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The Regime Theories: Useful Frameworks for Analysing Human Rights Issues?

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Sevilay Z. AKSOY*

ABSTRACT

International regimes have come to occupy an increasing space and importance within both politics among nations and the literature on international relations. This is so simply because of the ever-increasing need for fruitful international cooperation in the face of increasing and urgent problems facing the whole humanity. However, the related academic debate is in a state of major dissent regarding the conceptualisation of regimes, including their formation, maintenance and effectiveness. Human rights area is not immune from this state of dissent and confusion, and even more so because of the seeming resistance of human rights issues to international cooperation. This article addresses these issues and does so in three parts. First, I review the major theoretical approaches to the conceptualisation of regimes. Second, I explain the implications of this review for human rights regimes. And finally, I explore the motivations of international actors to cooperate under the dominant and competing regime theories, and examine their relevance to human rights issues.

Keywords: *International Regimes, Human Rights, Neoliberalism, Realism, Cognitivism.*

Rejim Teorileri İnsan Hakları Sorunlarının İncelenmesinde Çerçeve Olarak Kullanılabilir mi?

ÖZET

Uluslararası rejimler hem uluslararası siyasette hem de uluslararası ilişkiler literatüründe giderek artan bir yer ve önem kazanmaya başladı. Bunun başlıca sebebi tüm insanlığın karşı karşıya bulunduğu acil ve artan sorunlar karşısında çözüm üretebilecek uluslararası işbirliğine her zamankinden fazla duyulan ihtiyaçtır. Fakat ilgili akademik tartışma, rejimlerin kavramsallaştırılması, kurulması, sürdürülmesi ve etkinliği üzerine ciddi bir anlaşmazlık içerisindedir. İnsan hakları alanı bu anlaşmazlık ve karışıklık durumundan muaf olmadığı gibi, bu durumdan, insan hakları konularının uluslararası işbirliğine görünüşte direnç göstermesi sebebi ile daha çok etkilenmektedir. Bu makale bu konuları üç kısımda ele almaktadır. İlk olarak, rejimlerin kavramsallaştırılması ile ilgili başlıca teorik yaklaşımlar gözden geçirilmektedir. İkinci olarak, bu gözden geçirmenin insan hakları rejimleri için anlamı açıklanmaktadır. Ve son olarak, uluslararası aktörlerin, baskın ve birbiri ile rakip rejim teorileri çerçevesinde işbirliği motivasyonları araştırılmakta ve bunun insan hakları konularına olan bağlantıları ve ilgisi incelenmektedir.

Anahtar Kelimeler: *Uluslararası Rejimler, İnsan Hakları, Neoliberalizm, Realizm, Kognitivism.*

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Introduction

"...Neither anarchy-induced competitive international politics nor hierarchically ordered international policy-making exhaust the reality of 'politics among nations'", say Mayer, Rittberger and Zürn, who are among the leading theorists of young but promising regime analysis.¹ Within the international arena one increasingly comes across instances of rule-based collective action taken by international actors, most of which are usually states, to tackle problems arising in various issue-areas, the solution of which is a concern to each of them. International regimes are a prime example of such rule-based cooperation formed in a number of specific issue-areas ranging from the protection of the ozone layer to the regulation of banana exports. However, the explanation of formation, maintenance and consequences of regimes is not as easy as to claim that they are part of the international reality.

The former task shares a common fate with many other tasks involved in rendering social phenomena meaningful to the observer. If one considers the observations of the outside world as inevitably theory-dependent, then, one is led to proceed by using theoretical frameworks to diagnose and/or analyse the situation in hand. However, theoretical images projected on an issue or problematic shapes the extent and the nature of observations to be made and consequently leads to limited conclusions obtained from the latter. Each theoretical image captures, or more truly, tries to capture only a fracture of the complex social phenomena, whose regularities, if there are any, are thought to be a very complex combination of several factors. The issues of international cooperation, in general, and of the international regime, in particular, are instances of the social phenomena where such images are employed sometimes complementarily but most of the time competitively. The current regime theory itself is still far from a grand theory and, moreover, the competitive images held by the different schools of thought in international relations are reflected within this theory as well. The most comprehensive and updated book on regime theory has the title of "Theories of International Regimes" and makes a distinction among power-based, interest-based and knowledge-based theories of international regimes.² Though a considerable effort is made by the authors of the book to point to common ground where, at least, some meaningful interaction can take place among certain approaches, the

¹ Peter Mayer, Volker Rittberger and Michael Zürn, "Regime Theory: State of the Art and Perspectives", Volker Rittberger (ed.), *Regime Theory and International Relations*, Oxford, Clarendon Press, 1995, p. 402.

² Andreas Hasenclever, Peter Mayer, and Volker Rittberger, *Theories of International Regimes*, Cambridge, Cambridge University Press, 1997.

ontological and epistemological stands of some approaches, as the authors themselves admit, are irreconcilable.³ Thus, researchers employing a regime approach for their case studies are left to opt for an eclectic approach, i.e. to draw assumptions from each body of these theories to account for the same phase as well as for the different phases of the regime in question.

Accounting particularly for the maintenance and the consequences of human rights regimes in terms of the available regime theories is a challenging, though not impossible, task. The main current regime analysis is dominated by the studies concentrating mostly on international regimes formed in economic, environmental and security issue-areas.⁴ Accordingly, the theories of international regimes have usually been developed, or more accurately, the perspectives of the older theories of international relations on international cooperation have been revised and enlarged in correspondence to these top agenda issues. Those students of international relations willing to apply a regime framework to the issue-areas falling, for instance, under the "domain of rule", are, thus, forced to work with theoretical propositions that have been developed in response to the issue-areas of quite different nature.⁵ It is particularly at this point that the justification for an eclectic approach is more easily made. Below is an attempt to question the relevance of the dominant regime theories to

³ See particularly the last chapter, "Conclusion: prospects for synthesis", Hasenclever et al., *Theories*, p. 211-224. See also Andreas Hasenclever, Peter Mayer, and Volker Rittberger, "Integrating Theories of International Regimes", *Review of International Studies*, Vol. 26, No. 1, 2000, p. 3-33.

