Tracking the Process of International Norm Emergence: A Comparative Analysis of Six Agendas and Emerging Migrants’ Rights

Justin Gest, Carolyn Armstrong, Elizabeth Carolan, Elliott Fox, Vanessa Holzer, Tim McLellan, Audrey Cherryl Mogan, and Meher Talib

This article provides a systematic understanding of international norm emergence and illuminates the various strategic pathways to altering global dialogue and standards of practice. It traces the steps leading to global norm emergence and identifies the range of conditions that are necessary or sufficient for potential norms to move from one step to the next. Accordingly, it analyzes the progress of six separate international norm agendas to develop a more systematic understanding of the process of global norm creation, which can be applied to fledgling efforts to establish a new regime of international migrants’ rights. Based on this examination, it introduces a typology that categorizes the stages of norm development and the range of possible outcomes. **Keywords:** norm emergence, global governance, migration, human rights, agenda, process tracing, stages.

**Tracking the process of international norm emergence can be likened to understanding the development of a thundercloud.** We know the outcome of interest—a fierce tempest, or a cascade of political will behind change in international practice. We know the components that lead to the outcome of interest—particles of water and air, or individual and organizational support at the grassroots level. However, it is of use to track the processual stages during which components evolve and interact to produce the phenomenal result. This evolution has been tracked by meteorological scientists who have plotted the development of cumulonimbus clouds. And indeed, social scientists have performed similar analyses of ostensibly amorphous processes such as international power transition, political modernization, and even grief.

In this article, we analyze the progress of six separate international norm agendas. In doing so, we attempt to trace the steps leading to norm emergence and identify the range of conditions that are necessary or sufficient for potential norms to move from one step to the next. Earlier work has defined and analyzed the grander life cycle of international norms. Most prominently, Kathryn Sikkink and Martha Finnemore identify three stages: (1) norm emergence; (2) norm cascade; and (3) internalization. In this article, we specifi-
cally focus on the first stage until the so-called tipping point is reached and the cascade of conformity and implementation takes place. We ask this question in the general scientific interest of developing a more systematic understanding of the process of global norm creation, but also in the more specific interest of applying our understanding to fledgling contemporary efforts to establish a new regime of international migrants’ rights—the component parts of which largely remain in early stages of emergence.

We begin this analysis by reviewing current understandings of norm emergence to situate our contribution. We then describe our six selected cases of norm emergence and validate their selection with special reference to their relationship with emerging migrants’ rights agendas. In the interest of systematizing this examination, we introduce an initial typology that categorizes the stages of norm development and the range of possible outcomes. Doing so renders a common vernacular for this process that may serve as a useful reference point across cases and studies. Proceeding chronologically according to this typology, we then consider ways in which norm-creation efforts have raised the profile of their agendas, consolidated support, and institutionalized the movement. Next, we consider the ways in which these efforts have negotiated against state claims of sovereignty with certain tools of leverage, and their differential effects on state adoption and commitment. In the end, we hope to contribute a more systematic understanding of international norm emergence and illuminate the various strategic pathways to altering global dialogue and standards of practice.

Norm Emergence in Scope

A norm is commonly understood to be a standard of behavior that is considered to be appropriate for a given set of actors. The literature has also identified several distinctive categories of norms such as regulative norms, constitutive norms, or evaluative/prescriptive norms—all of which communicate an understanding of “appropriateness” or “oughtness” against which deviant behavior can be judged. Scholars have also made the important distinction between domestic and international norms while noting, however, that they are actually intertwined, as international norms may be used as leverage at the domestic level to bring about domestic change and because some international norms may actually originate from domestic norms that have been successfully elevated to the global level by domestic-level actors.

Taken in scope, the process of norm emergence has been largely under-theorized. Scholarly accounts tend to view norm emergence as the result of persuasion, with no formal or commonly occurring characteristics. Instead, studies tend to point to the charismatic leadership and initiative of messianic individuals or favorable circumstances, rather than a systematic process that contextualizes the appearance of such variables. One of the primary reasons
for this deficiency is perhaps that studies of norm emergence are often conducted in isolation. They tend to examine cases of emergence in specific states, or consider the international emergence of a singular normative agenda. Neither path enables comparative analysis, so any theoretical findings may be criticized as inductive and not externally valid.

Prominent explorations focus closely on the role of "norm entrepreneurs," key individuals who push normative change forward and are able to convince decisionmakers to put issues on the political agenda. Other scholars have focused on complementary societal influences. International norms may develop because they resonate with domestic audiences or because domestic norms are elevated to an international level. Alternatively, they may become institutionalized at an international level within existing organizations. Systemic-level explanations for successful norm development have also been presented. Norms may come about in response to coordination problems. A hegemonic state may also be able to successfully introduce a norm, or the successful creation of a norm could be linked to how well it meshes with existing international norms. It has also been suggested that the identity of actors, the power of emulation, and the politics of reputation could aid norm development. Deborah Cass looks to norm generation in the judicial sphere of international trade while Christine Ingebritsen speaks to the ability of certain states to act as early norm entrepreneurs—specifically, the role of Scandinavian states as the creators and promoters of norms in the areas of aid provision and global ecopolitics, among others. These contributions tend to consider norm emergence in isolated circumstances. They examine individual actors that are specific to a particular agenda, individual states' experiences with a particular agenda, or individual campaigns for a particular change in international practice.

Sikkink and Finnemore paint a more holistic and generalizable picture of international norm creation by developing their aforementioned life cycle model. They assert that norm emergence and norm acceptance are separated by a threshold or tipping point whereby a critical mass of actors agree to adopt the norm, thus allowing the norm to cascade. In line with other scholarship, Sikkink and Finnemore attribute the achievement of this tipping point to the norm entrepreneurs who persuade the critical mass to accept the norm as the new prevailing standard. They assert that norm entrepreneurs raise issues and frame them in order to achieve normative change, as the success of any norm is contingent on its successful competition against existing norms and the status quo. Their primary method for moving a norm forward at this early stage is thought to be persuasion, often by aligning a new norm with existing ideas to achieve norm resonance. According to Sikkink and Finnemore, norm entrepreneurs also require organizational platforms from which they can promote their norms. This can also involve a norm being institutionalized within certain international rules and organiza-
tions, which helps to achieve a cascade.\textsuperscript{15} Beyond this understanding, Sikkink and Finnemore concede that minimal focus has been given to the study of norm emergence or norm building in empirical studies.

Contributions by Ann Marie Clark and Kathryn Sikkink have attempted to fill this gap. Like this article, Ann Marie Clark considers a "phased" approach for the emergence of what she terms "principled norms" relating to human rights and grounded in beliefs of what is right and wrong.\textsuperscript{16} She identifies four phases: fact finding, consensus building, principled norm construction, and norm application. While this is a helpful articulation, Clark's analysis and its generalizability is limited because of its focus on the emergence of norms relating specifically to torture, disappearances, and political killings. In this sphere of activism, she relies heavily on the agency of non-governmental organizations (NGOs)—particularly Amnesty International—at the expense of considering other actors' capacity to overcome challenges of national sovereignty. Moreover, the agendas that she examines are predominantly located within the United Nations, which means that the stages she identifies assume a platform for emergence that most fledgling agendas do not share.

Kathryn Sikkink applies the norm life cycle to the advent of state actors' individual accountability for human rights violations.\textsuperscript{17} In doing so, she considers the evolution of human rights prosecutions and argues that the emergence of a "justice cascade" can be traced to the appeal of the norm and its intrinsic force, advanced by the support of an alliance of states and NGOs that want to see change and may be situated in institutions of law.\textsuperscript{18} While this account is compelling, it remains specific to the development of human rights prosecutions. Consequently, it does not render universal processual milestones that may be applied to other cases of norm emergence, despite connecting quite well with the more generalizable stages that we elaborate later in this article. Previous scholarship otherwise connects the emergence of norms to factors such as human initiative, historically favorable events, fortuitous circumstance, or simple indeterminacy.\textsuperscript{19} Furthermore, the variable successes and failures of different normative initiatives and the manifold paths pursued for the purposes of normative emergence have arguably helped to support discussions on the nature of normative change as something that is highly contingent.

