

RADBOD UNIVERSITY NIJMEGEN

# **Brazilian (non)Compliance with International Human Rights Norms**

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**The case of indigenous peoples' rights**

Master Thesis

by

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*A research written within the framework of Amnesty International The Netherlands' 'Strategic Studies Project'*

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# Abstract

This research, written as part of Amnesty International The Netherlands' 'Strategic Studies Project', is aimed at explaining why Brazil does not comply with international norms on indigenous peoples' rights, although this is a so-called 'ideal case' which depicts all the characteristics and outcomes under which the Risse, Ropp and Sikkink (2013) model expects compliance to take place. As this theoretical model, however, remains rather vague on the actual processes and mechanisms leading up to compliance, a new theoretical model is constructed based on the work of various IR scholars.

After formulating three hypotheses designed along the lines of the social mechanisms that foster compliance with international human rights norms, we start analyzing the Brazilian (non) compliance with international norms on indigenous peoples' rights and the role of various actors in 'pushing' the Brazilian government from commitment to compliance with these norms, using the qualitative method of process tracing. It appeared that all three 'mechanisms' work. However, although they played a role in advocating for compliance, these mechanisms were not as 'strong' as expected on beforehand, as the various transnational actors were not able to 'move' the Brazilian government from commitment to compliance with international norms on indigenous peoples' rights.

Therefore, we propose three additional scope conditions that may affect the 'working' of the social mechanisms. Incorporating the (perceived) salience of an issue, the relative weight of (economic) 'gains' and 'losses' and the target actor's 'nature' into the Risse, Ropp and Sikkink (2013) model has not only the potential to improve this theoretical model, but also the potential to provide transnational actors (such as Amnesty International) with better insights in the processes and mechanisms that influence states' move from commitment to compliance with international norms.

(keywords)

*Indigenous Peoples – Human Rights – International Norms – Norm Compliance – Brazil*

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## Acronyms and Abbreviations

ACT	Amazon Conservation Team
AI	Amnesty International
AIDA	Interamerican Association for Environmental Defense
APIB	Articulacao dos Pavos Indigenas do Brasil (Articulation of Indigenous Peoples of Brazil)
AW	Amazon Watch
BRICS	Brazil, Russia, India, China and South-Africa (association of major emerging economies)
CIMI	Conselho Indigenista Missionário
COIAB	Coordenação das Organizações Indígenas da Amazônia Brasileira (also referred to as: Coordinator of Indigenous Organizations of the Amazon River Basin)
CS	Cultural Survival
CWIS	Center for World Indigenous Studies
DOCIP	Indigenous Peoples' Center for Documentation, Research and Information
EI	Ecoterra International
EP	Earth Peoples
FERN	Forest and the European Union Resource Network
FOE	Friends of the Earth
FPCN	Friends of People Close to Nature
FPP	Forest Peoples Programme
FUNAI	Fundação Nacional do Índio (National Indian Foundation)
GFC	Global Forest Coalition
IACHR	Inter-American Commission of Human Rights
ICC	International Criminal Court
IITC	International Indian Treaty Council
IEN	Indigenous Environmental Network
ILC	International Land Coalition
ILO	International Labour Organization
IPCB	Indigenous Peoples Council on Biocolonialism
IPIR	Indigenous Peoples Issues and Resources
IPLP	Indigenous Peoples Law and Policy Program
IR	International Relations
IWA	Indigenous World Association
IWGIA	International Work Group for Indigenous Affairs
MRG	Minority Rights Group International
NGO	Non-Governmental Organization
PES	Payments for Environmental Services
POS	Political Opportunity Structure
SI	Survival International
TAN	Transnational Advocacy Network
TNA	Transnational Actors
UN	United Nations
UNCHR	United Nations Commission on Human Rights
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNFCCC	United Nations Framework Convention on Climate Change
UNPFII	United Nations Permanent Forum on Indigenous Issues
UNPO	Unrepresented Nations and Peoples Organization
UNWGIP	United Nations Working Group on Indigenous Populations
WRM	World Rainforest Movement

## Acknowledgements

This Master's thesis can be seen as the culmination of the Master Political Science (International Relations track) at the Radboud University Nijmegen. I very much enjoyed my last year at university but, once again, writing a Master's thesis has proven to be the most difficult part of the Master program. Rethinking the subject, rewriting sections and removing words has made the last months rather intensive. Especially the concluding weeks of this process were quite stressful, as I started working at the European Commission and had to finish this research during the evening hours. I am very grateful, though, that I had the opportunity to write this thesis within the framework of Amnesty International The Netherlands' *Strategische Verkenningen* (Strategic Studies Project) as this provided me with the opportunity to make this effort practically relevant, and applicable outside the 'academic bubble' as well.

I would like to thank several people. To start, everyone involved in the Strategic Studies Project of Amnesty International Netherlands, but especially Douthie Lettinga, who contributed vastly to this research by reading and (critically) reviewing my papers, and engaging me in thought-provoking discussions. Of course, I would also like to thank my academic supervisor: dr. T.R. Eimer for his outstanding support, (critical) remarks and pleasant discussions. I would also like to thank the second reader for reviewing my thesis. Last, but certainly not least, I would like to thank Jochem Schoenmaker, Stein van den Eijnden and Vincent Hendrikx for their discussions within our thesis discussion group. These rather informal meetings made everyone's progress 'visible' and provided the opportunity to exchange some words of encouragement.

Max Laven,

*November 2014*

# Chapter 1 Introduction

## 1.1 The Emergence of the BRICS and the International Human Rights Regime

*“Brazil has always been conscious of its size, and it has been governed by a prophetic sense with regard to the future”*

Joaquim Nabuco – Brazil’s first ambassador to the United States (1905-1910)

Under pressure from geopolitical shifts, and accelerated by fast economic developments, so-called emerging countries, such as the BRICS<sup>1</sup>, reassess their (foreign) policy agendas and consequently their attitude towards human rights. Brazil’s long-held aspirations in this respect are captured in the quote by Joaquim Nabuco cited above. As of today, however, both academic scholars and the international media have paid only very little attention to the (changing) foreign policy goals and strategies of such emerging powers, although the need for a better understanding of (the future development of) emerging power’s foreign policy agendas and strategies is underlined by scholars such as Cooper and Flesmes (2013) and Flesmes (2013)<sup>2</sup>.

A wide range of actors argue that the foreign policy goals (including *normative* policy goals, such as international human rights) of emerging countries are changing. Non-Governmental Organizations (NGOs), such as Amnesty International and Oxfam International, have published papers on the changing international role of emerging countries as well (see for example John, 2012). It is, however, not only the NGOs that argue that the BRICS have become normative powers. Scholars such as Xiaoyu (2012) and Epstein (2012) claim that emerging powers increasingly voice their opinion and dissatisfaction with (international) norms. The title of Epstein’s (2012) paper (“Stop telling us how to behave”) is, in this sense, exemplary. Hence, it is assumed that emerging powers not only reassess their own foreign policy goals (‘inward-out’), they also (re)assess their stance towards international norms (‘outward in’).

In this research we will focus specifically on *international human right norms*, as emerging countries seem to differ significantly with regard to their compliance with these (normative) norms. This holds particularly true for *Indigenous Peoples’ rights*: even in those BRICS-states which are widely considered to be ‘democratic’ (such as Brazil), the situation of indigenous rights can be regarded as troublesome.

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<sup>1</sup> The term 'BRICS' refers to the emerging economies of Brazil, Russia, India and China and (from 2010 onwards, transforming the 'BRIC' into 'BRICS') South-Africa (Cassiolato and Vitorio, 2009).

<sup>2</sup> Cooper and Flesmes (2013) and Flesmes (2013) published their articles in *Third World Quarterly*, which devoted a special issue (“*Foreign Policy Strategies of Emerging Powers in a Multipolar World*”; July 2013) to this subject.



## 1.2 Brazilian (non) Compliance?

With the emergence of constructivist accounts of International Relations (IR), norms, culture and ideas have become core concerns of IR scholars. Most commonly, 'norms' are defined as a "standard of appropriate behavior for actors with a given identity" (Finnemore and Sikkink, 1998, p.891). Although ample research has been conducted on the origins and emergence of (international) norms, the way in which these norms influence state behavior and the question which norms matter under which circumstances (see, for example, Finnemore and Sikkink: 1998), academic literature on the question how (i.e. through which mechanisms) emerging countries deal with international norms is not well researched. This research is aimed at unraveling the causal mechanisms underlying emerging countries' compliance with international (human right) norms.

In the last decades, a wide range of scholars (see for example: Finnemore and Sikkink, 1998; Price, 1998; Keck and Sikkink, 1999; and Acharya, 2004) studied (international) norms using an actor-based approach. Risse-Kappen, Ropp and Sikkink (1999) brought all those different insights together in their so-called 'spiral model of human rights change'. Although this model accounts for the entire process of norm socialization, it focuses only on official *commitment*<sup>3</sup> to certain norms and rights, while neglecting the process of *compliance*<sup>4</sup> to the agreed-upon norms. Last year, Risse, Ropp and Sikkink (2013) revised their model and incorporated scope conditions and processes leading from commitment to human rights norms to actual compliance with them.

At least since its transition in the 1980s from a dictatorial (military) regime to a democracy, Brazil can be regarded as an 'ideal' or 'most-likely' case within the Risse, Ropp and Sikkink (2013) framework. The protection of indigenous people is not only constitutionally prescribed; Brazil also depicts the right 'outcomes' with regard to scope conditions<sup>5</sup> under which compliance with international human rights norms is expected. Hence, both commitment and compliance with international norms are expected to take place. Brazil's day-to-day compliance with international human rights norms (for example, with the United Nations Declaration on the Rights of Indigenous Peoples<sup>6</sup>) is, however, lacking behind. UNDRIP is an important benchmark or point of reference for the measurement of compliance with international norms on indigenous peoples' rights: not only because the adoption of

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<sup>3</sup> *Commitment* is defined as "... actors accepting international human rights as valid and binding for themselves" (Risse, Ropp and Sikkink, 2013, p.9).

<sup>4</sup> *Compliance* is defined as rule-consistent behavior, or "sustained behavior and domestic practices that conform to the international human rights norms" (Risse, Ropp and Sikkink, 2013, p.10).