⁴ Regime analysis is no exception to the time- and space-bound character of social science theories in general. Different preoccupations and research interests of the regime scholars on both sides of the Atlantic have resulted in undue attention paid to certain issues. For instance, one of the most important American neoliberal proponents of the regime analysis, Robert O. Keohane, has actually employed this approach to give a better account of the declining American hegemony in the 1970s in his major work, *After Hegemony: Cooperation and Discord in the World Political Economy*, Princeton, Princeton University Press, 1984. Accordingly, the European scholars, being more interested in the implications of both the Cold War and the détente period in Europe, have concentrated usually on security matters. For a list of major works on the latter and for a more thorough explanation of different evolving patterns of the regime analysis on both sides of the Atlantic, see Volker Rittberger, "Research on International Regimes in Germany: The Adaptive Internalization of an American Social Science Concept", Rittberger (ed.), *Regime Theory*, p. 3-22. Environmental and human rights issues have become the new research agenda of both sides with the increasing salience of these issues on the world agenda. However, the regime literature on environmental issues is much richer than that on human rights issues. For the former, see the works of Oran R. Young, another leading neoliberal proponent of the regime analysis.

⁵ Problem-structuralism, a variant of neoliberal regime theory, distinguishes three main domains, i.e. economy, rule and security, under which issue-areas can be categorised, and hypothesises that inherent characteristics of each domain give rise to different degrees of co-operation and may explain the variation of behavioural patterns across issue-areas, Hasenclever et al., *Theories*, p. 59-63.

the issue-area of human rights in general. Such an attempt, however, needs to be preceded by the clarification of the concept of regime itself.

Different Conceptualisations of Regimes

The definition of a social phenomenon is a difficult task particularly in those instances where such an attempt is undertaken in the absence of a well-articulated theoretical framework concerning this phenomenon.⁶ International regimes, as the above discussion implies, are such a phenomenon, where its theorists look for "working" rather than "valid" definitions of the concept.⁷ Although there exists a common definition of the concept in the sense that it was worked out at a conference on international regimes and that many students of the regime school still refer to it, there remain some ambiguous points associated with it.

The consensus definition understands international regimes as "sets of implicit or explicit principles, norms, rules and decision-making procedures around which actors' expectations converge in a given area of international relations".⁸ In other words, an international regime is assumed to arise when a number of actors share convergent expectations about the solution of problems in a particular issue-area in accordance with rules they collectively deem appropriate and when they, out of free will, accept to be bound by the latter. However, as some scholars like Oran R. Young rightly point out, the elements listed in the definition, i.e. principles, norms, rules and decision-making procedures, are "hard to differentiate conceptually" and "often overlap in real-world situations".⁹

In an issue-area like human rights, a meaningful differentiation of these elements is equally difficult. Though "decision-making procedures"

⁶ Oran R. Young, "International Regimes: Toward a New Theory of Institutions", *World Politics*, Vol. 36, No. 1, 1986, p. 106-107.

⁷ What is meant by the validity of definition by these theorists is a definition that remains mostly unaltered throughout the subsequent stages of theory-building. See Hasenclever et al., *Theories*, p. 13.

⁸ Stephen D. Krasner, "Structural Causes and Regime Consequences: Regimes as Intervening Variables", Stephen D. Krasner (ed.), *International Regimes*, Ithaca, Cornell University Press, 1983, p. 2.

⁹ The rest of the definition where Krasner tries to clarify these elements, i.e. "[p]rinciples are beliefs of fact, causation, and rectitude. Norms are standards of behavior defined in terms of rights and obligations. Rules are specific prescriptions or proscriptions for action. Decision-making procedures are prevailing practices for making and implementing collective choice" is equally unsatisfactory to Young. Young thinks of this elaboration as adding more confusion to the already existing one by introducing "another set of ambiguous terms in the form of beliefs, standards, prescriptions, and practices", Young, "International Regimes", p. 106. See, for a similar argument about the vagueness of the consensus definition, Stephan Haggard and Beth A. Simmons, "Theories of International Regimes", *International Organization*, Vol. 41, No. 3, 1987, p. 493-494, and Hasenclever et al., *Theories*, p. 8-12.

may be easier to distinguish by finding about the mechanisms that are under plan or have already been developed vis-à-vis the implementation, enforcement and supervision of human rights (e.g. respective functional bodies), the differences that are assumed to exist particularly between principles and norms of human rights are far from clear.

The Behavioural Stance

In his attempt to tie the study of international regimes to a broader conceptual framework and, thus get rid of the difficulties arising from the consensus definition, which seems to be embedded in no influential school of any kind, Young has conceptualised international regimes in terms of social institutions. In doing so, he has placed international regimes on an equal footing with other social institutions, like the institutions of marriage or of market. Such an understanding of international regimes, i.e. "recognized practices consisting of easily identifiable roles, coupled with collections of rules or conventions governing relations among the occupants of these roles",¹⁰ not only saves one from the complex structure of the consensus definition by subsuming the latter's list of elements under "collections of rules or conventions" but, more importantly, makes behavioural dimension of regimes clearer. Distinguishing actors in terms of roles they fulfil in accordance with a set of rules or conventions carries the meaning that expectation of rule-observance is the norm rather than of deviation. Deviation, as Young argues, is not only an undesirable but also a prohibited act in order to ensure the maintenance of social institutions.¹¹ However, as many people, including Young, are aware despite prohibitions, deviations occur in every social institution and, thus what should be at stake is the degree of deviation or compliance, rather than the conformity of all behaviour with the rules of an institution. There then comes the question of how much deviation still points to the existence of an institution or, in other words, how much of it should be tolerated in order to preserve the maintenance of institutions. As a reply, those employing a behavioural definition argue that as long as persistent non-compliance does not occur, then, the regime in question can be said to exist.¹²

¹⁰ Young, "International Regimes", p. 107.