In the interest of beginning a conversation between scholars of global norm creation and enabling more generalizable conclusions about norm emergence, we seek to provide a common map of this important early stage. To pursue this heuristic inquiry, we have defined a class of observable phenomena that includes six different normative agendas that are analytically equivalent in distinct contexts. Each effort pursues a distinct objective, but they all conceptually and empirically relate to minority rights or concessions. With each selected normative agenda, we performed both a within-case, process-tracing analysis and a comparison of the cases (and their
histories) to draw inferences about the field. In this way, we were able to consider the range of known and unknown intervening variables that co-mingle to cause the development or stagnation of different initiatives. We therefore were also able to observe unexpected causal factors, create typologies of activity, and determine what conditions present in a case activate different mechanisms and pathways.\(^{20}\)

**Case Selection**

In this study, we were interested in the outcomes of different norm-creation agendas. However, there are myriad possible outcomes for such efforts and no universally recognized criteria for success or failure. Therefore, while we were concerned with considering variation in the different experiences of the agendas we examined, we were unable to classify some pursuits as fruitless and others as fulfilled. Instead, we opted for a range of different outcomes, which we enumerate later in this section. A further complication is that the paths of many of the most conceptually interesting cases are still evolving in this era of greater global governance, and it remains too early to determine their success. As a result, we identified scope conditions for our work that allowed us to narrow our field of interest and find six cases that we determined to hold conceptual or empirical relevance in the emerging sphere of migrants’ rights.\(^{21}\) In considering these cases’ historical progress to their current status, we hoped to determine whether and how a variable mattered to the outcome, rather than assessing how much it mattered.\(^{22}\) Indeed, at the minimum, we expected these methods to provide us with the confidence to determine whether or not principal variables are contributing factors.

We selected these cases for heuristic purposes to identify the range of possible variables, hypotheses, causal mechanisms, and paths of implementation. In the interest of understanding the scope of possible partners, obstacles, and variable conditions, we incorporated cases that exhibit both successful implementation and difficulty at different stages of development. While the cases are broad enough to extrapolate a more general understanding of norm emergence, they also substantially relate to the pathways and obstacles facing an emergent migrants’ rights agenda. And while our focus on cases that progressed toward a treaty assumes the importance of hard or soft law documents in the establishment of a new norm, we chose to do so in order to examine the process of norm emergence at all possible stages. We anticipated that these decisions would reveal the variety of alternative causal paths and provide tougher tests of existing theory.

1. The UN Guiding Principles on Internal Displacement were developed through a bottom-up approach spearheaded by international NGOs. Although under the auspices of the UN representative on internal displacement, the
Guiding Principles are unique in that they were drafted by legal experts and academic institutions completely outside of the UN system. Though they have never been formally voted on by states, the Guiding Principles have come to represent a standard in international law and, as such, provide a strong case of implementation utilizing soft law techniques to address an issue akin to international immigration. They function as a nonbinding instrument that has encouraged state compliance, enjoys wide support, and has been incorporated into a binding instrument by the African Union.

2. The International Labour Organization (ILO) Declaration on Fundamental Principles and Rights at Work (ILO 1998 Declaration) is a nonbinding commitment by member states to the following fundamental principles: freedom of association and the effective recognition of the right to collective bargaining, elimination of all forms of forced or compulsory labor, effective abolition of child labor, and elimination of discrimination with respect to employment and occupation. In response to member states' reluctance to increase legal obligations, a consensus emerged regarding a commitment to fundamental labor rights in the form of a nonbinding, promotional declaration. In 1998, the ILO adopted the Declaration on Fundamental Principles and Rights at Work and the Follow-up Mechanism which, through the ILO's existing constitutional structure, applies to all ILO members (185 countries) regardless of whether or not they have ratified relevant conventions or recommendations. The ILO 1998 Declaration aims to set global standards for the treatment of workers in a manner that could be similarly applied to immigrants. As a declaration of rights (as principles), this agenda confronts similar challenges to implementation. Yet more saliently, it serves as a case that addresses the risk of a fragmentation of standards when rights have already been enumerated in other human rights instruments. As a consequence of its soft law approach, the ILO 1998 Declaration has incorporated a variety of implementation measures, including an annual review for nonratifying countries to state what measures they are taking to achieve standards, a global report submitted by the ILO director-general to highlight areas that require greater attention, and technical cooperation to put principles into practice.

3. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) came into force in 2003, after being adopted by the UN General Assembly in 1990. It was composed by an Open-Ended Working Group of the General Assembly from 1979 to 1990. The project formalized norms pertaining to migrant workers as developed by the ILO since the 1940s. The institutional process through which the ICRMW developed within the UN was initiated by diplomats from countries with high rates of emigration who were frustrated with ILO efforts to date and were specifically prompted by dissatisfaction with the provisions of the 1975 ILO Migrant Workers Convention. The ICRMW is
characterized by low levels of country ratification and, crucially, no ratification from Western countries with high levels of immigration. With only thirty-four signatories, its low ratification rate—and, particularly, its lack of ratification among Western destination countries—provides insight into the likely opposition that a new international migrants’ rights agenda would face. It also highlights the need for a cohesive communications strategy regarding the goals and content of a normative agenda in order to avoid any misconceptions that may polarize receiving countries.23

4. The Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol is the first human rights treaty of the twenty-first century and, thus, the most contemporary model for an international migrants’ rights agenda. It serves as a useful case agenda that outlines the human rights of a particular category of persons. Similar to the ILO 1998 Declaration and an international migrants’ rights agenda, this effort was deemed necessary despite the fact that there were already several human rights instruments within the scope of which the plight of persons with disabilities fell. The CRPD and its Optional Protocol were adopted in 2006, marking a paradigm shift from a medical, paternalistic approach to disability to a social, human rights-based understanding.24 When opened for signatures in 2007, the CRPD and its Optional Protocol received the highest number of signatories to a UN convention on opening day, with eighty-two signatories to the CRPD, forty-four signatories to the Optional Protocol, and one ratification of the CRPD. The CRPD’s institutional framework makes this case conceptually interesting, because it combines traditional human rights treaty bodies with new ones: for example, the biennial Conference of the Parties (COP). The transnational movement of disability organizations was historically “disparate and divided.”25 The CRPD is also strategically interesting because its innovative drafting process attracted the unprecedented involvement of NGOs that represent persons with disabilities, requiring them to quickly step up their coordination.26

5. The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is a human rights-based convention that builds on previous treaties and documents and targets one vulnerable demographic, like the CRPD and ILO 1998 Declaration. The Optional Protocol itself does not contain any substantive rights and has only seventy-nine signatories. However, it provides a new complaints procedure to support provisions already contained in CEDAW. The introduction of the Optional Protocol was intended to remedy the fact that, despite being a hard law treaty, the provisions of CEDAW were rarely implemented by states. The Optional Protocol was one of several outcomes of a highly coordinated movement led by a global network of NGOs. As such, this case can be compared to NGO campaigns that have been more fragmented or that have been led by a few larger NGOs openly dictating an agenda. There may also be
lessons to learn from the movement's extensive use of UN conferences as a platform for agenda setting and consolidating support.

6. The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction (Mine Ban Treaty) came into being in 1997 with 122 government signatures following a short and highly orchestrated campaign by NGOs referred to as the "Ottawa process." Although it secured the backing of the Canadian state early on, the treaty is widely regarded as an exemplar of NGO-led international law. Its progress exhibits key lessons to be learned about norms and their role in the creation of international law. It has been argued that the treaty demonstrates the "potential of norm entrepreneurs to influence a broad audience." It also managed to successfully change the parameters of the debate on the issue from one of military utility to a broader discussion of societal impact, introducing a moral calculus into the definition of national security.

Each of these agendas has reached the later stages of norm creation, with variable amounts of success in implementing principles and rights frameworks. However, their paths to this point have been variable and divergent. We used a process-tracing analysis in seeking to identify and typologize key independent variables—indeed, those circumstances that were present in each case. In this way, we could also address what strategies the successful agendas had in common and what circumstances created difficulty across cases. (See the Appendix for a typology of partners and hindrances.)