<sup>5</sup> These 'scope conditions' include, but are not limited to, (the level of) democratic functioning, the way in which rules and policies are implemented and the capabilities of the state (ranging from 'limited' to 'consolidated' statehood) (Risse, Ropp and Sikkink, 2013, pp.16-21).

<sup>6</sup> Abbreviated to 'UNDRIP'

UNDRIP was conceived as a triumph for those actors who strived for UN recognition of the position of indigenous peoples and their rights to territories and resources, but also because many (non-governmental) actors perceive compliance with UNDRIP as one of their pivotal goals. 'Cultural Survival' (an NGO aimed primarily at defending indigenous peoples' human rights), for example, stated that the vast majority of its work with regard to indigenous peoples "is predicated on the United Nations Declaration on the Rights of Indigenous Peoples" (Cultural Survival, 2014).

In November 2012, the National Indigenous Umbrella Organization of Brazil (APIB<sup>7</sup>) voiced its concerns about "the worsening situation, (...) and the increasing violations of our fundamental collective human rights as a peoples" (APIB, 2012). Last year, Amnesty International's Secretary General, Salil Shetty, argued that "although indigenous rights are guaranteed under international law and declarations and even in Brazil's Constitution, decades of delay over the demarcation of ancestral lands has led to worsening conflict, putting lives at risks" (Amnesty International, 2013).

The contemporary academic literature on the concept of international norms, and specifically Risse, Ropp and Sikkink's (2013) model aimed at explaining rule- and norm compliance, cannot account for Brazil's deviant behavior. Hence, the question guiding this research states as follows:

**"Why does Brazil not comply with international human right norms while, according to Risse, Ropp and Sikkink (2013), one would expect Brazil to do?"**

### 1.3 Methods

This research will be qualitative by nature, as an in-depth case-study of the Brazilian compliance with international norms will form the basic tool of analysis. According to, inter alia, Lamont and White (2009) and Gerring (2007) qualitative research encompasses a vast set of methodological tools and techniques including (but not limited to) literature and archival research (Gerring, 2007, p.17): techniques that will be used in this research. Furthermore, qualitative research methods are valuable for disclosing mechanisms underlying causal processes and are ideal for so-called 'process tracking' (sometimes also called 'process tracing'). Qualitative research enables the researcher to gather detailed data, which allows for discerning "how processes emerge and evolve" (Lamont and White, 2009, p.10). Using these methods, we will try to identify the mechanisms underlying and influencing Brazil's level of compliance with international human rights norms.

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<sup>7</sup> APIB is the abbreviation of "Articulation of Indigenous Peoples of Brazil" (*Articulacao dos Povos Indigenas do Brasil*).

## 1.4 Societal and Scientific Relevance

This Master's thesis is written as part of Amnesty International's research project 'Mondiale Machtsverschuivingen'<sup>8</sup>. This project focuses on the foreign policy-related objectives of emerging powers, such as the BRICS. Under pressure from geopolitical shifts, and accelerated by fast economic developments it is argued that these countries reassess their policy agendas, including their attitude towards human rights. This research will contribute to a better understanding of Brazil's future developments with regard to its foreign policy agenda and strategy in general and (more specifically) its stance towards compliance with international norms.

Answering the question why Brazil does not comply with international norms on indigenous peoples' rights, while we would expect Brazil to do so, allows us to expose not only the effectiveness of (recent) international declarations on indigenous peoples' rights such as UNDRIP, which is believed to be a 'game-changer' with regard to the way in which (statist) actors deal with indigenous rights, but also allows us to assess whether the actions by various NGO and other (transnational) actors are effective. Hence, NGOs (such as Amnesty International), as well as (other) transnational actors and governmental organizations dealing with international human rights or the (future) behavior of emerging countries, may benefit from the insights provided by this research.

The scientific relevance of this research can be found in this thesis' aim to adjust and refine the model developed by Risse, Ropp and Sikkink (2013) in order to strengthen the academic debate on the processes leading up to a country's compliance with international norms. This is highly relevant, as it appears that Risse, Ropp and Sikkink's (2013) newly-developed model does not fit completely with the case of Brazilian (non)compliance with international human rights norms.

## 1.5 Structure of the Thesis

The following chapter of this research is dedicated to the theoretical framework, in which theoretical insights will be provided on the actor-based approach to international norms. Pivotal in this chapter will be the Risse, Ropp and Sikkink (2013) model on norm compliance. Based on the literature review several hypotheses will be formulated. In chapter three, the methodological choices made in this thesis will be defended and explained. Furthermore, the key concepts within this research will be operationalized and a more in-depth description of the case under research (Brazil) will be provided.

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<sup>8</sup> This research project is conducted within the framework of Amnesty's *Bureau Strategische Verkenningen (Strategic Studies Project)*. Amnesty International The Netherlands founded this department in April 2013 in order to "map out national and international social, political and legal developments which can affect the future of human rights and the work of Amnesty International in particular" (Lettinga and van Troost, 2014, p.2).

Chapter four will encompass the empirical part of this research. A case-study focusing on Brazil will allow for analyzing the processes and mechanisms through which compliance with international norms takes place. In this chapter we will describe not only how (transnational) actors make use of the processes and mechanisms aimed at fostering state compliance, we will also try to pin-point why these mechanisms do not (appear to) work in the case of Brazil. The fifth chapter is aimed at reflecting on the theoretical framework: what implications does this research have for the Risse, Ropp and Sikkink (2013) model? In the concluding (sixth) chapter of this research we will draw the major conclusions from the analysis of the case study. When affirming (or rejecting) the hypotheses drawn in the third chapter, we will eventually answer the research question. Furthermore, we will give some concise recommendations for future research on state compliance with international (human rights) norms and embed the results from this research in a broader societal and scientific context.

## Chapter 2 Theoretical Framework

### 2.1 Introduction

International norms do not just appear out of the blue sky. Instead, various processes and mechanisms influence and shape their emergence. In this chapter, theoretical insights on these processes and mechanisms underlying (international) norm emergence will be provided. Second, we will address the issue of norm commitment and compliance: when, and under which conditions, do we expect actors to ‘live up to their words’ and implement and execute international (human rights) norms in their day-to-day practices? In this research, we focus specifically on norm *compliance*.

Various theories, however, give different answers to the question under which circumstances states comply with international norm. Furthermore, we will identify the different conditions under which we would expect governmental actors to comply with international norms, such as the United Nations Declaration on the Rights of Indigenous Peoples.

### 2.2 Norm Commitment

As we have seen earlier, a norm can be defined as a “standard of appropriate behavior for actors with a given identity” (Finnemore and Sikkink, 1998, p.891). There are, however, different types of norms. *Regulative* norms order and constrain certain behavior, while *constitutive* norms create new actors, actions and interests (ibid, p.892). Many international norms originate from certain domestic norms: through the efforts of norm entrepreneurs, and through the filter of domestic structures, international norms may arise. Some of these norms gain broad (international) acceptance. If this happens, the norm ‘cascades’, and may become internalized by a range of actors. However, according to Finnemore and Sikkink (1998), it is not necessarily the case that the emergence of norms follows all the way through this three-stage process. Some domestic, local or regional norms do not become international norms (pp. 893-895). If norms reach the international level, an organizational platform is needed from and through which actors can promote their norms. Most of the time, nongovernmental organizations within global or transnational advocacy networks provide such platforms (ibid, p.899). Evidently, with regard to the emergence of norms related to the rights of indigenous peoples, the United Nations played a decisive role in providing a platform through which all sorts of actors are able to promote norms.

It is, however, not the case that international norms emerge only through domestic (or regional/local) norms. Price (1998) argues that focusing solely on domestic actors as norm entrepreneurs diverts the attention from other sources of agency. These ‘sources’ are, predominantly, non-state

actors which generate norms in a variety of issue areas on the global agenda (Price, 1998, p.615). Using the example of the civil-society lead campaign for the ban on land mines, Price shows that NGOs were the catalysts for politicizing this subject (ibid, p.639). Logically, local actors are not passive targets of these international norms. Through processes of norm diffusion local actors “reconstruct foreign norms to ensure the norms fit with the agents’ cognitive priors and identities” (Acharya, 2004, p.239).

Once certain norms are generally accepted and adopted, either through the ‘internationalization’ of domestically rooted norms, or through pressure from transnational actors, chances are rather big the international norm does not produce (immediate) compliance. As Van Kersbergen and Verbeek (2007) argue, the development of (international) norms is characterized by “recurrent battles for and over the norms itself” (p.219). Hence, norms are not easy to live with: the (international) acceptance of a certain norm is rather likely to be the start of a battle to define the meaning and implication of the norm in question. This leads to a process of almost constant reformulation of international norms (Van Kersbergen and Verbeek, 2007, p.234).

In this research, we are interested in the implementation of an international norm (regarding the rights of indigenous peoples) on the domestic level (Brazilian governmental actors). By this, however, we do not mean a norm’s formal ratification or the adaption of legal texts (commitment), but the practical implementation which becomes visible in the day-to-day political practices (compliance).

### *The Spiral Model of Human Rights Change*

In the last decades, various scholars (see, for example, Finnemore and Sikkink, 1998; Price, 1998; Keck and Sikkink, 1999; and Acharya, 2004) studied (international) norms using an actor-based approach. Risse-Kappen, Ropp and Sikkink (1999) combined these insights in their ‘spiral model of human rights change’, which was loosely based on the work of Finnemore and Sikkink (1998) and on the so-called ‘boomerang model’ Sikkink and Keck (1998) had developed earlier. The ‘spiral’ model is a five-phased model explaining “the variation in the extent to which states have internalized (...) certain norms” (Risse-Kappen, Ropp and Sikkink, 1999, p.3). The first phase represents a situation in which domestic (societal) actors are too weak to challenge the dominant views, beliefs and norms held by the state. Only if these domestic actors are able to inform (some of) the transnational advocacy networks about their pressing situation (and these transnational networks become convinced that this is indeed a ‘norm-violating’ state) the issues of the domestic actors in question can be put on the international agenda, moving the situation to the second phase (ibid, p.22). During

this phase international (public) attention is raised towards the issue at stake. The initial reaction of a norm-violating state is, however, likely to be one of denial: refusing to “accept the validity of international norms themselves and (...) opposing the suggestion that its national practices in this area are subject to international jurisdiction” (ibid, p.23). Although international pressure may be mounting, norm-violating governments have still a range of strategies at their disposal to fight off this pressure, as the domestic groups (although backed by global or transnational advocacy networks) are still too weak to pose a realistic threat to the regime.