¹¹ *Ibid.*, p. 107-108. However, Young argues that social institutions in general and international regimes in particular are not static but, to the contrary, can be radically altered and even destroyed if the conditions of their bases, whether be political or moral, change themselves.

¹² For instance, Mark W. Zacher, "Trade Gaps, Analytical Gaps: Regime Analysis and International Commodity Trade Regulation", *International Organization*, Vol. 41, No. 2, 1987, p. 174, cited in Hasenclever et al., *Theories*, p. 15.

On the other hand, there are those, particularly German students of the regime school, who are in favour of a stricter definition of regimes in behavioural terms, and, thus find the above definitions quite loose in that sense. Expectations of observance with regime rules and/or delineation of boundaries of admissible behaviour by the latter are not satisfactory enough for them. Their argument is that "norms and rules which do not shape the behaviour of states cannot be considered reliable predictors of states' behavior capable of producing convergent expectations" and that "even explicit norms and rules if they remain largely inoperative fail to indicate the existence of an institution, and therefore do not form part of an international regime".¹³ In other words, instead of treating the effectiveness of regimes as a separate dependent variable, i.e. as an impact or consequence, they consider it as a defining criterion of regimes.

No doubt, those researchers who want to find out whether regimes do influence state behaviour would be quite unwilling to select a definition, like that of the German students, that would be quite "unworking" for them, since as Hasenclever et al. succinctly puts it, "given a behavioral understanding of regimes, the statement: "if a regime exists in the issue-area, states tend to act in accordance with its injunctions" [becomes] true by definition".¹⁴

With the outright acceptance of the latter position, obviously, several possibilities are all but overlooked particularly relating to the extent, nature and meaning of behavioural influence of regimes. For instance, such an influence may be a matter of degree rather than an undisputed fact. If expectations are taken to be certain goals whose achievement is dependent on observance of regime rules, then some regimes may partly live up to the expectation of their builders, some may exceed them, and some not at all. In other words, there may be those instances of cooperation where deviation from formal rules may not signal the breakdown or even the weakening of the regimes in question. There may exist implicit understandings among actors of a rule-based cooperation as to what is tolerable and desirable and to what extent. Moreover, particular behaviour previously perceived as unreasonable by the members of a regime may be considered reasonable under changing circumstances. Also, parties to a regime may sometimes obey the injunctions of the latter

¹³ Volker Rittberger, "Research on International Regimes in Germany: The Adaptive Internalization of an American Social Science Concept", Rittberger (ed.), *Regime Theory*, p. 9-12.

¹⁴ Hasenclever et al., *Theories*, p.18. In addition, Robert O. Keohane argues that those researchers opting for a strict behavioural concept of regimes will have to pursue quite an "odd" course of scientific investigation, i.e. explanation preceding description rather than vice-versa, Keohane, "The Analysis of International Regimes: Towards a European-American Research Programme", Rittberger (ed.), *Regime Theory*, p. 28.

out of convenience rather than because of its mere existence. In such cases, no doubt, qualifying the rule-based cooperation in question as a regime by simply paying attention to the effectiveness of its rules, which, in turn, is deduced from the extent of conforming behaviour would be quite illusory. More importantly than all these perhaps, taking rule-conformity as the sole or the most important criteria for the existence and the effectiveness of regimes, may prove to be quite parochial in those cases of less rule-observant instances of cooperation, where the mere establishment of the latter may lead to developments unforeseen by their members. For instance, within the framework of a regime, some degree of rapprochement or its opposite may take place among its members, which may, in turn, influence relations in other issue-areas as well. Or, quite possibly, regimes may lead to changes within the domestic politics of their members. The final implications of these and similar examples are that the potential influence and effectiveness of regimes cannot merely be linked to state behaviour and that the definitions or conceptualisations of regimes based on strict behavioural criteria overlook that potential influence in question.

The Cognitivist Stance

Some of these points about the qualities of regimes that are not immediately accessible to the observer are taken up in another conceptualisation of regimes developed from a cognitivist point of view. The latter, in fact, is already implied in Krasner's consensus definition and is very close to Young's institutional understanding of regimes. However, what makes the separate consideration of cognitivist concept worthy comes from its clearer stance on such qualities and from its resultant epistemological preference.

References to the "convergence of expectations" in Krasner's and "recognised practices, conventions, roles" in Young's definitions, according to the proponents of cognitivism, already emphasise the "intersubjective" quality of regimes and they go as far as describing this quality as the ontology of regimes.¹⁵ They argue that regimes make sense to us not only by the observance of their rules, but, more significantly, "by their principled and shared understandings of desirable and acceptable forms of social behavior".¹⁶ Justifications or excuses put forward for the violation of norms, demands made for the exemption from certain norms,

¹⁵ Friedrich Kratochwil and John G. Ruggie, "International Organization: A State of the Art on an Art of the State", *International Organization*, Vol. 40, No. 4, 1986, p. 764, cited in Hasenclever et al., *Theories*, p. 16.

¹⁶ *Ibid.*

or arguments made about the coherence or clarity of certain rules are all considered as valid indicators of regime existence as behavioural conformity with regime norms.¹⁷

Institutions and thus regimes, according to the cognitivist understanding, are established on and maintained through a communicative structure that should "constitute the referential framework for attempts to understand why actors do the things they do".¹⁸ In order to uncover this communicative structure, the cognitivists favour the employment of an interpretive epistemology. Since interpretation by actors of their surroundings is of utmost importance to them, the cognitivists reject an epistemology based on the criteria of logical positivism. It is this rejection that further separates them from the behaviouralists who, in their search for regularities of overt behaviour, usually follow a positivist epistemology. However, the search for such empirical regularities to reach law-like or scientific knowledge is regarded by cognitivists both as a misplaced ideal and as an incomplete task in social science in general and in particular where norms play an important role in shaping the expectations and behaviour of the actors in question.¹⁹ The causal link implied by the norms is perceived to be quite different from a physical sense. Kratochwil, a leading cognitivist, claims the existence of such difference by distinguishing between "regulative" and "constitutive" rules, and explains their different natures as follows:

..."when a rule is purely regulative, behavior which is in accordance with the rule could be given the same description or specification...whether or not the rule existed'. The problem is however significantly different in the case of an institutional rule, constitutive of a practice. Threatening the king in a chess game by announcing 'check' means something *only* with reference to the underlying rules of the game. Thus, the meaning of the move and its explanation crucially depend upon the knowledge of the rule-structure."²⁰

In this regard, the utterances like threatening, demanding, justifying, promising or excusing that take place within an institutional (regime) framework do make sense only with background knowledge of

¹⁷ Friedrich Kratochwil, "Contract and Regimes: Do Issue Specificity and Variations of Formality Matter?", Rittberger (ed.), *Regime Theory*, p. 92.

¹⁸ Friedrich Kratochwil, "Regimes, Interpretation and the 'Science' of Politics: A Reappraisal", *Millennium*, Vol. 17, No. 2, 1988, p. 277.

¹⁹ *Ibid.*, p. 263-266.

²⁰ *Ibid.*, p. 271.

institutional norms. In other words, the communicative structure that maintains regimes is norm-bound. The meanings attached to the dynamics of this structure are claimed to be intersubjectively accessible only to those actors that are parties to the institution in question. Also, it is particularly this norm-bound quality of intersubjective claims that, cognitivists argue, refutes the charges of subjectivism made against interpretive epistemology. Or, put differently, the employment of interpretive methods is argued not to necessarily result in idiosyncratic knowledge (i.e. interpretations made by the actors within an institutional framework are considered not to be ad hoc), but to be based on intra-institutionally accessible knowledge and on some intra-institutionally accepted criteria.²¹

Irrespective of how convincing the arguments put forth by different conceptualisations of regimes are, there seems to be no winner in this case. Since the ongoing discussion mainly between behavioural and cognitivist conceptualisations arise out of differing ontological, and particularly of epistemological stances, researchers with different research objectives (for instance, with an interest to find out the reasons for the variation in overt rule-compliant behaviour across different issue-areas or, alternatively, with an interest to understand how an existing regime is interpreted by different political groups in a country) are likely to employ an understanding of regimes that will suit and facilitate their respective research tasks.²²

Implications of Different Regime Conceptualisations for Human Rights

Similar remarks can be made in relation to human rights regimes when a choice is to be made among these different conceptualisations. However, since in an issue-area like human rights, where rule-based cooperation among international actors and particularly among states is more difficult and, where even if such cooperation takes place, it may be naïve to expect immediately observable results, such a choice requires additional caution.

²¹ Kratochwil argues that one way of escaping the dilemma in social sciences between logical positivism (epistemological monism) and ad hoc epistemological pluralism is to shift the focus from the "science" itself to the type of knowledge-claims making scientific arguments. Such claims, he argues, deploy intersubjectively accessible (public) knowledge and are based on some accepted criteria (their warrants). These two important features, he says, help maintain "the non-idiosyncratic and warranted character of scientific arguments" while simultaneously avoiding the dogmatic claim of logical positivism that only one such criteria exists, *Ibid.*, p. 264.

²² See, for a similar argument on the unlikelihood of a universal agreement on the issue of conceptualisation, Hasenclever et al., *Theories*, p. 21.

The problems arising out of the ambiguous structure of the consensus definition in relation to human rights regimes have already been identified. However, such an ambiguity seems to be much less difficult to overcome than, for instance, the German students' concept. The latter, with its highly demanding criteria of close to complete norm/rule conformity to distinguish regimes from other types of cooperation, may call into question the taken-for-granted existence of a number of regional and international human rights regimes that have been established after the Second World War. If effectiveness were accepted as a "defining" criterion of regimes, then very few, and perhaps only the European human rights regime would deserve to be called as such. However, even if this strict and restrictive definition is employed in accordance with the objectives of the researcher, the latter still faces the task of filling the conceptual gap created by the rejection of the regime concept. For instance, where, as in the majority of cases of cooperation on human rights issues, the relevant decision-making procedures established and the conventions signed by states are "not" considered simply "dead" (not only by the accusing but also by the accused governments) and where cooperative steps are taken, though occasionally and gradually, particularly by the latter, the researcher will not only be discouraged to dismiss these cases as another example of "realpolitik", but also be mistaken if he equates them with formal agreements and international organisations. Since there are instances where governments do consent to varying degrees of derogation from their sovereignty in the issue-area of human rights, it does not do justice to turn a blind eye on such instances or to underemphasise them. The second alternative of describing the existing instances of cooperation as formal agreements or international organisations also seems inadequate, if not completely false. For one thing, as contemporary instances indicate, whatever has been going on among states either on an international or regional level in relation to human rights is not just limited to written rules and procedures to implement the latter. On the contrary, it comprises, for instance, a considerable amount of domestic as well as international discourse, and/or transnational alliances formed among nongovernmental organisations, political parties and other civil society groups, all dedicated to help bring about rule-governed practices in terms of the existing agreements.²³ In other words, in cases where expectations and understandings converge as to what is admissible behaviour against a

²³ See, for instance, Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink (eds.), *The Power of Human Rights: International Norms and Domestic Change*, Cambridge, Cambridge University Press, 1999, and Sevilay Aksoy, *The Socialisation of International Human Rights Norms: the Spiral Model – the Turkish Case (1980-1999)*, unpublished Ph.D. Thesis, United Kingdom, University of Exeter, Graduate School of Historical, Political and Administrative and Sociological Studies, 2003.

background of formal and informal norms or rules, and where such expectations last beyond the formally agreed agreements (if there are any), then, one has to think of a more encompassing term than merely that of inter-state agreements in order to give a better account of such cases.