In the interest of facilitating a systematic, focused examination that considered comparable data, we addressed each case with a set of standardized questions as part of a process-tracing analysis. Each case expert adhered to a universal list of inquiries. We monitored the conduct of the case studies to ensure that guidelines were followed in the interest of uniformity. The analyses accounted for the effects of history and personal agency, and addressed any idiosyncrasies that account for differences in outcomes. However, in compiling the data, we employed a procedure of systematic accumulation that both framed our analysis and made space for nuanced narratives.

Types of Outcomes
As we considered variation in the experiences of the agendas we examined, our case selection entailed questions about the definition of success. While many observers condition success on the creation of a new convention, securing a convention's ratification has often proven to be an inexhaustible process that does not guarantee compliance anyway. And while successful soft law may encourage wider implementation through dialogue and diplomacy, the worst-offending states underscore its nonbinding nature. However,
discussions that focus only on the hard law or soft law debate may miss a vital component of norm generation. Given this concern for the broader context of norm generation and the debatable criteria of success, this analysis concerned itself with productive outcomes. We organized these outcomes into five types: a shift in discourse, a change in the way an issue is discussed; the vernacularization of rights, or the creation and popularization of new language that facilitates the universal communication of grievance, shared experience, and collective advocacy; the rearticulation or reaffirmation of preexisting law; the creation of new commitments in the form of a new piece of international legislation or norms that introduce previously undocumented principles into the sphere of legal discourse (and perhaps statute); and the implementation of new law, or the enforcement of existing (but unpracticed) law. All of these can be seen as building toward stronger commitment, but they do not necessarily occur in the sequence identified. In the remainder of this article, we examine the process through which different normative agendas have achieved these variable outcomes.

Stages of Norm Development
Our analysis followed a uniform timeline that systematically structured the history and progress of each case in six stages of norm emergence. While the different stages may overlap and utilize multiple potential mechanisms, they were nonetheless evident in each case and proceeded chronologically stopping before the tipping point when a critical mass of states had accepted a norm regime. The process began with public awareness campaigns in the interest of agenda setting. With broad awareness, the campaigns sought to consolidate support in order to approach international institutions for consideration. Negotiations with state partners leveraged public support and institutional strength against states’ sovereignty-based resistance to international law in the interest of securing their adoption and commitment to the agenda (see Figure 1).

This outline of the progress of norm-emergence structures the remainder of this study. As we hope it will help future scholars systematically examine norm emergence and its processual steps, we employed it here to char-

Figure 1 Stages of Norm Emergence

<table>
<thead>
<tr>
<th>Stage 1: Agenda setting</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stage 2: Consolidation of support</td>
</tr>
<tr>
<td>Stage 3: Institutional approach</td>
</tr>
<tr>
<td>Stage 4: Negotiation</td>
</tr>
<tr>
<td>Stage 5: Adoption</td>
</tr>
<tr>
<td>Stage 6: Commitment</td>
</tr>
</tbody>
</table>
acterize the paths of the selected cases. For clarity, this study shares our observations and explains our conclusions in a way that corresponds to this standardization of chronological progress. For charts listing a typology of potential partners and hindrances encountered at each stage of norm emergence, refer to the Appendix.

**Agenda Setting: The Challenge of Public Awareness**

The challenge of moving from setting an agenda to building greater support for that agenda is perhaps the most significant hurdle for nascent norm-creation efforts.\(^{30}\) Our analysis suggests that this is a problem of fostering a threshold of public awareness about a political issue, but also a problem of coordinating a variety of interested parties in the diffuse global civil sphere. In this section, we first focus closely on how the six cases managed to build public awareness among relevant stakeholders and exhort them to prioritize their issue over competing policy challenges. Those efforts in pursuing an agenda outside of an institutional "home" capitalized on an international focusing event that served as an exhibition or example of the issue that they wished to raise. Conversely, efforts that were based in international institutions did not take advantage of such focusing events to publicize awareness and were able to consolidate support (i.e., move from Stage 1 to Stage 2) without the deliberate exploitation of an external event.

In the case of the International Campaign to Ban Landmines (ICBL), the use of a public awareness strategy was key in developing the sense of moral urgency that led to a change in the discourse around landmines and in pressuring states from below to conform to new norms. A broad international effort created a global critical mass of small local organizations that lobbied domestic governments under an international umbrella—the ICBL—while star power was mobilized by recruiting respected international ambassadors such as Princess Diana. Consequently, this effort was able to capitalize on increased media presence in conflict zones to create norms that "reversed the burden of proof" onto states to justify their use of weapons—creating positive reputation incentives for states to commit.\(^{31}\)

In the case of the UN Guiding Principles on Internal Displacement, leading NGOs like the Friends of the World Committee (Quakers), the Refugee Policy Group, and the Council of Churches employed a bottom-up approach that mobilized support during the aftermath of conflicts in Sudan, Iraq, and Somalia. The movement came about amidst the backdrop of changing notions of sovereignty brought on by the emerging human rights regime and greater access across borders in the post–Cold War period.\(^{32}\) These surrounding circumstances were coupled with a spike in the number of internally displaced persons (IDPs) from 1.2 million in 11 countries in 1982 to 20–25 million IDPs in 40 countries in 1995—significantly outpacing the number of refugees.\(^{33}\) The conflicts in Sudan, Iraq, and Somalia,
demonstrated the lack of an adequate international framework to deal with IDPs so that, by the early 1990s, the issue of IDPs was ripe for norm generation. In the case of the CEDAW Optional Protocol, women’s rights groups launched several awareness campaigns in the early 1990s.13 This included the holding of the first annual “16 Days of Activism Against Gender Violence” and a petition drive calling for the 1993 Vienna conference to address women’s rights.15 These campaigns focused on violence against women in a way that was timed to capitalize on contemporaneous media attention directed toward atrocities against women in war-torn Yugoslavia.16

Alternatively, movements that were based in international institutions did not take advantage of such exogenous events and, instead, used tactics that played off their status in diplomatic and institutional circles. The ILO 1998 Declaration, being based within the ILO, did not need a publicity campaign to promote its movement. Instead, the movement was able to consolidate the support at an international and intergovernmental level through ILO state membership and international conferences. Similarly, the ICRMW was initially generated by individual diplomats to the UN from major migrant-sending countries that sought to create momentum for a new migrant workers’ norm within the UN framework, which stemmed largely from dissatisfaction with recent ILO efforts in this area.17 Following its adoption by the UN in 1990, the ICRMW attained the minimum number of ratifying countries needed to enter into force in 2003 but, faced with a marked lack of ratification from migrant-receiving countries, launched an international civil society platform in 2005. Indeed, this movement went public only when internal diplomatic techniques failed to garner support.

With regard to creating a disability-specific international human rights treaty, the movement attempted to shift the UN’s approach from a medical, paternalistic understanding to a social model and human rights based approach. This paradigm shift took place at different levels: nationally through the adoption of legislation to halt discrimination against people with disabilities in several states, regionally through the creation of the Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities, and universally through the publication of several reports and opinions by different UN bodies. This change in the public treatment and conception of disability was crucial for setting the agenda and consolidating support for what was to become the Convention on the Rights of Persons with Disabilities and its Optional Protocol, but it was fostered primarily through institutional means.18 Threaded throughout these examples the integral role played by norm entrepreneurs that help guide agendas through the “normative vacuum” can be seen, as previously argued by Sikkink and Finnemore.19 And while these efforts that utilize celebrities as norm entrepreneurs can create public awareness on their own, other norm entrepreneurs often rely on external events that engage a wider audience.
Although the regular publication of migrants’ tragic stories suggests that the next such focusing event is just around the corner, the apparent disinclination to act on these unfortunate incidents thus far implies that public opinion is too distracted by protectionism. Recent events have revealed images of truckloads of suffocated undocumented migrants in Arizona, exhibited the detention of migrants on Christmas Island, and exposed the exploitation and subordination of immigrants in Dubai. International attention was attracted, but it led to few proactive measures beyond sympathy. Our analysis therefore suggests that a campaign for migrants’ rights would be better off not relying on the urgency stimulated by an exogenous event, but should instead be housed in an institution like the UN High Commissioner for Refugees or International Organization for Migration where awareness may be raised through persistent institutional means and then amplified by the happenstance of any exogenous events. This also seems to suggest that there may be a hierarchy of public awareness in that elite actors are likely to become aware of a particular problem prior to the general public (who likely lack the resources or inclination to address the problem).