The transition to the third phase (*tactical concessions by the regime*) is highly dependent on the strength of the transnational advocacy network itself, as well as on the level of vulnerability of the norm-violating regime to international pressure. If, however, international pressure mounts, the norm-violating regime “seeks cosmetic changes to pacify international criticism” (ibid, p.25). According to Risse-Kappen, Ropp and Sikkink (1999) this is the most challenging phase of the model, as it might result in the regime’s embrace of the international norm (leading up to enduring changes in the human rights conditions) or in a fierce backlash, in which the regime represses the domestic groups advocating for change. However, if the regime is susceptible to international pressure, it becomes

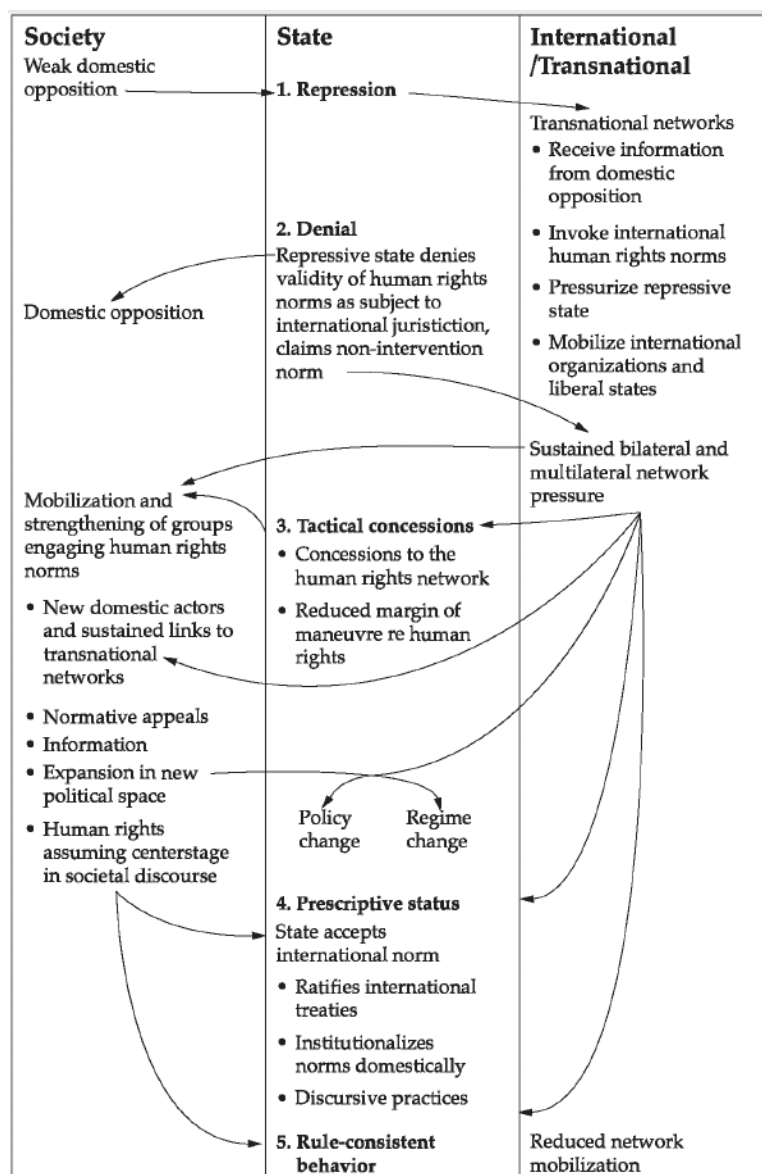


Figure 1: The Spiral Model (Risse-Kappen, Ropp and Sikkink, 1999, p.20).

entrapped in its own rhetoric: norm-violating actors are no longer able to deny the validity of international norms when they are making (tactical) concessions. The process of ‘self-entrapment’ implies that regimes, when making concessions, underestimate the impact of these changes and

(hence) overestimate the control they are able to exercise over the transnational advocacy networks, as well as the domestic opposition groups (Risse-Kappen, Ropp and Sikkink, 1999, pp.26-28). Both groups become valid interlocutors for the regime, which only (further) empowers them.

As depicted in figure 1, the fourth phase of the Spiral Model is referred to as 'prescriptive status'. Human rights are supposed to be center staged in the societal discourse: "the actors involved regularly refer to the human rights norm to describe and comment on their own behavior and that of others" (Rittberger, 1993 in Risse-Kappen, Ropp and Sikkink, 1999, p.29). Norms are no longer controversial, even if the actor continues to violate them. In this phase, it does not matter whether these norms have become 'true beliefs' or (just) verbal utterances (ibid, p.30): whether words and deeds match is not taken into account. Phase five ('rule-consistent behavior'), on the other hand, refers to a situation in which "international human rights norms are fully institutionalized domestically and norm compliance becomes a habitual practice of actors and is enforced by the rule of law" (ibid, p.33). To put it bluntly: a *prescriptive status* with regard to norms refers to the policy *output*<sup>9</sup> of a regime, while regime's *rule-consistent behavior* refers to policy *outcomes*<sup>10</sup>. Only when actors depict rule-consistent behavior, we can assume that (international) norms are actually internalized into the society's (human rights) discourse.

As with almost every IR model or framework, the spiral model been criticized by various scholars. Most recently, for example, Wiener (2014) argued that Risse-Kappen, Ropp and Sikkink (1999) struggle to "link the international push of norms with the absence of domestic pull" (p.30). This caveat in the model is also corroborated by Muñoz (2009), who argues that domestic politics "apart from the pressure exerted by national human rights groups" (p.45) is not included in the theoretical model<sup>11</sup> as a factor of importance. Other scholars, such as Hochstetler and Viola (2012) and Shor (2008) argue that the model does not only underestimate the role of domestic politics or domestic actors in the process of norm emergence, but also wrongfully treats states' human rights practices as homogenous. Risse, Ropp and Sikkink (2013) acknowledged that, within the spiral model, domestic processes and conditions (that might contribute to compliance with international norms) were underspecified. In the next sections, we will focus on the specific processes that possibly lead up to statist compliance with international norms.

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<sup>9</sup> The *output* of a policy can be described as 'what the policy does'.

<sup>10</sup> The *outcome* of a policy can be described as 'what difference the policy made/makes'.

<sup>11</sup> Muñoz (2009) refers to the spiral model. See Risse-Kappen, Ropp and Sikkink (1999)



## 2.3 From Commitment to Compliance

Although the five-phase spiral model accounts for the entire process of norm socialization, it focuses only on official *commitment*<sup>12</sup> to certain norms and rights, while neglecting the process of *compliance*<sup>13</sup> to the agreed-upon norms. As there is not a single state left in the international system that has not ratified at least one international human right treaty (Liese, 2006), it is important for us to understand which mechanisms actually lead to compliance with norms. Therefore, the analytical part of this research will focus solely on *compliance* with international norms.

In the work of Risse-Kappen, Ropp and Sikkink (1999) the processes and conditions under which states move a 'prescriptive status' to 'rule-consistent behavior' were underspecified. Therefore, the conceptual linkage between phases four and five had to be defined more precisely. Last year, Risse, Ropp and Sikkink (2013) revised their model and incorporated scope conditions and processes leading from commitment to human rights norms to actual compliance with them (see figure 2).

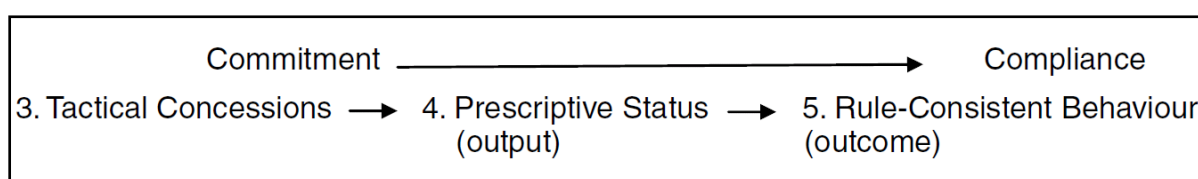


Figure 2: Commitment, Compliance and the Spiral Model (Risse, Ropp and Sikkink, 2013, p.10).

Whereas *commitment* to norms (in the case of states) requires only 'the act of' signing up to or ratifying certain international human rights treaties, *compliance* requires an actual change in states' behavior: (domestic) practices, habits and norms have to be adapted in order to match the agreed upon international norms. According to Raustiala and Slaughter (2002) the 'prescriptive status' (phase 4) should be seen as the output dimension of norm compliance, while states' 'rule-consistent behavior' (phase 5) equals the outcome dimension. Many scholars have argued that ratification of international treaties does not guarantee that states comply with the newly established norms. Hafner-Burton and Tsutsui (2005) even go as far as arguing that signing international treaties (*commitment*) has become an "empty promise" (p.1373). Although this is a rather bold way of expressing discontent with states' commitment to norms, one may wonder indeed to what extent ratification of a treaty reflects a government's genuine commitment.

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<sup>12</sup> *Commitment* is defined as "... actors accepting international human rights as valid and binding for themselves" (Risse, Ropp and Sikkink, 2013, p.9).

<sup>13</sup> *Compliance* is defined as rule-consistent behavior, or "sustained behavior and domestic practices that conform to the international human rights norms" (Risse, Ropp and Sikkink, 2013, p.10).

Similarly, definitions of *compliance* vary as well. According to Weiss and Jacobson (1998) compliance has several different dimensions: “compliance with procedural obligations, such as the requirement to report; compliance with substantive obligations stipulated in the treaty; and compliance with the spirit of the treaty” (Weiss and Jacobson, 1998 in Risse, Ropp and Sikkink, 2013, pp.86-87). Typically though, as we have stated before, compliance refers to rule-consistent behavior with an (explicit provision in an) international treaty. Hence, there seems to be some sort of a ‘continuum of compliance’ between phase 4 (prescriptive status) and phase 5 (rule-consistent behavior). Therefore, as Cardenas (2007) argues, it is safe to say that compliance is not an “all-or-nothing” (p.1) affair. It is rather a multifaceted process, characterized by “a collage of choices and actions that takes different shapes in different environments, distinguished by acts of norm commitment or avoidance and (...) acts of norm fulfillment or violation” (Hafner-Burton, 2007, p.858). Hence, different actors affect (the level of) states’ norm compliance. This may lead to a situation in which states create the appearance of compliance with a certain treaty or norm, without actually complying (Cardenas, 2007, p.97).

