	-0.68	-0.5	1

[76] Using 10 political rights indicators and 15 civil liberties indicators, Freedom House creates political rights and civil liberties ratings, ranging 1 to 7. 1 is assigned for the greatest degree of freedom and 7 for the smallest degree of freedom. Freedom Rating is then calculated by averaging the two ratings, determining the status of Free (1.0-2.5), Partly Free (3.0-5.0) or Not Free (5.5 to 7.0).

[77] There are three versions of the Political Terror Scale index. In this analysis, I use the index based on reports from the US State Department.

It deserves to be mentioned that measuring human rights has been conceptually and methodologically challenging. There are different categories (civil, political, economic, cultural, and social) and dimensions (positive and negative) of human rights. A combination of multiple dimensions and categories requires a systemized and operationalized concept of human rights. Furthermore, there are very limited sources, with a possibility of under or over-reporting of events. Among the four measures of human rights introduced above, it is *Freedom House index*, based on press reports and country sources, which captures the broadest concept of human rights, including civil and political rights. The other two variables, the *Political Terror Scale* and *physical integrity rights index*, share a very close concept of human rights, measuring states' practices such as torture, political imprisonment, unlawful killing, and disappearance. Meanwhile, the *torture index* offers the 'narrowest' concept of human rights, which is most relevant to the study here. Using different measures of human rights would be helpful to address this measurement issue.

It is also important to recognize that human rights data have their limits. These four measures of human rights are standards-based data. They aggregate the information on human rights in a large number of countries. They establish comparability, enabling researchers to conduct cross-country and time-series analyses. Given that alternatives such as event-based or survey-based data have their limitations, such as over- or under-reporting of events, selection bias, cultural bias, and misunderstanding of the questions across countries, standards-based data has more advantages. However, some specific information, such as types of human rights

abuses or human rights violators, may be lost in the process of raising the level of abstraction (Landman 2005, 2006).

Costs of Adjustment

To measure costs of ratification hurdles, I create a variable, *political constraints*. I adopt approaches used by Neumayer (2007) and Hill (2015), and use the number of veto points measured by the political constraint index created by Henisz (2002). This variable captures the existence of independent executive and legislative branches with veto power over policy (Henisz 2002). The variable ranges from 0 to 1, with a higher value indicating less discretion over policy change. For common law systems, I use data from Powell and Mitchell (2007) and create the variable *common law* to measure whether a country uses a common law system in the British tradition (Powell and Mitchell 2007). A value of 1 is assigned to countries with common law while 0 is assigned for countries with civil law or mixed systems. To measure judicial independence, I create *judicial independence* and adopt the measure, *Latent Judicial Independence*, developed by Linzer and Staton (2015). Given that judicial independence is not directly observable, this variable provides time-series, cross-sectional data that address the challenges of measuring judicial independence on a global scale (Linzer and Staton 2015). It is noteworthy that the conceptualization of judicial independence is not without controversy, and there are different approaches toward conceptualizing judicial independence. One way is to distinguish de facto independence, focusing on independent judging in practice, from de jure independence, with its consideration of the existence of formal institutions. Another

way is to investigate whether or not a judge is autonomous from undue external influence, especially from government. This variable not only captures whether or not a judge has this autonomy, but also examines whether a decision by the judge is properly implemented, thus constraining others' behavior or choices (Linzer and Staton 2015).

Varying Levels of CAT Commitment

I create *CAT commitment level* to capture varying levels of commitment to the CAT. I use a 5-point scale measurement. If a country has not ratified the CAT, it is coded as 0. Even if the country signed the CAT, it is considered as non-binding and thus treated as non-commitment. If a country ratified with reservations and declarations, it is coded as one, while two is assigned to countries that ratified the CAT without any qualifications. The CAT also has Article 21 and Article 22, which can be optionally declared by countries when they ratify it. Article 21 concerns inter-state communication, while Article 22 addresses the individual petition mechanism. Thus, if a state declares its commitment to any of these Articles, it should be regarded as a higher level of commitment to the CAT. Therefore, I assign a value of 3 to countries with a further commitment to either Article 21 or Article 22. Finally, a value of 4 is assigned to countries who ratified the CAT with declarations made on the both articles.

Democratization

For another measure to test the signaling hypothesis for democratizing states, I create a binary variable, *democratization*, to measure whether a country is in the process of democratization or not. Following an approach suggested by Cheibub, Gandhi, and Vreeland (2010), a country is coded as democratizing if there is a transition in the Polity IV score from autocracy to either anocracy or democracy, or from anocracy to democracy between t and t-5 year. Autocratization is measured in the same way when democracy is transited to anocracy or autocracy, or when anocracy is transited to autocracy (Cheibub, Gandhi, and Vreeland 2010). Variables for stable anocracy and stable democracy are also created for states who do not make a transition within the five-year time span. A value of 1 is assigned to a country undergoing democratization, and 0 is assigned for other regime types.

Dependency on External Economic Relations

I create three economic variables to measure how dependent a state is on external economic relations. First, using the World Bank Integrated Trade Solution system provided by the World Bank, I create *trade* to measure trade dependency. Trade is the sum of exports and imports of goods and services measured as a share of gross domestic product. Second, I create *foreign direct investment* to measure the net inflows of foreign direct investment as a percentage of the gross domestic product. This data is retrieved from the World Development Indicators. Third, foreign aid data, *foreign aid per capita,* is the net official development assistance (ODA) per

capita, drawn from the Organization for Economic Cooperation and Development (OECD).

Ratifications by Neighboring Countries

I create *neighbors' ratifications* to measure the density of OPCAT ratifications by neighboring countries. If a country has five neighboring countries of which two have ratified the treaty, a density score is calculated by dividing two by five, which is equal to 0.4.

Regional Human Rights Regime

I create two different variables to measure the strength of regional human rights regimes. The first variable is *regional human rights regime*, which captures the strength of the regional human rights regime. Using criteria explained by Donnelly (1986, 2007), the strength of the regime is evaluated by figuring out if the region has an enforcement, implementation, monitoring, or declaratory regime. If a region has a human rights regime with an enforcement mechanism, it is regarded as the strongest regime, coded 3, which is the case in Europe. The Americas, a region with a promotional regime, is assigned a numeric value of 2. The African regime is on the borderline between promotional and declaratory regimes, and is thus assigned a 1. The other regions, including Asia and Oceania, where only weak or no regional human rights regime exist, are coded 0. Another measure I create is *ECPT*, which refers to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. The ECPT is a regional counterpart to the

OPCAT regarding its purpose and visiting mechanism, which can be understood as the most relevant and strongest regional human rights mechanism against torture. *ECPT* measures whether countries have ratified the ECPT. If a country has ratified it, that country is coded 1, otherwise, 0.

4.1.3 Control Variables

I include a set of variables from the existing literature on treaty ratification to control for other potential effects on states' ratification decisions. First, a variable of *civil war* is included in models to control for its expected negative effect on the likelihood of treaty commitment. This is because a state in a civil war is likely to engage in torture activities, and is thus less likely to commit to the OPCAT (Conrad and Moore 2010). For this civil war variable, the Uppsala Conflict Data Program (UCDP) / Peace Research Institute in Oslo (PRIO) Armed Conflict Dataset (version 4-2015) is used. According to the UCDP, conflict is defined as "a contested incompatibility that concerns government and/or territory where the use of armed force between two parties, of which at least one is the government of a state, results in at least 25 battle-related deaths."[78] One is coded if there is an armed conflict in a given country at a given country, and 0 for otherwise.

Second, using data from Conrad (2012), *Muslim* measures if a country has a majority-Muslim population. This variable is expected to have a negative effect on the likelihood of commitment to the OPCAT. Third, a logged population variable is

[78] See UCDP-PRIO Dataset Codebook (version 3) http://www.prio.no/cwp/armedconflict/current/Codebook_v3-2005.pdf

also included with the expectation that a larger population has a positive effect on state commitment to the OPCAT. Finally, I include a variable for logged GDP per capita. It is measured in thousands of (1995 purchasing power parity) dollars. Greater GDP per capita is expected to increase the probability of ratification. Table 4.2 displays definition and descriptive statistics of main dependent, independent and control variables. The statistics represent mean and standard deviation values for the variables in the study period during which time countries are 'at risk' for ratification of the OPCAT.

For comparison, I also include a Cox Hazard statistical model to estimate effects of variables on states' probability of ratifying the CAT. In this model, the dependent variable is a binary variable of whether a state ratifies the CAT or not in a given year from 1984 to 2014. I included the same independent and control variables that I used in models accounting for states' commitment to the OPCAT. There are two caveats to note here. First, since the CAT was open for signature and ratification in 1984, variables in the CAT model have a wider time span from 1984 to 2014. Another caveat is that the CAT model excludes the variable, *CAT commitment level*, which measures the level of commitment to the CAT.

Table 4.2. Definition and descriptive statistics for variables

Variable	Definition	Mean	SD
Ratification of OPCAT	Ratification of the OPCAT	0.24	0.43
Human rights practices	Measured by Physical Integrity Index by Cingranelli & Richard (2014)	4.62	2.17
Political constraints	Measured by Political Constraint Index by Henisz (2002)	0.30	0.21
Common law	Measured by Powell and Mitchell (2007)	0.18	0.39
Judicial independence	Measured by Linzer and Staton (2015)	0.49	0.29
CAT commitment level	Level of commitment to the CAT	2.23	1.47
Democratization	Dummy variable for democratizing states	0.06	0.24
Trade	Measured by the sum of exports and imports of goods and services (% of GDP)	87.26	48.72
Foreign direct investment	Measured by net inflows of Foreign Direct Investment (% of GDP)	5.13	10.65
Foreign aid for government	Measured by net ODA (Official Development Assistance) received (% of central government expense)	278.48	2806.16
Foreign aid per capita	Measured by net ODA received per capita	78.34	236.14
Neighbors' ratifications	Density of OPCAT ratification among neighboring countries	0.24	0.31
Regional human rights regime	The strength of regional human rights regime	1.3	1.13
ECPT	European Convention for the Prevention of Torture	0.22	0.41
Civil war	A dummy variable for countries with civil war	0.16	0.37
Muslim	A dummy variable for countries with a majority-Muslim population	0.29	0.46
GDP	Measured by logged GDP per capita	8.35	1.56
Population	Measured by logged population	16.14	1.62

4.2 Results and Discussions

In this section, I report key findings of explanations for states' commitment to the OPCAT. The three different perspectives explained in the previous chapter are statistically evaluated to adjudicate which has more of explanatory power. Furthermore, I also discuss implications of my findings on the studies of human rights treaty commitment. In my event analysis models, a positive coefficient indicates that as that independent variable increases, the state is more likely to commit to the Protocol. Three different levels of statistical significance – 0.01, 0.05 and 0.1 – are used in the statistical analyses.

4.2.1 Evaluating the Screening Perspective

Table 4.3 presents estimates of the effect of variables from the screening perspective on the probability of states' commitment to the OPCAT. Coefficients and robust standard errors in parenthesis, adjusted for clustering by country, are also reported.

To test the first set of hypotheses (1a and 1b), I use four different measures of human rights practices, including CIRI physical integrity rights index, CIRI Torture index, Freedom House index and Political Terror Scale. In my first hypothesis, I predict that countries with poorer human rights practices are less likely to commit to the OPCAT. This expectation is drawn from the treaty terms of the Protocol on regular visits, national preventive mechanisms, and no reservation clauses, all of which are assumed to increase costs of ratification substantially. However, the statistical results from models 1 through 4 do not offer empirical evidence to support this hypothesis. Although the directions of those estimates of variables indicate that

better human rights records are associated with a higher probability of OPCAT ratification, none of human rights practices variables has a coefficient which is statistically significant.

Table 4.3. Screening perspective - Analysis of OPCAT commitment

	Model 1	Model 2	Model 3	Model 4
Physical integrity rights index	0.01 (0.11)			
Torture index		-0.21 (0.25)		
Freedom House index			0.42 (0.299)	
Political Terror Scale				-0.26 (0.198)
Political constraints	0.65 (0.92)	0.84 (0.88)	0.35 (0.92)	0.4 (0.9)
Common law	-1.05** (0.49)	-1.06** (0.48)	-1.18** (0.495)	-1.16** (0.499)
Judicial independence	0.98 (0.93)	1.12 (0.9)	0.47 (0.97)	0.93 (0.87)
CAT commitment level	0.57*** (0.097)	0.57*** (0.098)	0.61*** (0.099)	0.6*** (0.1)
Civil war	-0.28 (0.56)	-0.32 (0.51)	-0.15 (0.5)	-0.07 (0.61)
Muslim	0.26 (0.36)	0.32 (0.36)	0.31 (0.35)	0.14 (0.37)
Population	-0.12 (0.11)	-0.15 (0.11)	-0.12 (0.1)	-0.06 (0.099)
GDP per capita	-0.25** (0.11)	-0.22* (0.12)	-0.26 (0.1)	-0.32*** (0.11)
Number of Observations	1114	1117	1209	1199
Number of Countries	155	155	155	154

*Note: Robust standard errors in parentheses. Significance at ***0.01; **0.05; *0.1 levels.*

Among 87 states parties to the OPCAT, it is not difficult to identify some of the countries with poor human rights records that have ratified the Protocol. For instance, Turkey's human rights records did not improve and remained poor when it

ratified the OPCAT in 2011.[79] Police violence against demonstrators, including the use of firearms, remained a serious concern for domestic and international observers.[80] In November 2010, the UN Committee against Torture raised concerns about Turkey's failure to investigate numerous, ongoing, and consistent allegations concerning the use of torture.[81] Amnesty International also made a public statement on 25 November 2010, calling on the Turkish government to act against torture and impunity. However, no progress was made toward tightening the rules regulating the use of force against demonstrators or detainees when the OPCAT was ratified in 2011. Another case is Nigeria, which ratified the Protocol in 2009.[82] President Umaru Yar'Adua and his government made little progress in improving human rights. Human rights abuses in Nigeria include extrajudicial killings, torture, and extortion related to sectarian clashes as well as human rights abuses by Nigerian security forces. In 2008 in responding to election-related violence in Jos, there were more than 130 unlawful killings. The Boko Haram leader Mohammed Yusuf, his father-in-law, Baba Mohammed, and a governmental official, Buji Foi, were killed in police custody. Human Rights Watch reported that some state governments in the country apply Sharia law as their part of criminal justice system and criticized that some of their sentences, like the death penalty, by the state governments are regarded as cruel,

[79] Turkey's CIRI physical integrity rights score was 2 in 2011. The CIRI torture score remained 0 from 2006 to 2012.
[80] Human Rights Watch, World Report 2012.
[81] See also a document created by the Committee against Torture, "Consideration of reports submitted by States parties under article 19 of the Convention" Forty-fifth session, Geneva, 1-19 November 2010.
[82] Nigeria's CIRI physical integrity rights score was 1 in 2009; the CIRI torture score was 0.

inhuman, and degrading punishment.[83] These two cases show that some countries ratified the Protocol with fewer concerns about their poor human rights records.

From the results in Table 4.3, it is reported that countries with poorer human rights practices are *not* less likely to ratify the OPCAT. Above all, this finding directly contradicts the first theoretical perspective which posits that the costs of ratifying the OPCAT would be substantial, deterring human rights-violating countries from signing and ratifying it in the first place. It is feasible that states with poor human rights practices still regard their commitment to the OPCAT as costly due to the regular monitoring, required establishment of national preventive mechanisms, and the no-reservations clause. However, the result suggests that those costs are not substantial enough to screen out human rights violators. As suggested in the conflicting hypothesis (1b), the institutional loopholes of the Protocol may allow states to consider potential costs of ratification to be minimal or almost negligible. Reports created by international visitors can be made inaccessible to the public unless the host country consents to make it public. Strengthened monitoring might not be a concern for them because the report contains only recommendations, not legally binding mandates. The lack of enforcement mechanisms in the OPCAT may simply render it seen by some state leaders, including human rights violators, as a no-cost commitment. Moreover, other domestic circumstances may also influence leaders' disregard for the costs of OPCAT ratification. State leaders may have different discount rates for the costs of non-compliance. Some may have a shorter time horizon and are more concerned with uncertainty and potential consequences of OPCAT

[83] Human Rights Watch, World Report 2010.

ratification. They may then see the ratification of the treaty as riskier. If the media is strongly controlled by the government, state leaders may offset potential damages caused by the exposure of their human rights violations to a domestic and international audience.

If the costs of ratification do not deter human rights-violating countries from entering into the Protocol, it raises another question of what *makes* those human rights abusers commit to the Protocol. The existing literature does not have a clear answer to this fundamental question, especially regarding human rights-violating countries. A study on CAT commitment by Vreeland (2008) deserves a discussion here. He argues that it is a small concession for rights violating countries to sign and ratify the CAT so that they can eschew substantial and significant change in their human rights practices and still build a good reputation in front of domestic opposition (Vreeland 2008). States' commitment to the OPCAT can be similarly understood as a further small concession once the OPCAT does not hold substantial costs of ratification for the rights-violating countries.

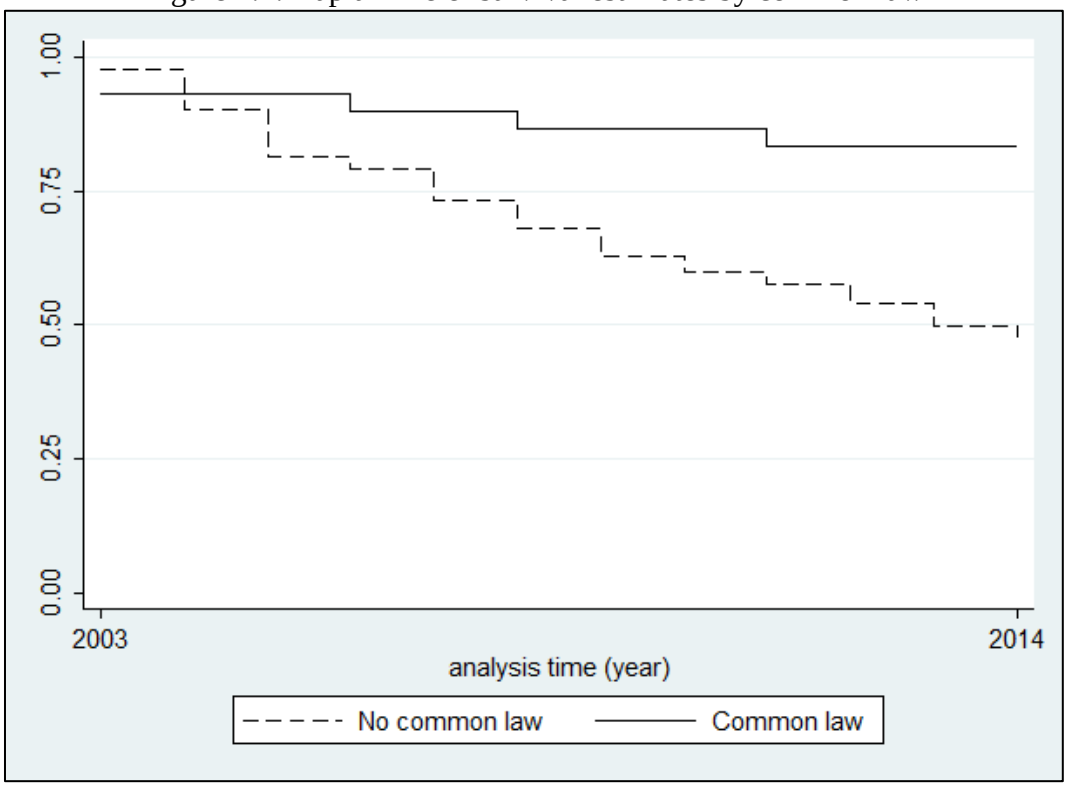
Regarding hypotheses 2 and 3, political and judicial costs of implementation, integration, and adjustment present mixed support for the screening perspective on the OPCAT ratification. From models 1 through 3, political constraints measured by veto points do not affect the chance of states ratifying the Protocol.[84] By contrast, the variable which captures countries with common law systems is statistically significant across the models. The finding implies that it is less likely for countries with the common law system to ratify the OPCAT. For instance, in model 1, the coefficient of

[84] When excluding the CAT commitment level in models, judicial independence displays as statistically significant. However, its direction is not consistent across all models.

the common law variable is -1.05, which is translated into a hazard ratio of 0.35. It means that countries with a common law system are 65% less likely ratify the Protocol than countries with civic or mixed law systems would do

To visualize this finding, Figure 4.1 shows Kaplan-Meier estimates for countries with and without the common law system. The Kaplan-Meier estimate displays survival over time. In this study, survival implies time until ratification of the OPCAT. The vertical axis in the graph presents a proportion of countries that have not ratified the Protocol. The horizontal axis indicates analysis time, which begins in the year of 2003. As one moves across the horizontal axis, the lines descend, indicating that more and more countries ratify the Protocol over time. As Figure 2 shows, an estimated probability of the OPCAT commitment for countries without common law systems approaches 0.5 in the year of 2014, while the survival rate by countries with common law systems is still close to 0.8. In other words, the line representing countries without the common law descends more rapidly than the line for countries with common law. These results indicate that this difference is statistically significant at 0.01 significance level and does not occur by a random chance.