**Consolidating Support: The Role of Conferences**

Once broad public awareness has been achieved, our analysis suggests that conferences are essential instruments for the consolidation of support in Stage 2 by enlisting partners, ensuring resources, and elaborating a path of action (see the typology of partners in the Appendix). In all six cases, conferences proved to be effective platforms to coordinate the efforts of interested parties or gain state support.\(^{40}\) One source of variation in the organized conferences pertained to their interest in the support of states or nonstate actors. The women’s rights, migrant workers’ rights, IDPs’ rights, and ILO movements used conferences to gain the support of states while the disability rights campaign and Mine Ban Treaty used conferences as platforms in which NGOs, civil society, governments, and other interested parties coordinated efforts and, in doing so, consolidated support. More interestingly, while some agendas were set at initial global conferences early in the process of the effort, others built momentum at smaller regional and local conferences before consolidating full support at a final universal conference where the different stakeholders came to a collective agreement.\(^{41}\)

In the cases of CEDAW, the ILO 1998 Declaration, the Mine Ban Treaty, and the ICRMW, agendas were more defined in initial conferences. In the case of the Mine Ban Treaty, the campaign to ban landmines was able to capitalize on a review conference of a previous, underperforming convention on landmines to highlight its failures and propose something new. As the failure of the previous convention became apparent, a group of six NGOs set up the ICBL in advance of its review conference, hosting the Montreux symposium in Switzerland that brought together mine specialists and manufacturers, surgeons and orthopedists, international law specialists.
and NGOs. Here, they were able to put forward their vision of a world free from landmines and use the review conference to highlight its necessity.

With regard to the CEDAW Optional Protocol, women's rights activists exploited a number of global UN conferences—most notably, the 1993 Vienna and 1996 Beijing conferences—in order to generate support from states for their movement. Preconference meetings were organized by umbrella NGOs in order to coordinate strategies. Both the Vienna and Beijing conferences ended with states adopting a declaration calling for the creation of the CEDAW Optional Protocol. Similarly, the UN repeatedly provided the platform for the ICRMW project to advance, first through a 1977 resolution on measures to improve the situation of migrant workers adopted by the General Assembly. That same year, the UN Economic and Social Council (ECOSOC) adopted a resolution creating a working group that recommended exploring the possibility of a UN Migrant Workers Convention. In 1979, a General Assembly resolution created an Open-Ended Working Group of the General Assembly tasked with creating a draft.

In the case of the ILO 1998 Declaration, three conferences were significant in the defining of the agenda and the consolidation of support for the movement. At the 1995 UN World Summit for Social Development in Copenhagen, heads of state and government confirmed their commitment to strengthening standards and confidence in the ILO to pursue this endeavor through formal commitments and the adoption by the World Summit of the Programme of Action to promote four core rights. The 1996 World Trade Organization (WTO) Ministerial Conference in Singapore saw the rejection of the debated "social clause" that was attached to trade agreements sanctions for standards violations and affirmed in its declaration support of the ILO to promote standards. Then, in June 1997, at the eighty-fifth session of the International Labour Conference, the commitment to strengthening labor standards began taking the form of a declaration.

Meanwhile, in the case of the CRPD and Guiding Principles for IDPs, momentum was first built at regional and local conferences. In the case of the CRPD, the movement advocating a disability-specific human rights treaty was fragmented in nature and, thus, used different platforms to set the agenda and consolidate support for its endeavor. The normative agenda of the CRPD took greater shape and enfranchised new partners mostly during sessions of different UN bodies or at meetings with stakeholders and interested parties that took place prior to, alongside, or after official sessions. There also were local or regional conferences among different members of the disparate disability movement; for example, meetings of experts on disability law and a conference of five disability NGOs that proposed a disability-specific convention.

A number of regional conferences were held due to a concern that significant increases in the number of IDPs could create regional instability. The International Conference on Central American Refugees in 1989 recog-
The six case studies clearly suggest that the negotiation stage may not begin until an international norm agenda secures the backing or gains the support of a particular supranational bureaucracy, organization, or agency. However, it is also clear that this may occur at a range of possible intervals—early enough to preempt the need for a public awareness campaign, or only after the consolidation of support at numerous local and regional conferences.

There are certain advantages that institutions may provide at early stages, which suggest the inherent desirability of rapidly finding an institutional home. These advantages include an international platform for publicity managed by a paid bureaucracy, state involvement in the development of the agenda, and access to a variety of potential partners via the institution’s affiliates and networks. States, research organizations, civil society groups, and prominent individuals top the list of parties connected to institutions to which different efforts have been linked. However, efforts that become embedded in an institution also are at the mercy of an institution’s bureaucratic drag, are subject to established priorities, and are at risk of alienating supportive civil society groups that feel circumvented or unconsulted. For this reason, some pursuits have entered an institutional sphere only after an exhaustive consultation period. These are the same pursuits that were forced to capitalize on an international focusing event to raise popular awareness to levels that attracted the attention of state governments.

While those pursuits that resisted an early institutional alliance depended on extensive local conferences to consolidate support, norm-creation agendas situated in an institution tended to skip directly to addressing global assemblies. Such assemblies were ultimately pivotal to consolidating local and regional support into a broad declaration or treaty. Given the near ubiquity of contemporary migration and related policy concerns, our analysis indicates that a migrants’ rights agenda can work from a global level early in its campaign. Given earlier efforts addressing migrant labor, humanitarian refugees, and IDPs, there already exists a global infrastructure of migration-oriented NGOs and institutions. And as the issue is front and center on many states’ legislative agendas, the topic of migrants’ rights also particularly attracts the attention of sending countries that are concerned for the fate of their nationals abroad.
Negotiation: Leveraging Against Sovereignty

After institutionalizing broad-based support behind a unified agenda, norm-creation efforts enter the stage of negotiation seeking to leverage this strength against states’ sovereignty-based resistance to international law. Corresponding to “logics of appropriateness” and “logics of consequence,” we identified two forms of such leverage. The first form emphasizes the moral urgency of the political cause and effectively shames governments into acknowledgment, dialogue, and action. The second form of leverage appeals to states’ interests in the practical feasibility of implementing an agenda or addressing a bothersome issue. This latter form tends to pertain to the ease of integrating new law into current legislative frameworks or to the advantages of adopting a softened version of existing standards.

While some of the earlier literature on norm emergence portrayed the state as an almost unitary actor that required singular persuasion, more recent scholarship has advanced an understanding of the state’s decision-making function as composed of a myriad collection of bureaucracies, ministries, and governmental elites. As the gatekeepers of domestic policy and the political agenda, each of these represent potential entry points for achieving government support. With regard to determining the most appropriate entry point for a given normative agenda, it has been further argued that “domestic institutions, by structuring the game of politics, privilege some domestic agents over others,” all of whom have “distinct sets of institutional biases and predispositions that will lead them to favor different foreign policy priorities on any given issue.” Joshua Busby further makes a case for what he terms “strategic framing,” in that norm advocates should appropriately “tap into the values of the policies they are targeting” in order to gain the support of the policy gatekeepers who ultimately represent the potential veto players capable of blocking change.55

From the case studies, we see that emphasizing moral urgency has been effective both at drawing public attention toward a specific issue and at persuading the worst-offending or most reluctant states to engage in dialogue. Evoking public outcry by exhibiting the vulnerability of particular groups has been a strategy most effectively utilized by NGOs and special interest groups. The disabilities and women’s rights campaigns both communicated moral urgency with the stories of individuals. With respect to the CRPD, the moral urgency of the plight of persons with disabilities was a crucial form of leverage, in particular during the negotiation stage. The slogan “nothing about us without us” epitomized the message employed by disability groups. Disability groups and persons with disabilities maintained active involvement during the negotiation of the CRPD, with cross-disability groups yielding to more specialized groups only in the discussion of issues where the latter had particular expertise or interest.56 In the case of the CEDAW Optional Protocol, NGOs sought to highlight the prevalence of human rights
abuses against women in order to emphasize the moral urgency of their cause. Violence against women was once again a focal point with victims of gender-related violence giving public testimonials of their experiences and coining the slogan “women’s rights as human rights.”