An institutionalist or cognitivist conceptualisation of regimes, thus, may be more appropriate for the latter task. Such conceptualisations, as mentioned above, with their emphasis on "shared understandings, convergence of expectations, and recognised practices and roles" imply their discontent with an understanding which presumes a close to one-to-one relationship between regime norms/rules and behaviour. Thus, in an issue-area like human rights, where rule-governed practice in the latter sense is very difficult to achieve, a regime, in a cognitivist sense, can still be said to have come into being if parties' expectations converge on a legitimate or valid conceptualisation of human rights that provides both intersubjectively accessible knowledge and its criteria as its own basis. In other words, the existence of a communicative dynamic based on an intersubjectively meaningful and accepted rule or norm structure of human rights indicates the existence of a regime in relation to that structure. Members of such a regime are expected to play by the rules of the game as regards not only rule-conformist behaviour but also while putting forth justifications, excuses for the violations they commit or while asking for exemptions from certain norms or rules. Put differently, basing one's own arguments on idiosyncratic knowledge and criteria (i.e. one that is not intersubjectively meaningful and/or acceptable to the rest of its partners) would be considered non-regime behaviour. In this regard, an institutionalised higher, particularly judicial, authority and its advisory organs, if they exist, are to be of immense help in both establishing and forcefully judging on the basis of such criteria.²⁴

Such a cognitivist understanding of human rights regimes may help not only to distinguish regime from non-regime situations, but also to understand why an effective human rights regime is relatively difficult to achieve. The attempt of some cognitivists to embed institutions in general within higher normative structures sheds some light on this issue by helping to reveal the uneasy alliance between the higher regimes of international system (i.e. state sovereignty and the principle of non-intervention) and human rights regimes.

²⁴ In this regard, Kratochwil distinguishes between two reasoning styles used for giving assent to the validity of norms. One of them, he says, "[by] represent[ing] norms in terms of systemic hierarchies, or in the terms of logical structures...internalis[es] the reasons for the validation of norms" and does rest on the criteria of consistency. The other one, he argues, rests on the criteria of justice and thus, may justify deviations "in the light of past cases as well as in the light of the particular circumstances", Kratochwil, "Regimes, Interpretation", p. 275.

The Cooperation Problematique and Human Rights

The absence of a central authority in international politics having decision-making, enforcement and sanctioning powers and the presence of a multiplicity of sovereign nation-states entitled to all these powers refer, as well known by the students of international relations, to the anarchical image of the international system. Though the anarchy image as such is usually taken for granted, the external behaviour of the sovereign units of the international system, particularly vis-à-vis international cooperation, is subject to different readings within different traditions of international relations, which result, in turn, from some differing assumptions made about the nature of these units.

Two of the most influential schools of international relations, realism and neo-liberalism, explain the behaviour of nation-states in functional terms. According to this functional reading, nation-states are self-interested utility-maximisers mainly because of the anarchical "outside", which leaves these states with no option but to ensure survival and order "inside" their borders by themselves. With their national interests formulated to maximise their own utility functions, these sovereign states are mostly to have competitive interests. However, one also notices an acceptance by this reading of the growing interdependence of states on a number of complex issues, most of which are transnational in character and, thus necessitate cooperation to be coped with effectively. This dichotomy created by the conflicting imperatives of the anarchy and of the interdependency (i.e. to compete versus to co-operate) constitutes the "cooperation problematique" of the realist and neo-liberal theories of international relations. This problematique, however, is approached quite differently by these theories that, in turn, result from their dissension on the nature of the utility-maximising function of the sovereign units of the international system.²⁵

The Neo-Liberal Stance

For neo-liberals, the self-interested state actors are concerned, above all, with their own absolute gains and losses. So any policy that has the potential of leaving each better off than they are at the moment, appeals to them strongly, irrespective of the requirements of such policy. Thus, if the pursuit of cooperative ventures among each other is perceived as more conducive to the achievement of their objectives vis-à-vis a particular

²⁵ For more on the neo-realist/neo-liberal debate, see, for instance, David A. Baldwin (ed.), *Neorealism and Neoliberalism: The Contemporary Debate*, New York, Columbia University Press, 1993, and Charles W. Kegley (ed.), *Controversies in International Relations Theory: Realism and the Neoliberal Challenge*, New York, St. Martin's Press, 1995.

problem, then, the self-interested actors are assumed to leave aside their competitive policies and deploy more cooperative ones vis-à-vis the latter. However, for neo-liberals there are some obstacles that stand in front of any such cooperation even if the common, though not identical, interests of states require it. The fear of being cheated and the transaction costs are among their most important concerns. In this regard international cooperation conducted within the framework of voluntarily agreed rules and norms (i.e. international institutions (regimes)) is considered an effective means to allay such concerns.²⁶

On the one hand, a regime/institutional framework, for neo-liberals, by both setting standards for the admissible behaviour and by creating transparency (through its monitoring devices) vis-à-vis a particular issue, stabilises the expectations of its members as to the pursuit of the agreed-upon policies in question. This function of international regimes of causing "reputational concerns" to their members is regarded as a strong deterrent against the fear of being cheated. Thus, it is assumed that even if a member of an international regime may have a strong tendency to reap more benefits by pursuing non-regime policies, it will be least likely to do so since acquisition of a bad reputation is most likely to affect negatively its future relations with the others, and thus to be detrimental for its long-term interests. On the other hand, the concern of states as to the rising of transaction costs in case of cooperation is assumed to be alleviated if such cooperation takes place within an institutional framework, since such costs are considered to be much lower within a multilateral framework than on a bilateral basis.²⁷

In short, international institutions in general and international regimes in particular are strongly valued by neo-liberals mainly because of their supposedly vital functions of facilitating and furthering international cooperation within an otherwise anarchic and not-so-conducive international environment. Put differently, international regimes are considered effective means for changing the structure of the context within which states interact "so as to make it possible for the countries

²⁶ Hasenclever et al., *Theories*, p. 23-34.