Figure 4.1. Kaplan-Meier survival estimates by common law

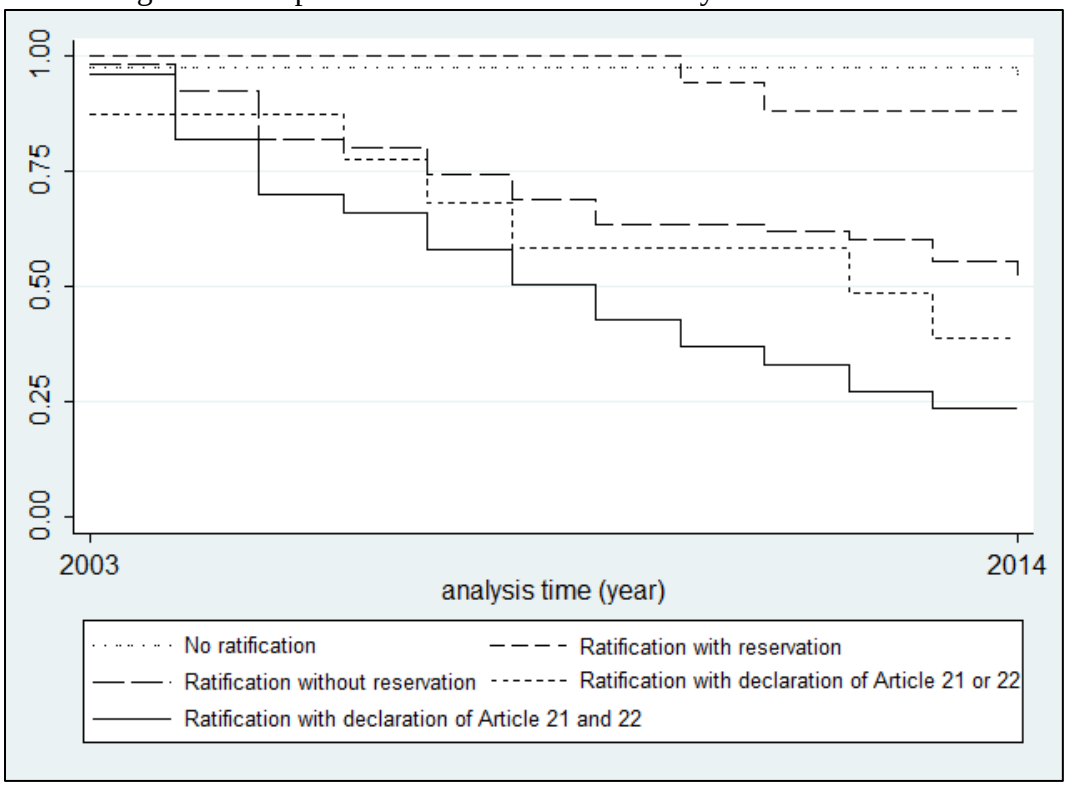


Domestic enforcement regarding hypothesis 4 shows neither the expected direction of influence on the chance of OPCAT ratification, nor a statistical significance. This finding contradicts previous studies showing that effective domestic judiciaries decrease the likelihood of treaty ratification (Powell and Staton 2009). The case of the OPCAT implies that states are not concerned with judicial independence when they sign the Protocol. It is explicable that the international visiting program and national preventive mechanism do not consider judiciaries and their enforcement as direct and substantial as in other treaties that require domestic laws to criminalize certain acts and policies against human rights.

The last hypothesis from the screening perspective predicts that states' previous level of CAT commitment influences their decisions to further ratify its

optional protocol. With a higher level of commitment to the CAT, states are more likely to ratify the OPCAT because they expect smaller costs of adjustment and implementation. This prediction is strongly supported by empirical evidence across models presented in Table 4.3. For instance, an estimated coefficient of the CAT commitment variable in the model 1 is 0.57, equivalent to a hazard ratio of 1.77. It is then interpreted that states with one-level higher commitment to the CAT have a 77% higher chance of ratifying the OPCAT. Kaplan-Meier survival estimates in Figure 4.2 visually present this finding. The line representing countries with the highest level of commitment – ratification with declarations made on Article 21 and 22 – approaches 0.25 at the end of the analysis period. In 2014, three-fourths of countries in this group ratified the OPCAT. This group of countries with the highest degree of CAT commitment is more likely to ratify the Protocol, and more quickly, than the other groups. This difference is statistically significant according to the results in Table 4.3. Additionally, I conduct the same analysis with a sub-sample of countries excluding countries that have not ratified the CAT, assuming that non-ratifiers of the CAT may bias the estimates reported in Table 4.3. The sub-sample analysis provides similar results that the stronger commitment to the CAT is positively associated with the greater likelihood of states ratifying its Protocol.

Figure 4.2. Kaplan-Meier survival estimates by CAT commitment



The findings regarding the hypothesis relating the CAT commitment level to the OPCAT commitment draw two important implications for studies on states' participation in international human rights agreements. First, studies on states' commitment to optional protocols can benefit from the theorizing on the relation between states' commitment to original treaties and their optional protocols. Existing studies often ignore or underestimate this connection. Their approach to treating them as independent of one another does not account for the influences of original treaty ratification on leaders' decisions to further commit to optional protocols. As the evidence suggests, the probability of signing and ratifying the OPCAT is strongly

related with states' previous levels of CAT commitment. In this regard, it is important to identify how the previous level of CAT commitment affects the decision for further commitment to the OPCAT. From the screening perspective, states with a weaker commitment may see greater costs associated with signing the OPCAT. They may first consider increasing their commitment levels to CAT before agreeing to the terms of OPCAT if they want to increase their commitment level in a less risky and more practicable way. If a country ratifies the CAT and makes declarations acknowledging the authority of the Committee to receive complaints from member states, individuals, or groups of individuals, the country may anticipate a smaller step forward toward the OPCAT commitment due to the smaller costs of adjustment and implementation. It would make them more likely to ratify the Protocol than states with a weaker commitment to the CAT.

Another important discussion should focus on how different levels of CAT commitment influence domestic politics, which in turn affect state leaders' decision to ratify the Protocol. If the CAT is ratified, it can act as a focal point for the mobilization of domestic groups. As Simmons (2009) explains, joining international human rights treaties can place human rights issues on the national agenda, drawing much more domestic and international attention and discussion. Furthermore, domestic groups may demand stronger human rights policy reforms to implement the CAT. Domestic litigation may also increase with the integration of the anti-torture norms and practice into domestic judicial systems. However, we do not know yet whether and how these domestic changes affect states' further commitment to the OPCAT. The finding in Table 4.3 does not lend any direct evidence of likely changes

in domestic politics that may lead up to the OPCAT commitment. Two different causal mechanisms are possible. More mobilization, national agenda setting and domestic incorporation of the CAT may cause states' compliant behavior and better human rights records. These domestic changes may pressure state leaders to further commit to the Protocol while making it less costly to ratify it. Alternatively, some state leaders may learn that there are few changes and pressures in the phase of post-ratification of the CAT, making them less worried about further OPCAT commitment. Future studies should identify the mechanisms linking the previous CAT commitments to states' further decision to ratify the OPCAT with a focus on dynamic changes in domestic politics after the CAT commitment and their influence on the decision to further ratify or not ratify the Protocol.

4.2.2 Evaluating the Signaling Perspective

The signaling perspective proposes that states ratify the OPCAT for instrumental purposes, to gain political and economic benefits in particular. Table 4.4 presents statistical results of signaling models of OPCAT commitment. First of all, regarding hypothesis 6, the democratization variable is not statistically significant. It indicates that countries undergoing democratization are *not* more likely to ratify the OPCAT than those countries not undergoing democratization. This finding provides evidence against the previous studies suggesting treaty commitment as signaling or credible commitment. For instance, Moravcsik (2000) argues that international human rights institutions are joined by countries that want to reduce domestic uncertainty and lock in domestic reforms (Moravcsik 2000). He explains that Eastern European countries

had this motivation around the time of the collapse of the Soviet Union and the following political transitions. Similarly, Hafner-Burton, Mansfield, and Pevehouse (2013) argue that democratizing states are more likely to participate in human rights institutions that impose greater constraints on state sovereignty. By joining high-cost human rights institutions, states want to make a costly commitment to increase the quality of their signal about their intentions. They specifically mention that the OPCAT is such a high-cost human rights institution and thus should be joined by democratizing states (Hafner-Burton, Mansfield, and Pevehouse 2015). However, my findings do not offer the evidence in support of their expectation and instead challenge the claim of the signaling theory that OPCAT ratification has a signaling value that motivates democratizing states to sign and ratify it.

Table 4.4. Signaling perspective – Analysis of OPCAT commitment

	Model 1	Model 2	Model 3	Model 4	Model 5
Democratization	0.5				0.58
	(0.43)				(0.42)
Trade		-0.002			-0.004
		(0.002)			(0.005)
Foreign direct investment			0.02*		0.046***
			(0.01)		(0.011)
Foreign aid (per capita)				0.0005**	-0.0005
				(0.0002)	(0.002)
Civil war	-0.54	-0.56	-0.48	-0.34	-0.38
	(0.44)	(0.44)	(0.44)	(0.46)	(0.46)
Muslim	-0.39	-0.37	-0.39	-0.1	-0.18
	(0.28)	(0.28)	(0.28)	(0.3)	(0.299)
Population	-0.0004	-0.01	0.01	0.036	0.01
	(0.07)	(0.08)	(0.73)	(0.097)	(0.1)
GDP per capita	0.14*	0.12*	0.1	0.19	0.21
	(0.07)	(0.07)	(0.07)	(0.13)	(0.14)
Number of Observations	1441	1395	1424	1076	1013
Number of Countries	161	159	160	121	118

*Note: Robust standard errors in parentheses. Significance at ***0.01; **0.05; *0.1 levels.*

The second signaling hypothesis, which is also based on the assumption that there are substantial costs of ratification, suggests the OPCAT commitment as a signaling tool for states to gain international economic benefits. It predicts that states that are more reliant on foreign economic benefits are more likely to ratify the OPCAT. From models 2 through 5, three different economic measures, including trade, foreign direct investment, and foreign aid per capita are used to test the signaling claim.

Other than the trade variable measured by a share of GDP, foreign direct investment and foreign aid are statistically significant, indicating that a greater dependence on foreign direct investment or foreign aid increases the probability of OPCAT ratification. In the model 2, a coefficient of 0.02 is equivalent to a hazard ratio of 1.02, which means that a one percentage point increase in the net FDI inflows as a percentage of GDP increases by 2% the chance of OPCAT ratification. However, this variable loses statistical significance in the model in Table 4.6, which includes all the main independent variables from the three theoretical frameworks.

The foreign aid per capita variable is also statistically significant with a coefficient of 0.0008 and a hazard ratio of 1.00053. It can be interpreted that one dollar increase in net ODA (Official Development Assistant) per capita increases by 0.053% the probability of joining the OPCAT. It is debatable whether or not this variable has substantive importance given the small size of the effect on the chance of Protocol ratification. Moreover, the foreign aid variable displays the opposite direction of effect and is no longer statistically significant in model 5 where all the economic measures are included. Neither is the variable in the model that includes all

the independent variables from the three perspectives as presented in Table 4.6. For a robustness check, I use alternative measures of foreign aid, such as foreign aid as a share of central government expenses or Gross National Income. Neither of them holds statistical significance across a set of differently specified models.

All of these empirical findings challenge the common assumption, for instance, made by Hathaway (2007) that ratification of human rights treaties would bring material benefits to its member states. If the OPCAT, which is assumed to have greater costs of ratification and thus greater signaling value, does not yield international economic gains, it is questionable whether there are material incentives for states to commit to other human rights treaties. This is in line with empirical findings by Nielsen and Simmons (2015) that states do not get rewarded for their ratification of human rights agreements. Two explanations are possible for the lack of economic rewards. First, the ratification of human rights treaties may fall short of signaling. For example, donor states may not regard the commitment as a costly action because there is a further assessment stage – compliance. If states ratify the human rights treaties and do not uphold their promises, international donors would easily identify the commitment as a false promise and decide not to reward them. Second, investors or trading partners may not consider the OPCAT commitment as an important clue for their investment or trading decision. This possibility emphasizes that the OPCAT commitment may be a supplementary instrument for signaling at best. This then raises two puzzling questions of how much states' commitment to human rights treaties can contribute to their signaling in contrast to signing and ratifying bilateral and multilateral investment and trade agreements, and how strongly

the ratification of the OPCAT can send a signal compared to other human rights treaties.

To sum up, the signaling models represent mixed but overall weak evidence for determinants of states' OPCAT commitment. There is no statistical evidence supporting the claim that democratizing states tend to join the Protocol to send a costly signal of their intent to support human rights, democracy, or the rule of law. Some of the economic signaling models have support for FDI and foreign aid variables, but those variables do not hold statistical significance when different measurements are used or when models with different specifications are tested. These findings call into question the signaling perspective that the OPCAT has greater costs of ratification and is thus ratified by a certain group of states as a signaling device for political and economic benefits.

4.2.3 Evaluating the Regional Perspective

The third perspective proposes that social and normative pressures, which vary across regions, play a role in influencing states' ratification decisions. In particular, more ratifications by neighboring countries and a stronger regional human rights regime are likely to increase the probability of OPCAT commitment.

Table 4.5 reports statistical results from this theoretical approach. The variable measuring neighboring countries' ratifications is statistically significant in models 1 and 4, meaning that neighboring countries' ratifications are positively associated with a higher chance of states committing to the OPCAT. The hazard ratio is 2.1, which

indicates 110% higher chance of ratifying the Protocol as one percentage point of neighboring countries' ratification density increases.

Table 4.5. Regional perspective – Analysis of OPCAT commitment

	Model 1	Model 2	Model 3	Model 4
Neighbors' ratifications	0.73***			0.56***
	(0.16)			(0.13)
Regional human rights regime		0.62***		0.39*
		(0.15)		(0.23)
ECPT			1.38***	0.44
			(0.32)	(0.5)
Civil War	-0.5	-0.35	-0.43	-0.34
	(0.43)	(0.47)	(0.46)	(0.46)
Muslim	-0.31	0.21	-0.08	0.11
	(0.28)	(0.32)	(0.3)	(0.74)
Population	0.009	0.001	-0.01	0.01
	(0.08)	(0.09)	(0.08)	(0.1)
GDP per capita	0.07	-0.05	-0.08	-0.1
	(0.07)	(0.08)	(0.08)	(0.09)
Number of Observations	1411	1441	1441	1411
Number of Countries	159	161	161	159

*Note: Robust standard errors in parentheses. Significance at ***0.01; **0.05; *0.1 levels.*

The regional human rights regime also affects states' ratification behavior. As presented in Figure 4.3, countries in Europe or the Americas are much more likely to ratify the OPCAT than countries from other regions. Europe has the most advanced regional human rights regime while America comes in second. In particular, more than four-fifths of European countries, about 82%, were states parties to the Protocol at the end of 2014. A total number of 73 countries ratified the Protocol, and 45 countries of those countries (62%) are located in either Europe or the Americas. Kaplan-Meier survival estimates in Figure 4.4 present a similar result that European countries are quicker and more likely to ratify the OPCAT. For countries in the Americas, the survival rate descends at a slower pace and approaches slightly below

0.5 in 2014. Also, countries that ratified the ECPT are more likely to ratify the OPCAT than other countries. The variable *ECPT* is statistically significant, and the size of influence on states' commitment to the OPCAT is substantially large with a coefficient of 1.38, which is a hazard ratio of 3.97.

Figure 4.3. Proportion of OPCAT ratification by region, 2003-2014

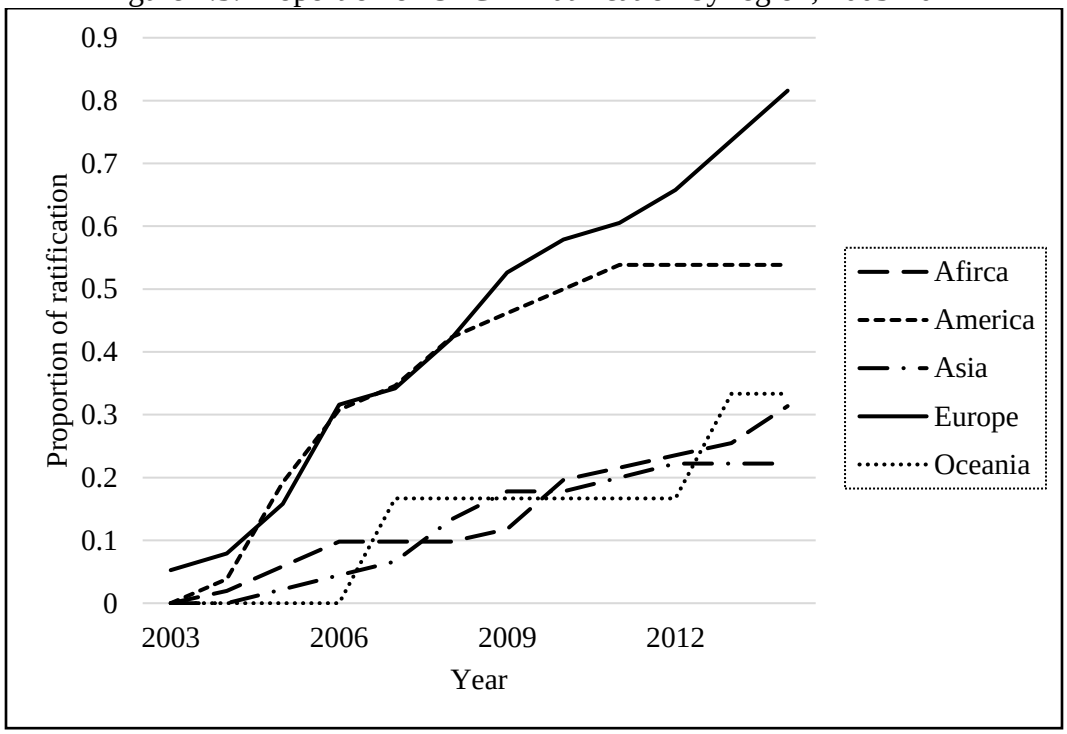
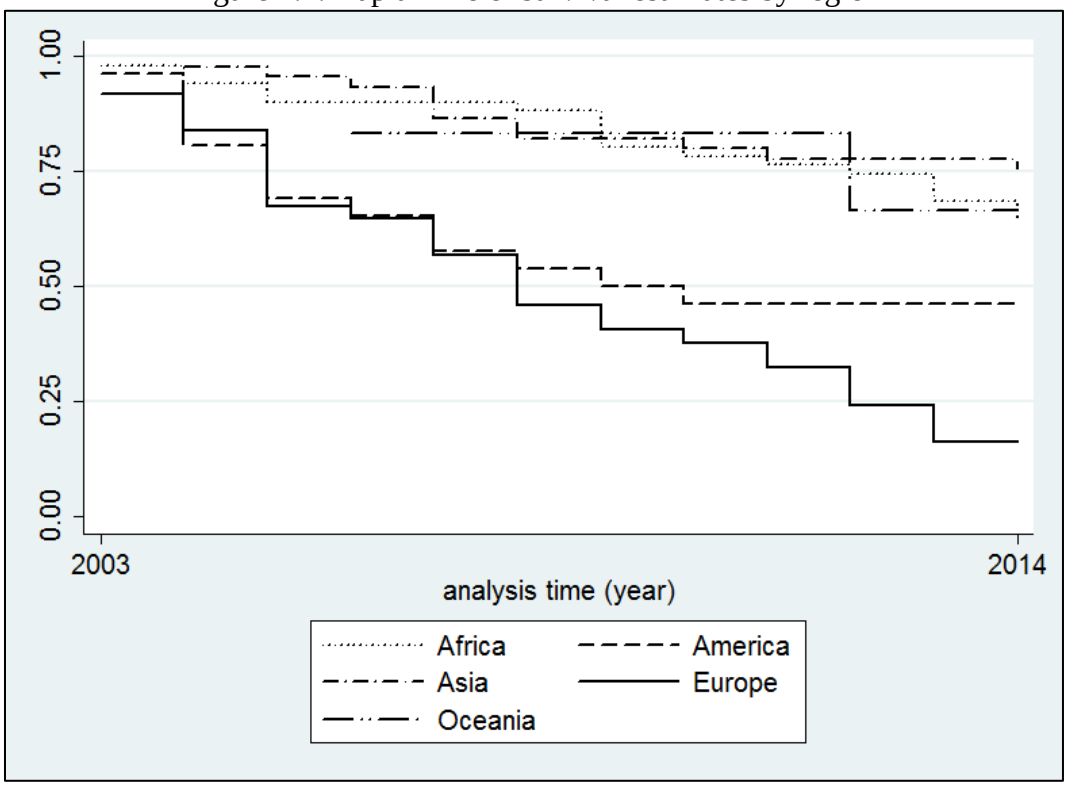


Figure 4.4. Kaplan-Meier survival estimates by region



As explained in the theory section, this regional clustering shows how states respond to the normative and social pressure to participate in international human rights treaties. It may be a socialization process through which states regard the commitment as appropriate as more neighboring countries follow suit. It could also be a rational response by some regional states, rather than a result of socialization or norm internalization, to regional and peer pressure. Some states in a region where strong human rights norms and institutions exist may simply want to save face and eschew the spotlight of non-ratification. It is not always clear whether the logic of appropriateness or logic of consequentialism is more accurate in explaining OPCAT ratification behavior from the regional perspective. The literature on norm diffusion and some constructivists' studies indeed suggest that these two mechanisms may co-

exist (Simmons, Dobbin, and Garrett 2006; Fearon and Wendt 2002; Risse, Ropp, and Sikkink 1999). Acknowledging that very few studies have delved into exploring causal mechanisms to explain the effect of neighbors' or regional human rights regimes on states' commitment to human rights treaties, this is a promising area of research where case studies can contribute to our understanding of regional clustering patterns of the OPCAT commitment.