International support behind an issue is encouraging to governments concerned with their perceived legitimacy as “good countries.” Proponents of the Mine Ban Treaty employed a strategy of “reputation and emulation”—the campaign mobilized norm production and was able to capitalize on the desire of states to be perceived as one of the good countries. According to those authors sympathetic to the movement, international reputation pressures and the persuasion of decisionmakers resulted in systemic normative change that encouraged a ban on antipersonnel (AP) landmines. They were also able to successfully bring together a critical mass of grassroots support behind a single agenda, giving the campaigners legitimacy and creating the perception of a democratic mandate.

Where moral urgency was insufficient to mobilize states’ adoption, several campaigns employed opt-out provisos or watered down obligations in their diplomatic efforts. In the case of the ICRMW, “many provisions phrased in terms of absolute rights for the individuals or absolute obligations by the states gradually evolved into provisions containing recommendations or escape clauses.” Additionally, opposition by many states to an inquiry procedure in the CEDAW Optional Protocol gave way to Article 10, an opt-out clause. Notably, however, the CEDAW Optional Protocol’s opt-out clause has been used by only 4 of the 100 signatories, suggesting that the need to retain some form of ownership, as opposed to any significant substantive concerns, was key. With the Optional Protocol, advocates also emphasized the fact that states had already committed themselves to CEDAW and that the Optional Protocol did not create any new substantive rights. At the drafting stage, the proposed monitoring mechanisms were correspondingly watered down in order to minimize states’ objections.

Other efforts rendered states a degree of flexibility or control that eased the imposition of international constraints. This was evident in the ICRMW where, in order to appease claims to state sovereignty, ratified state parties are able to elect members to the Committee on Migrant Workers. There were two readings of the ICRMW draft during the ten-year gestation process of the General Assembly’s Open-Ended Working Group. From the first reading (1981) to the second (1990), the text evolved from being individual to state centered which, in the words of a participant, was explained by the fact that “in the second reading, the proposals were more closely scrutinized by the national authorities with a view to a possible ratification, although individual delegates even then had a varying amount of freedom of action and flexibility in their negotiating position.”

In some cases, shaming the worst-offending states was eschewed in the interest of bringing those governments to the negotiating table. The diplo-
matic tactic used by the UN representative on internal displacement, Francis Deng, to encourage states into an international dialogue on the issue of IDPs as opposed to overt finger-pointing was a crucial factor in getting the worst-offending states (such as Sudan) to fully accept, implement, and disseminate the principles. More generally, the decision to reframe sovereignty as responsibility to one’s own nationals played an important role in encouraging states to implement and enforce the agenda. This allowed for states to retain ownership over their actions and nationals, but also ensured that governments could not explicitly challenge this idea “because any government that did so would have to argue that sovereignty allows a state to deny life-sustaining support to its citizens.” Deng complemented these moves with extensive government meetings that fostered a working relationship. Such private diplomacy was equally beneficial to the CRPD effort. Its eventual passage was a product of a close relationship between campaigners and supportive countries (e.g., New Zealand and Mexico) and meetings with representatives of the European Union to promote dialogue on contentious issues.

From this examination of leverage forms emerge several prominent tools that norm-creation campaigns have used in their appeals to states’ “logic of consequence” and “logic of appropriateness.” A key decision involves how standards will be proposed. While some agendas opt for the creation of new standards that extend beyond previously accepted norms (as exemplified by the Mine Ban Treaty), other agendas pursue the rearticulation of existing standards. This was the case with the Guiding Principles, the CRPD, and the ILO 1998 Declaration, each of which reminded states of their continuing obligations to certain fundamental rights. Each of these documents is effectively a reiteration of standards already acknowledged elsewhere. At a minimum, both the creation and rearticulation of standards attempt to shift discourse by going public. For example, by reiterating human rights standards in the context of disabilities, the CRPD’s proponents successfully contributed to a paradigm shift from a sociomedical approach to disability toward a human rights-based approach. Moreover, new or reiterated standards have in some instances provided the basis for domestic legislation, as in the case of the Guiding Principles which have been incorporated into some states’ domestic legislation, thereby providing their citizens with judicial recourse.

Norm campaigns can benefit from appeals to domestic courts empowered with oversight over existing human rights commitments that an agenda seeks to rearticulate. Although constitutional provisions and judicial cultures vary significantly from state to state, there are some instances in which ratified (or perhaps adopted) hard international law can be directly applicable in a domestic court. Soft laws, on the other hand, are only rarely persuasive. This, however, does not mean that soft laws cannot be useful tools. With respect to our case studies, the Colombian Supreme Court has ruled that the
Guiding Principles on Internal Displacement are “supranational legislation” and that the Colombian state is therefore bound to uphold them.27

In rearticulating norms, strategies promoting both hard law and soft law have yielded official and unofficial monitoring and accountability mechanisms. While state parties agree on some official mechanisms as an outcome of past negotiations, others may be applied without state cooperation in the interest of leveraging ultimate agreement. Focusing on the UN human rights system, there are three principal forms that such mechanisms take. First, hard law human rights treaties, such as the CRPD, create obligations on all state parties to regularly submit comprehensive reports on the measures that they are taking to meet their obligations under the convention. These reports are often submitted to a specially appointed committee of experts (in this case, the Committee on the Rights of Persons with Disabilities). A second complementary mechanism allows these committees to hear individual complaints against states based on particular or systematic violations of rights. These additional powers are normally created by an optional protocol (as is the case with the CRPD and CEDAW), and hold less impact without institutionalized authority. A third possible mechanism is an issue-specific special rapporteur or special representative such as the representative on the human rights of IDPs. As a further example, the ILO 1998 Declaration was accompanied by a follow-up mechanism that enforced the declaration through reporting and technical assistance at the state and supranational level.

Our case studies suggest that such official or unofficial monitoring bodies may be useful in a variety of ways. First, the creation of these bodies may in themselves be a mode of rearticulating existing rights. In this respect, the complaints procedure of the CEDAW Optional Protocol was designed to deal with areas of human rights that were considered to be insufficiently implemented.28 Similarly, the follow-up mechanism to the ILO 1998 Declaration required states that have not ratified the corresponding conventions and recommendation to report annually on what measures they have taken toward achieving the standards set forth in the declaration. Second, though nonbinding on states, the reports and other advocacy by these institutions can provide NGOs with a public platform around which to rally support for a specific (often local) issue.29 In addition, because the processes of investigation are interactive, they encourage states to engage the subject matter from a human rights perspective. For instance, the activities of the representative on IDPs “have opened discussions with governments previously reluctant to engage on issues of internal displacement at an international level.”30 As such, reports may facilitate a shift in discourse or facilitate the vernacularization of rights. This in turn may contribute toward the eventual implementation of rights. With respect to the Guiding Principles, the representative’s work has been instrumental in seeing the incorporation of these norms into the domestic policies of some states.31 However, even when it is unclear that monitoring has influenced public
policy, it may still foster a greater awareness of rights-based claims, as in
the case of CEDAW’s complaints procedure. 82

These negotiating tools of leverage have supported the pursuit of agen-
das with different objectives. Given the above-described range of outcomes,
certain tools appear more suited for certain results. Going public, encour-
ging auditing and monitoring, enforcement of existing commitments, and
engagement in public dialogue seem to support discursive and vernacular
changes. Meanwhile, auditing or monitoring by a rapporteur, drafting special
reports, legislating common denominator standards, and reaffirming the
commitments of state signatories seem to support the rearticulation or imple-
mentation of law.