### *The Role of Transnational Actors*

As we have discussed in the previous paragraph, a range of different actors plays a role in affecting states’ compliance with international norms. Within the Risse, Ropp and Sikkink (2013) model, specific emphasis is paid to the role of so-called *transnational actors* (often abbreviated to ‘TNAs’). These actors, representing a broad variety of organizations (including inter alia NGOs, social movements and advocacy networks), operate on a global scale, across state borders (Bexell et al, 2010, pp.81-82).

Transnational actors are often seen as part of (an emerging) transnational civil society, active on a global scale and exercising influence on the outcomes of (international) politics (see, for example, Boli and Thomas, 1999 or Florini, 2000). One way or another, TNAs have “left their mark on the international system as (...) we cannot start theorizing about the contemporary world system without taking their influence into account” (Risse, 2007, p.251). It is, therefore, useful to focus on the *interactions* between the state and transnational actors (ibid, p.252): in order for global governance to succeed, states need to engage in active cooperation with transnational actors. Governing without TNAs is not an option any more (Reinicke, 1998, p.219). Also with regard to (international) norms on human rights, transnational actors are increasingly active on this specific issue as well:

*“(...) the norm-guided logic of appropriateness now requires both governments and non-state actors in world society to at least pay lip service to the idea that there are such things as fundamental human rights” (Risse, Ropp and Sikkink, 2013, p.9).*

Hence, within academia, there is a growing consensus that transnational actors have a substantial influence on (international) politics in general, and (more specifically) on international norms with regard to human rights as well. The question remains, however, under what conditions TNAs are able to exercise influence. In the next section of this chapter, we will turn to the specific mechanisms (transnational) actors have at their disposal when fostering a state's compliance with international norms.

## 2.4 Mechanisms Fostering Compliance

Risse, Ropp and Sikkink (2013) argue that there are four social mechanisms (exogenous to the state itself) that foster compliance with international human rights norms: coercion (the use of force and legal enforcement), incentives (sanctions and rewards), persuasion and capacity-building (pp. 13-16). Although these four mechanisms provide us with an eloquent insight into the processes that lead up to compliance with international norms, we have to conclude that Risse, Ropp and Sikkink (2013) do not provide us with an in-depth conceptualization of the (four) mechanisms. Therefore, we need to complement the Risse, Ropp and Sikkink model on norm compliance with insights from other IR scholars and construct 'our own' theoretical framework with regard to the four mechanisms believed to induce compliance with international norms.

### *Coercion and Threat: Reputational Losses*

First of all, there is *coercion*. State (and non-state actors as well) can be coerced to comply with rules. This form of compliance can be imposed by using the force of external actors (inter alia the 'responsibility to protect' or R2P principle) or through the 'force' of legal commitment: states, for example, commit themselves to the International Criminal Court (ICC) (Risse, Ropp and Sikkink, 2013, pp.13-14). In the case of, for example, the United Nations Declaration on the Rights of Indigenous Peoples (which is, after all, not subject to ratification and does not have a legally binding status) we argue that it is rather questionable whether this mechanism of forceful coercion plays a role in influencing state compliance with this international norm. It is not likely that there is an actor in the international system (states, Intergovernmental Organizations nor NGOs) willing (or able) to intervene (or put extended pressure on non-cooperative states) solely because of non-compliance

with UNDRIP or any other (international) norm related to indigenous peoples' rights. Therefore, we do not take (forceful) coercion (as a social mechanism inducing compliance with international norms) into account. Coercion conceived as a broad concept, however, encompasses the use of institutional 'threat' as well. Especially with regard to legal commitments, states' international reputation is often at stake, making them more receptive to actors questioning their reputation in the international system.

Reputation has been subject to IR research for decades. Scholars within the so-called *British School of IR*<sup>14</sup>, for example, argued that ideas and norms shape the conduct of (international) politics. As (groups of) states recognize their common interests, they consent on common norms<sup>15</sup> that are safeguarded, primarily, by international institutions (Bull and Watson, 1984). According to Brown and Ainley (2005) the 'British School of IR' conceives international society as states having a "norm-governed relationship (...) accepting that they have responsibilities towards one another and the society as a whole" (pp. 201-202). Having responsibilities in the international political spectrum, then, implies that states want to be 'trustworthy' and have a reputation as a reliable partner within politics. Still, 'reputation' is a rather intangible concept, and many scholars fail to come up with a clear definition. Mercer (1996), however, argues that reputation should be conceived as a "judgment of a state's character, which is used to predict and explain its future behavior" (p.6).

Although the nature of (political) actors and institutions has evolved (see, for example, Kaldor: 2006 for more detailed insights into the way in which the 'game' of war and international relations is played) in recent decades, Mercer's (1996) conceptualization of 'reputation' remains useful as it depicts clearly that (the prediction) of a state's future behavior is at stake when (state) actors consider their and other's reputation. Verbeek (2012) shows that states always 'balance' between short-term losses, refusing to comply with a certain norm which leads to the loss of reputation, and long-term benefits in the form of endurable cooperation (p.197). Complying with international law or norms enables states, at least in the long-run, to enhance their reputation and enables them to "pursue their interests in a relatively inexpensive way" (ibid, p.198).

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<sup>14</sup> The British School of International Relations is, essentially, *realist*. The Risse, Ropp and Sikkink (2013) model, on the other hand, could be characterized as *liberal*. We argue, however, that this does not pose a problem to our theoretical framework, as both (inter alia) perceive the state as the pivotal (although certainly not the only) actor to be targeted by transnational actors. Furthermore, both theoretical approaches 'share' the same *rationalist* basis. For example, states' preferences are (at least partly) exogenously given: actors external to the state (i.e. TNAs) influence constrain or enable state behavior.

<sup>15</sup> Although the terms 'rules' and 'norms' are often used interchangeably, we argue that it is better to speak of *norms*, as most of the *rules* in question are not legally binding due to the fact that there are no ordering institutions with regard to the international norms relevant to this research.

The question remains, however, how to ensure state compliance without enforcement. Koh (1997) argues that various actors promote compliance not through coercion but, rather, through “a cooperative model of compliance” (p.2636). Sovereignty, Koh (1997) contends, does not mean freedom from external force or interference per se, but the ‘freedom’ to engage in international relations with (other) states as well. If this holds true, a strong impetus for compliance is not a state’s fear for sanctions or external coercion, but “fear of diminution of status through the loss of reputation” (Koh, 1997, p.2637). Although this proposition sounds fairly logical, Koh (1997) does not elaborate on the ways in which such a ‘cooperative model of compliance’ should be shaped. Burgerman (1998), however, offers a framework aimed at explaining under which circumstances transnational actors are able to influence state rule or norm compliance. One of the crucial factors in this framework is the state’s “sensitivity to deligitimization or damage of its international prestige” (Burgerman, 1998, p.915). The effectiveness of (transnational) actors in promoting compliance with international norms is based on the idea that a government’s elite holds for the state’s international reputation, and the belief that a negative reputation will negatively affect the state’s position in the international (political) sphere (ibid, pp.915-916). Price (2003) corroborates these arguments, as he argues that transnational actors require government’s elites and key decision-makers who are concerned about their country’s international reputation (pp.592-593).

Reputation has often been associated with (state) compliance with international norms and is, moreover, seen as a mechanism fostering international cooperation between states. When complying with international norms, states develop a good reputation among other actors (including state- and non-state actors) with shared values. Having a good reputation internationally is an asset when negotiating on agreements or actions, as reputation “determines states’ bargaining powers within the international community and their chances for inclusion in the ‘big league’ of power play” (Avdeyeva, 2012, p.298). Reputation is seen by states as an instrumental goal for increasing their (bargaining) power in the international system (ibid, pp.298-299).

The earlier work of Risse-Kappen, Ropp and Sikkink, (1999) may help us in understanding *how* exactly transnational actors may credibly threaten states with reputational losses, and what the role of transnational advocacy networks (TANs) is in this respect. Recall that the ‘spiral model’ consists out of five steps through which states’ norm internalization is explained. Especially during the second and third phase of the process, transnational actors have the potential to question (and hence, influence) the international reputation of states: international (public) attention is raised towards the certain issue(s) at stake. At that very moment, transnational actors could increase the pressure on norm-violating governments by referring to the (potential) consequence of their behavior: a deteriorating international reputation. Transnational actors (often within the context of TANs), also play a role in

'safeguarding' international pressure over a longer period of time. To achieve this goal, tactics might include (threatening for) reputational losses. Vice versa, the rhetoric of transnational actors might also focus on *improving* a state's international reputation if the state is susceptible for the embrace of the international norm in question (Risse-Kappen, Ropp and Sikkink, 1999, pp.26-28).

### *Incentive Structures*

The second exogenous social mechanism comprises so-called *incentive structures*, which can play an important role as well in moving states from commitment to compliance. Basically, incentives can have a negative (sanctions) or a positive (rewards) nature. Sanctions, for example, may change a state's utility calculations by raising the costs for non-compliance. This rational choice mechanism makes an actor (re)consider its behavior in response to the changed incentives. The same accounts for positive incentive structures: foreign aid, for example, is sometimes used as a tool to change a state's utility calculations (and, consequently, its stance towards certain international norms). Rather logically, the effectiveness of incentive structures, encompassing both sanctions and rewards, depends on the receptiveness of the state in question to (exogenous) pressure (Risse, Ropp and Sikkink, 2013, pp.14; 103-104).