4.2.4 Comparing the OPCAT with the CAT

The results of statistical analyses of the determinants of the OPCAT commitment provide a set of empirical findings that contribute to our understanding of the OPCAT commitment. While summing up the results here, it is also important to discuss those findings in comparison with the CAT ratification. For this purpose, Table 4.6 presents statistical estimates of determinants of the OPCAT and CAT commitment. The OPCAT model in the table includes the main variables from the three perspectives, while the CAT model includes the same independent and control variables from the OPCAT model.[85] For the CAT model, these variables cover a longer time span of 1984 to 2014 since the CAT was established in 1984. Only the variable measuring the level of CAT commitment is excluded from the analysis of the CAT commitment.

[85] I also conducted the same analyses using alternative variables for human rights practices, economic benefits, or regional human rights regimes. The quantitative results do not vary across different specifications.

Table 4.6. Determinants of CAT and OPCAT ratification

	CAT Commitment	OPCAT commitment
Physical integrity rights index	0.12	-0.02
	(0.07)	(0.12)
Political constraints	-0.38	0.59
	(0.76)	(0.93)
Common law	-1.14***	-1.01*
	(0.30)	(0.55)
Judicial independence	0.57	0.86
	(0.70)	(0.95)
CAT commitment level		0.50***
		(0.11)
Democratization	0.12	0.60
	(0.26)	(0.47)
Foreign direct investment	0.03***	0.01
	(0.01)	(0.02)
Neighbors' ratifications	-0.48	1.06*
	(0.42)	(0.55)
Regional human rights regime	0.42***	0.02
	(0.13)	(0.21)
Civil war	0.49	-0.24
	(0.34)	(0.56)
Muslim	0.13	0.26
	(0.27)	(0.42)
Population	0.20***	-0.09
	(0.07)	(0.13)
GDP per capita	0.11	-0.22*
	(0.09)	(0.13)
Number of Observations	1452	1080
Number of Countries	130	152

*Note: Robust standard errors in parentheses. Significance at ***0.01; **0.05; *0.1 levels.*

First of all, countries with frequent human rights violations are not deterred from ratifying the Protocol. This challenges the prediction that the substantial costs of OPCAT commitment due to international visits and national preventive mechanisms may concern states with poor human rights, deterring them from entering into the agreement. These findings show that there is no significant difference between the CAT and OPCAT commitment regarding costs of ratification that may worry human rights violators. If state leaders with poor human rights practices are not concerned

about the consequences of non-compliance with the OPCAT, the costs of OPCAT ratification emanating from the treaty terms will not bring as much difference to human rights practices as conventionally expected. However, the costs of adjustments particularly discourage states with a common law system from joining the Protocol, while a lower level of CAT commitment also decreases the chance of ratifying it. In Table 4.6 the analysis of CAT ratification offers evidence that the common law system also hinders states' ratification of the CAT.[86] This implies that the costs of ratification of the OPCAT do not emanate from legal obligations of the specific treaty terms but from general characteristics of international human rights treaties.

Relatedly, the OPCAT is not used as a signaling device by democratizing countries or countries that rely on international economic benefits. Although the table above shows that the CAT ratification may have a signaling value since foreign direct investment is statistically significant, this statistical significance does not hold across different specifications, and alternative measures of economic benefits do not show consistent results. Theoretically speaking, it is also not logical to think that only the CAT, not the OPCAT, has a signaling value. The CAT was established in 1984 and already over two-thirds of countries are parties to it, while the OPCAT came almost 20 years later and has been ratified by a smaller number of countries. If signaling is meant to distinguish countries from others in order to show the true nature of their intention, the OPCAT is more likely to be used by states because of its more specific

[86] In the literature there have been findings that poor human rights records do not prevent states from ratifying the CAT (Hathaway 2007; Vreeland 2008; Hollyer and Rosendorff 2011). My findings in Table 6 report a similar conclusion.

and stronger monitoring system and the legal obligation to set up a national preventive mechanism.

Another point for emphasis is the finding that neighboring countries' ratifications influence states' commitment to the OPCAT. From the results in Table 4.6, CAT commitment is also influenced by a regional human rights regime.[87] This brings our attention to the regional clustering of the OPCAT, which has also been found in cases of other human rights treaties. As I provided in the theory section, it would be important to tease out the varying rational and normative mechanisms linking regional or neighbors' pressure to states' commitment to human rights treaties.

[87] Analyses of different specifications presented somewhat inconsistent results for the variable measuring the regional human rights regime and ECPT.

Chapter 5: Analysis of Compliance with the OPCAT

This chapter seeks out further evidence of states' commitment to the OPCAT by investigating states' compliant behavior with the OPCAT. Two questions are discussed in this chapter: first, have states parties to the OPCAT complied with the visiting program? Second, have states parties to the Protocol complied with the NPMs obligation? This chapter provides descriptive statistics and anecdotes vignettes to examine states' compliant behavior with the treaty terms while attempting to provide preliminary evidence to test the hypotheses set out in Chapter 3.

5.1 Compliance with the SPT Visit Program

There are two major components to OPCAT's treaty terms, as discussed in the chapter 2. The first element is a regular visit system that allows the SPT to visit places of detention in states parties to the Protocol. Before a visit, the SPT notifies the state party concerned in advance of the planned dates of a visit. The SPT may request information to be provided in advance of the visit. During the visit, the SPT delegation meets with governmental officials responsible for law enforcement and custody of persons in detentions, prison, or psychiatric or social care institutions. The SPT may also meet with the NPMs if already established, national human rights institutions, non-governmental organizations, and persons who have information relevant to the SPT's mandates. At the end of the visit, the SPT delegation holds a final meeting with senior officials from relevant ministries and governmental

institutions where it presents their preliminary observations and discusses issues for immediate attention. After the visit, a confidential report on the visit is written and adopted by the SPT for transmission to the state party. The SPT report generally consists of several components – cooperation, overarching issues, development of the NPMs, the situation of persons deprived of their liberty, and a summary of recommendations and requests for more information. The concerned state is requested to respond to the suggestions in the report and any request for further information. The report remains confidential and is only published upon request by the state party. The state party can also make its replies to recommendations and suggestions by the SPT publicly available.[88]

As of January 2018, there are 87 states parties to the OPCAT. Since the first SPT visit to Mauritius in October 2007, there have been 62 SPT visits, including follow-up and advisory visits. The SPT made a follow-up visit to five countries: Paraguay, Cambodia, Maldives, Mexico, and Bolivia. 11 visits focused only on NPMs, while four visits were advisory. 37 states parties, about 43% of member states, have hosted SPT visits. Appendix 3 shows a list of states parties to which the SPT made a visit. Figure 5.1 presents the number of countries the SPT has visited over the years. With a growing number of ratifications around the world, the number of SPT visits has also increased incrementally over the years. Furthermore, there is not a regional variation of SPT visits, as shown in Figure 5.2.[89]

[88] See OHCHR webpage for more information on protocol of the SPT regular visit. http://www.ohchr.org/EN/HRBodies/OPCAT/Pages/Outline.aspx.
[89] Only three countries in Oceania – Australia, Nauru, and New Zealand – ratified the Protocol. The SPT has made a visit to Nauru and New Zealand.

Figure 5.1. SPT visits, 2007-2017

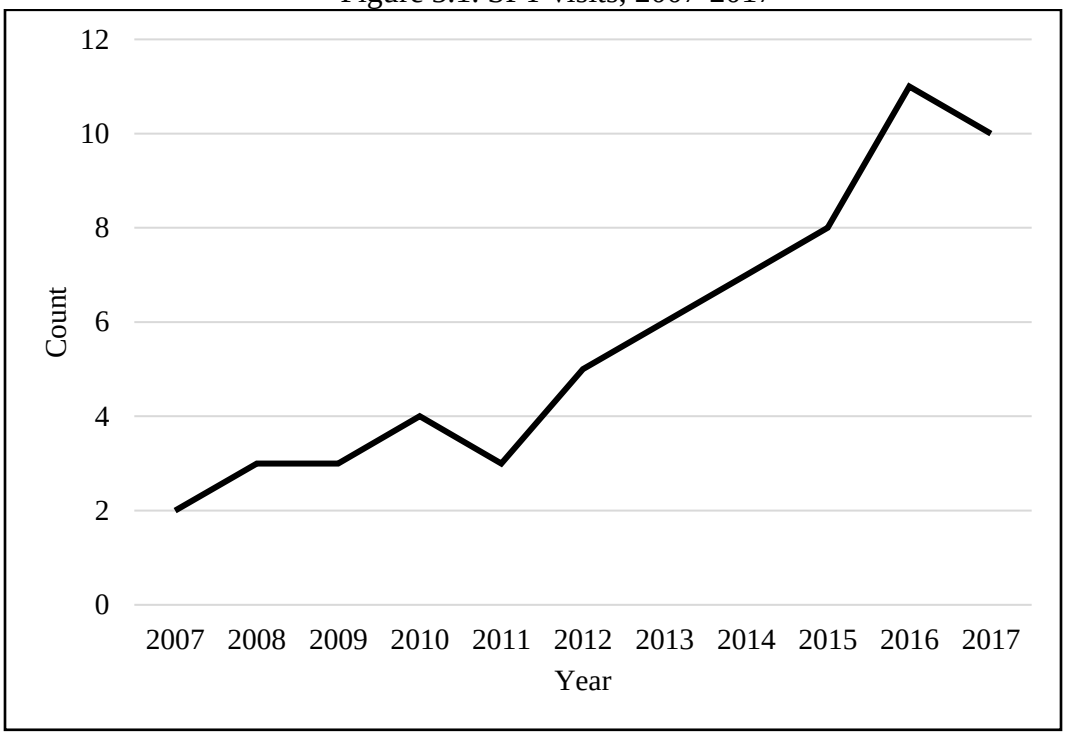
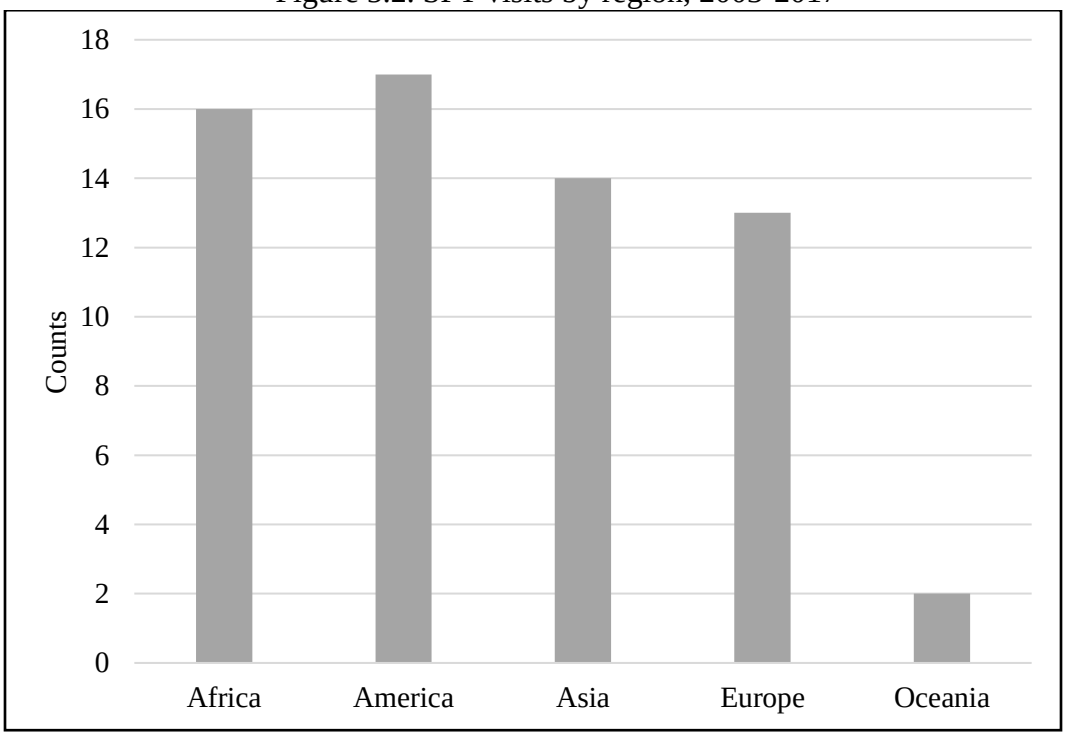


Figure 5.2. SPT visits by region, 2003-2017



Note: There are states parties that the SPT revisited. They include Benin, Honduras, Paraguay, Brazil, Cambodia, Maldives, Kazakhstan, Azerbaijan, and Ukraine.

Do states parties to the OPCAT comply with the visiting program? The main component of compliance is whether host countries allow the SPT delegation unhindered access to places where people are likely deprived of their liberty. According to the SPT country and annual reports, it appears that most states parties to the OPCAT visited by the SPT have been compliant with the visiting program in terms of allowing the SPT unrestricted access.[90] Although the SPT annual reports frequently claim that some states parties are not perfectly cooperative with the SPT mandate on the ground, most SPT visits have been carried out without suspension. Only three visits, those to Azerbaijan, Ukraine, and Rwanda, were suspended. For instance, the SPT delegation was prevented from visiting several places of detention in Azerbaijan and concluded that the integrity of its visit had been compromised due to serious breaches of Azerbaijan's obligations under the OPCAT.[91] Another case of suspension was the SPT visit to Ukraine in May 2016, where the delegation was denied access to places where the Security Service of Ukraine had allegedly detained and tortured people.[92] In addition to this denied access, the delegation to Rwanda in October 2017 faced a series of obstructions imposed by the Rwandan authorities to the SPT's conducting of private and confidential interviews with some persons

[90] For SPT annual reports, visit the Office of the United Nations High Commissioner for Human Rights (OHCHR) site at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=12&DocTypeID=27

[91] UN Office of the High Commissioner, "Prevention of Torture: UN human rights body suspends Azerbaijan visit citing official obstruction," 17 September 2014. http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15047&LangID=E

[92] UN Office of the High Commissioner, "UN torture prevention body suspends Ukraine visit citing obstruction," 25 May 2016. http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20017

deprived of their liberty. Arman Danielyan, head of the SPT delegation, said, "Many of those we have managed to interview have expressed fears of reprisals." [93] In two of the three cases – Azerbaijan and Ukraine– the SPT was able to complete its visit months later.

Regarding the SPT reports, Table 5.1 presents a proportion of confidential and public reports to states parties and their NPMs. there are 36 reports publicly available, including 27 reports to states parties and 9 to their NPMs. Out of the total number of 73 reports, 49% of them were publicly released. Almost the half of the SPT reports are confidential, not accessible by the public and relevant stakeholders. There is also great variation in states' behavior regarding the publication of SPT reports and their replies. Some states, including Azerbaijan, Bolivia, Lebanon, Mauritania, and the Philippines made neither their SPT reports nor their replies publicly available. Some states such as Ecuador have permitted the SPT report to its NPMs to be made public but not the report to the state party. For instance, Benin allowed the SPT report to be publicly accessible in 2009, but not in 2016. Gabon made its SPT report public in 2014, but not its response to the SPT in 2015.

Table 5.1. Public release of the SPT reports, 2007-2017[94]

	Reports to states parties	Reports to NPMs	Total
Public	27	9	36 (49%)
Confidential	30	7	37 (51%)
Total	57	16	73

[93] UN Office of the High Commissioner, "Prevention of Torture: UN human rights body suspends Rwanda visit citing obstructions," 19 October 2017. http://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=22273&LangID=E

[94] SPT visits to Morocco and Burkina Faso were conducted in October and December 2017, respectively. They are excluded from this table because their reports have not yet been finalized and sent to the states parties.

Although a government's decision to keep the SPT report confidential is not a breach of the Protocol, it requires further investigation as to why states want to keep those reports confidential despite the SPT recommendation to make them public. The varying behaviors regarding the reports indicate that the decision is not a random phenomenon, and thus warrants investigation. I provided in Chapter 3 the hypothesis that states parties with poorer human rights are more likely to eschew public release of the report because the governments may not want their human rights conditions to be exposed to a domestic and international audience, while at the same time avoid breaching the international commitment. Figure 5.3 presents average human rights scores for states parties based on whether or not they keep their SPT reports confidential or make them public. The basic descriptive statistics suggest that countries with better human rights have a greater tendency to make the report public than countries with poorer human rights. Another related correlation is also found in Figure 5.4. More democratic countries are associated with a higher chance of the SPT reports being released to the public. The Polity IV score, which is converted to a 21-point scale, shows that democracies are correlated with the chance of the SPT reports being made available to the public.