Adoption and Commitment: Soft and Hard Approaches

With respect to both legally binding and nonbinding instruments, adoption at
the international level entails general acceptance of the normative agenda by
states and possibly other stakeholders. But this support is not necessarily car-
rried through to the next stage of normative development. This is particularly
important with regard to legally binding international treaties that require rat-
ification by states and domestic implementation. International adoption of a
treaty does not generate legal obligations for the participating states. Indeed,
a state’s signature to a treaty does not express its consent to be bound if the
treaty must subsequently be ratified. Signing a treaty does, however, create an
obligation of good faith not to undertake acts that frustrate the treaty’s
goals. 83 The ICRMW, for example, was internationally adopted, but suffers
from a lack of ratification by the main receiving countries. 84

The commitment stage includes the follow-through to ensure that the
norm is implemented and upheld after its adoption. In the case of a legally
binding treaty, this stage takes the form of ratification and implementation.
While implementation necessarily takes place at and below the national
level, the follow-through may occur at the regional or global level (e.g., by
international monitoring). International human rights treaties typically estab-
lish treaty bodies to audit the compliance by state parties and to further
develop the meaning of the treaty provisions. The CRPD is innovative by
additionally creating a conference of the parties to discuss matters relating to
implementation and by stipulating the involvement of civil society and per-
sons with disabilities in the national implementation of the CRPD. With
regard to legally nonbinding instruments, the precise nature of this stage is
more fluid. We have purposely chosen not to address treaty enforcement.
Compliance is a matter that has been treated separately in the academic lit-
erature and entails considerations beyond the scope of this examination. 85

In attempting to persuade states to adopt and commit to international
norms, rights movements must choose between so-called hard and soft law
approaches. The terminological and conceptual distinction between interna-
tional hard and soft law is problematic because of its rhetorical and legal
variants. However, in statute, international law is clearly defined as stemming from the sources listed in Article 38(1)(a)–(c) of the Statute of the International Court of Justice; that is, international treaties, custom, or general principles of law. Soft law is thus not strictly international law. Its roots of validity lie in the political sphere rather than the formal sources of international justice. Soft law comprises norms or commitments in international relations that are more than mere moral aspirations or policy statements, but less than law in the strict sense. Though not legally binding, soft law is characterized by its proximity to hard law because of the legal relevance that it nevertheless maintains. It is conventionally created by the subjects of international law such as states or international organizations. Soft law instruments assume many forms, ranging from resolutions of international organizations and treaty bodies over nonbinding interstate agreements to interpretative declarations of governments. It is noteworthy that many attempts to employ soft law to facilitate new standards were ultimately followed by hard law strategies because of the initial effort's inadequacy. Indeed, soft law appears most successful under circumstances where hard law was otherwise impossible due to imposed time constraints or the unwillingness of states to cooperate even with reduced standards.

There has been a great deal of scholarship comparing the merits and effects of hard and soft law approaches to facilitating adoption, commitment, and ultimately compliance. The application of this debate to our six cases is beyond the scope of this article. However, from the perspective of migrants' rights activists, they are thus faced with the choice of exploiting states' earlier commitments to basic (but largely unenforced) migrants' rights, or jeopardizing the opportunity for such commitment by advocating a more elaborate set of complete rights that likely will be rejected by states but could instead set a higher international standard for treatment.

Conclusion
Grounded in intensive examinations of six international norm agendas across thirty years, this study offers a more systematic analysis that depicts the political process of international norm emergence. While proposing a structured understanding of stages in this process, it also renders new typologies of outcomes, partners, hindrances, and tools of leverage (see the typology of partners and hindrances in the Appendix).

Reflecting on the nature of the six stages of norm emergence, it is our contention that effective international normative agendas must be appraised by their achievements given the uncontrollable circumstances of state sovereignty. Indeed, in case after case and stage after stage, we saw the strategies and journeys of emergent normative campaigns ultimately conditioned by the will of states:
• Public awareness campaigns were less necessary for those efforts embedded in state-supported supranational bureaucracies.

• Forms of political leverage attracted states with mitigated standards or weakened enforcement, only after recognizing that appeals underscoring the moral urgency of certain circumstances were ineffective.

• Strategies of hard and soft law were typically deliberated according to whether states were likely to recognize the sufficient moral imperative or legitimate legality of hard law measures.

• The introduction or affirmation of standards was typically accepted by states in exchange for weak enforcement, an opt-out clause, or mitigated regulations.

In the field of immigration policymaking, governments are ultimately burdened with the need to justify their liberal constraint under the auspices of national interest—or, more cynically, the need to neither enforce popular restrictionist policies nor commit to any supranational standards. Consequently, campaigns have historically complemented their appeals to states’ moral constraints by offering national governments persuasive rationales that enable them to justify a surrender of sovereignty in the light of national interests. Cooperation appears ever conditional on states’ capacity to frame their decisions in the light of national interests of security, prosperity, and legitimacy—leaving international norm emergence significantly subject to state limitations. In light of such observations, rather than imposing a universally applicable path for considerations of international normative agendas, we hope our systematic analysis renders a clearer idea of their politics, their contextual conditions, and the variety of paths that different campaigns take to arrive at different outcomes. 

Notes
Justin Gest is a lecturer in Government and Sociology at Harvard University. He is also cofounder and deputy director of the Migration Studies Unit at the London School of Economics and Political Science (LSE). He is author of a monograph on immigrant-origin Western Muslims, Apart: Alienate and Engaged Muslims in the West (2010), and articles on the politics of global migration.

Carolyn Armstrong is a PhD candidate at LSE in the Department of Government and is also a research fellow for the LSE Migration Studies Unit.

Elizabeth Carolan is a researcher at the Institute for Government in London. She previously worked for local and national NGOs in Ireland and the Balkans, conducting research and providing support to migrants, asylum seekers, and women affected by conflict.

Elliott Fox is media officer for The Elders, a group of global leaders working together for peace, justice, and human rights. At the time of this writing, he was a public affairs consultant with Raitt Orr & Associates, specializing in the international development sector.
Vanessa Holzer is a PhD candidate at the University of Frankfurt. She is currently based at the Lauterpacht Centre for International Law in Cambridge as a British Red Cross research fellow. She has worked for the UN High Commissioner for Refugees on refugee protection for people fleeing conflict and violence. The views expressed in this article are those of the author and are not necessarily shared by the British Red Cross or the International Committee of the Red Cross.

Tim McLellan is a PhD candidate at Cornell University in the Department of Anthropology. He previously worked as a graduate teaching assistant with the School of Law at the School of Oriental and African Studies.

Audrey Cherryl Mogan is currently working with the Institute for Legal Practice and Development on mapping the legislative process in Rwanda. She previously worked within the Legislative Drafting Department at the Ministry of Justice in Rwanda and since 2008 she has worked with Aegis Trust, a UK-based genocide prevention NGO. She has conducted research in Sri Lanka on the ability of NGOs to operate in conflict zones.

Meher Talib is a global law scholar and law student at the Georgetown University Law Center. She has worked at the office of the UN High Commissioner for Refugees in Malaysia and the US Committee for Refugees and Immigrants in Washington, DC.

This article is based on research undertaken in consideration of the International Migrants’ Bill of Rights—a collaborative research endeavor initiated by the deputy commissioner of the UN High Commission for Refugees, T. Alexander Aleinikoff, during his tenure as dean of the Georgetown University Law Center. The authors thank the Georgetown coordinators of this pursuit—Ian Kysel, Randy Nahle, Maher Bitar, and Bianca Santos for their support and collaboration. They especially thank Justin Fraterman for his direct input in discussions during the formulation of their research design. This article would not have been possible without the support of a grant from the Open Society Foundations and the backing of the LSE Migration Studies Unit. At the LSE, the authors received invaluable advice from Chris Brown, Mathias Koenig-Archibugi, Eiko Thieleman, Patrick McGovern, and David Held—each of whom dedicated a significant amount of time to nourish, channel, and improve their ideas. They also received an endorsement from Peter Sutherland, whose vision continues to inspire new ways to consider global migration governance, and feedback from Beth Simmons, Anna Boucher, Volker Turk, Pia Oberoi, Vincent Chetail, and Ryszard Cholewinski. The authors further thank Eleat Albin, Tomer Broude, and Danny Exron at Hebrew University; Margaret Garigan and Andrew Schoenholtz at Georgetown University; and Maria Teresa Rojas at Open Society Foundations for continuing to support new paths in global migration research.

4. Ibid., p. 893.
7. Cortell and Davis, “How Do International Institutions Matter?”
15. Ibid., pp. 898–899.
18. Ibid.
22. George and Bennett, Case Studies and Theory Development.