According to Risse, Ropp and Sikkink (2013) *capacity building* should be seen as another social mechanism. The rationale behind this mechanism is that "involuntary non-compliance with costly rules or norms is at least as important as non-compliance that results from the unwillingness of statist actors to abide by them" (Risse, Ropp and Sikkink, 2013, p.15). After all, states are only able to comply with certain rules or norms if they have the capacities and capabilities to actually enforce them (ibid, pp.15-16). We argue, however, that 'capacity building' should be seen as part of the overall incentive structure as well. If actors, exogenous to the state, help to strengthen or (re)build state capacity, this can be seen as an incentive to comply with (international) rules, simply because it offers an (initial) impetus to overcome the problem of involuntary non-compliance. Therefore, in contrast to the Risse, Ropp and Sikkink (2013) model, we do not perceive 'capacity building' as a social mechanism in itself. Rather, we argue that 'incentive structures' should be seen as a broad, overarching, concept encompassing not only (institutional) sanctions and rewards, but also initiatives and processes leading up to the enhancement of state capacity.

Again, the model of Risse, Ropp and Sikkink (2013) remains rather vague on the actual processes and mechanisms (the conceptualization) on which the incentive structure itself is based. Scholars such as Börzel and Risse (2010) have elaborated more extensively on the influence of external actors on the

governance practices of states, and have argued that capacity building is (rather logically) especially needed in areas of 'limited statehood'<sup>16</sup>. When taking the influence of external actors into account, we have to acknowledge that limited statehood is more widespread in the current international system than often assumed. Risse, Ropp and Sikkink (2013) were right, however, in their assumption that the areas of limited statehood are not confined per se to failed states, as it is a "common phenomenon among developing countries" (p.15), such as Brazil, as well. While effective public policy-making is often rather hard in areas of limited statehood, networks of governance encompassing a broad range of non-state actors as well, can work even in the absence of strong, hierarchically organized statehood (Börzel and Risse, 2010, p.130).

These so-called 'external actors', including inter alia International Organizations or NGOs, can play an important role in networks of governance, as the state is not (per se) the only actor providing governance structures in a certain territory. Furthermore, these actors are able to commit (domestic) non-state actors to contribute to more effective governance structures. We can distinguish several ways through which external actors may influence states' governance practices<sup>17</sup>. First of all, they may exercise 'domestic sovereignty' directly, holding the monopoly over means and violence. This is the case, primarily, when external international organizations or states act according to the 'responsibility to protect' (R2P) norm. Apart from the question whether foreign actors actually are able to exercise effective and sustainable public governance under such unstable circumstances (see, for example, Schneekener: 2010), Brazil has not lost its domestic sovereignty to external actors: most certainly, 'R2P' will not be applied in the Brazilian case. Furthermore, there is a link between the external actor's home country regulation, and its contributions to (state) governance in the area of limited statehood. The rationale behind this argument is that actors, when operating in a foreign country, are not bound to international law only, but also to the regulatory norms of their home country. Although Börzel and Risse (2010) argue that the scope and enforcement of this mechanism is (still) limited, "extra-territorial jurisdiction on human rights (...) shows the potential for external actors to influence and regulate" (p.123) the governance practices of states.

Although Börzel and Risse (2010) provided us with some insights in the ways in which external actors influence the governance practices of states, we have to pin-point more precisely which processes and mechanisms are at play when (external) actors try to shape the incentive structures aimed at

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<sup>16</sup> Generally speaking, the concept of limited statehood is defined as "areas where political institutions are too weak to hierarchically adopt and enforce collectively binding rules" (Börzel and Risse, 2010, p.113).

<sup>17</sup> See Risse (2013) for a detailed description on the relation between state capacity and governance structures. As for the actor dimension of governance, Risse (2013) argues that there are various combinations of state and non-state actors governing in areas with limited state capacity.

moving states to compliance with international norms. In this respect, the work of Jordana and Levi-Faur (2004) is rather beneficial as it depicts what (external) actors should aim for when creating an incentive structure. These scholars focus on *regulation*, a broad concept that may refer to a wide range of processes and phenomena<sup>18</sup>. In this research, however, we corroborate the arguments of Jordana and Levi-Faur (2004) and argue that there are three (interrelated) meanings for the notion of regulation: in the narrowest sense, regulation refers to the “promulgation of an authoritative set of rules, accompanied by some mechanism, typically a public agency, for monitoring and promoting compliance with these rules” (pp.3-4). Second, regulation refers to all state efforts to steer the country and its economy (ibid, p.4). This meaning is clearly broader, and includes specific (governmental) measures next to rule-making only. The third meaning of *regulation* is the most extended one, encompassing a broad range of mechanisms aimed at increasing (social) control, including “intentional and non-state processes” (ibid, p.5). Especially the latter (third) connotation of the concept of regulation fits the efforts of non-state (external) actors within the framework of consensual international regimes, such as UNDRIP, aimed at the governance of what Jordana and Levi-Faur (2004) call “global problems” (p.5), as it takes the mechanisms that are not the product of state activity into account. It is exactly the compliance with this ‘third type’ of regulation external actors’ incentives are aimed at. In this respect, it is important to recognize that ‘governance’ incorporates a dyad of actors: state as well as non-state related. According to Risse (2013) non-state actors are able (and even necessary), especially in areas of weak or limited statehood to improve governance structures. Non-state actors do not function next to the state, but should be seen as complementary “providing rules, regulations, and public services” (Risse, 2013, p.11). It is exactly those services the incentives of external actors are aimed at.

When focusing on transnational actors’ influence (inter alia within transnational advocacy networks) on a country’s regulations and policies, four different so-called ‘pathways’ through which change of policy (for example compliance with international norms) can be fostered, are distinguished by Bernstein and Cashore (2000). These ‘pathways’ enable for disentangling how “actors and institutions (...) that extend beyond the state borders can influence domestic public policies and regulations (Bernstein and Cashore, 2000, p.68). The first ‘path’ highlights the importance of *market dependence*, as external actors may create a powerful incentive by ‘persuading’ governmental officials or agencies into compliance by arguing that, if the state complies with the norm in question, no negative campaigns will be launched. Second, it is argued that, if states commit to a certain international norm, this norm becomes a “resource on which (...) domestic actors can draw when

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<sup>18</sup> See, for example, Baldwin et al. (1998) for a more detailed discussion on what *regulation* and the *regulatory state* may comprise of.



their government does not comply” (ibid, p.80). External (transnational) actors, then, may aggregate the discomfort to pressure governments to live up to their commitments. As these two incentives resemble the processes of threatening a state’s reputation (on which we elaborated in the previous section) to a great extent, we will not discuss these pathways any further. The third ‘path’, however, concerns “the efforts by transnational actors to participate in the domestic policy-making process, in effect internalizing the external influence” (ibid, p.83). Two interrelated factors are key with regard to this pathway: the structure of the domestic policy network and the ability of the external (transnational) actors to penetrate these domestic networks and to voice its opinion towards state officials (ibid). If domestic networks are rigid and closed, the influence of external actors will be limited. Furthermore, one has to take the autonomy of state officials into account: “where state structures are fragmented or decentralized, policy success will be more limited than in those networks where authority is concentrated, because relatively quick and wide-ranging decisions are possible” (ibid, pp. 84-85). State capacity, referring to the ability of statist actors to implement policy choices, matters as it constrains or supports the potential for external actors’ arguments to be considered.

### *Persuasion and Discourse*

According to Risse, Ropp and Sikkink (2013), ‘*Persuasion and Discourse*’ should be seen as a mechanism to “induce actors into voluntary compliance with costly rules” (p.14). Persuasion is often perceived as a more long-lasting socialization mechanism as, in contrast to the mechanisms discussed previously, it fosters (norm) compliance without the use of external force. ‘Discourse’ matters as well, as it is argued that other mechanisms do not work if the various actors involved do not believe in the social validity of the international norm. Once a norm has become a dominant discourse, it “exerts structural power on actors. As a result, they are more likely to comply” (ibid, pp.14-15).

Although Risse, Ropp and Sikkink (2013) admit that the use of ‘pure persuasion’ is quite rare in international affairs, a combination of persuasion and incentives is used when (external) actors try to induce rule or norm compliance. In the previous section we elaborated on the ‘policy change pathways’ provided by Bernstein and Cashore (2000), and discussed how (some of) the pathways influenced the incentive structure. The fourth pathway (referred to as *International Normative Discourse*), however, is not discussed yet. This pathway is aimed at explaining the “discourse developed internationally (...) for the express purpose of influencing domestic practices” (Bernstein and Cashore, 2000, p.81).

There are various strategies aimed at (changing) the discourse on certain norms that external (transnational) actors may use to encourage states to comply with these international norms. Actors advocating for change often (explicitly) try to reframe the discourse around a norm in order to create or reinforce commitment. According to Bernstein and Cashore (2000) these ‘tactics’ often include “broadening a policy field, or linking it to other goals that then require major changes in practices” (p.82). For example, the way in which many people or actors perceive the concept ‘rainforest’ has changed and expanding from solely an economic commodity to a broad conception including (inter alia) environmental protection, indigenous peoples’ rights and wildlife diversity (ibid). The concept of *issue linkage* plays an important role in this respect. Widely used in the academic literature on transnational advocacy networks (TANs)<sup>19</sup>, issue linkage refers to the idea of linking an issue or agreement to another issue or agreement that, in itself, is not connected to the former one (Whalley and Zissimos, 2000, p.552). The concept of issue linkage has been used extensively to study the development of (international) environmental agreements<sup>20</sup>. Carpenter (2007), however, is amongst the first to apply this concept specifically on international human rights norms<sup>21</sup>. One might argue that the linkage of (for example) environmental issues and indigenous peoples’ rights is likely to increase the so-called ‘persuasiveness’ of the latter. Indigenous peoples link the issue of human rights and environmental protection to strengthen their claims for the recognition of, inter alia, their customary rules (Cruz and Sayago, 2012 in: Eimer, 2014).

Actors within advocacy networks are concerned, primarily, with the (political) effectiveness of their actions. Effectiveness is often measured by the ‘degree’ of policy change by so-called *target actors* which, especially within this research, are (national) governments or governmental agencies. In the process of advocating for change, actors need to both pressurize and persuade more powerful (governmental) actors at the same time. Hence, these actors seek *leverage*, through which they may gain “influence far beyond their ability to influence state practices directly” (Keck and Sikkink, 1999, p.97). In general, two kinds of leverage are discussed in the academic literature on advocacy networks: *material* and *moral* leverage. Generally speaking, material leverage takes the form of issue-linking. There is an abundance of examples of issue-linking, but with regard to human rights related issues the following quote is of interest:

*“The human rights issue became negotiable because governments or financial institutions connected human rights practices to the cut-off of military and economic aid, or to worsening*

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<sup>19</sup> See, for example, Keck and Sikkink (1999) or Meijerink (2008).