Figure 5.3. Human rights and confidentiality of the SPT report, 2007-2017[95]

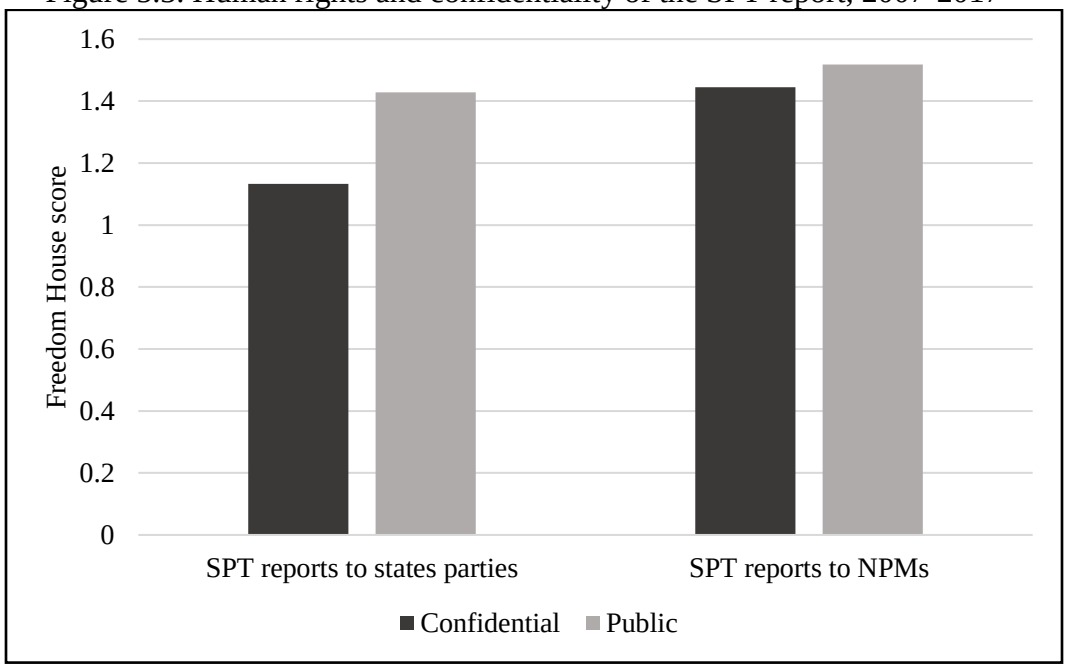
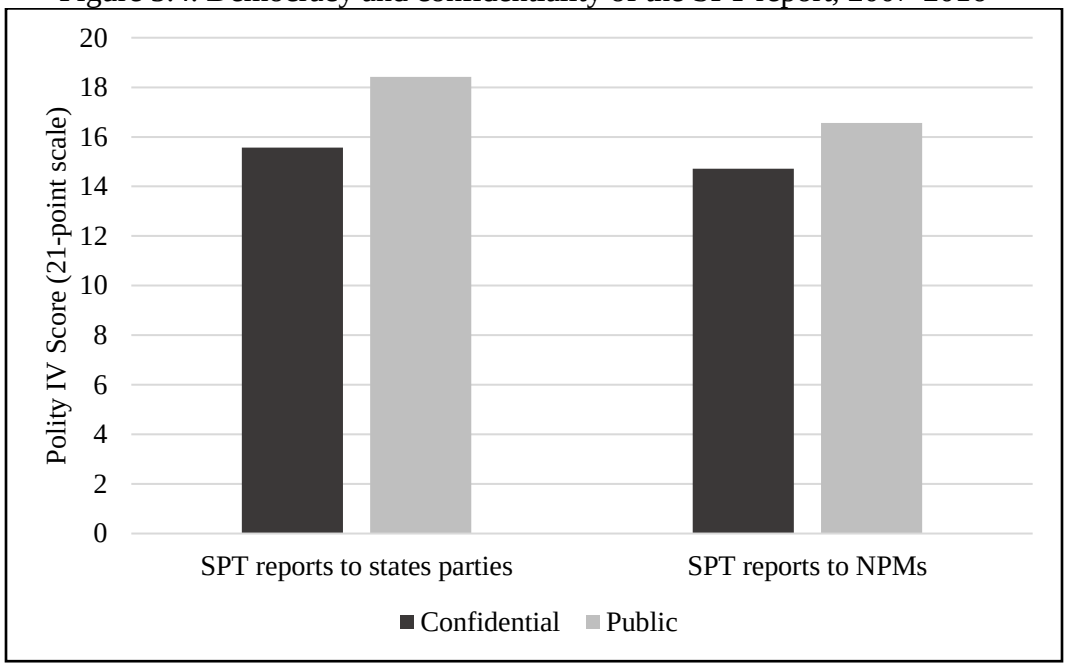


Figure 5.4. Democracy and confidentiality of the SPT report, 2007-2016[96]



[95] Regarding human rights scores, there are few data covering the recent years. The CIRI torture index does not provide a time span of 2012-2017 and neither does PTS beyond the year of 2012. These data are not presented in this table since about the half of observations are lost due to the unavailability of the data.

[96] This figure does not include compliant behavior by Maldives, Mozambique, and Nauru since they are excluded from the Polity IV dataset.

States parties are requested to respond to the SPT reports. Like public release, states parties are not obligated to respond to the reports. However, replies can be valuable because they reveal governments' plans to implement the treaty terms of the OPCAT while addressing specific human rights concerns raised by the SPT. For instance, Mexico, in its reply to the SPT report published in June 2009, responded that the state and federal authorities established a working group to implement the recommendations of the SPT. The document then lays out details of how the government has been and will be implementing the recommendations by the SPT on the training of public servants, implementation of legislative reforms, planning and implementation of public policy, and improvement of conditions in detention facilities.[97] As of January 2018, Mexico is the only country to have submitted a second reply in 2011 to provide further details of progress made to prevent torture.

Have all the states parties to the OPCAT replied to their SPT reports? Certainly not. There were 31 cases of non-response to the SPT reports to states parties, and 11 cases of non-response to the SPT reports to NPMs. Overall, about 58% of states parties to the OPCAT have not yet replied to the SPT reports. Table 5.2 presents these findings. Furthermore, it is noteworthy that not all of these replies are made public. Among 30 replies by states parties, only 19 documents are made accessible to the public.

[97] Mexico's replies to the recommendations and requests for information made by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in its report on its first periodic visit to Mexico (CAT/OP/MEX/1).

Table 5.2. Replies to the SPT reports, 2007-2017

	Replies to SPT reports to states parties	Replies to SPT reports to NPMs	Total
Replied	26	4	30 (42%)
Not yet replied	31	11	42 (58%)
Total	57	15	72

Hypothesis 3 as discussed in section 3.3.2 expects that transitional states are more likely to comply with the visiting program in order to keep their signaling credible. Table 5.3 provides descriptive statistics about compliant behavior between democratizing states and the rest. It appears that there is no strong relationship between democratizing states and compliant behavior. Public release of the SPT reports and replies are more likely for transitional states, but the rate of reply by states parties is lower than the rest. Further investigation may be needed to decipher these mixed results.

Table 5.3. SPT compliant behavior: democratizing v. the rest, 2007-2017

	Democratizing states	The rest
Public release of the Report	27/50 (54%)	9/23 (39%)
Reply made	17/50 (34%)	13/23 (57%)
Public release of the reply	12/17 (71%)	7/13 (54%)
The number of visits	21	41

Another hypothesis regarding compliant behavior is that countries in a strong regional human rights regime display a higher rate of compliance. Table 5.3 summarizes SPT visit-related compliant behavior by region. Statistics in the table provide evidence in support of the hypothesis. Asian countries with the weakest regional human rights regime display less compliance with the Protocol. Only 31% of

states parties in Asia made their SPT reports publicly accessible. Although half of them responded to the reports, 62% did not make their replies public. African member states to the OPCAT are slightly more compliant with the SPT visiting mechanism. It is noteworthy, however, that the rate of reply to their SPT reports is the lowest. Compared to Africa and Asia, states parties in Europe and America display more compliant behavior. Countries in these regions are more likely to release their SPT reports and respond to those reports publicly.

Table 5.4. SPT compliant behavior by region, 2007-2017

	Africa	America	Asia	Europe	Oceania
The number of SPT visit suspensions	1 (Rwanda)	0	1 (Azerbaijan)	1 (Ukraine)	0
Public release of the SPT report made	6/17 (35%)	11/19 (58%)	5/16 (31%)	13/19 (68%)	1/2 (50%)
Reply to the SPT report made	5/17 (29%)	8/19 (42%)	8/16 (50%)	8/19 (42%)	1/2 (50%)
Public release of the reply made	3/5 (60%)	7/8 (88%)	3/8 (38%)	5/8 (63%)	1/1 (100%)
The number of visits	16	17	14	13	2

To sum up, the regular visit mechanism has been in operation since the OPCAT entered into force. Compliance with the visiting program of the Protocol was discussed in terms of states parties' cooperation with the SPT visit, the public release of the SPT report, a reply to the SPT report, and the public release of the reply. Overall, states parties have displayed varying degrees of compliant behavior. In terms of unrestricted access to places, most states parties cooperated with the SPT, with only three exceptions of suspended missions. However, at a less significant level, non-compliance with the SPT visiting mechanism has been frequent. It is noteworthy that more than half of states that hosted the SPT have not requested to make the SPT

report publicly available. Preliminary evidence suggests that governments with poorer human rights tend to keep the reports confidential due to their concerns over exposure of their human rights circumstances to the domestic and international audience. Over 50% of states parties have also not responded to the SPT reports while 37% have not permitted the replies to be made public. With regard to this subject, future studies, and primarily case studies, are required to investigate whether and how well host states accepted and implemented suggestions made by the SPT and whether those interactions meaningfully improved human rights circumstances. It is also important to acknowledge that there are more than half of states parties to the Protocol that the international monitoring body has not yet visited. Fully understanding the effectiveness of the OPCAT may require more time.

5.2 Compliance with the NPMs Obligation

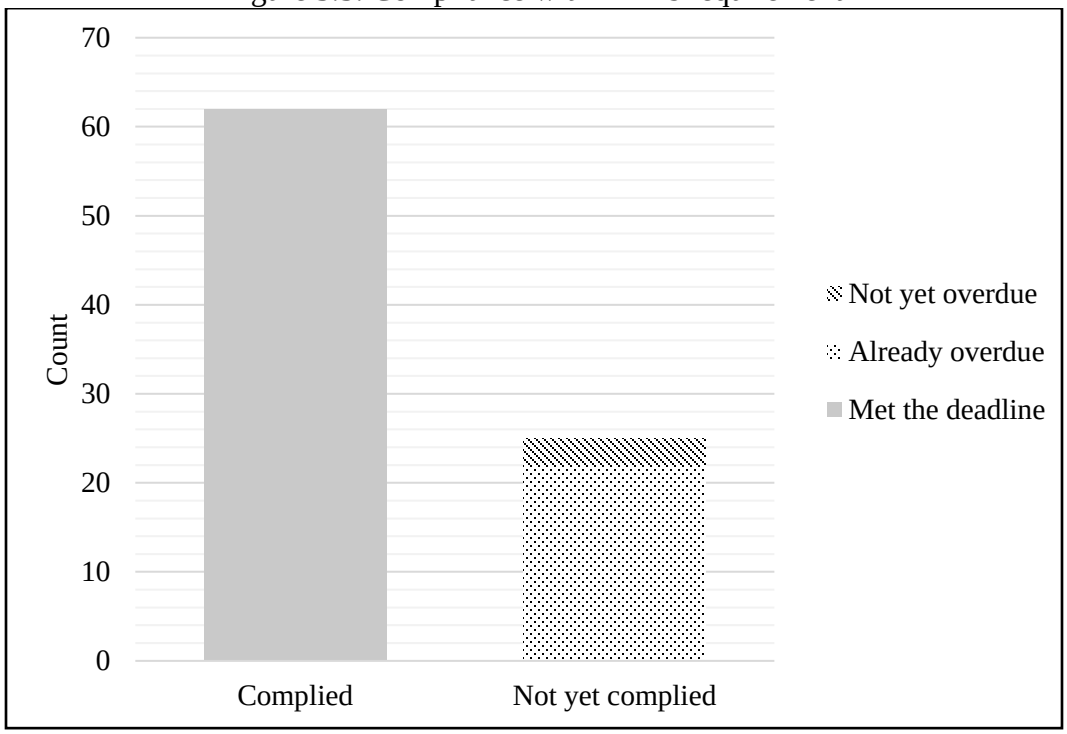
The second feature of the treaty terms under the OPCAT is the NPM obligation. Article 17 provides that each state party shall set up, designate, or maintain at the domestic level bodies for the prevention of torture and other cruel, inhuman, or degrading treatment or punishment. As discussed previously, Article 24 permits states parties to make declarations postponing the implementation of their obligations regarding NPMs for a maximum of three years.[98]

How have the states parties complied with the NPMs? As presented in Appendix 3, there are 62 states parties that have met the legal obligation to establish

[98] Eight countries actually made declarations on the postponement of implementing NPMs. These include Australia, Bosnia and Herzegovina, Germany, Hungary, Kazakhstan, Montenegro, the Philippines and Romania.

or designate NPMs, as of January 2018. As presented in Figure 5.5, this accounts for 71% of states parties to the OPCAT. 25 states parties, or 29%, have not yet complied with the NPMs requirement.[99] Among them, the one-year deadline to maintain, designate, or establish NPMs has not yet expired for Australia, Madagascar, and the State of Palestine. The legal obligation for the remaining 22 states parties is overdue. In 2016, the SPT made public a list of states parties that had not implemented Article 17. They include Benin, Bosnia and Herzegovina, Burkina Faso, Burundi, Cambodia, Chile, the Democratic Republic of the Congo, Gabon, Liberia, Nauru, Nigeria, Panama, and the Philippines.

Figure 5.5. Compliance with NPMs requirement



[99] For more information, see http://www.ohchr.org/EN/HRBodies/OPCAT/Pages/NationalPreventiveMechanisms.aspx.

Taking Benin as an example, it ratified the Protocol in 2006 without a declaration to postpone its NPMs obligation. After an SPT visit in 2008, a report was submitted to the Benin government on 17 June 2009, recommending that the government reconsider an exclusion of practicing legal or medical professionals from NPM membership and also speed up an adoption of the draft NPM law.[100] In its reply, Benin responded that it would "take due note of all the relevant recommendations" by the SPT and reconsider some elements of the draft NPM law.[101] Despite early steps by the government to draft the NPM legislation and a preparatory consultation with civil society, Benin has not fulfilled its NPMs obligation as of January 2018, while there remain human rights problems such as police use of excessive force, harsh prison conditions, and vigilante violence.[102]

Chile is another case of non-compliance with the NPMs obligation, but there has been progress and positive signs of compliance. Chile ratified the OPCAT in 2008 and designated the National Human Rights Institute, created in 2009, as the NPM. However, the Chilean government did not establish its legal framework, structure, and budget. A SPT report, published on 16 May 2017, recommended that the NPM should not be subordinate to the National Human Rights Institute in order to guarantee its functional independence and autonomy, urging the government to comply "swiftly" with its international obligation to establish an NPM.[103] The

[100] Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Benin (CAT/OP/BEN/1).
[101] Replies of the Republic of Benin to the recommendations and requests for information made by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in its report on its first periodic visit to Benin (CAT/OP/BEN/1).
[102] US State Department, "Benin 2016 Human Rights Report."
[103] Report on the visit to Chile undertaken from 4 to13 April 2016: observations and recommendations addressed to the State party (CAT/OP/CHL/1).

Chilean government replied to the report that the Ministry of Justice and Human Rights had drafted a bill that incorporates the recommendations made by the SPT, such as budget and functional independence, and that it would be submitted to National Congress in the coming weeks.[104] On 29 May 2017, the bill was signed by President Bachelet and sent to the National Congress for examination and final adoption.[105]

Cambodia has also displayed a case of non-compliance due to an absence of a crucial aspect of the NPM – independence. Cambodia ratified the OPCAT on 30 March 2007 and established an inter-governmental committee through a sub-decree approved by Prime Minister Hun Sen on 7 August 2009. This committee was composed of only government senior officials and the Deputy Prime Minister and the Minister of Interior as the chairs, rendering the committee not as truly impartial and independent. In November 2010, the Committee against Torture also expressed the concern that the inter-governmental committee did not ensure its independence from the government and excluded the participation of civil society, two requirements of the OPCAT. The Committee also recommended the Cambodian government to "take all necessary measures to ensure that its NPM will be established in accordance with the OPCAT. To this end, the state party should ensure that the NPM will be created by constitutional amendment or organic law and that it will be institutionally and

[104] Replies by Chile to the report on the SPT Visit to Chile undertaken from 4 to 13 April 2016: observations and recommendations addressed to the State party (CAT/OP/CHL/1/Add.1).
[105] APT News, "Chile takes historic step on National Preventive Mechanism." June 12, 2017 https://www.apt.ch/en/news_on_prevention/chile-takes-historic-step-on-national-preventive-mechanism/.

financially independent and professional."[106] However, Cambodia has not displayed its intention to fully comply with the NPM obligation by creating a new, independent NPM. Kuy Bunsorn, General Department of Prisons director, rejected the idea of creating a new NPM, saying that there had been enough transparency and independence and that there would be no clear criteria for judging who is independent or not.[107] Likewise, Interior Minister Sar Kheng, while recently pledging to push forward with efforts to create a new NPM, opposed an idea that prison officials should be excluded from membership in relevant bodies.[108] As of January 2018, Cambodia still remains one of the non-compliant countries.

How can this variation in compliant behavior be explained? The screening perspective expects that states concerned with costs of ratification would be deterred from ratifying the treaty. If there is a screening effect on the OPCAT membership, a large part of states parties are expected to comply with the NPM requirement. From the descriptive analysis, a 25% rate of non-compliance with the NPMs partially suits this proposition. Given that some of these countries, like Chile, have been slowly making progress toward fulfilling their NPMs obligation, and that the SPT has established a dialogue with these states parties to urge and facilitate the

[106] Report of the Committee against Torture, Forty-fifth session (1-19 November 2010)& Forty-sixth session (9 May–3 June 2011)
http://www2.ohchr.org/english/bodies/cat/docs/A.66.44.pdf.
[107] The Phnom Penh Post, "Prison oversight lags: UN" 18 December 2013 (accessed 20 March, 2018).
https://www.phnompenhpost.com/national/prison-oversight-lags-un.
[108] The Cambodia Daily, "Government bodies at odds over anti-torture mechanism" 30 September 2015 (accessed 20 March, 2018).
https://www.cambodiadaily.com/news/govt-bodies-at-odds-over-anti-torture-mechanism-95971/.

implementation of the NPMs, more compliance in is likely to be observed in the near future.

Are states parties with frequent human rights violations likely to violate the NPMs obligation? To visualize the relationship between human rights and noncompliance with the NPMs obligation, I calculate the average scores of the Freedom House index and PTS for states in compliance and out of compliance, respectively.[109] Rudimentary evidence suggests that states parties with poorer human rights are less likely to comply with the NPMs obligation. Both scores show that better human rights are associated with compliant behavior regarding the NPMs.

Table 5.5. Average human rights scores for NPMs-compliant and non-compliant states parties[110]

	Freedom House score	PTS score
Complied with the NPMs	1.55	2.08
Not yet complied with the NPMs	1.01	3

The signaling perspective also predicts that democratizing states parties are more likely to comply with the NPMs. Table 5.6 preliminarily shows that there is an association between a higher rate of compliance with the NPMs obligation and democratizing states. However, both figures are not much different, necessitating further investigation.

[109] Some limitations should be noted. First, Australia, Madagascar, State of Palestine (not yet expired), Belize, Cabo Verde (data limitation) are excluded from calculation. Second, there were few alternative human rights scores available until recent years. Third, an ideal way would be to calculate the average scores from the year of ratification until the year of NPM implementation. Instead, if a country ratified the OPCAT in 2008, I average human rights scores since 2008 to 2014. I expect that this way does not significantly bias the average scores since there are very few changes, especially in Freedom House scores during the period of study.

[110] A higher score on the Freedom House index indicates better human rights. By contrast, a lower PTS score refers to better human rights.

Table 5.6. Democratizing states parties and compliance with the NPMs

	Democratizing states parties	The rest of states parties	Total
Complied with the NPMs	32 (80%)	26 (72%)	58
Not yet complied with the NPMs	8 (20%)	10 (28%)	18
Total	40	36	

It is also expected that compliant behavior is more likely if a country is situated in a stronger regional human rights regime. As shown in Table 5.7, Europe presents the highest rate of compliance with Article 17. Only one country, Bosnia and Herzegovina, has not fulfilled its legal obligation. States parties in America and Asia also showed 80% and 77% compliance rates, respectively. By contrast, Africa, which in my measurement in Chapter 4 is regarded as one of the weakest regional human rights regimes along with Asia, displays a significantly lower rate of compliance with the NPMs obligation. It is puzzling why the two regions with the weakest regional human rights regimes display different compliant behaviors.

Table 5.7. Compliance with the NPMs by region[111]

	Africa	America	Asia	Europe	Oceania
Complied with the NPMs	5 (24%)	12 (80%)	10 (77%)	32 (97%)	0 (0%)
Not yet complied with the NPMs	16 (76%)	3 (20%)	3 (23%)	1 (3%)	1 (100%)
Total	21	15	13	33	1

[111] Australia, the State of Palestine, and Madagascar were excluded from this table since their deadlines for fulfilling the NPMs obligation are not yet overdue.

5.3 Summary

This chapter examined states' compliance with the OPCAT. It focused on the implementation of the two important treaty terms: the regular visit mechanism by the SPT and establishment or designation of national preventive mechanisms. More than half of states parties have yet to be visited by the SPT, while there are countries whose deadlines for NPMs obligation are already overdue. It is therefore premature to try to draw a complete picture of how states parties comply with the SPT visit and NPMs. Moreover, institutional development of the treaty body has also been in progress with new budgets and staff, as well as evolutionarily updated operations on the ground. It is important to acknowledge that patterns of compliance with the OPCAT, summarized in Table 5.8, do not guarantee that they would continue in the same way in the future.