Reproduced with permission of the copyright owner. Further reproduction prohibited without permission.

28. Price, "Reversing the Gun Sights."


30. When we refer to agenda setting, we mean agenda setting at the international level whereby a norm seeks establishment on a global level. This can encompass norms that have been initiated at the international level from the beginning and also (what are believed to be more common in the literature) norms that have domestic origins but now seek international recognition.

31. Price, "Reversing the Gun Sights."


37. MacDonald and Cholewinski, *Migrant Workers Convention in Europe.*


39. Sikkink and Finnemore, "International Norm Dynamics and Political Change."

40. With the increased use of conferences as platforms for norm development, some actors began to complain of "conference fatigue" and question the costs and effectiveness of these conferences. While the flurry in activity surrounding human rights in the 1990s may be partially responsible for generating this sense of fatigue, our analysis of the six case studies presented here nevertheless demonstrate the irrefutable instrumentality of conferences in facilitating agreement and garnering support for newly emergent norms.

41. Our investigation focused particularly on conferences convened by the central organizers of the global normative agenda, and those convened by component groups before a central group of organizers had emerged. It is worth noting that, after centralization, unofficial peripheral conferences can occasionally be diversionary.


43. Bunch et al., "Making the Global Local."


49. Orchard, "Protection of Internally Displaced Persons.”


53. This process of gaining an institutional “home” is to be distinguished from the process of “institutionalization,” which Sikkink and Finnmorer identify as a potential mechanism for the ultimate internalization of a norm that marks the final stage of a norm’s life cycle. Sikkink and Finnmorer, “International Norm Dynamics and Political Change.”


57. Ibid., p. 248.


65. Ibid., p. 316.

66. Ibid., pp. 316–317.

68. Entwisle, "Tracing Cascades."
70. Ibid., p. 466.
71. Ibid.
72. Rowland personal communication.
74. This can be likened to what Richard Price calls "grafting," in that a new norm can be grafted onto an existing norm. He uses the term to "refer to the combination of active, manipulative persuasion and the contingency of genealogical heritage in norm germination." Price, "Reversing the Gun Sights," p. 617.
77. Ibid., p. 296.
84. MacDonald and Cholewinski, Migrant Workers Convention in Europe.
## Appendix: Potential Partners and Hindrances During Stages 1–6 of Norm Emergence

<table>
<thead>
<tr>
<th>Stage 1</th>
<th>Stage 2</th>
<th>Stages 3 and 4</th>
<th>Stages 5 and 6</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agenda Setting</td>
<td>Consolidation of Support</td>
<td>Institutional Approach and Negotiations</td>
<td>Adoption and Commitment</td>
</tr>
</tbody>
</table>

### Partners

**NGOs/Rights Activists**

In most cases, NGOs and specialized rights groups initiate rights-based movements.

*Example:* The most obvious example of this is the Mine Ban Treaty, which was a movement led by a coalition of 6 NGOs that established a specialized group to lead the movement.

*Others:* CEDAW, Guiding Principles on Internal Displacement, and the CRPD. In the case of the ILO 1998 Declaration, NGOs raised awareness of the consequences of trade deregulation, specifically on developing countries that increased pressure on the ILO to step up and promote labor rights.

**Countries/Governments**

Often the involvement of a country as a primary advocate for a movement can help to encourage and consolidate the support of other countries and organizations.

*Example:* The NGOs pushing for the Mine Ban Treaty were able to gain the support of the Canadian government, which acted as both a funder and an advocate, which helped to get other countries on board.

*Others:* Austria secured the support of 16 other states in the case of the Guiding Principles on Internal Displacement. Mexico successfully proposed a draft resolution to the General Assembly to explore options for a disability-specific human rights treaty.

**States**

States continually play an important role as potential partners in the advancement of a rights-based agenda, given that they need to be on board to ensure participation, they are able to recruit other supporters, and they are able to provide funding.

*Example:* With regard to the ICRMW all of the literature points to the instrumentality of the Mediterranean-Scandinavian countries, including Finland, Greece, Italy, Spain, Portugal, Sweden, and Norway, all of which helped to shape the document and push it forward. This led other countries to get involved, which helped to move things closer toward consensus.

*Others:* State support for the CEDAW Optional Protocol; state funding for the participation of disability groups from the Global South in the drafting of the CRPD.

**International Organizations**

International organizations can play an instrumental role in getting states to adopt certain agreements and can act as an observing body.

*Example:* For the Guiding Principles on Internal Displacement, the UN IDP unit played a crucial role in assisting with adoption and enforcement by helping to train officials, by holding workshops, by assisting governments with introducing the Guiding Principles, and by encouraging the involvement of NGOs to assist with implementation. In the case of the ILO 1998 Declaration, the ILO was instrumental in developing the declaration and in enforcing adherence to the principles as ILO members by virtue of their membership were obligated to adopt and comply with the principles.

*continues*
Appendix: continued

<table>
<thead>
<tr>
<th>Stage 1</th>
<th>Stage 2</th>
<th>Stages 3 and 4</th>
<th>Stages 5 and 6</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agenda Setting</td>
<td>Consolidation of Support</td>
<td>Institutional Approach and Negotiations</td>
<td>Adoption and Commitment</td>
</tr>
</tbody>
</table>

**Partners**

**The Media**
The media is double-edged at all stages in the process of norm emergence, as publications and broadcast entities may ignore or misrepresent a particular cause as much as they may stimulate greater awareness and concern for it. While news media are conventionally thought to be watchdogs of governments and therefore likely to support norm agendas that pose challenges to state sovereignty, populist tendencies in their orientation may align reporting in opposition to liberal norm agendas.

**Individuals**
The support of certain individuals can be a huge asset in garnering support, and this can take the form of a head of state, the spouse of a head of state, a celebrity, a policy champion, etc.

*Example:* The profile of the Mine Ban Treaty was raised significantly through the involvement of Princess Diana, which helped to foster high levels of public support and awareness.


**Organizations/International Bodies**
Members of organizations as well as different arms of various international bodies have been used as partners during the negotiation phase.

*Example:* This was particularly important in the case of the CRPD, as the NGOs that had pushed for the convention were not traditionally allowed in the negotiating forum of the UN. After intense lobbying of the General Assembly and its suborgan mandated with the drafting, a special allowance was made that permitted the intense involvement of NGOs during the negotiation process.

**NGOs/Civil Society**
Certain NGOs and civil society can be instrumental in helping to recruit further state support and in policing involvement.

*Example:* In the case of the ICRMW, NGOs and civil society members took it upon themselves to advocate the issue and to recruit country support. In the UK, the United Nations Association helped to create an NGO coalition that attempted to put the issue on the European agenda.
Support Organizations
The involvement of larger organizations has also been instrumental in the consolidation of support for several movements.

Example: By its title, the ILO obviously played a vital role in establishing the ILO 1998 Declaration. The ILO, by virtue of its tripartite structure including governments, employers' groups, and workers' groups, was able to consolidate support for the declaration within the organization itself. In the case of the CRPD, the UN High Commissioner for Human Rights revealed in a report the inadequacy of existing human rights instruments with regard to the protection of persons with disabilities. This was important since it documented the need for a specific convention.

Research Community/Organizations
Researchers and academics can be helpful as partners by providing their specific knowledge and also can be useful as a source of legitimacy.

Example: Academics, legal scholars, and research institutions were important partners in the case of the Guiding Principles on Internal Displacement.

Countries
States that are already in support of an initiative continue to play a crucial role by helping to garner additional support from other states in these later stages.

Example: With the Mine Ban Treaty, countries that had previously remained outside of the process came on board when the treaty achieved a critical mass of states behind it. This may be seen as in line with theories of an S curve of participation, with a tipping point of participation required for it to be more beneficial to opt into a piece of legislation than to abstain.

Others: Austria is still crucial for the IDP movement.

Individuals/Political Actors
During these stages, individual advocates can also be enlisted as useful partners to advance the moral agenda and to bring public attention to the issue.

Example: In the case of the Mine Ban Treaty, political actors were targeted to ensure continuing alliances with states and also because they could help to push the issue up the agenda.