<sup>20</sup> Examples include: Folmer, van Mouche and Ragland (1993); Cesar (1994); and Cesar and de Zeeuw (1996).

<sup>21</sup> Carpenter’s (2007) research focusses primarily on the question which issues, under what circumstances, ‘prevail’ and are linked to other issues (pp.643-644).

*bilateral diplomatic relations. Human rights groups obtained leverage by providing US and EU policy-makers with information that persuaded them to cut off military and economic aid. To make the issue negotiable, NGOs first had to raise its profile or salience, using information and symbolic policies. The more powerful members of the network had to link cooperation to something else of value: money, trade or prestige (...)" (Keck and Sikkink, 1999, p.98).*

Moral leverage, on the other hand, includes what some refer to as "the mobilization of shame, where the behavior of (...) actors is held up to the bright light of international scrutiny" (Keck and Sikkink, 1999, p.97). Moral leverage tactics can be effective especially in cases where (governmental) actors value their international prestige. Within this second 'type' of leverage, actors try to frame certain issues by "identifying and providing powerful symbolic events, which in turn become catalysts for the growth of networks" (ibid, p.96). Again, there are ample examples of symbolic events that fueled public (international) awareness of certain issues. With regard to international norms on indigenous peoples' rights, Brysk (1994) showed that Brazilian indigenous peoples' movements used the 500<sup>th</sup> anniversary of Columbus' voyage to America<sup>22</sup> as a symbolic event to effectively raise a wide range of issues related to the deprived situation of indigenous people.

The importance of (influencing) the discourses on international norms is also recognized by the growing body of constructivist literature on international politics and relations. Institutionalizing norms internationally may contribute to framing domestic or national (policy) discourses in a certain way. Adler (1997), for example, argues that norms, even when they are not binding on states, can influence and alter states' behavior, interests and identities (p.346-348). Checkel (1998) even speaks of a "constructivist turn in IR history" (p.324). This might be quite a bold statement. But, in order to grasp the role persuasion and discourse plays in (influencing) state behavior, understanding the basic assumptions of IR constructivism is rather beneficial. First of all, according to Constructivist scholars, the environment in which actors are active is material as well as social. Second, this 'setting' constitutes the (understanding of) actors' interests (Checkel, 1998, pp.325-325). Especially this second assumption is of importance for this research, as the process of interaction between actors and the system's structure is addressed. Constructivists "emphasize a process of interaction between actors and the structure of the system (...) in which mutual constitution" (ibid, p.326) is key. With regard to (international) norms, international actors (for example NGOs) interact with states in the process of influencing their discourse on certain norms. When discussing persuasion and discourse, international actors matter as they embody the norm of appropriate behavior. Hence, even if these actors appear to be "weak on one dimension, such as providing binding rules, it may still play a

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<sup>22</sup> This anniversary took place in 1992

powerful normative role” (Bernstein and Cashore, 2000, p.82). Changing a discourse on a certain issue is, primarily, a matter of persuasion, (moral) suasion and communicative action, rather than forceful coercion (ibid, p.83).

In short, we may argue that the social mechanism aimed at persuasion and changing the discourse around a specific issue address the *intrinsic* motivations and beliefs of decision-makers and other actors at the governmental level. On the other hand, the mechanisms aimed at reputational losses (the first social mechanism we discussed in this theoretical framework) and changing the incentive structure, which is ultimately aimed at changing a state’s utility calculations (the second social mechanism addressed in this theoretical framework) address the *extrinsic* motivations of decision-makers.

## 2.5 Scope Conditions

In the previous section, we have discussed the social mechanisms (exogenous to the state itself) that foster compliance with international human rights norms. We argued that Risse, Ropp and Sikkink’s (2013) model lacks a much-needed conceptualization of the four mechanisms and, therefore, we complemented the insights brought forward in this model with insights from the academic literature on norm compliance. This conceptualization, however, is not complete without a discussion of the five ‘scope conditions’ under which Risse, Ropp and Sikkink (2013) expect the four social mechanisms (coercion, incentives, persuasion and capacity-building) to induce compliance with international human rights norms by both state and non-state actors (p.16). The first three scope conditions apply only to states, while the two remaining conditions apply to any type of rule target:

1. *Democratic vs. Authoritarian regimes*

It is argued that countries with democratic regimes are more likely to comply with international human rights norms, than authoritarian ones (Risse, Ropp and Sikkink, 2013, pp.16-17).

2. *Consolidated vs. Limited statehood*

Regimes with a consolidated statehood, characterized (for example) by a well-functioning governmental apparatus, are more likely to comply with international norms, as they have the capability to implement (and execute) new legislation. Hence, some regimes are incapable, rather than unwilling to comply to international human rights norms. Limited statehood is a major obstacle to norm-compliance (ibid, p.18).

3. *Centralized vs. decentralized rule implementation*

Risse, Ropp and Sikkink (2013) argue that, at least with regard to rule- or norm compliance states should not be regarded as unitary actors. Rather: “the degree to which decision-making is centralized with regard to norm compliance makes a difference” (Lutz and Sikkink, 2000 in Risse, Ropp and Sikkink, 2013, p.18). As a rule of thumb, one can say that the more decentralized decision-making is, the harder it is to comply with rules and norms.

The next two scope conditions affect the movement towards compliance “relate to any given rule target’s vulnerability to external as well as to internal domestic pressure” (Risse, Ropp and Sikkink, 2013, p.20).

#### 4. *Material vulnerability*

This fourth scope-conditions resembles, to a certain extent, the ‘realist’ assumption that powerful economic or military actors are less vulnerable to pressure to comply with international human rights norms, than materially weak ones.

#### 5. *Social vulnerability*

This last scope-condition, social vulnerability, refers to an actor’s desire to be an accepted member of a social group or community. Constructivist IR scholars argue that a state’s identity influences its vulnerability to social pressure: states with insecure identities, or states that aspire to improve their standing in the international community are more vulnerable to pressure from external actors (Risse, Ropp and Sikkink, 2013, pp.20-21).

## 2.6 Conclusion

This chapter was aimed at providing an overview of the academic literature on (international) norm emergence, commitment and compliance. First, we discussed the actor-based approach based on, primarily, the work of Finnemore and Sikkink (1998); Price (1998); Keck and Sikkink (1999) and Acharya (2004). We argued that the work of these scholars accounted for the (official) *commitment* to norms, but ‘neglected’ the actual *compliance* of state-actors to agreed-upon (international) norms. Therefore, we elaborated on the Risse, Ropp and Sikkink (2013) model, which incorporates several social mechanisms leading from commitment to actual compliance with international norms. As this model did not provide us with an in-depth conceptualization of the mechanisms, we presented the insights of various scholars which enabled us to ‘embed’ the four social mechanisms into a broader theoretical framework. At this point we have to note, however, that the social mechanisms discussed in this chapter should not be seen as independent and separate units of analysis. Rather, they should be conceived as interconnected and interdependent. For example: persuasion, discourse and

reputational losses are, basically, the different side of the same coin. What differs, however, is the 'methods' through which the mechanisms try to foster compliance. In the last section of this chapter, we discussed the (five) scope conditions under which we expected the social mechanisms to induce compliance with international human rights norms by both state and non-state actors.

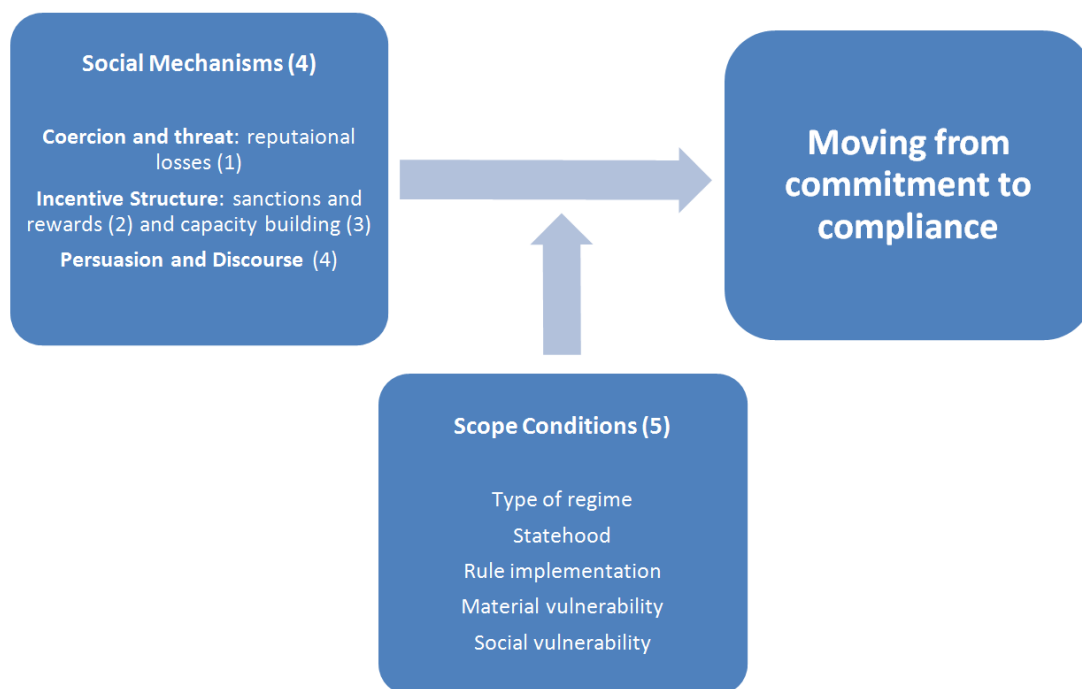
In the next chapter we will, based on the academic literature discussed in the theoretical framework, present three hypotheses outlining our expectations with regard to the 'empirical reality' analyzed in the fourth chapter. Furthermore, we will make clear what the different concepts and terms used in this research actually entail and which methods will be used to execute this research.