Table 5.8. Summaries of compliance with the OPCAT, 2007-2017

Items of compliance	Result	Importance
Have states parties cooperated with the SPT delegation to ensure unrestricted access to all places where persons are likely deprived of their liberty?	Three visits to Azerbaijan, Rwanda, and Ukraine, out of 62 SPT visits, were suspended due to obstructions by authorities.	Mandatory
Have states parties requested the SPT report to be publicly released?	49% of SPT reports have been made public.	Recommended by the SPT
Have states parties replied to the SPT reports?	42% of states parties have replied to the SPT reports.	Requested by the SPT
Have states parties requested their replies to be made public?	63% of states parties have made their replies publicly available.	Recommended by the SPT
Have states parties established or designated the NPMs?	71% of states parties have fulfilled their NPMs obligation.	Mandatory

In terms of the importance of obligation, states parties have a legal obligation to establish the NPMs and allow the SPT to visit all places of detention or prison. It appears that most states parties have generally complied with the treaty terms. Out of 62 SPT visits, only three missions were halted due to obstructions by authorities to the SPT delegation's right to unhindered access to all places where people are deprived of their liberty. 71% also complied with the NPMs obligation. However, when looking at less significant and less mandatory items of compliance, states parties' behavior has not been fully compliant. 49% of the SPT reports are not made public, restricting fact-finding information to international and domestic stakeholders. Only 42% of states parties replied to their SPT reports, and 63% of replies were publicly released when they decided to respond. Overall, it is premature to expect that most states parties are compliant with the visiting mechanism and that the OPCAT guarantees the effectiveness of prevention of torture. At a lower level, non-compliance is frequent, likely limiting the impact of SPT visiting mechanisms on preventing human rights violations.

Although this chapter does not fully explain why some countries comply with the OPCAT, the descriptive analyses provide some insights into the patterns of compliant behavior by incorporating some important variables from the theoretical frameworks discussed in Chapter 3. States parties with poorer human rights tend to keep their reports confidential. Future research is needed, but their concerns over the exposure of their human rights violations to domestic and international observers might influence their decision to keep the reports confidential. These human rights-

violating countries were not deterred from joining the OPCAT, but their compliant behavior with the public release of SPT reports and replies, as well as the NPMs obligations, are worse than states parties with better human rights.

Another interesting pattern of compliant behavior is the regional variation. In a region where a stronger regional human rights regime exists, states parties are more likely to comply with the treaty terms. SPT reports are likely to be made public, and replies are likely submitted publicly. As shown in Table 5.7, states parties in Europe, followed by the Americas, observed the highest rate of compliance with the NPMs obligation.

Chapter 6: Case Studies

This chapter provides qualitative evidence to complement the findings from the analyses in the previous chapters. I focus on the Philippines and the United States as case studies, using the three perspectives from Chapter 3. The biggest contrast between the Philippines and the US is that the Philippines has ratified the OPCAT, while the US has not. From the regional perspective, each case represents a deviant case, given that the US is situated in a strong regional human rights system, while the Philippines is not. The case of the Philippines provides evidence to support the argument that countries with human rights violations still ratify the Protocol with a weak commitment, while giving some partial support for the signaling account. By contrast, the American non-commitment to the OPCAT shows that the costs of ratification due to specific human rights concerns and adjustments deterred the country from ratifying it. Furthermore, the case of Philippines also represents non-compliance with the OPCAT. Although the country cooperated with the SPT visit in general, its non-compliant behavior regarding the public release of reports and reply, as well as NPMs obligations, indicates that the OPCAT ratification does not guarantee an increased commitment to anti-torture and human rights norms. In this chapter, I provide rationales for this case selection and then discuss each state's decision (not) to ratify the Protocol and compliance with the treaty.

My case selection deserves discussion. First, the two cases are not randomly chosen. Random sampling is not typically viewed as a viable approach when cases are not large (Seawright and Gerring 2008; Gerring 2008). Second, given my study

provides three different approaches with a list of explanatory variables, I select the two cases that can rule out the regional perspective. In doing so, I can focus more on the screening and signaling approaches to figure out which has more confirmatory evidence. The two cases are examined by using a typical method – screening approach for the US and signaling approach for of the Philippines – to provide confirmatory evidence. Third, compliance with the OPCAT for the Philippines simultaneously represents an extreme case when considering the NPMs obligation and a typical case with regard to the visiting program. For this reason, the Philippines is selected to examine different compliant behaviors across several items of compliance. Finally, the two cases are also expected to reveal whether some factors are under-examined in the quantitative analyses. In particular, they include non-state actors' influence on OPCAT ratification in the case of the Philippines, and domestic preferences regarding torture and international commitment in the context of the US. These aspects would guide new and further research agendas while complementing the quantitative findings.

6.1 The Philippines

6.1.1 Ratification of the OPCAT

Regional Perspective

The Philippines is an interesting case for the three perspectives examined in Chapter 3. First, the country is situated in Asia where there is a very weak regional human rights regime. The Philippines ratified the OPCAT on 17 April 2012, making it the

63rd state party to the treaty. In the region, it was the 10th country to ratify the Protocol. Given the vast area of the Asian region, it may be more legitimate to look at neighboring countries' ratifications or sub-regional human rights institutions to see if the regional perspective has any explanatory power. Cambodia was the only neighboring country in the Southeast Asian region to have committed to the Protocol before the Philippines followed suit.[112]

Regarding regional human rights regimes, Southeast Asia has a weak human rights regime compared to that of Europe or America (Eldridge 2013; Donnelly 2007). In 2009 the Association of Southeast Asian Nations (ASEAN) established the ASEAN Intergovernmental Commission on Human Rights to promote human rights in the region. The ASEAN Human Rights Declaration was further adopted in 2012. Although these two institutions can be regarded as a significant step toward the development of a regional human rights system, there have been concerns over the 'landmark' human rights instrument. According to the UN Office of the High Commissioner for Human Rights, these concerns include provisions addressing the right to life, "balance" between rights and individual duties, and conditions restricting peoples' rights.[113] The Declaration was also criticized by regional and domestic human rights groups arguing that in the Declaration, human rights is defined through the lens of national governments rather than as universal, irrevocable, and absolute

[112] As of January 2018, four countries have ratified the OPCAT. These include the Philippines, Sri Lanka, Cambodia, and Timor-Leste. Of the five founding countries of ASEAN, only the Philippines has committed to the Protocol.
[113] UN News, "UN experts raise concerns over 'landmark' Southeast Asian human rights declaration," 16 November 2012 (accessed 25 April 2018) https://news.un.org/en/story/2012/11/425852.

right of individuals. Furthermore, consensus-based decision making of the ASEAN as well as a lack of participation and engagement from civil society and domestic and transnational NGOs in the regional human rights system are also seen as constituting a weak regional human rights regime in Southeast Asia (Katsumata 2009). Given that the Philippines ratified the OPCAT only months after the adoption of the Declaration, it is hard to say that the ratification was mainly influenced by the regional human rights instrument.

Overall, the regional perspective does not predict a high chance that the Philippines will ratify the OPCAT due to the lack of density in neighbors' ratifications and the weak regional human rights regime. Normative and social pressures on signing and ratifying the Protocol were not as strong as in Europe or America. Incentives to imitate ratification behavior were almost non-existent in the region. In contrast to the statistical results in support of the regional hypotheses in Chapter 4, the case of the Philippines deviates from this approach and raises intriguing questions of why they committed to the Protocol.

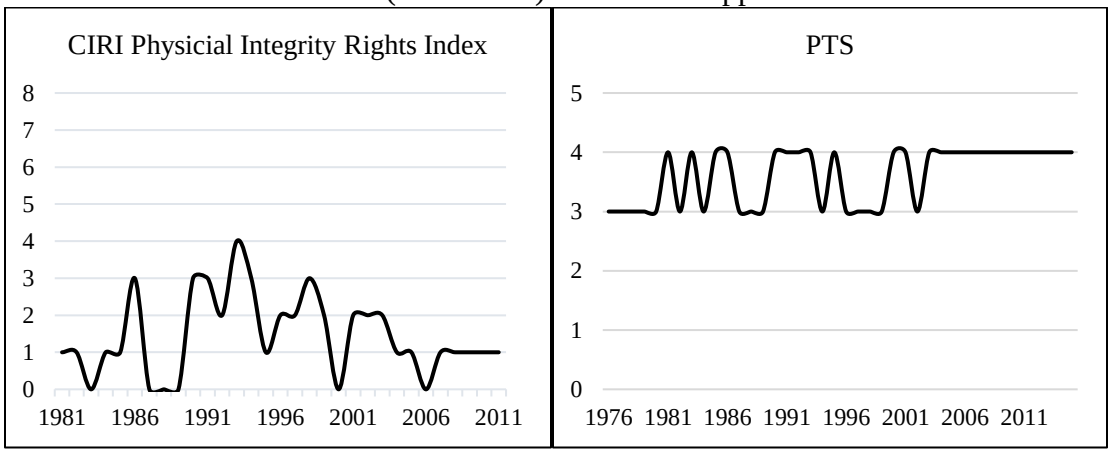
Screening Perspective

It is also interesting to observe that human rights concerns did not prevent the Philippines from ratifying the Protocol. Were there certain costs that caused the Philippines to worry about further commitment to the OPCAT? Although the Philippines has been considered as fairly democratic with a new democratic constitution and government after the People Power Revolution of 1986, human rights issues in the archipelago have frequently arisen throughout the 1990s and

2000s (YU 2005).[114] As Figure 6.1 presents, human rights records in the country have been poor, even after the democratic restoration in 1986. The Corazon Arroyo government inaugurated in 2001 was often criticized for tolerating and even supporting abusive acts by its military and police forces against the civilian population. It was also charged with extrajudicial killing in Muslim Mindanao in the name of a war against terror.[115] Task Force Detainees of the Philippines, a non-profit national human rights organization, reported that there had been 830 cases of arbitrary arrest, with 2913 individuals as victims, between 2001 and 2008.[116] The following Benigno Aquino administration also faced several charges of human rights violations for actions such as the Lumad killings, political imprisonment, and journalist killings.[117] From the screening perspective, especially in terms of ratification costs due to the treaty terms regarding visiting and NPMs, the Philippine government had reasonable concerns about the costs of ratification and was expected not to ratify the OPCAT.[118]

[114] The Polity IV democracy index for the Philippines has remained "8" since 1987. A value of 10 is assigned to the most democratic countries while 0 is assigned to the least.
[115] In February 2003, a military offensive was launched in Central Mindanao, resulting in the displacement and evacuation of thousands of civilians.
[116] See human rights situations under the Arroyo Government, http://www.tfdp.net.
[117] The Lumads are a group of non-Muslim indigenous people on Mindanao Island, the southern part of the Philippines. Due to armed conflicts between the New People's Army and Armed Forces of the Philippines, the Lumads were displaced, detained, and killed.
[118] Other measures of human rights have presented similar observations on the Philippines. A value of 4 is assigned to the Philippines from 200 Political Terror Scale.

Figure 6.1. CIRI Physical Integrity Rights Index (1981-2011)[119] and Political Terror Scale (1976-2015)[120] in the Philippines



The fact that the poor human rights practices did not deter the country from entering into the Protocol contradicts hypothesis 1a in Chapter 3. The case of the Philippines as detailed later in this section instead provides strong evidence to support hypothesis 1b that institutional features weakening the commitment of the OPCAT invite some human rights violators to participate in the treaty. The government employed several measures to weaken its legal obligation to comply with the treaty terms concerning the SPT visit program, all the while not complying with the NPMs requirement. There was a clear precedent to this behavior when the country ratified the CAT in 1986 with a weak commitment. The Philippines did not make a declaration on Article 21 or Article 22, both of which recognize the competence of

[119] CIRI physical integrity rights index is composed of four elements – disappearance, political imprisonment, extrajudicial killing, and torture. Values range from zero to eight, with eight indicating the highest level of physical integrity rights protection.
[120] Sources are from US State Department. This ordinal scale ranges from values of 1 to 5. A level of 5 indicates that terror has expanded to the whole population, while 0 is given to countries under a secure rule of law. Level 4 indicates that civil and political rights violations have expanded to large numbers of the population, while level 3 indicates that there is extensive imprisonment, or a recent history of such imprisonment.

the Committee to receive and consider communications from other states parties or individuals claiming that a state party violated the provisions of the CAT. The government took a similar approach toward the OPCAT at the time of ratification, making the following declaration:

> *"In accordance with Part IV, Article 24 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, the Republic of the Philippines hereby declares the postponement of the implementation of its obligations under Part III of the Optional Protocol, specifically Article 11(1)(a) on the visitations by the Subcommittee on Prevention to places referred to in Article 4 and for them to make recommendations to States Parties concerning the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment."*

It is not unusual that states make a reservation or declaration when ratifying an international human rights treaty to avoid a legal obligation or to buy time for adjustment, implementation, and integration. In the case of OPCAT, eight countries made a declaration on the postponement of designating or establishing NPMs. However, there is no state party delaying compliance with the treaty terms under Part III, which stipulates the mandate of the SPT. Along with Part IV, which describes the NPMs requirement, Part III is understood as the backbone of the Protocol. The Philippines' declaration to postpone the implementation of Part III, however, was largely ignored and has not received as much attention by international human rights community as its ratification. The international and domestic groups mentioned above that praised ratification as a step toward better human rights protection in the country did not specifically pay attention or criticize the government's declaration.

Another hypothesis from the screening approach is that the costs of ratification in the gap between the CAT and OPCAT commitment affect states' decision to commit to the OPCAT. The statistical results from Chapter 4 provide strong evidence in support of this proposition. The case of the Philippines is interesting in that the country had the weak commitment to the CAT, but further ratified the OPCAT. Although the screening theory does not tell whether states with a weak CAT commitment would ratify the OPCAT with a declaration or would not ratify it at all, the case of the Philippines illustrates a rare occasion that when they decided to do, they likely attempt to find a way to alleviate their legal burdens.

Signaling Perspective

Did the commitment by the Philippines amount to signaling? The signaling theory proposes that states ratify the human rights treaties to send a costly signal of their intent to a commitment to human rights and democracy. Democratizing states or states heavily reliant on international aid or receiving economic benefits are more likely to commit to the Protocol. In the case of the Philippines, the economic signaling loses explanatory value. The Philippines' major trade partners in 2012 included Japan, the US, South Korea, the People's Republic of China, and Singapore.[121] None of these countries has ratified the OPCAT. Except for the US, these trading partners are also countries from the same region where human rights are rarely linked to international economic policies or agreements, despite urge from

[121] Philippine Statistics Authority, Foreign Trade Statistics of the Philippines: 2012 (accessed May 2 2018), https://psa.gov.ph/content/foreign-trade-statistics-philippines-2012.

human rights NGOs to integrate human rights into a trade or investment treaties. Furthermore, the Philippines is not heavily reliant on international economic benefits. In terms of trade measured as a share of GDP, the Philippines is the second-lowest country among its regional neighbors including Singapore, Malaysia, Cambodia, Thailand, and Indonesia.[122] Foreign direct investment net inflow measured as a share of GDP, or foreign aid measured by net ODA received per capita, present a similar picture of a country that is the least or second-least reliant on international economic benefits compared to other countries in the region.[123] These indicators suggest that the economic signaling theory does not account for the OPCAT ratification by the Philippines.

Some notable evidence regarding the democratizing hypothesis can be found in the case of the Philippines. Although the Philippines is often regarded as the oldest democracy in Asia, the country has not been a stable democracy. President Ferdinand Marcos declared martial law in 1972, a declaration followed by political repression and human rights violations. In 1986, a series of popular demonstrations, known as the People Power Revolution, emerged and ended Marco's 21-year authoritarian rule. A new government led by Corazon Aquino adopted a constitution in 1987 that limited a president to a single six-year term in office while initiating democratic reforms,

[122] According to World Bank Open Data, trade (% of GDP) for the Philippines was 68% in 2011 and 65% in 2011. These figures are slightly higher than ones for Indonesia (50% in 2011 and 2012), but are lower than figures for the other countries, https://data.worldbank.org/.

[123] The FDI figures for the Philippines were 0.9 in 2011 and 1.3 in 2012. Only Thailand had a lower figure, 0.7 in 2011. Net ODA received per capita for the Philippines was -1.9 in 2011 and -0.03 in 2012. Again, Thailand is only the country with lower figures. Data accessed from the World Bank Open Data, https://data.worldbank.org/.

such as restoring civil liberties of free speech, freedom of assembly, and a free press (Nadeau 2008).

The CAT was ratified in the middle of this political transition to democracy, only months after the People Power Revolution broke out and Corazon Aquino was inaugurated as a new president. On 18 June 1986, the Philippines became the fifth state party to the treaty. As one of the measures for the new government to signal its effort to restore democracy and consolidate democratic institutions in the archipelago, the CAT ratification had an instrumental value of signaling the government's intent to engage in political reform and thereby gain political support from the domestic and international audience. It was a strategic move to display the new government's direction of reform as shown in another ratification of international human rights treaty – International Covenant on Civil and Political Rights – four months after the CAT commitment.

The OPCAT commitment can be understood in a similar manner. First, since the political transition in 1986, signaling of governments' intent to protect human rights has become important, at least as rhetoric. The OPCAT was signed on 22 April 2008 by the Arroyo government. President Arroyo stated that "the Philippine government is morally obliged to strengthen the country's compliance with international human rights instruments."[124] This kind of remark made without addressing serious human rights violations in the country is likely to be rhetoric. Since Aquino's inauguration in 2001, the government had been losing political legitimacy due to an election scandal, extrajudicial killings, restricted freedom of the

[124] Office of the President, "President Arroyo ratifies Optional Protocol to U.N. treaty against torture," 22 April 2008.

press, continuing corruption and a recurrence of military adventurism (Hutchcroft 2008). Amid the loss of political legitimacy and growing human rights violations, the Arroyo government did sign the OPCAT to fend off domestic and international criticism. Likewise, the government of her successor, Benigno S. Aquino III, which ratified the OPCAT in 2012, won the election in 2010 using a political platform that included human rights commitments and criticism of Arroyo's ignorance of human rights violations.[125] Therefore his government had a stronger incentive to signal the intention to uphold human rights values and initiate human rights and democratic reform to domestic constituents and international human rights bodies. Senator Loren Legarda clearly show this point in a Committee (on Foreign Relations) Report No. 92, stating that the OPCAT ratification is a natural process for the country as an internationally recognized champion of human rights in the region and is a constitutionally mandated obligation to ensure that the rights of citizens are protected.[126] Given the initially high expectation about his human rights agenda and growing domestic and international criticism on human rights abuses during the Aquino presidency, such as extrajudicial killings, torture and enforced disappearances, it is reasonable to argue that the OPCAT ratification was more like rhetoric and instrumentally used to cope with the growing criticism while gaining a political support and legitimacy.

If the OPCAT ratification was mere rhetoric and signaling without a sincere will to prevent torture and improve human rights, is it the case that the observers soon

[125] Amnesty International, "Progress, stagnation, regression? The state of human rights in the Philippines under Aquino" ASA 35/002/2011.
[126] The Senate Committee on Foreign Relations, Committee Report No. 92.

recognized a false promise, making state leaders re-consider the signaling value? The case of the Philippines hints that at least in the early stage, OPCAT ratification was often hailed as a significant step toward human rights protection by human rights observers, despite the weak level of commitment. For instance, European Union Higher Representative of the Union for Foreign Affairs and Security Policy Ashton announced that the Philippine government demonstrated its strong commitment in favor of promoting human rights.[127] The Danish human rights institute, DIGNITY, also hailed its ratification by claiming that the country "opens its prison doors to independent monitoring teams in order to combat torture and ill-treatment."[128] Domestic rights groups have displayed a similar response to the international commitment. The BALAY Rehabilitation Center, Inc., one of the most vocal human rights NGOs in the Philippines, also welcomed the ratification with the headline: "OPCAT Finally Ratified."[129]

Besides these three perspectives, one under-examined aspect of ratification in the theoretical framework and quantitative analysis in this study is the role played by non-state actors, especially NGOs and IGOs. Advocacy groups, such as the Philippines United against Torture Coalition under the leadership of the Task Force Detainees of the Philippines, the Association for Prevention of Torture (APT), and the

[127] Delegation of the European Union to the United Nations, "Ashton welcomes ratification by the Philippines pf the optional protocol to the convention against torture," http://eu-un.europa.eu/eu-hr-ashton-welcomes-ratification-by-the-philippines-of-the-optional-protocol-to-the-convention-against-torture-and-other-cruel-inhuman-or-degrading-treatment-or-punishment-opcat/.
[128] Dignity Institute News, https://dignityinstitute.org/news-and-events/news/2012/the-philippines-ratifies-the-opcat/.
[129] Balay Rehabilitation Center, https://balayph.net/news/66-balay-trains-bjmp-personnel-on-psychosocial-processing.html.