Special Interest Groups
Various special interest groups can become involved in these stages and help to encourage adoption and commitment.

Example: With regard to the CRPD, disability organizations, persons with disabilities, and national human rights organizations became involved in Stages 5 and 6 (possibly as a result of previous stages).

Others: Academics in the case of the ICRMW; workers and employer groups in the ILO 1998 Declaration.

continues
Appendix: continued

<table>
<thead>
<tr>
<th>Stage 1</th>
<th>Stage 2</th>
<th>Stages 3 and 4</th>
<th>Stages 5 and 6</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agenda Setting</td>
<td>Consolidation of Support</td>
<td>Institutional Approach and Negotiations</td>
<td>Adoption and Commitment</td>
</tr>
</tbody>
</table>

| Partners |

**Civil Society**

A potential partner in the negotiations of new documents can be civil society or grassroots organizations because they can help to mobilize an issue and give it impetus.

*Example:* In the case of the Mine Ban Treaty, the involvement of grassroots organizations increased over time and was used as a source of legitimacy emerging from involvement with and the development of global civil society.
Hindrances

**Limited Global Scope**

Another potential hindrance is the limited global scope of a document.

**Example:** In the case of CEDAW, initially the agenda was set predominantly by Western NGOs, which was viewed as a potential hindrance to the success of the Optional Protocol. However, other NGOs were involved at later stages to address this issue and it is quite feasible that the exclusion of these groups at the earliest stages was necessary for successfully setting a pragmatic agenda.

---

**Treaty Fatigue**

In cases where there are preexisting treaties that cover the same rights issues, there may be resistance when trying to gain support.

**Example:** Because the CRPD largely reasserted rights and principles that had already been established in previous agreements, the need for a new framework was questioned. However, advocates were able to demonstrate the inadequacy and inefficacy of the previous instruments.

**Others:** The Guiding Principles on Internal Displacement also reiterated existing principles, ILO 1998 Declaration was a reiteration of already agreed on rights.

---

**Idealism vs. Pragmatism (Fear of State Resistance)**

Most aspirational rights-based agendas face the risk that states will not accept or support them, as a result of state fears that new obligations will arise.

**Example:** This was seen with the ILO 1998 Declaration, as it was feared that state acceptance would be hard to attain. To resolve this, advocates focused on a soft law approach, promoting a Declaration of Fundamental Principles that did not increase the legal obligations of member states, but acted as a reminder that members of the ILO should be abiding by these principles regardless of formal acceptance of recommendations or conventions.

---

**Ensuring Universalization of Adoption**

A significant problem in Stages 5 and 6 is the scope of adoption and ensuring that as many countries as possible come on board. This is particularly problematic when certain countries or groups lie outside the scope of influence of international law.

**Example:** This was a potential hindrance for the Mine Ban Treaty, as its goal was to ban the use of them entirely. Thus, the problem of non-adoption by principle users was an issue as well as the problem associated with obtaining agreement from non-state parties such as rebel or armed forces groups.

**Others:** Lack of ratification and no method for applying pressure was also an issue for the ICRMW.
<table>
<thead>
<tr>
<th>Hindrances</th>
<th>Stage 1</th>
<th>Stage 2</th>
<th>Stages 3 and 4</th>
<th>Stages 5 and 6</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contextual Parameters</td>
<td>Agenda Setting</td>
<td>Consolidation of Support</td>
<td>Institutional Approach and Negotiations</td>
<td>Adoption and Commitment</td>
</tr>
</tbody>
</table>

**Lack of Coordination**
A lack of coordination among the NGOs advocating a movement can also prevent a problem for both successful agenda setting and the consolidation of support.

**Example:** The issue of landmines had traditionally been a military discussion, which had previously acted as a potential hindrance to the development of a treaty but, by shifting the discussion to a humanitarian one, widespread support for the Mine Ban Treaty was gained.

**Others:** Guiding Principles on Internal Displacement shifted discussion from humanitarian to security interests.

**Impact of New Rights on Existing Rights**
A potential hindrance with regard to adoption and enforcement is the fear that certain new rights or new provisions might serve to undermine previous treaties or rights-based mechanisms.

**Example:** In the case of the ICRMW, this was a huge obstacle to its success as negotiations occurred in the context of an Open-Ended Working Group that allowed the nature of the document to change significantly over the course of its negotiation. Also, due to a high level of turnover in delegates, only two delegates who were involved at the beginning of the process were still involved at the end.

**Example:** In the case of the ILO 1998 Declaration, there was a debate on the impact of “core labor rights,” as it was feared that the hierarchical ordering of rights would serve to lower certain labor standards, although it was also argued that this would create access to other rights. There was also concern that the new declaration might lead to a fragmentation of standards by creating a potentially competitive dynamic between the ILO 1998 Declaration and other human rights instruments.
Barriers to Access
The advocates of the movement may face barriers that prevent them from accessing the decision-making forums through which they could exert their influence.

Example: The discussion on the creation of the CRPD occurred within a suborgan of the General Assembly, which originally provided limited access to the NGOs that had been fighting for the development of this convention.

Organized Opposition
Another potential hindrance is the influence of organized groups, which may oppose the content of a proposed treaty, protocol, etc.

Example: In the case of CEDAW, the discussion of certain issues (e.g., abortion and birth control) triggered organized opposition on behalf of certain politicians and pro-family groups.

Lack of Unity Among Advocates
Another potential hindrance to successful negotiations is a lack of coordination or agreement among advocates.

Example: In the case of the CRPD, disagreement existed over which NGOs should be represented in negotiations.

Others: Over 1,000 organizations were involved in the Mine Ban Treaty.

Differences Between Countries
A certain geographical focus of an agreement or lack of consideration regarding implementation in countries with different circumstances can also present a problem for adoption and enforcement.

Example: In the case of the CRPD, a lack of consideration for implementation obstacles in developing countries presented a problem (e.g., outdated approaches to disabilities; lack of reliable statistics; weak public sector; and lack of a legal mandate and resources for national implementation mechanisms).

Others: Lack of global nature of CEDAW continued to be a hindrance.

The Media
The media are double-edged at all stages in the process of norm emergence, as publications and broadcast entities may ignore or misrepresent a particular cause as much as they may stimulate greater awareness and concern for it. While news media are conventionally thought to be watchdogs of governments and therefore likely to support norm agendas that pose challenges to state sovereignty, populist tendencies in news media’s orientation may align reporting in opposition to liberal norm agendas.

Lack of NGO Presence During Negotiations
While NGOs are essential to the initiation of most movements, they sometimes face challenges in ensuring that they remain involved and influential.

Example: This was particularly true in the case of the CRPD, as there was a fear regarding lack of legitimacy given the underrepresentation of developing countries (partially resolved through state sponsorship of representatives). There was also the problem of actual physical accessibility in that facilities where the drafting took place were not fully suited for representatives with disabilities.

Country Resistance
Another hindrance that can be encountered at this stage is the open opposition of certain countries.

Example: With the Guiding Principles on Internal Displacement, certain countries (China, Egypt, India, and Sudan) all voiced concerns that the Guiding Principles would be used as an excuse for interference. India argued that consent should be required and China pointed out that these were not UN mandated.
### Appendix: continued

<table>
<thead>
<tr>
<th>Stage 1</th>
<th>Stage 2</th>
<th>Stages 3 and 4</th>
<th>Stages 5 and 6</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agenda Setting</td>
<td>Consolidation of Support</td>
<td>Institutional Approach and Negotiations</td>
<td>Adoption and Commitment</td>
</tr>
</tbody>
</table>

#### Hindrances

**Funding**

Another important hindrance is lack of funding.

*Example:* Advocates of the Guiding Principles on Internal Displacement were forced to call on individuals, organizations, and states for financial support or pro bono involvement.

**Transferability from Rights to Action**

Issues regarding implementation concerns also come to the fore during these stages.

*Example:* Implementation of the Guiding Principles on Internal Displacement was fragmented and ad hoc and, even though certain countries had adopted it, this process was slow. Furthermore, there were concerns regarding how to actually transfer the Guiding Principles into practice (in response, a handbook of practical steps was written).

---