²⁷ *Ibid.*, p. 35. For more on neoliberal institutionalism or neoliberalism for short, see also, for instance, Robert O. Keohane and Joseph S. Nye (eds.), *Power and Interdependence*, Boston, Little Brown, 1989; Robert O. Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy*, Princeton, Princeton University Press, 1984; Robert Axelrod, *The Evolution of Cooperation*, New York, Basic Books, 1984; Robert O. Keohane (ed.), *International Institutions and State Power: Essays in International Relations Theory*, Boulder, CO, Westview Press, 1989; and Thomas Risse-Kappen (ed.), *Bringing Transnational Relations Back In: Non-State Actors, Domestic Structures and International Institutions*, Cambridge, Cambridge University Press, 1995.

involved to work together productively".²⁸ However, it is ambiguous whether these neo-liberal assumptions, that have been developed and tested against mainly political-economic and sometimes military-security issues,²⁹ can be applied to issue-areas of different nature as well. Human rights, obviously, is one such issue-area that those neo-liberals did not have in their minds when formulating their ideas about the cooperation problematique in international politics. Thus, it remains to be seen whether a neo-liberal reading in this regard can have of any explanatory value for this particular issue-area.

As mentioned above, for neo-liberals the major precondition of any cooperation is the existence of willingness on the part of self-interested actors, who have a mixture of conflicting and complementary interests, "to adjust their behavior to the actual or anticipated preferences of others".³⁰ A reading that requires, above all, the identification of both conflicting and complementary interests and the willingness to make mutual adjustments, makes obviously a good start for analysing human rights issues. The issue of human rights is one area where self-interested actors, perhaps as in any other, have both kinds of such interests and where the willingness on the part of states to adjust their policies unilaterally or mutually is an intense subject of dispute. From a functionalist point of view, cooperation on human rights issues seems to be a high possibility since progress on such issues is likely to benefit all actors whether they are states or individual citizens. Actually, cooperation of states in human rights matters seems even self-evident, since a dissatisfied domestic society is a major obstacle to the development and therefore to the long-term interests of all otherwise self-interested and disrespectful states. Gross violations of human rights seem most likely to endanger the continuance of development plans and to disrupt political stability of human rights-violating states in the long-term. Cooperation is also in the interest of developed Western states not only for altruistic but for selfish reasons as well, among which the prevention of the increasing flow of immigrants from the less developed countries stands as a well-known example. However, a closer examination of the international rhetoric on human rights issues reveals that such self-evident complementary interests do not in fact wholly mirror the reality and that many conflicting interests among states emanating from their simple short-sightedness (for instance, the interest of an oppressive regime to maintain its survival) and/or their different understandings and

²⁸ Robert Axelrod and Robert O. Keohane, "Achieving Cooperation Under Anarchy: Strategies and Institutions", *World Politics*, Vol. 38, No. 1, 1985, p. 253.

²⁹ *Ibid.*, p. 226.

³⁰ *Ibid.*

interpretations of human rights norms, do constitute an obstacle for cooperative ventures in this issue-area. Regarding the issue of adjustment, all seems, then, to depend on the formation of the most crucial perception among the involved states that each will be better off if they mutually adjust their human rights policies. If such perception does not arise, then it can safely be predicted within the neo-liberal framework that cooperation is less likely to arise.

However, in cases where such a perception exists, it remains to be seen whether the fear of being cheated and transaction costs resulting from uncertainties of the future hold any relevance with regard to human rights issues. As mentioned above, an institutional framework in the form of a regime is believed to alleviate the concerns of the involved states most importantly about the future behaviour of their partners. Reputational concerns arising in a transparent institutional setting are expected to ensure conformity with the agreed-upon norms and rules of the regime in question. Nonetheless, it is unclear why a state with a reputational concern, to start with, would be willing to be part of a cooperative human rights venture (as of any other issues), since such a concern is most likely to arise if the true intention of the state in question is to pursue opportunistic policies rather than adjusting ones. Conversely, it is difficult to understand why a state with a belief that cooperative policies will bring more benefits than self-help strategies wants to resort to the latter. To this otherwise self-contradictory assumption neo-liberals reply by emphasising the role that international regimes are supposed to play by "rais[ing] the threshold of opportunism for a rational egoist who is sensitive to her long-term interests".³¹ What is noteworthy in this reply is the emphasis put on long-term interests only upon which cooperation is assumed to be built on. Then only within a context where the involved states perceive their long-term interests (as opposed to short-term ones) to be served by cooperating on some human rights matters, the neo-liberal reading can be of some explanatory value. As mentioned above, since human rights issues of the contemporary world carry an increasingly international character, despite being essentially internal matters of states, a perception of joint gains from cooperation still remains a possibility. To the extent that the fulfilment of these joint gains necessitates the pursuit of cooperative policies, the formation of an issue-specific or general regime may be of instrumental value at least to reduce the concern of involved parties to be double-crossed by the pursuit of non-regime (opportunistic) policies by their partners.

³¹ Hasenclever et al., *Theories*, p. 36.

The Realist Stance

The possibility and, if it occurs, the extent of international cooperation are not very promising in terms of the other influential tradition of international relations, the realist tradition. Realists, as mentioned above, share with neo-liberals most of the main assumptions about the nature of the international system and its actors, i.e. an anarchical system with its utility-maximising egoist sovereign units (states). However, they differ on a point concerning the behaviour of states and from this follows their sceptical attitude towards international cooperation. The depiction of the utility-maximising functions of states in "absolute" terms is considered by realists to be at least a misperception on the part of neoliberals. In a world characterised by the absence of an "orderer", the relative power capabilities of states are deemed to be of utmost importance in ensuring their own sovereignty and survival. In other words, the gains of others are explained in terms of one's own losses and vice-versa. Thus, according to realists, behaviour of rational actors is more accurately described in terms of concerns for relative gains rather than for absolute ones.³²