Commission on Human Rights of the Philippines (CHRP), played a role in consulting with and pressuring the government to ratify the Protocol.[130] The APT in particular played an important role.[131] It began discussions with the Philippine government on the issue of OPCAT ratification in 2006. The APT also visited the Philippines in 2010 and met governmental officials, senators, Commission on Human Rights representatives, and civil society organizers to discuss OPCAT ratification and implementation. Moreover, the Philippines made a commitment in 2007 before the UN Human Rights Council that it would work toward OPCAT ratification. In the following year, the government supported the idea of OPCAT ratification at the Universal Periodic Review of the Philippines. Then, OPCAT was signed by President Arroyo in 2008. Soon after, a Philippines OPCAT Working Group, the Department of the Interior and Local Government, composed of government agencies and partners in civil society, was created.[132] The case of the Philippines shows that domestic and transnational institutions take part in the ratification process by pressuring, lobbying, and consulting with the concerned governments.

6.1.2 Compliance with the OPCAT

The country's compliance with the OPCAT can be discussed in terms of whether it complied with the SPT visit and NPMs. The SPT made its first visit to the Philippines

[130] "Working Together for the Ratification of the Optional Protocol to the UN Convention against Torture." Task Force Detainees of the Philippines. Vol 22, No.1. 2010 http://www.tfdp.net/publications/phru/volume-22-number-1/115
[131] Severo S. Catura, "The Road to OPCAT Ratification: The Philippine Experience," Seminar for Thai Government Officials on Preventing Ill-Treatment Through the OPCAT (February 19, 2013)
[132] The APT, "The road to OPCAT ratification: The Philippine Experience."

during the period of 25 May to 3 June 2015, almost three years after the country had ratified the Protocol with the declaration on postponing its compliance with Part III, which specifies the mandate of the SPT. Places the SPT delegation, headed by Suzanne Jabbour, visited included prisons, police stations, military detention facilities, correctional rehabilitation facilities for women and juveniles, and psychiatric hospitals. The members of delegation carried out private interviews with law enforcement officials, medical staff, and persons deprived of their liberty while meeting relevant authorities, such as members of the Senate and the House of Representatives, members of government departments, and civil society representatives.

As noted in Chapter 5, the SPT visit to the archipelago was not one of the three occasions where the delegation suspended a mission due to a hindered access to places. Its visit to the country belongs to 95% of cases where states parties generally cooperated with the SPT delegation. However, it is noteworthy that the SPT report sent to the Philippines on 23 February 2016 was confidential and not made accessible by the public. The only information about the visit came from Suzanne Jabbour, who said that the government of the Philippines needed to particularly address the chronic problem of overcrowding in places of detention.[133] Given that only 42% of states parties replied to their SPT reports, the Philippines actually did respond to the SPT report. The government's reply received on 1 September 2016 again remained confidential. Despite the recommendation by the SPT and demands by domestic

[133] United Nations Human Rights Office of the High Commissioner, "UN experts urge Philippines to tackle "chronic" prison overcrowding," 3 June 2015. http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16033&LangID=E.

rights groups to release the SPT report and reply to the public, the government of the Philippines has yet to make the report and reply publicly available.

The more significant compliance issue is that the Philippines has not yet fulfilled its legal obligation to designate or establish a national preventive mechanism. The country was supposed to meet the deadline for NPMs by April 2013. In response to this non-compliance, international bodies pressured the government to comply with the NPMs obligation. SPT delegation head Jabbour urged the Philippines to enact a law establishing an effective national independent monitoring body or a national preventive mechanism by 2015, if possible. In February 2016, the SPT decided to take further action regarding states parties, including the Philippines, who have not met their NPM obligations as set out in Article 17 of the Protocol. In April 2016, the SPT sent a letter to those countries and formally requested the information on progress toward compliance with their obligation under that provision while informing them that a public list of these states would be considered. After consideration of the information provided by states parties, the SPT eventually made public the list of states parties whose compliance with the designation or establishment of NPMs was at least three years overdue. The Philippines, with 12 other states parties, has been on this list on the SPT website since then.

To sum up, the Philippines has not complied with one of the important obligations of the treaty terms – NPMs. While the SPT carried out its first visit to the country without major issues known to the public, the SPT reports and the government's reply have not been publicly released. The screening perspective explains that the Philippine government was concerned with the risks of the exposure

of their human rights violations to domestic and international observers, especially in the conflict zone, if they publically released the SPT report, thus causing the government not to request its publication. The government also had to make the reply confidential since the reply, which contains the government's plan to implement recommendations by the SPT as well as responses to human rights violations, can be a focal point for human rights campaigns. If the government failed to address the issues raised, it would face political costs. Although poor human rights in the archipelago did not deter the country from participating in the OPCAT, its compliant behavior regarding the public release of the SPT report and reply suggests that governments with poorer human rights are more likely to use confidentiality of the report and reply as a means of avoiding potential political costs.

Given the more worrisome developments after Rodrigo Duterte took a presidential office on 30 June 2016, aggravating human rights concerns have made the government less likely to engage in human rights discussion with NGOs and IGOs. Indeed, President Duterte has been criticized for his de facto endorsement of extrajudicial killings under the auspices of the "Davao Death Squad" when he was the mayor of the city of Davao. From his first day in office, he has carried out a "war on drugs," resulting in the deaths of about 12,000 suspected drug dealers and users by January 2017.[134] Unlawful executions by police or agents of the police were frequently reported by the media and rights groups. Duterte has also impugned, harassed, and threatened critics of the government and human rights defenders in response to increased criticism of his drug war campaign. His most prominent critic,

[134] See more information, see https://www.hrw.org/asia/Philippines.

Senator Leila de Lima, has remained in detention while being charged with drug trafficking, a charge that she has emphatically denied. In August 2017, Duterte even encouraged police to attack human rights advocacy groups and activists, allowing police to shoot them "if they are obstructing justice."[135] In addition, he has refused to undertake a serious investigation into the drug war and threatened to block an investigation by the national commission on human rights into alleged abuses by Philippine security forces. This recent development of human rights violations and government's reduced interest in human rights discussion would explain the ongoing non-compliance with the NPMs obligation.

From the signaling perspective, the case of Philippines suggests that the conclusion that transitional countries are more likely to comply with the treaty terms because they want to send a signal is not straightforward. As illustrated through non-compliance with the NPMs obligation and confidentiality of those documents, signaling can be used for short-term political gains, saving face, or diverting growing criticism on human rights. Furthermore, the regional perspective also offers preliminary evidence that the Philippines has not been under significant pressure by neighboring countries or regional human rights system to comply with the treaty terms. As the most embedded country in the international human rights treaty system and the oldest democracy in the region, the Philippines is often regarded as a front-runner, not a follower, in terms of human rights treaty commitment (Eldridge 2013; Bünte and Dressel 2016). Although it is difficult to conclude that the absence of a

[135] "Human rights group slams Philippines president Duterte's threat to kill them," *The Guardian*, 17 August 2017. https://www.theguardian.com/world/2017/aug/17/human-rights-watch-philippines-president-duterte-threat.

strong regional human rights regime was more influential than other factors like poor human rights in its compliant behavior, the case of the Philippines indicates that the government may have behaved in a different way had there had been a pattern of compliant behavior in the region and stronger normative and social pressure to comply with the treaty.

6.2 The United States

The United States has often been regarded as a leading global advocate of human rights. It was an active proponent of creating a universal human rights regime. It also played an important role in establishing the Universal Declaration of Human Rights in 1948 and setting up the Nuremberg International Military Tribunals to persecute those who committed crimes against humanity during the Second World War. Despite some setbacks in its early efforts due to the Cold War rivalry and inconsistent implementation on the ground, the US has incorporated the promotion of human rights into some of its important foreign policy goals.

However, the US is only a party to human rights treaties on civil and political rights, torture, and racial discrimination.[136] The US has remained outside of three core human rights treaties on economic, social and cultural rights, rights of the child, and discrimination against women. It is the only country other than Somalia that has not ratified the Convention on the Rights of the Child. It is also one of the six countries

[136] UN Office of the High Commissioner for Human Rights, http://indicators.ohchr.org/.

with Iran, Palau, Somalia, Sudan, and Tonga that has failed to commit to the Convention on the Elimination of All Forms of Discrimination against Women.

The United States signed the CAT on 18 April 1988 and ratified it on 21 October 1994. However, the OPCAT has not been ratified yet. What can explain the American non-commitment to the Protocol? First of all, from the signaling perspective, the US is not a country that needs to credibly signal its intent to support democratic institutions and human rights at home. There is not as much gain from the OPCAT ratification as some democratizing countries might. The OPCAT commitment as signaling for international economic benefits is also less applicable to the case of the US since it has been both the upholder and the greatest beneficiary of the international economic system. Neither has the US has been a recipient of foreign aid, but rather it is one of the major foreign aid donors.

Furthermore, the account based on the regional influence of neighboring countries or regional human rights system predicts that non-ratification is due to the lack of normative influence. The American case presents interesting counter-evidence to this prediction. As presented in Figure 4.3 in Chapter 4, the rate of OPCAT ratification in the Americas is the highest after Europe. Moreover, there has been a fairly strong regional human rights regime. The Inter-American system for the protection of human rights exists within the Organization of American States (OAS). The American Declaration on the Rights and Duties of Man was adopted in 1948, seven months before the Universal Declaration of Human Rights, while the regional countries also further established a legally binding treaty, the American Convention

on Human Rights, in 1969.[137] In addition to these documents, charter-based and treaty-based systems – Inter-American Commission on Human Rights and Inter-American Court of Human Rights – were established to implement the agreements (Donnelly 2007). Given the fairly strong regional human rights system, it is intriguing that the US has opted out of the OPCAT. Especially considering that the US has been improving its image as a human rights defender in its relations with Latin American countries, the regional approach leaves the American non-ratification question unanswered and more puzzling (Sikkink 2004; Forsythe 2006).

The screening perspective lends some evidence to explain American behavior of non-ratification of the OPCAT. First, human rights concerns appear to deter the US from participating in the OPCAT. Although the US has been regarded as the oldest democracy in which civil liberties and political rights are well-respected, concerns for human rights practices, particularly torture and other ill-treatment in prisons and detention facilities, have increasingly attracted domestic and international human rights observers, as also visualized in Figure 6.2.[138] After the deadly attacks on the US on 11 September 2001, the US government authorized the use of "enhanced interrogation techniques" on terrorism suspects in US custody. President George W. Bush publicly disclosed the enhanced interrogation program employed by the Central Intelligence Agency (CIA) on 6 September 2006. On 4 December 2014, the US Senate Intelligence Committee's report summary on the CIA detention and

[137] The US has failed to commit to this regional human rights instrument.
[138] The US has been reported to have the largest incarcerated population in the world. The number is nearly 2.4 million persons behind bars on any given day. There is no independent mechanism monitoring prison conditions. See more information about US prisons on the Human Rights Watch website, https://www.hrw.org/.

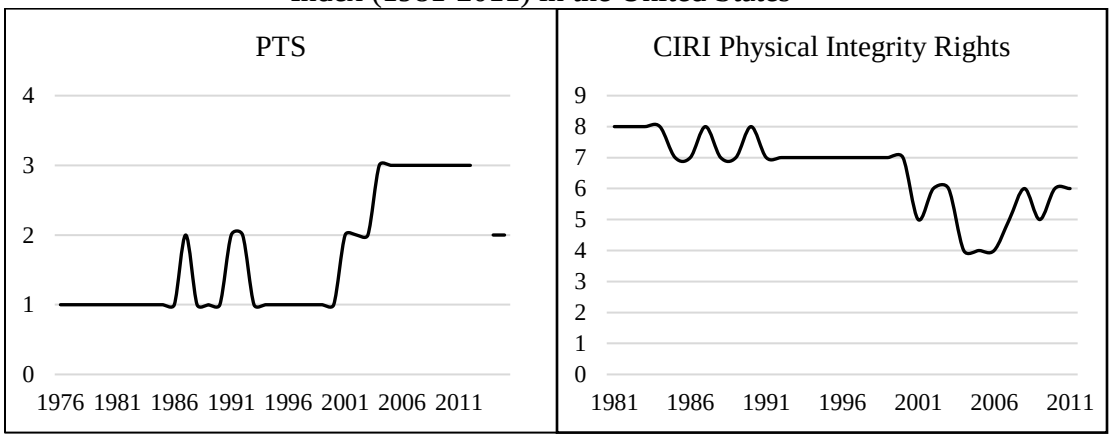
interrogation program was released. According to the summary report, CIA abuses were more brutal, systematic, and widespread; the CIA's interrogation methods went beyond those authorized by the Justice Department; those interrogation techniques were employed before authorization was obtained, and senior CIA officials were well aware that their interrogation tactics were illegal.[139] More recently, it has also been reported that torture continues at Guantanamo Bay, according to UN experts.[140] Figures below confirm that since the 2000s, US records on torture and human rights practices, in general, have deteriorated. These poor records have contributed to the decision not to further ratify the OPCAT given that it could allow international monitors to visit detention facilities and interview terrorist suspects, for instance, in Guantanamo Bay, Cuba.[141]

[139] The Senate Committee summary report can be assessed at the link below.
behttps://www.feinstein.senate.gov/public/_cache/files/7/c/7c85429a-ec38-4bb5-968f-289799bf6d0e/D87288C34A6D9FF736F9459ABCF83210.sscistudy1.pdf

[140] USA Today, "US torture continues at Guantanamo Bay, UN expert warns," 12 Dec 2017, https://www.usatoday.com/story/news/world/2017/12/13/united-states-torture-continues-guantanamo-bay-united-nations-expert/949052001/.

[141] There was a debate over extra-territorial applications of the CAT and OPCAT. This debate is directly related to how to interpret "under its jurisdiction and/or control" in human rights treaties. Opinions issued by the CAT, HRC, UN Special Procedures, and the ICJ have reached a consensus that the OPCAT provides the SPT and the state party's NPM with the competence to monitor the state party's military places of detention located overseas. It has made the US more concerned with the OPCAT ratification, given that the government, until very recently denied, the use of torture at the Guantanamo Bay detention facility.
See a legal briefing series report by APT, "Application of OPCAT to a State Party's places of military detention located overseas," October 2009, https://www.apt.ch/content/files_res/LegalBriefing1_OPCAT.pdf.

Figure 6.2. The Political Terror Scale (1976-2015) and CIRI Physical Integrity Rights Index (1981-2011) in the United States[142]



The screening approach also proposes that higher costs of adjustment discourage states from committing to the OPCAT. A general approach by the US toward ratification of human rights treaties has been guided by several principles that conform to the screening perspective. First of all, the US would not undertake any treaty obligation that it is unable to implement because it is inconsistent with the US Constitution. Second, US adherence to an international human rights treaty should not affect or promise change in existing US law or practice. Therefore, once the government signs a treaty, the Justice Department lawyers review the pact to find any requirement that might be more protective of American citizens' rights than pre-existing domestic law (Roth 2000). Third, every human rights treaty which the US ratifies should be subject to a federal clause so that it could leave the implementation of the human rights treaty largely to the states. Finally, every international human rights treaty should be non-self-executing. It means that the treaty has no force of law without implementing legislation. The non-self-executing declaration precludes that a

[142] This scale is based on reports from Amnesty International.

cause of action under the treaty cannot be stated, and without implementing legislation, there is no alternative way to assert a claim (Roth 2000).

All these principles are well-reflected in the case of CAT ratification in the US, and its resistance to ratification of the OPCAT is also related to its lower degree of CAT commitment. As the screening theory expects, weak commitment to the CAT has made the OPCAT commitment costlier. Upon signing the CAT, the US made a declaration that the government reserves the right to communicate, upon ratification, such reservations, interpretive understandings, or declarations as are deemed necessary. When ratifying the CAT in 1994, the US did not make a further declaration on Article 22, which recognizes the competence of the Committee to communicate with groups or individuals over alleged violations of the treaty terms. Furthermore, several reservations were entered. Most of them address the interpretation of terms and articles. For instance, the US made a reservation that the term 'cruel, inhuman or degrading treatment or punishment' would mean by the cruel, unusual and inhumane treatment or punishment as prohibited by the Fifth, Eight, and/or Fourteenth Amendments to the Constitution of the United States. An American official once mentioned in 2002 that the Optional Protocol would be unconstitutional in the US because it does not recognize states' rights in the US federal system.[143] The large "package" of reservations, understandings, and declarations has often been described as specious, meretricious, and hypocritical (Henkin 1995). More importantly, it indicates that the US was very cautious about its international legal

[143] Barbara Crosette, "U.S. Fails in Effort to Block Vote on U.N. Convention on Torture," *New York Times*, July 25, 2002, http://www.nytimes.com/2002/07/25/world/us-fails-in-effort-to-block-vote-on-un-convention-on-torture.html.

obligation due to the costs of its integration into its domestic law system and implementation.

As briefly explained in Chapter 2, not only has the US not ratified the Protocol, but also it attempted to block a vote on the OPCAT at a stage of drafting and adoption. The Bush administration objected to the establishment of the Protocol in 2002. The official position was that international inspections under the treaty terms of the Protocol would be "overly intrusive" while claiming that there are many opportunities for persons in detention to make a claim over abusive punishment or treatment. Another concern was that the Protocol would violate the federal rights of individual US states. These concerns are reflected in the 2006 US response to the list of issues to be considered during the examination of the second periodic report of the US.[144]

> *The United States is not considering ratification of the Optional Protocol to the Convention against Torture. ... Because, in the view of the United States, the Optional Protocol will not substantially contribute to the eradication of torture, the United States has declined to ratify the instrument. … [T]he United States' legal system affords numerous opportunities for individuals to complain of abuse, and to seek remedies for such alleged violations.*

One dimension underexplored in the theory and quantitative analyses in the previous two chapters is how domestic politics affect the discourse on torture and commitment to international agreements. In the American case, partisan politics is attributed as one of the reasons why the OPCAT has not been ratified. For instance, the Republican electorate can be mobilized against ratification of the OPCAT, while

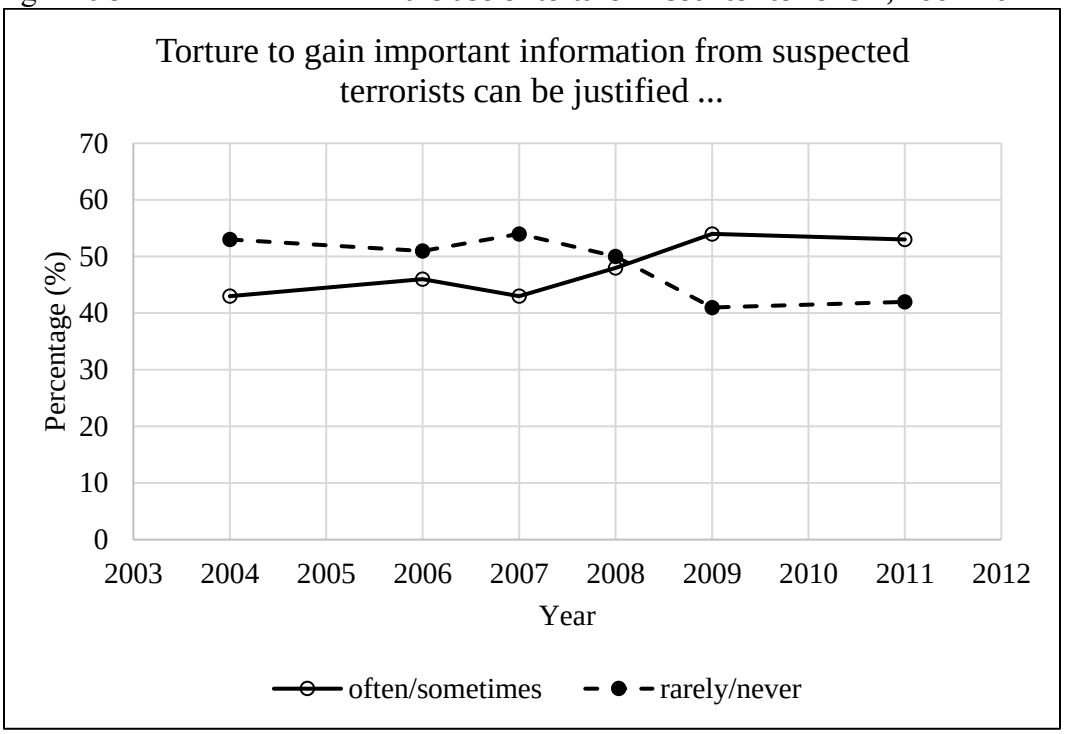
[144] List of issues to be considered during the examination of the second periodic report of the United States of America. Response of the United States of America. (28 April 2006) http://www2.ohchr.org/english/bodies/cat/docs/AdvanceVersions/listUSA36_En.pdf

the ratification of the Protocol and other human rights agreements would not attract a majority of constituents (Donnelly 2013). Simmons (2017) reports that in the context of American politics, respondents with higher levels of chauvinistic nationalist sentiment also have higher levels of opposition to the jurisdiction of international legal institutions to prosecute members of a nation's military (Simmons 2017). As long as the claim that the ratification of international human rights treaties sacrifices the national sovereignty has an appeal to a significant portion of voters, there is less likely for politicians to push for the ratification.