## Chapter 3 Methodology

### 3.1 Introduction

This third chapter provides us with the methodological foundations that will help to translate the theoretical concepts, presented in the previous chapter, into useful ‘tools’ for understanding the empirical reality. As we have (theoretical) expectations about the empirical reality, we will also make clear why we choose to conduct an in-depth case study on Brazil specifically, and why the methods used fit this research best. Furthermore, we will present three hypotheses based on the expectations drawn from the various theoretical approaches.

First of all, the theoretical framework will be presented in the form of a conceptual model (see figure 3). This model does not only give us a concise graphical display of the theoretical framework, it also provides us with an overview of the expected causal mechanisms at stake. Logically following, the (three) hypotheses that can be extracted from the conceptual model and the operationalization of this research’ key concepts and variables is provided in section 3.2. The (justification of) the case selection, answering the question why the case of Brazil can be considered a ‘most-likely’ case (especially with regard to the five ‘scope conditions’), takes place in section 3.3. Finally, in section 3.4 the methodological choices concerning the research design are outlined, in order to account for the ‘logic of reasoning’ behind this research.



**Figure 3: The Conceptual Model**

### 3.2 Hypotheses and Operationalization

The aim of this research is to explain the (lack of) Brazilian compliance with international human rights norms. Risse, Ropp and Sikkink (2013) constructed a model that is supposed to account for the process leading from norm commitment to norm compliance. Pivotal in this model are the social mechanisms that foster compliance with international human rights norms. Hence, the presented hypotheses are designed along the lines of these social mechanisms.

First, we focused on governmental actors' loss of reputation, and the way in which transnational actors 'threatened' these actors with a diminishing (international) reputation. We argued that threat in the form of forceful coercion is not likely to occur in the case of human right-related international norms. Coercion, however, is a broad concept, encompassing institutional 'threat' as well. Especially with regard to legal commitments, states' reputation is often at stake, making them receptive to actors questioning their reputation in the international system. Having responsibilities in the international political spectrum implies that states want to be trustworthy and have a reputation as a reliable partner. Transnational actors, then, should try to influence those decision-making actors that are concerned with a country's (international) reputation.

**HYPOTHESIS 1**        *If transnational actors are able to threaten governmental actors with the loss of reputation, these latter actors will be inclined to comply with international norms*

Second, we discussed incentives structures as a social mechanism. Basically, incentives are negative (sanctions) or positive (rewards) by nature and (may) change the costs for non-compliance. Through this rational choice mechanism, it is assumed that (governmental) actors reconsider their behavior to the changed incentives. In contrast to Risse, Ropp and Sikkink (2013), we argued that *capacity building* should also be seen as part of the overall incentive structure. If (transnational) actors strengthen state capacity this should be seen as an incentive to comply to international norms or rules, as it offers an impetus to overcome involuntary non-compliance. When focusing on the influence of transnational actors on state's policies, the work of Bernstein and Cashore (2000) proved to be rather helpful, as these scholars came forth with several 'pathways' through which policy change can be fostered.

**HYPOTHESIS 2**        *If transnational actors are able to create attractive and convincing incentives, governmental actors will be inclined to comply with international norms*



Third, the social mechanism referred to as ‘persuasion and discourse’ was addressed last in the theoretical framework. This mechanism is aimed solely at inducing voluntary compliance. In contrast to the previously discussed mechanisms, this one involves a more long-lasting socialization process. In the previous chapter we encountered several strategies aimed at changing the discourse on a certain issue. The concept of *issue-linkage* plays an important role in reframing the discourse around a norm. Persuasion, on the other hand, is an important tactic for (transnational) actors seeking *leverage* through which they try to influence governmental actors.

**HYPOTHESIS 3**                    *If transnational actors are able to raise persuasive arguments, governmental actors will be inclined to comply with international norms*

### *Operationalization*

The aim of this section is to ‘trace’ which processes are at stake in the case under research. In order to do so, an operationalization of the key concepts as well as the dependent and independent variables (which indicate whether the hypotheses are valid) is provided. Operationalizing the variables also allows for carefully and justly dealing with the empirical observations made in the next chapters, as an operationalization provides us with a ‘meta-empirical’ description through which the observations can be compared to the expected processes and outcomes. This section starts with an outline of the key concepts. Afterwards, the independent variables and dependent variable will be operationalized.

### **Key concepts**

*Transnational actors*                    This term is used frequently within this research, and refers to a broad range of (private) actors “that organize and operate across state borders, including non-governmental organizations (NGOs), advocacy networks, social movements etc.” (Bexell et al, 2010, pp.81-82). Transnational actors (also referred to as ‘TNAs’) contribute strongly to the process of “growth of governance beyond the nation-state” (ibid, p.81), that is taking place throughout the last decades. Risse (2007) distinguished TNAs along two dimensions: the first concerns the actor’s internal structure, the second differentiates between actors’ motivations for action. With regard to the internal structure, TNAs can be divided between those that are a formal organization (NGOs, for example) and those that are connected more loosely (for example, individuals within a community) in a network (Risse, 2007, p.252). Within this research, we focus solely on formal organizations. The

second dimension concerns actors' intrinsic motivations. Some actors, for example industrial- or enterprise related advocacy groups, are motivated primarily by instrumental or financial motivations. Others, such as NGOs, are typically motivated by "promoting a perceived common good" (ibid, p.523). In this thesis we focus only on the latter category. At this point, we have to note that the concept 'transnational actor' is widely used. However, various scholars use different concepts to denote what Risse (2007) and Bexell et al. (2010) have called TNAs: 'external actors' or 'actors external to the state' are also used to describe the actors we have labeled as 'transnational actor'.

*Governmental actors* In this research, the term 'governmental actor' is used to describe those actors that are part of, or affiliated with, the legislative, executive and judiciary branches of the Brazilian government. Although focusing predominantly on *national* governmental actors, this concept may also include actors at lower levels of government, such as regional or local governing bodies. Furthermore, this concept may also comprise governmental *agencies*, for example 'FUNAI' (*Fundação Nacional do Índio*) which is the Brazilian governmental agency issued with the protection of indigenous peoples' interests.

*Indigenous People* What the term 'indigenous people' actually comprises is hard to grasp: "among the many challenging aspects of understanding indigenous peoples is the fundamental difficulty of defining who is an indigenous person" (Coates, 2004, p.1). Hence, despite the fact that the concept has been discussed widely in various academic disciplines and international organizations<sup>23</sup>, there is no consensus on the meaning of it. Most of the definitions, however, emphasize that indigenous peoples (should) have specific rights based on (historic) ties to a certain territory, and point to their cultural distinctiveness from other groups within a specific territory that are (most of the time) politically dominant (ibid, pp.13-14).

Coates' (2004) definition of indigenous peoples (presented above) is still vague and opaque. Distinguishing between this concept and other concepts that are rather similar might help, however, to delineate what indigenous peoples are, by describing what other concepts are *not*. Schulte-Tenckhoff (2012) argues that there is a worrisome tendency to use the concepts of indigenous peoples and minorities interchangeably. The concept of 'minority' can be applied to broad range of groups. Common denominator (with indigenous peoples) is that minorities only exist in "relation to other collective entities" (ibid, p.68). Both groups comprise of people that are "non-dominant in economic, political and socio-cultural terms" (ibid, p.69), seek to maintain their own identity and (often) are the victims of conquest or even genocide. The difference between the concepts, however,

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<sup>23</sup> International Organizations such as the International Labour Organization (ILO), the World Bank and the United Nations (UN) have come forth with definitions of, and policies aimed at, indigenous peoples.

lies in the fact that indigenous peoples are the (descendants of) the original inhabitants of a certain area or territory. Hence, we corroborate the argument put forward by Schulte-Tenckhoff (2012):

*“indigenous peoples must be viewed above all as the descendants of overseas people that came in contact with, and eventually were dominated by, European powers during the era of European expansion since the ‘age of discoveries’, and that now form culturally separate as well as non-dominant groups in states having gained their independence via the exclusion of their original inhabitants” (p.70).*

*International norms* International norms have become a pivotal research topic in IR research since the emergence of Constructivism. Maybe except for the most diehard (neo)realists, the idea that norms matter is widely embraced in academia (Checkel, 1997, p.473). Norms are generally defined as “standards of behavior” (Axelrod, 1986, p.1096). Defining norms in such a way emphasizes two points. First of all, it stresses that norms are about behavior, and not (directly) about ideas: the way in which states (and other actors) act in the international system is put central. Second, the “distinctiveness of a norm is the essence of *ought*” (Florini, 1996, p.364). International norms are considered to be a legitimate behavioral claim (ibid, p.365). Furthermore, it is important to recognize that international norms are intersubjective (shared), not bound to a limited number of actors (Finnemore, 1994, pp.2-3) creating structures shaping actors’ behavior (Thomson, 1993, p.72). The question remains whether (or, to what extent) international norms matter. This research is, in that respect, no exception.

In this research we focus specifically on international *human rights* norms, a sub-category of the overarching term international norms. When speaking about human rights we refer, most of the time, to “principled ideas about the treatment to which every individual is entitled by virtue of being human” (Schmitz and Sikkink, 2002, p.827). UN declarations, such as UNDRIP, can be seen as an expression of this idea.

## **Independent Variables**

*Loss of reputation* Reputation, and the loss of reputation, are quite intangible concepts. Earlier on in this research, we argued that reputation should be seen as a “judgments of a state’s character, used to predict and explain its future behavior” (Mercer, 1996, p.6). Hence, ‘measuring’ (the loss of) reputation should be done through examining the actions by actors exogenous to the state aimed at altering the state’s reputation. The effectiveness of transnational actors in spurring compliance with international norms is (at least partly) based on the idea that a deteriorated

reputation negatively affects a state's position in the international system. In order for these arguments to hold true, we corroborate Avdeyeva's (2012) method of measuring state's reputation. This method assumes that the international systems consists out of states grouped hierarchical, "bound by competitive and unequal relations" (Avdeyeva, 2012, p.300). These hierarchies are heavily influenced by international organizations and other transnational actors, "which often include some states and exclude other, thus, reputational concerns arise in response to (...) unequal opportunities" (ibid). Reputation, then, can be influenced by (transnational) actors if they aim to alter the behavior of state officials, and (hence) the opportunities of states to change their relations with other actors in the international system.