Such concern, accordingly, is supposed to hinder cooperation attempts by states. This hindrance, in realist terms, results not only from the fear of states of being cheated but also from their anxiety as to how gains from a cooperative relationship will be distributed among and will be used by participants. The possibilities that the gains of other actors can be used, immediately or in the future, against one's own independence and survival or that such gains can be transformed into a bargaining lever "in the issue-area in question and beyond" constitute the major obstacles for cooperation.³³ The existing or potential international regimes, in turn, are perceived at best as intervening variables or as "essential mediators between the distribution of power and concomitant interests, on the one hand, and outcomes in the issue-area, on the other".³⁴ In other words, international regimes constitute a valuable asset for the strongest power or stronger powers of the international system to get things done in their own way "in a co-ordinated manner". The more sophisticated versions of realism goes beyond the former type of arguments that are more

³² Ibid., p. 83-84. For more on the relative/absolute gains debate, see also, Joseph M. Grieco, "Anarchy and the Limits of Cooperation: A Realist Critique of the Newest Liberal Institutionalism", *International Organization*, Vol. 42, No. 3, August 1988, p. 485-507; Robert Powell, "Absolute and Relative Gains in International Relations Theory", *American Political Science Review*, Vol. 85, No. 4, 1991, p. 1303-1320; and Robert Jervis, "Realism, Neoliberalism and Co-operation: Understanding the Debate", *International Security*, Vol. 24, No. 1, Summer 1999, p. 42-63.

³³ Hasenclever et al., *Theories*, p. 115-117.

³⁴ Ibid., p. 108.

characteristic of hegemonic stability theories and claim that cooperation is possible only if institutions or regimes are ensured to embody terms that not only alleviate concerns of involved actors as to the commitment of each of them to agreed-upon policies but also ensure "a *balanced (or equitable) distribution of gains*" from such cooperation, i.e. maintenance of the pre-cooperation balance of distribution of capabilities.³⁵

For these reductionist arguments to be of any explanatory value for human rights regimes, one has to show that any deterioration or improvement of human rights conditions in a country does indeed detract from or improves others' own gains within and beyond the issue-area of human rights. Such an attempt, in turn, further requires a discussion of the nature of human rights itself. So, for instance, can the latter be said to be of a relatively assessed good like weapons? Can the assumption that "the more weapons I have the more insecure my neighbour feels" be translated into, for instance, one saying that "the more freedom of expression I grant to my citizens the more insecure other states feel"? In other words, can one talk of power of ideas in the same way as he can talk of power of weapons? Can the former be as destructive or as influential as weapons? Obviously there are no easy and straightforward answers to these questions and conflict typologies developed by some problem-structuralists can be of some help at least in showing that it may be mistaken to place human rights under a strict category, i.e. relatively or absolutely assessed good, that in turn leads to parochial perspectives on the cooperation/regime problematique.

Problem-Structuralism: A Practical Guide

The typologies made on the basis of the inherent properties of conflicts or of objects of contention may prove to be more useful than those based solely on the nature of issue-areas themselves.³⁶ Typologies based on the latter place rather quickly human rights issues under the domain of rule, which is assumed to be the least conducive to cooperative treatment.³⁷

³⁵ Ibid., p. 120. Italics are in the original. Hasenclever et al. argues that the difference between these two types of arguments on the formation and/or content of regimes stems from the different meanings attributed to the concept of 'power' itself by different realist scholars. For instance, they say, Krasner perceives power as a "*means of statecraft*" whereas Grieco considers it as a significant "*end*" in itself. They explain that these different perceptions lead respectively to their emphases on the importance of power and of sensitivity to relative gains/losses vis-à-vis their explanations of content of international regimes, Hasenclever et al., *Theories*, p. 86.

³⁶ Those problem-structuralists who focus on conflicts or objects of contention rather than on issue-areas themselves argue that it is the inherent properties of the former that may be held accountable for the type of conflict management that arises in the end, Hasenclever et al., *Theories*, p. 63.

³⁷ For the issue-areas falling under other domains, see fn. 2.

While doing so, obviously, human rights are treated solely as an internal matter concerning the values of the society in question. However, as explained above, human rights policies of individual states may have serious repercussions beyond their borders. So treating human rights issues as exclusively domestic matters may be quite a parochial attempt in some, though not all instances. In other words, when inter-state conflicts arise in the issue-area of human rights, they may not always necessarily concern values. Other possibilities of conflicts on human rights issues do exist and they may more neatly be categorised by benefiting from conflict typologies that distinguish between “dissensual” and “consensual” conflicts. Conflicts about values and means are described by problem-structuralists as dissensual, since actors subject to such conflicts usually “disagree on what is desirable, not just for each of them individually but for all of them collectively”.³⁸ On the other hand, consensual conflicts are explained in terms of conflicts of interest where a certain kind of consensus is supposed to exist among actors about the same scarce good (that may be relatively or absolutely assessed), sharing of which makes them parties to a conflict in the first place.³⁹ Against the background of this framework, it will be argued that conflicts regarding human rights may concern values, interests, and means simultaneously or in different combinations of these.

Theorists, who readily place human rights under the category of conflicts about values, do so by knowing that they will find plenty of examples supporting their argument. And the academic and popular debate on cultural relativism versus universality on human rights issues constitutes a major source of such examples. However, it is this very debate itself that also seriously questions the legitimacy of arguments put forth by those passionate cultural relativists who would like to present inter-state conflicts of human rights as arising mainly from the clash of values (for instance, the Western individualism versus Asian, African, and Middle Eastern collectivism). Accordingly, while it is possible to point to those instances where the majority of the population of an illiberal state perceives some of the Western human rights ideals as alien to their own culture and even as a threat against the moral and social fabric of their society, one can also cite those states, including some of the illiberal, that aspire to transform or at least to improve their own human rights conditions in accordance with those Western standards they consider as being universal, but find it difficult to do so mainly because they lack the

³⁸ Hasenclever et al., *Theories*, p. 63.