Furthermore, Americans have been divided in their views of the use of torture in counter-terrorism campaigns as presented in Figure 6.3. Throughout the 2000s, opinions were almost evenly divided, with slightly higher percentages of opposition to the use of torture until 2008. Since 2009, there has been an upward trend in support of using torture as a counter-terrorism measure. Although former President Obama signed an executive order in 2009 that banned torture in the interrogation of terrorist suspects, the debate has continued over whether interrogation constitutes torture and whether the government officials who were involved in the interrogation should be prosecuted. The Trump administration has taken the position that the US would consider withdrawal and non-participation in multilateral treaties, including international human rights treaties. President Trump also mentioned in January 2017 that he thought waterboarding worked as an intelligence-gathering tool, hinting that he would consider the use of interrogation techniques.[145]

[145] *The Washington Post*, "A Trump moratorium on international treaties could roll back human rights – here at home," 1 March 2017,

Figure 6.3. Americans' view of the use of torture in counter-terrorism, 2004-2011[146]



6.3 Summary

The case study on OPCAT ratification and compliance by the Philippines reveals that states' commitment to the Protocol does not necessarily indicate an increased commitment to anti-torture and human rights norms. Poor human rights records in the Philippines did not deter it from ratifying the Protocol. The potential costs of ratification, emanating from poor human rights and often assumed to be high, can be offset by the Protocol's institutional loopholes. Compliant behavior by the Philippines

https://www.washingtonpost.com/news/monkey-cage/wp/2017/03/01/a-trump-moratorium-on-international-treaties-could-roll-back-human-rights-here-at-home/?utm_term=.c60c151d1ab9.

[146] Data is accessed from the Pew Research Center. More comprehensive survey results can be found at http://www.pewresearch.org/fact-tank/2017/01/26/americans-divided-in-views-of-use-of-torture-in-u-s-anti-terror-efforts/.

provides evidence supporting this argument. The SPT monitoring mechanism has its limitations if states do not request publication of the SPT report or their replies. States parties are not required to respond to recommendations and suggestions made by the SPT report. Although this non-compliant behavior is not regarded as a serious breach of the treaty and is less significant than obstructing operations of the SPT delegation, they do affect how the visiting mechanism would work and affect the prevention of torture. Moreover, non-compliance with the NPMs obligation, although uncommon, still exists, as shown in the case of the Philippines. While the case of Chile shows progress in developing an NPM in consultation with the SPT and other human rights institutions, the case of the Philippines emphasizes that there is a lack of enforcement mechanisms, which contributes to the ongoing non-compliant behavior in the archipelago.

The American case mainly lends evidence to support the screening perspective. Its concerns about human rights violations in detention centers overseas, and poor domestic prison conditions may be sufficient reasons for the government to resist ratification. In addition, a general approach of eschewing the costs of adjustments and integration into national laws and policies has also influenced the ongoing non-commitment by the US. The case study also suggests that more attention should be paid to understanding how domestic politics affects policymakers and politicians. In the American context, counter-terrorism campaigns complicated domestic politics about torture, almost evenly dividing in half opinions on banning torture practices. When there is not a strong political consensus on banning the use of

torture, it is likely that politicians would not push hard enough for commitment to the OPCAT.

Chapter 7: Conclusion

7.1 Arguments, Implications and Contributions

On 17 November 2016, the United Nations celebrated the 10th anniversary of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Secretary-General of the United Nations, Ban Ki-moon, delivered a message that the entry into force of the OPCAT in 2006 was a paradigm shift in the human rights arena, emphasizing that the evil that torture represents should be eradicated around the world.[147] Have states' ratification and compliance with the OPCAT met this high hope for prevention of torture and human rights improvement? As the first systemic study on states' commitment to the OPCAT, this study attempts to answer the question of whether states' commitment to the OPCAT is another empty promise or does in fact represent an increased commitment to the global norms of human rights.

This dissertation study first examines how the OPCAT was established and what terms the treaty includes. On the one hand, the OPCAT has distinctive features compared to the CAT or other human rights treaties: the Protocol includes a regular monitoring system which enables international observers to make visits to states parties and grants them unlimited access to all places where people are deprived of their liberty. States parties under the OPCAT are also obliged to establish or designate

[147] Message of the Secretary-General of the United Nations on 10th anniversary of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), 17 November 2016, https://www.unog.ch/80256EE600583A0B/(httpPages)/5963F1D53864932DC125806E0055A6E9?OpenDocument&year=2013.

an NPM that functions as a domestic monitoring body. On the other hand, however, the SPT report can remain confidential without states' explicit request to make it public. It is not also mandatory for states parties to respond to the SPT report. Like other human rights treaties, there is no mechanism to enforce states parties' fulfillment of the NPMs obligation. These institutional deficiencies certainly influence states' ratification of and compliance with the Protocol.

What then explains states' commitment to the OPCAT? Building on the literature on treaty commitment, three perspectives – screening, signaling and regional – are suggested. Several findings from the quantitative analyses in Chapter 4 were reported. Above all, states concerned with their poor human rights are not deterred from ratifying the Protocol. Like the CAT, the Protocol has also been joined by human rights violators. This finding challenges the expectation from the screening perspective that the OPCAT creates substantial costs of ratification that effectively distinguish a sincere commitment from an insincere commitment. Some evidence is found to support the screening approach, however. For instance, the costs of adjustment and a weak commitment to the CAT are likely to decrease the probability of states committing to the OPCAT. Also, these statistical results do not lend strong evidence to support the signaling hypotheses that argue that OPCAT ratification is used instrumentally by states wanting to gain political or economic benefits. Finally, there is strong statistical evidence to support the regional perspective on states' commitment to the OPCAT. When states face a higher density of ratifications by neighboring states, or are located in a stronger regional human rights regime, they are

more likely to respond to social and normative pressures by imitating their neighbors' OPCAT commitments.

The analysis of states' compliant behavior with the visiting and NPMs mechanisms of the OPCAT lends us early evidence on whether or not states' OPCAT commitment is an empty promise. In general, the SPT visiting program has been operational since 2007 with a growing number of SPT country visits over time. There are only three occasions when the SPT delegation had to suspend their tasks due to obstructions by authorities, such as hindered access to certain places or persons for private and confidential interviews. At a lower level of compliance items, about the half of states parties do not request their SPT reports to be released to the public and do not respond to the SPT report. Regarding the NPMs obligation, there are 22 states parties, or 29%, which have yet to fulfill their NPMs obligation. These varying compliant behaviors indicate that states parties have complied with the major components of the visiting and NPMs mechanisms – cooperating with the SPT delegation and establishing or designating the NPMs. However, non-compliance is more frequent at a lower and less significant level and could mitigate the effectiveness of the OPCAT in promoting human rights.

Case studies on the Philippines and United States present confirmatory and intriguing evidence which is under-examined in the quantitative analyses. OPCAT ratification by the Philippines shows some signaling rationale, while supporting the hypothesis that that a country with human rights violations can still participate in the treaty mainly due to the institutional limitations that enable the country to mitigate potential costs of commitment. As an extreme case, non-compliance with Article 17

(NPMs) has also been noteworthy in the case of the Philippines. The American case also provides evidence to support the argument that the costs of ratification due to poor human rights, as well as domestic integration and adjustment, deterred the US from ratifying the Protocol. Moreover, two cases specifically highlight the role played by national and transnational institutions and domestic preferences over torture and international commitment. These aspects of ratification and compliance need future research.

Is the OPCAT ratification another empty promise or does it represent increased commitment to the global human rights norms? Does the growing number of ratifications around the world strengthen the existing human rights treaty system? My verdict is that the OPCAT commitment does not guarantee an increased and stronger commitment to anti-torture norms and practices. Human rights-violating countries have also ratified the Protocol while continuing to employ torture as a repressive method. As presented in the case of the Philippines, states parties still have room to move around and mitigate potential costs of ratification and non-compliance. The confidentiality of those reports and replies, as well as the absence of enforcement mechanisms, could ensure that some states unwilling to comply with the treaty are still able to ratify the Protocol. Moreover, the findings that states with a common law system or with a lower density of regional or neighboring countries' ratification are less likely to ratify the OPCAT are also consistently found in studies on international human rights treaties. It is hard to argue that the ratification pattern of the OPCAT is distinguished from the pattern of the CAT. Although the introduction of the visiting or NPMs into the global human rights treaty system can be regarded as a new and

valuable addition to human rights instruments, it is premature to hail the establishment of the Protocol and increasing number of ratifications as a 'paradigm shift.'

If the ratification by states does not guarantee their strong commitment to anti-torture and human rights, it is the subject of compliance that researchers should focus on to see if states parties meet the legal obligations of the treaty. The analyses of compliant behavior with the OPCAT suggest that the high rate of NPMs and SPT obligation fulfilled by states parties is a sign that the OPCAT commitment is not another empty promise. Considering more frequent non-compliant behavior with the SPT visiting mechanism at a less significant level, however, it is again cautious to conclude that it represents an increased and more sincere commitment to human rights norms. A more concrete answer awaits until the SPT makes visits to all the states parties and there is a better understanding as well as information on how the NPMs function and how the governments cooperate with the national preventive bodies. Although the OPCAT is still in its early stage, it is clear that making promises does not naturally ensure keeping promises.

Overall, this dissertation study makes a contribution to our understanding of states' commitment to the OPCAT which has been under-examined in the literature. Given the high expectations often accompanying the OPCAT, it is important to investigate states' ratification and compliance to evaluate if those high hopes can be empirically founded. As this study suggests, there are reservations to the claim that the increasing number of ratifications serves as concrete evidence of strengthening global human rights norms around the globe. Instead, more attention should be given

to understanding how the treaty terms, such as the SPT visits and NPMs, are implemented.

A broader implication of this project is for the answer to the question of whether or not the international community should continue drafting and adopting more optional protocols to international human rights treaties. Are such protocols an effective way to implement and strengthen international human rights treaties? There are indeed a total of nine optional protocols as of January 2018 with a variation in their institutional designs.[148] Other than the OPCAT, there are two different types of optional protocols. The first type of optional protocol is designed to allow for individual petitions that enable individuals or a group of individuals to complain about violations of their rights to an international human rights treaty body. Another group of optional protocols aims at incorporating emerging and more specific issues into the existing treaties. For instance, the Convention on the Rights of the Child (CRC) has two optional protocols that specifically address the rights of the child in armed conflicts and a set of issues including the sale of a child, child pornography, and child prostitution. The same research questions should be raised about these two groups of optional protocols, focusing on the different institutional designs that may cause varying degrees of commitment. Regarding this future research, it is important to understand how far the international human rights treaty regime has come in terms of its effectiveness, and equally importantly, to understand whether it would be promising and constructive or not to continue legalizing international human rights by adding more optional protocols and creating new treaties.

[148] Retrieved January 31, 2018 from United Nations Treaty Collection online database, https://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en.

7.2 Directions for Future Research

There are some research agendas that can be developed for future research. The first direction for future research concerns one of the findings in Chapter 4 that OPCAT commitment by regional or neighboring countries' exerts a significant influence on states' decision to ratify the Protocol. Although the significance of this variable has constantly been reported in the literature, a more concrete explanation is required to decipher this association. A big and controversial question is whether this behavior follows a logic of appropriateness or logic of consequentialism. It is still uncertain whether more ratifications by neighboring countries make the commitment normatively more appealing and appropriate, or whether they simply pressure the government to a point where the country is unable to avoid its ratification. The regional perspective in Chapter 3 assumes that these two mechanisms can co-exist and does not distinguish between them. Thus future research can focus on figuring out which logic is more influential in terms of OPCAT ratification and compliance.

Another area for further development initiated by this project is to investigate the relationship between OPCAT and CAT commitment. There is the strong correlation between a higher degree of CAT commitment and a greater probability of OPCAT commitment. Future research can transcend a simple identification of an association by examining causal mechanisms linking these two treaty commitments to each other. Domestic political changes after the CAT commitment need to be better understood in this context. Rather than treating the two treaty commitments as independent of one another, it is important to understand how post-CAT ratification

affects domestic actors, including state leaders, agents, and civil society, and how these changes further affect state leaders' decisions to ratify the OPCAT.

It is also important to delve into roles played by non-state actors. The existing literature, including this dissertation study, adopts a state-centric approach (Simmons 2010). However, as the case of the Philippines briefly showed, there are non-state actors who facilitate states' ratification and compliance with the treaty. It is reasonable to assume that ratification is not a decision that can be made overnight, out of nowhere. Regional, national, and transnational human rights advocacy groups are likely to be engaged in a series of workshops and conferences, as well as consultations with government officials and Congress members, until the ratification is made. Once a state has ratified, this advocacy network will then monitor the implementation status, and if necessary, launch a campaign to pressure or persuade the government to comply with the treaty. In addition to human rights advocacy groups, there are other non-state actors who hinder treaty compliance. Torture is often carried out by local, paramilitary, or non-governmental actors. Many of the torture activities and human rights violations in the Philippines were carried out by the local government and its sponsored groups. If compliant behavior with the OPCAT cannot be ordered from the top down, then future research should focus on agency problems and the dynamics that play between governmental and non-governmental actors.

Evaluating the effectiveness of the Protocol is another area for future research. First of all, there are methodological challenges, such as selection bias. Given that the OPCAT ratification is a non-random phenomenon, researchers need to address the selection effect in the OPCAT membership. It also asks researchers to imagine

counterfactuals to estimate the effect of OPCAT commitment on human rights improvement. For instance, it should be asked what would have happened if uncommitted countries had been forced to ratify the treaty. The effect of the OPCAT could be then estimated by comparing predicted probabilities of engaging in torture for uncommitted states to probabilities for uncommitted states engaging in torture if they had been forced to ratify.

Equally importantly, evaluating the effect of the OPCAT can benefit from an understanding of causal mechanisms linking the treaty commitment to human rights improvements. Future studies need to explain how the two mechanisms – SPT visit and NPMs – can separately or synergistically work to produce a positive impact on promoting human rights. In this regard, it is important for researchers to understand the institutional features that allow for a variation in complaint behavior like the public release of SPT reports and replies. Communication between the SPT and states parties can also be analyzed to figure out what recommendations or suggestions the SPT made and whether states parties addressed them. NPMs also raise several research questions. For instance, researchers can question how differently an ombudsman or human rights commission as an NPM would affect the effectiveness of NPMs and human rights protection (Steinerte and Murray 2018). It would also be promising to examine whether and how much independence NPMS are granted and how the independence of NPMs affects the prevention of torture and human rights improvement (Steinerte 2014). This research agenda will benefit from case studies, as recently illustrated by McGregor's study on New Zealand (McGregor 2017). In addition, as suggested by Cassel (2001), the OPCAT may be a part of a broader set of

interrelated and mutually reinforcing processes that together pull human rights forward. In this regard, it is important to consider the impact of other relevant treaties, especially the CAT (Cassel 2001).

Appendices

Appendix 1. The Text of the OPCAT

Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

Adopted on 18 December 2002 at the fifty-seventh session of the General Assembly of the United Nations by resolution A/RES/57/199
entered into force on 22 June 2006

PREAMBLE

The States Parties to the present Protocol,

Reaffirming that torture and other cruel, inhuman or degrading treatment or punishment are prohibited and constitute serious violations of human rights,

Convinced that further measures are necessary to achieve the purposes of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the Convention) and to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment,

Recalling that articles 2 and 16 of the Convention oblige each State Party to take effective measures to prevent acts of torture and other cruel, inhuman or degrading treatment or punishment in any territory under its jurisdiction,

Recognizing that States have the primary responsibility for implementing those articles, that strengthening the protection of people deprived of their liberty and the full respect for their human rights is a common responsibility shared by all and that international implementing bodies complement and strengthen national measures,

Recalling that the effective prevention of torture and other cruel, inhuman or degrading treatment or punishment requires education and a combination of various legislative, administrative, judicial and other measures,

Recalling also that the World Conference on Human Rights firmly declared that efforts to eradicate torture should first and foremost be concentrated on prevention and called for the adoption of an optional protocol to the Convention, intended to establish a preventive system of regular visits to places of detention,

Convinced that the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment can be strengthened by non-judicial means of a preventive nature, based on regular visits to places of detention, Have agreed as follows:

PART I

General principles

Article 1

The objective of the present Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.

Article 2

1. A Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture (hereinafter referred to as the Subcommittee on Prevention) shall be established and shall carry out the functions laid down in the present Protocol.

2. The Subcommittee on Prevention shall carry out its work within the framework of the Charter of the United Nations and shall be guided by the purposes and principles thereof, as well as the norms of the United Nations concerning the treatment of people deprived of their liberty.

3. Equally, the Subcommittee on Prevention shall be guided by the principles of confidentiality, impartiality, non-selectivity, universality and objectivity.

4. The Subcommittee on Prevention and the States Parties shall cooperate in the implementation of the present Protocol.

Article 3

Each State Party shall set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter referred to as the national preventive mechanism).

Article 4

1. Each State Party shall allow visits, in accordance with the present Protocol, by the mechanisms referred to in articles 2 and 3 to any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence (hereinafter referred to as places of detention). These visits shall be undertaken with a view to strengthening, if necessary, the protection of these persons against torture and other cruel, inhuman or degrading treatment or punishment.

2. For the purposes of the present Protocol, deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private

custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority.

PART II

Subcommittee on Prevention

Article 5

1. The Subcommittee on Prevention shall consist of ten members. After the fiftieth ratification of or accession to the present Protocol, the number of the members of the Subcommittee on Prevention shall increase to twenty-five.

2. The members of the Subcommittee on Prevention shall be chosen from among persons of high moral character, having proven professional experience in the field of the administration of justice, in particular criminal law, prison or police administration, or in the various fields relevant to the treatment of persons deprived of their liberty.

3. In the composition of the Subcommittee on Prevention due consideration shall be given to equitable geographic distribution and to the representation of different forms of civilization and legal systems of the States Parties.

4. In this composition consideration shall also be given to balanced gender representation on the basis of the principles of equality and non-discrimination.

5. No two members of the Subcommittee on Prevention may be nationals of the same State.

6. The members of the Subcommittee on Prevention shall serve in their individual capacity, shall be independent and impartial and shall be available to serve the Subcommittee on Prevention efficiently.

Article 6

1. Each State Party may nominate, in accordance with paragraph 2 of the present article, up to two candidates possessing the qualifications and meeting the requirements set out in article 5, and in doing so shall provide detailed information on the qualifications of the nominees.

2.

(a) The nominees shall have the nationality of a State Party to the present Protocol;

(b) At least one of the two candidates shall have the nationality of the nominating State Party;

(c) No more than two nationals of a State Party shall be nominated;

(d) Before a State Party nominates a national of another State Party, it shall seek and obtain the consent of that State Party.

3. At least five months before the date of the meeting of the States Parties during which the elections will be held, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall submit a list, in alphabetical order, of all persons thus nominated, indicating the States Parties that have nominated them.

Article 7

1. The members of the Subcommittee on Prevention shall be elected in the following manner:

(a) Primary consideration shall be given to the fulfilment of the requirements and criteria of article 5 of the present Protocol;

(b) The initial election shall be held no later than six months after the entry into force of the present Protocol;

(c) The States Parties shall elect the members of the Subcommittee on Prevention by secret ballot;

(d) Elections of the members of the Subcommittee on Prevention shall be held at biennial meetings of the States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Subcommittee on Prevention shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of the States Parties present and voting.

2. If during the election process two nationals of a State Party have become eligible to serve as members of the Subcommittee on Prevention, the candidate receiving the higher number of votes shall serve as the member of the Subcommittee on Prevention. Where nationals have received the same number of votes, the following procedure applies:

(a) Where only one has been nominated by the State Party of which he or she is a national, that national shall serve as the member of the Subcommittee on Prevention;

(b) Where both candidates have been nominated by the State Party of which they are nationals, a separate vote by secret ballot shall be held to determine which national shall become the member;

(c) Where neither candidate has been nominated by the State Party of which he or she is a national, a separate vote by secret ballot shall be held to determine which candidate shall be the member.

Article 8

If a member of the Subcommittee on Prevention dies or resigns, or for any cause can no longer perform his or her duties, the State Party that nominated the member shall nominate another eligible person possessing the qualifications and meeting the requirements set out in article 5, taking into account the need for a proper balance among the various fields of competence, to serve until the next meeting of the States Parties, subject to the approval of the majority of the States Parties. The approval

shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

Article 9

The members of the Subcommittee on Prevention shall be elected for a term of four years. They shall be eligible for re-election once if renominated. The term of half the members elected at the first election shall expire at the end of two years; immediately after the first election the names of those members shall be chosen by lot by the Chairman of the meeting referred to in article 7, paragraph 1 (d).

Article 10

1. The Subcommittee on Prevention shall elect its officers for a term of two years. They may be re-elected.

2. The Subcommittee on Prevention shall establish its own rules of procedure. These rules shall provide, inter alia, that:

(a) Half the members plus one shall constitute a quorum;

(b) Decisions of the Subcommittee on Prevention shall be made by a majority vote of the members present;

(c) The Subcommittee on Prevention shall meet in camera.

3. The Secretary-General of the United Nations shall convene the initial meeting of the Subcommittee on Prevention. After its initial meeting, the Subcommittee on Prevention shall meet at such times as shall be provided by its rules of procedure. The Subcommittee on Prevention and the Committee against Torture shall hold their sessions simultaneously at least once a year.

PART III

Mandate of the Subcommittee on Prevention

Article 11

1. The Subcommittee on Prevention shall:

(a) Visit the places referred to in article 4 and make recommendations to States Parties concerning the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;

(b) In regard to the national preventive mechanisms:

(i) Advise and assist States Parties, when necessary, in their establishment;

(ii) Maintain direct, and if necessary confidential, contact with the national preventive mechanisms and offer them training and technical assistance with a view to strengthening their capacities;

(iii) Advise and assist them in the evaluation of the needs and the means necessary to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;

(iv) Make recommendations and observations to the States Parties with a view to strengthening the capacity and the mandate of the national preventive mechanisms for the prevention of torture and other cruel, inhuman or degrading treatment or punishment;

(c) Cooperate, for the prevention of torture in general, with the relevant United Nations organs and mechanisms as well as with the international, regional and national institutions or organizations working towards the strengthening of the protection of all persons against torture and other cruel, inhuman or degrading treatment or punishment.

Article 12

In order to enable the Subcommittee on Prevention to comply with its mandate as laid down in article 11, the States Parties undertake:

(a) To receive the Subcommittee on Prevention in their territory and grant it access to the places of detention as defined in article 4 of the present Protocol;

(b) To provide all relevant information the Subcommittee on Prevention may request to evaluate the needs and measures that should be adopted to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;

(c) To encourage and facilitate contacts between the Subcommittee on Prevention and the national preventive mechanisms;

(d) To examine the recommendations of the Subcommittee on Prevention and enter into dialogue with it on possible implementation measures.

Article 13

1. The Subcommittee on Prevention shall establish, at first by lot, a programme of regular visits to the States Parties in order to fulfil its mandate as established in article 11.

2. After consultations, the Subcommittee on Prevention shall notify the States Parties of its programme in order that they may, without delay, make the necessary practical arrangements for the visits to be conducted.

3. The visits shall be conducted by at least two members of the Subcommittee on Prevention. These members may be accompanied, if needed, by experts of demonstrated professional experience and knowledge in the fields covered by the present Protocol who shall be selected from a roster of experts prepared on the basis of proposals made by the States Parties, the Office of the United Nations High Commissioner for Human Rights and the United Nations Centre for International Crime Prevention. In preparing the roster, the States Parties concerned shall propose no more than five national experts. The State Party concerned may oppose the

inclusion of a specific expert in the visit, whereupon the Subcommittee on Prevention shall propose another expert.

4. If the Subcommittee on Prevention considers it appropriate, it may propose a short follow-up visit after a regular visit.

Article 14

1. In order to enable the Subcommittee on Prevention to fulfil its mandate, the States Parties to the present Protocol undertake to grant it:

(a) Unrestricted access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;

(b) Unrestricted access to all information referring to the treatment of those persons as well as their conditions of detention;

(c) Subject to paragraph 2 below, unrestricted access to all places of detention and their installations and facilities;

(d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the Subcommittee on Prevention believes may supply relevant information;

(e) The liberty to choose the places it wants to visit and the persons it wants to interview.

2. Objection to a visit to a particular place of detention may be made only on urgent and compelling grounds of national defence, public safety, natural disaster or serious disorder in the place to be visited that temporarily prevent the carrying out of such a visit. The existence of a declared state of emergency as such shall not be invoked by a State Party as a reason to object to a visit.

Article 15

No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the Subcommittee on Prevention or to its delegates any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.

Article 16

1. The Subcommittee on Prevention shall communicate its recommendations and observations confidentially to the State Party and, if relevant, to the national preventive mechanism.

2. The Subcommittee on Prevention shall publish its report, together with any comments of the State Party concerned, whenever requested to do so by that State Party. If the State Party makes part of the report public, the Subcommittee on Prevention may publish the report in whole or in part. However, no personal data shall be published without the express consent of the person concerned.

3. The Subcommittee on Prevention shall present a public annual report on its activities to the Committee against Torture.

4. If the State Party refuses to cooperate with the Subcommittee on Prevention according to articles 12 and 14, or to take steps to improve the situation in the light of the recommendations of the Subcommittee on Prevention, the Committee against Torture may, at the request of the Subcommittee on Prevention, decide, by a majority of its members, after the State Party has had an opportunity to make its views known, to make a public statement on the matter or to publish the report of the Subcommittee on Prevention.

PART IV

National preventive mechanisms

Article 17

Each State Party shall maintain, designate or establish, at the latest one year after the entry into force of the present Protocol or of its ratification or accession, one or several independent national preventive mechanisms for the prevention of torture at the domestic level. Mechanisms established by decentralized units may be designated as national preventive mechanisms for the purposes of the present Protocol if they are in conformity with its provisions.

Article 18

1. The States Parties shall guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel.

2. The States Parties shall take the necessary measures to ens ure that the experts of the national preventive mechanism have the required capabilities and professional knowledge. They shall strive for a gender balance and the adequate representation of ethnic and minority groups in the country.

3. The States Parties undertake to make available the necessary resources for the functioning of the national preventive mechanisms.

4. When establishing national preventive mechanisms, States Parties shall give due consideration to the Principles relating to the status of national institutions for the promotion and protection of human rights.

Article 19

The national preventive mechanisms shall be granted at a minimum the power:

(a) To regularly examine the treatment of the persons deprived of their liberty in places of detention as defined in article 4, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment;

(b) To make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations;

(c) To submit proposals and observations concerning existing or draft legislation.

Article 20

In order to enable the national preventive mechanisms to fulfil their mandate, the States Parties to the present Protocol undertake to grant them:

(a) Access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;

(b) Access to all information referring to the treatment of those persons as well as their conditions of detention;

(c) Access to all places of detention and their installations and facilities;

(d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the national preventive mechanism believes may supply relevant information;

(e) The liberty to choose the places they want to visit and the persons they want to interview;

(f) The right to have contacts with the Subcommittee on Prevention, to send it information and to meet with it.

Article 21

1. No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the national preventive mechanism any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.

2. Confidential information collected by the national preventive mechanism shall be privileged. No personal data shall be published without the express consent of the person concerned.

Article 22

The competent authorities of the State Party concerned shall examine the recommendations of the national preventive mechanism and enter into a dialogue with it on possible implementation measures.

Article 23

The States Parties to the present Protocol undertake to publish and disseminate the annual reports of the national preventive mechanisms.

PART V

Declaration

Article 24

1. Upon ratification, States Parties may make a declaration postponing the implementation of their obligations under either part III or part IV of the present Protocol.

2. This postponement shall be valid for a maximum of three years. After due representations made by the State Party and after consultation with the Subcommittee on Pre vention, the Committee against Torture may extend that period for an additional two years.

PART VI

Financial provisions

Article 25

1. The expenditure incurred by the Subcommittee on Prevention in the implementation of the present Protocol shall be borne by the United Nations.

2. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Subcommittee on Prevention under the present Protocol.

Article 26

1. A Special Fund shall be set up in accordance with the relevant procedures of the General Assembly, to be administered in accordance with the financial regulations and rules of the United Nations, to help finance the implementation of the recommendations made by the Subcommittee on Prevention after a visit to a State Party, as well as education programmes of the national preventive mechanisms.

2. The Special Fund may be financed through voluntary contributions made by Governments, intergovernmental and non-governmental organizations and other private or public entities.

PART VII

Final provisions

Article 27

1. The present Protocol is open for signature by any State that has signed the Convention.

2. The present Protocol is subject to ratification by any State that has ratified or acceded to the Convention. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Protocol shall be open to accession by any State that has ratified or acceded to the Convention.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States that have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

Article 28

1. The present Protocol shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying the present Protocol or acceding to it after the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession, the present Protocol shall enter into force on the thirtieth day after the date of deposit of its own instrument of ratification or accession.

Article 29

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

Article 30

No reservations shall be made to the present Protocol.

Article 31

The provisions of the present Protocol shall not affect the obligations of States Parties under any regional convention instituting a system of visits to places of detention. The Subcommittee on Prevention and the bodies established under such regional conventions are encouraged to consult and cooperate with a view to avoiding duplication and promoting effectively the objectives of the present Protocol.

Article 32

The provisions of the present Protocol shall not affect the obligations of States Parties to the four Geneva Conventions of 12 August 1949 and the Additional Protocols thereto of 8 June 1977, nor the opportunity available to any State Party to authorize the International Committee of the Red Cross to visit places of detention in situations not covered by international humanitarian law.

Article 33

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations, who shall

thereafter inform the other States Parties to the present Protocol and the Convention. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Such a denunciation shall not have the effect of releasing the St ate Party from its obligations under the present Protocol in regard to any act or situation that may occur prior to the date on which the denunciation becomes effective, or to the actions that the Subcommittee on Prevention has decided or may decide to take with respect to the State Party concerned, nor shall denunciation prejudice in any way the continued consideration of any matter already under consideration by the Subcommittee on Prevention prior to the date on which the denunciation becomes effective.

3. Following the date on which the denunciation of the State Party becomes effective, the Subcommittee on Prevention shall not commence consideration of any new matter regarding that State.

Article 34

1. Any State Party to the present Protocol may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties to the present Protocol with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting at the conference shall be submitted by the Secretary-General of the United Nations to all States Parties for acceptance.

2. An amendment adopted in accordance with paragraph 1 of the present article shall come into force when it has been accepted by a two -thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties that have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendment that they have accepted.

Article 35

Members of the Subcommittee on Prevention and of the national preventive mechanisms shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions. Members of the Subcommittee on Prevention shall be accorded the privileges and immunities specified in section 22 of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946, subject to the provisions of section 23 of that Convention.

Article 36

When visiting a State Party, the members of the Subcommittee on Prevention shall, without prejudice to the provisions and purposes of the present Protocol and such privileges and immunities as they may enjoy:

(a) Respect the laws and regulations of the visited State;

(b) Refrain from any action or activity incompatible with the impartial and international nature of their duties.

Article 37

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States.

Appendix 2. OPCAT membership

Participant	Signature, Succession to signature	Accession, Succession, Ratification
Albania		1 Oct 2003
Angola	24 Sep 2013	
Argentina	30 Apr 2003	15 Nov 2004
Armenia		14 Sep 2006
Australia	19 May 2009	21 Dec 2017
Austria	25 Sep 2003	4 Dec 2012
Azerbaijan	15 Sep 2005	28 Jan 2009
Belgium	24 Oct 2005	
Belize		4 Sep 2015
Benin	24 Feb 2005	20 Sep 2006
Bolivia (Plurinational State of)	22 May 2006	23 May 2006
Bosnia and Herzegovina	7 Dec 2007	24 Oct 2008
Brazil	13 Oct 2003	12 Jan 2007
Bulgaria	22 Sep 2010	1 Jun 2011
Burkina Faso	21 Sep 2005	7 Jul 2010
Burundi		18 Oct 2013
Cabo Verde	26 Sep 2011	1 Apr 2016
Cambodia	14 Sep 2005	30 Mar 2007
Cameroon	15 Dec 2009	
Central African Republic		11 Oct 2016
Chad	26 Sep 2012	
Chile	6 Jun 2005	12 Dec 2008
Congo	29 Sep 2008	
Costa Rica	4 Feb 2003	1 Dec 2005
Croatia	23 Sep 2003	25 Apr 2005
Cyprus	26 Jul 2004	29 Apr 2009
Czech Republic	13 Sep 2004	10 Jul 2006

Democratic Republic of the Congo		23 Sep 2010
Denmark	26 Jun 2003	25 Jun 2004
Ecuador	24 May 2007	20 Jul 2010
Estonia	21 Sep 2004	18 Dec 2006
Finland	23 Sep 2003	8 Oct 2014
France	16 Sep 2005	11 Nov 2008
Gabon	15 Dec 2004	22 Sep 2010
Georgia		9 Aug 2005
Germany	20 Sep 2006	4 Dec 2008
Ghana	6 Nov 2006	23 Sep 2016
Greece	3 Mar 2011	11 Feb 2014
Guatemala	25 Sep 2003	9 Jun 2008
Guinea	16 Sep 2005	
Guinea-Bissau	24 Sep 2013	
Honduras	8 Dec 2004	23 May 2006
Hungary		12 Jan 2012
Iceland	24 Sep 2003	
Ireland	2 Oct 2007	
Italy	20 Aug 2003	3 Apr 2013
Kazakhstan	25 Sep 2007	22 Oct 2008
Kyrgyzstan		29 Dec 2008
Lebanon		22 Dec 2008
Liberia		22 Sep 2004
Liechtenstein	24 Jun 2005	3 Nov 2006
Lithuania		20 Jan 2014
Luxembourg	13 Jan 2005	19 May 2010
Madagascar	24 Sep 2003	21 Sep 2017
Maldives	14 Sep 2005	15 Feb 2006
Mali	19 Jan 2004	12 May 2005
Malta	24 Sep 2003	24 Sep 2003
Mauritania	27 Sep 2011	3 Oct 2012
Mauritius		21 Jun 2005

Mexico	23 Sep 2003	11 Apr 2005
Mongolia	24 Sep 2013	12 Feb 2015
Montenegro	23 Oct 2006 d	6 Mar 2009
Morocco		24 Nov 2014
Mozambique		1 Jul 2014 a
Nauru		24 Jan 2013
Netherlands	3 Jun 2005	28 Sep 2010
New Zealand	23 Sep 2003	14 Mar 2007
Nicaragua	14 Mar 2007	25 Feb 2009
Niger		7 Nov 2014
Nigeria		27 Jul 2009
Norway	24 Sep 2003	27 Jun 2013
Panama	22 Sep 2010	2 Jun 2011
Paraguay	22 Sep 2004	2 Dec 2005
Peru		14 Sep 2006
Philippines		17 Apr 2012
Poland	5 Apr 2004	14 Sep 2005
Portugal	15 Feb 2006	15 Jan 2013
Republic of Moldova	16 Sep 2005	24 Jul 2006
Romania	24 Sep 2003	2 Jul 2009
Rwanda		30 Jun 2015
Senegal	4 Feb 2003	18 Oct 2006
Serbia	25 Sep 2003	26 Sep 2006
Sierra Leone	26 Sep 2003	
Slovenia		23 Jan 2007
South Africa	20 Sep 2006	
South Sudan		30 Apr 2015
Spain	13 Apr 2005	4 Apr 2006
Sri Lanka		5 Dec 2017
State of Palestine		29 Dec 2017
Sweden	26 Jun 2003	14 Sep 2005
Switzerland	25 Jun 2004	24 Sep 2009

The former Yugoslav Republic of Macedonia	1 Sep 2006	13 Feb 2009
Timor-Leste	16 Sep 2005	
Togo	15 Sep 2005	20 Jul 2010
Tunisia		29 Jun 2011
Turkey	14 Sep 2005	27 Sep 2011
Ukraine	23 Sep 2005	19 Sep 2006
United Kingdom of Great Britain and Northern Ireland	26 Jun 2003	10 Dec 2003
Uruguay	12 Jan 2004	8 Dec 2005
Venezuela (Bolivarian Republic of)	1 Jul 2011	
Zambia	27 Sep 2010	

Note: This list is based on the UNTC as of January 2018.

Appendix 3. Implementation of the NPMs and regular visit

Country	Year of Ratification & Accession	NPMs compliance	Regular Visit
Albania	2003	yes	
Argentina	2004	yes	2012
Armenia	2006	yes	2013
Australia	2017*	not yet**	
Austria	2012	yes	
Azerbaijan	2009	yes	2014, 2015
Belize	2015	not yet	
Benin	2006	not yet	2008, 2016
Bolivia (Plurinational State of)	2006	yes	2010, 2017
Bosnia and Herzegovina	2008*	not yet	
Brazil	2007	yes	2011, 2015
Bulgaria	2011	yes	
Burkina Faso	2010	not yet	2017
Burundi	2013	not yet	
Cabo Verde	2016	not yet	
Cambodia	2007	not yet	2009, 2013
Central African Republic	2016	not yet	
Chile	2008	not yet	2016
Costa Rica	2005	yes	
Croatia	2005	yes	
Cyprus	2009	yes	2016
Czech Republic	2006	yes	
Democratic Republic of the Congo	2010	not yet	
Denmark	2004	yes	
Ecuador	2010	yes	2014
Estonia	2006	yes	
Finland	2014	yes	
France	2008	yes	
Gabon	2010	not yet	2013
Georgia	2005	yes	
Germany	2008*	yes	2013
Ghana	2016	not yet	
Greece	2014	yes	
Guatemala	2008	yes	2015
Honduras	2006	yes	2009, 2012
Hungary	2012*	yes	2017

Italy	2013	yes	2015
Kazakhstan	2008*	yes	2016
Kyrgyzstan	2008	yes	2012
Lebanon	2008	yes	2010
Liberia	2004	not yet	2010
Liechtenstein	2006	yes	
Lithuania	2014	yes	
Luxembourg	2010	yes	
Madagascar	2017	not yet**	
Maldives	2006	yes	2007, 2014
Mali	2005	yes	2011
Malta	2003	yes	2014
Mauritania	2012	yes	2016
Mauritius	2005	yes	2007
Mexico	2005	yes	2008, 2016
Mongolia	2015	not yet	2017
Montenegro	2009*	yes	
Morocco	2014	not yet	2017
Mozambique	2014	yes	2016
Nauru	2013	not yet	2015
Netherlands	2010	yes	2015
New Zealand	2007	yes	2013
Nicaragua	2009	yes	2014
Niger	2014	not yet	2017
Nigeria	2009	not yet	2014
Norway	2013	yes	
Panama	2011	not yet	2017
Paraguay	2005	yes	2009, 2010
Peru	2006	yes	2013
Philippines	2012*	not yet	2015
Poland	2005	yes	
Portugal	2013	yes	
Republic of Moldova	2006	yes	2012
Romania	2009*	yes	2016
Rwanda	2015	not yet	2017
Senegal	2006	yes	2012
Serbia	2006	yes	
Slovenia	2007	yes	
South Sudan	2015	yes	
Spain	2006	yes	2017
Sri Lanka	2017	yes	
Sweden	2005	yes	2008
State of Palestine	2017	not yet**	

Switzerland	2009	yes	
The former Yugoslav Republic of Macedonia	2009	yes	2017
Togo	2010	yes	2014
Tunisia	2011	yes	2016
Turkey	2011	yes	2015
Ukraine	2006	yes	2011, 2016
United Kingdom of Great Britain and Northern Ireland	2003	yes	
Uruguay	2005	yes	

*Note: * States made declaration on postponement of implementation of NPM obligation.*
*** one year deadline to maintain, designate or establish NPMs not yet expired.*

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