³⁹ *Ibid.*, p. 63-64. See also Manfred Efinger, Peter Mayer and Gudrun Schwarzer, “Integrating and Contextualizing Hypotheses: Alternative Paths to Better Explanations of Regime Formation?”, Rittberger (ed.), *Regime Theory*, p. 264-265.

socio-economic means. The latter case is quite common in the contemporary world, where many states fail to reach up to the standards set up by a number of conventions on human rights, not simply because they fundamentally disagree with the values embedded within these conventions but mostly because their socio-economic conditions that further deteriorate by the imposition of IMF's structural and adjustment plans constitute a major impediment in this regard. Many of the political and economic rights enumerated in various international human rights documents are of Western origin and presuppose a particular kind of political and economic structure for their realisation. Thus, even if such rights may be accepted in "essence", their realisation may require some sort of restructuring of the terms of economic and financial cooperation with the advanced industrialised states of the West. Such restructuring carries a significant importance not just for economic development per se but can have important political implications as well. The existence of a number of examples in the developing world where the forced liberalisation of their economies result in more authoritative political practices of the state authorities suggests that a humane restructuring of the economic relations between the North and the South may also help overcome the dilemma within the call of the Northern countries for a simultaneous liberalisation of the economic and political systems of the South. Where such restructuring or, at least, understanding is not forthcoming one may rightly talk about conflict about means as well as about values.

Inter-state conflicts on human rights may also involve conflicts of interests. In fact, the latter example that sees conflicts of human rights as stemming from the deeper imbalances of the world economy, can also be considered as conflicts of interests over a relatively assessed good (i.e. everyone wants to live humanely but the dynamics of Western capitalism requiring a particular distribution of world economic gains in order to ensure the well-being of its own nations, keep the rest of the world in a dependent and chaotic situation). In other words, in the event of a much fairer redistribution of world's economic resources it may be argued that the human rights standards (particularly of socio-economic nature) of the Western states may fall, though not dramatically, while those of the rest of the world may increase. In the absence of an acknowledgement on the part of the wealthier nations of this dimension of human rights conflicts, that is not the only but an important one, or, even in case of an acknowledgement, the absence of their willingness to effectively cope with the underlying reasons of this dimension, a realist understanding of conflict management and cooperation may be a better means of explaining the content and the level of effectiveness of the current relevant regimes.

Concluding Remarks

In this article I assessed the dominant regime theories as regards the issue-area of human rights. It should be clear from this assessment that those researchers willing to examine the latter on the basis of these theories face a number of important, though not insurmountable, challenges. The first challenge regards the selection of the most appropriate conceptualisation. The behavioural approach that tends almost to equate norms with behaviour itself cannot be a good choice in this respect, since by doing so it blurs the distinction between the defining criteria and effectiveness of regimes. Even the world's most sophisticated human rights regime (i.e. the Council of Europe), for instance, is faced with many instances of rule-deviation, but this does not call into question its regime status. Thus I have argued that the cognitive approach with its emphasis on convergent expectations and intersubjective understandings as regards the definition of regimes serves better the research interests of human rights students. This is not to ignore or underemphasise the importance of rule-compliant behaviour, but to enable to treat it as an independent variable per se. Furthermore, there are some aspects of human rights regimes, such as the importance of the discourse of international and transnational political and social actors, that lend themselves to an analysis that rests on an interpretive method rather than a too positivist one.

Second, I have argued that the nature of inter-state conflicts of human rights, a critical issue affecting the selection among the competing regime theories, cannot be defined a priori without due regard to the type of human rights and the contextual variables in question. The exclusion of these latter two not only distorts the reality but also results in at best limited results vis-à-vis the possibility and extent of cooperative ventures. Obviously, overemphasising conflict of values in a context where means are in greater dispute may insufficiently or wrongly explain why the attempts to establish a regime failed in the first place or, if they have not, why the emergent regime is not very effective. So I have argued that it is wrong to treat the assumptions of the neoliberal-realist debate on the relative/absolute gains and their implications for the cooperation problematique as universal statements that are valid in all times and conditions, at least with regard to human rights issues. They may be of some explanatory value only in those cases where their relevance can be pointed out.

Last but not the least, I suggest that human rights students should pay increasing attention to the legitimate points raised by the cognitivist line of thinking. The current regime research, dominated by the neoliberal

perspective, assumes that as long as there exists the prospect of realisable joint gains from co-operating, other obstacles are easy to overcome through positive and negative incentives provided by a regime. Thus perception of common interests is taken to be an unproblematic starting point in this line of thinking. Why such a perception may still be awaited in some cases (as in human rights) it does not really constitute a research question of the neoliberal agenda. The issues like legitimacy, justice and morality that are closely associated with the fortunes of cooperation, particularly on human rights, are hardly, if at all, covered by this agenda, the fact of which is hardly surprising, since this agenda itself is informed to a great extent by the realist reading of international politics. While the classic rule-defiant anarchy image of the realists are sought to be superseded by the neoliberals, normative questions such as these are still not addressed and part of this negligence of the neoliberals is attributed rightly by Hurrell to their preoccupation mainly with an "understanding [of] cooperation between liberal developed states that enjoy a compatibility of major values and a common conceptualization of such basic concepts as 'order', 'justice', 'state', 'law', 'contract', etc."⁴⁰ The later variant of neoliberalism, problem-structuralism, as explained above, makes an effort to overcome this negligence by inventing categories to account for the different success stories of issue-areas or conflicts. However, such an effort while valuable in itself does only (and narrowly) name the reasons of success or failure and does not involve itself in an in-depth analysis of these reasons by placing them in a wider framework of thought. New directions for research, as suggested by the cognitivist line of thinking, should be towards an understanding of the (constitutive) relationship between the fundamental legal and political normative structures of international politics and the formation, maintenance and effectiveness of issue-area specific regimes, including human rights regimes.

⁴⁰ Andrew Hurrell, "International Society and the Study of Regimes: A Reflective Approach", Rittberger (ed.), *Regime Theory*, p. 61.

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