*Attractive incentives* Incentives can be raised through the mechanisms of sanctions and rewards, creating positive or negative incentives for states to comply with international norms. Transnational may use these tactics as they change state's utility calculations. Capacity building is, however, also part of the overall incentive structure as it is key in overcoming the problem of involuntary non-compliance. Transnational actors may offer an (attractive) incentive when they help to (re)build state capacities and capabilities.

*Persuasive arguments* The last independent variable focuses particularly on mechanisms through which the discourse around an international norm can be reframed. Tactics to achieve this goal include broadening a policy field, or linking the norm to other norms, goals or practices (often referred to as *issue-linkage*).

## **Dependent Variable**

The dependent variable, which should be considered as the centerpiece of this research, concerns a state's (in this case Brazil's) compliance, through policy change, with international norms (concerning indigenous peoples' rights). Policy change, in the form of compliance with international norms, can be 'measured' in terms of the "degree to which new policy initiatives conform to the (...) goals or values promoted by transnational actors or international institutions" (Bernstein and Cashore, 2000, p.70). In this case, the conformation of Brazilian policies and (new) policy initiatives to international declarations concerning indigenous peoples' rights will be assessed: "indications of change include attempts by policy makers to institutionalize new goals either by creating new policy structures or new laws, or attempt to de-legitimize former practices" (ibid, p.71).

As we have touched upon previously in this research, the importance of the difference between *commitment* and *compliance* with (international) should be stressed. Whereas commitment refers to

a state's acceptance of international norms as valid, compliance refers to the rule-consistency of state's behavior (which is not at stake with norm commitment). Inherent to compliance with international norms is the internalization of rules, practices and so on and so forth in state's domestic day-to-day practices (Risse, Ropp and Sikkink, 2013, pp.9-10). Compliance, to put it in other words, is concerned with the question whether (statist) actors 'live up to their words'<sup>24</sup> and implement and execute human rights norms in their daily practices. It is exactly these processes at which the dependent variable is focused. For example, we would regard the demarcation of the various indigenous territories as compliance with international norms on indigenous peoples' rights, whereas statist actions aimed solely at underlining or improving the rights of indigenous peoples 'on paper' will be regarded rather as commitment only as no actual change in the 'practices on the ground' occurs.

### 3.3 Case Selection

Brazil is a 'most-likely' case<sup>25</sup> within Risse, Ropp and Sikkink's theoretical framework. Indigenous peoples' rights are not only protected constitutionally, Brazil also depicts the right outcomes with regard to the scope conditions (see section 2.5) under which Risse, Ropp and Sikkink (2013) expect the four social mechanisms to induce statist compliance with international norms. Since the democratization process started in the mid-1980s, and despite some serious flaws (see for example Pinheiro, 1998), Brazil has developed gradually towards a consolidated democratic regime (Economic Intelligence Unit, 2013) federal by nature, but with a centralized governmental structure (Eaton and Dickovick, 2004; Desposato and Scheiner, 2008). However, as we have seen earlier, Brazil's day-to-day compliance with international human rights norms is lacking behind. This deficit is especially visible in the case of indigenous peoples' rights as many (transnational) NGOs and advocacy groups voice their concerns about the violation of indigenous peoples' rights in Brazil. Focusing on indigenous peoples' rights allows as well for gathering detailed data, as there is a rather large number of local, national, regional as well as international groups and organizations<sup>26</sup> advocating for

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<sup>24</sup> Words are covered by state's *commitment* to international norms

<sup>25</sup> Also referred to as a *disconfirmatory crucial case*, a most-likely case research is based on the (Popperian) idea that it is "easier to disconfirm an inference than to confirm the same inference" (Gerring, 2007, p.120). The key proviso Gerring (2007) puts forward is that the theory used must be "consistent (...), even if its predictions are not terrifically precise, well elaborated, or broad" (ibid.). Based on the theory used, we expect certain phenomena to happen. The case under research is chosen, however, specifically as it lacks the causal relations expected according to the theory. Of course, these causal factors, also in this research, are hardly ever dichotomous. Evidently, these mechanisms are often matters of degree. Gerring (2007) refers to these cases as "*more or less crucial*" (p.120). The case under research in this thesis is, in that respect, not different.

<sup>26</sup> See section 4.3 for a complete overview of all the actors involved

an improvement in the Brazilian compliance with international norms on human rights in general, and indigenous peoples' rights specifically.

From the scientific point of view, using a most-likely case design allows for testing and refining well-established and plausible assumptions from the academic literature in question. According to Gerring (2007), "a most-likely case is one that is very likely to validate the predictions of a model or a hypothesis. If a most-likely case is found to be invalid, this may be regarded as strong disconfirming evidence" (p.213). Most-likely cases must, therefore, closely fit the theory in question. Brazil, as we argued before, certainly fits the Risse, Ropp and Sikkink (2013) model. Moreover, in case the predictions of the theoretical model in question can be validated, the Risse, Ropp and Sikkink (2013) model may be refined, as the qualitative nature of this research as well as the 'close fit' of the Brazilian case in the Risse, Ropp and Sikkink (2013) model allows (potentially) for improving or 'fine-tuning' this theoretical model.

### 3.4 Method of Inquiry

This research is based on qualitative research methods, and will encompass a set of methodological tools and techniques including (but not limited to) literature research and archival research (Gerring, 2007, p.17). In the previous sections we elaborated on several (independent) variables. In order to see how these variables 'play out' in reality, we will use the method of process tracing. This qualitative method enables the researcher to gather detailed data, which allows for discerning "how processes emerge and evolve" (Lamont and White, 2009, p.10). Process tracing "involves a commitment with the most continuous spatial-temporal sequences we can describe at the finest level of detail that we can observe" (Bennett and George, 2005 in Zwaan, 2012, p.47). To put it bluntly, we will use process tracing in order to explain Brazilian (non)compliance with international human rights norms, reconstructing the efforts of (transnational) actors as well as Brazil's stance towards these efforts from the mid 1980 (when the political processes towards democratization started<sup>27</sup>) until the present day.

With regard to the sources used, this qualitative method of process tracing relies heavily on detailed analysis of "the evolution of a sequence of events within a case" (Brecher and Harvey, 2002, p.443). We will pay close attention to the series of events with regard to indigenous peoples' rights in Brazil as this allows for exploring the causal ideas embedded in the narratives (Collier, 2011, p.828). Hence, we will examine histories, archival documents, (interview) transcripts and other qualitative sources in

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<sup>27</sup> See Fausto (1999, pp.296-320) for a more detailed account of Brazil's democratization process

order to examine whether the causal mechanisms "hypothesized by the theory are in fact evident (...) in the case under research" (Bennett and George, 2005, p.6). With regard to actions by transnational actors (TNAs), such as NGOs, we will primarily consult online sources such as websites. The vast majority of TNAs under research regularly publish overviews, documents, policy briefs and other forms of communications of their activities on their websites. Both Checkel (2008) and Tansey (2007) argue that (expert or elite) interviews are "highly relevant for process tracing" (Tansey, 2007, p.4) too, as "elite actors are often sources of information about the political processes of interest" (ibid, p.5). Due to limitations in time and resources and the researchers' lack of knowledge of the Portuguese language (expert or elite) interviews are not used as a source in this research. However, in order to compensate for this caveat, we will try to incorporate secondary sources<sup>28</sup> in which the views of expert- or elite actors are incorporated.

Process tracing helps us to solve two interrelated problems. The first is determining the causal direction of the processes and mechanisms involved, the second that of (potential) spuriousness (Bennett, 2010). Process tracing does not only help us to show correlation between a set of variables, it also helps in determining the direction of the relation. The critiques of this method, however, center around the problems of infinite regress, arguing that the number of steps within the causal chain are (potentially) infinite, and the degrees of freedom, arguing that (when using the qualitative method of process tracing) the researcher only investigates a small number of cases with too many variables (ibid, p.209). According to Bennett (2010), these criticisms can be put aside, as "it is not the amount of evidence, but (...) their difference in probative value that is of importance" (p.210).

Every research of qualitative nature can be criticised rather easily on certain choices or interpretations that have been made. The concepts of 'validity' and 'generalizability' are usually used to evaluate the overall quality of a research. Validity concerns the 'tools': whether one measures what one set out to measure. Validity consists out of an external and internal component. External validity is a "problem of representativeness between sample and population" (Gerring, 2007, p.43). As there are only a limited number of cases involved, qualitative research suffers almost always from problems concerning representativeness. The 'virtue' of qualitative case study research is, however, its strong internal validity allowing to "peer into the box of causality (...) through which one can 'see' the X and Y interact" (ibid, p.45). An additional 'problem', in this respect, is the fact that many sources on indigenous peoples' rights are written in Portuguese, a language the researchers do not speak. This limits the number of possible sources. With regard to generalizability, the question is also

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<sup>28</sup> For example, many TNAs publish (translations of) interviews with experts, politicians, human rights activists etcetera on their websites.

whether “the (...) researchers’ findings can be generalized from the study sample to the entire population” (Meyers, 2000, p.3). Bennett and Elman (2006) corroborate this problem, but argue that it is not possible for researchers to know *a priori* whether any of their findings are relevant for the case under research alone, or for a broader population as well (p.462). Nevertheless, indigenous norms are ‘just’ an example of a broader group of international norms. Therefore, it is highly likely that the findings of this research are generalizable to other cases of (statist compliance with) international norms as well.



## Chapter 4 Analysis

### 4.1 Introduction

In this research we focus on international norms, in particular those on in *indigenous peoples self-determination*, which can be defined as “the rights of ethnic, religious, and linguistic communities to promote and protect their culture, to practice their religion, and to speak their language without undue restrictions” (Shelton, 2013, p.390). Pivotal in the framework on indigenous self-determination is the recent (2007) UN ‘Declaration on the Rights of Indigenous Peoples’ (abbreviated to ‘UNDRIP’) which reiterated that indigenous communities are “entitled to freely determine their political status and freely pursue their economic, social and cultural development” (ibid, p.391). Although UNDRIP is not subject to ratification and, hence, does not have a legally binding status, it does “reflects the collective views of the United Nations which must be taken into account by all members in good faith” (ILO, 2007, p.2). Furthermore, UNDRIP has legal relevance: it may, for example, reflect obligations of UN member-states under other sources of international law (ibid, pp.2-3).

For more than two decades, indigenous peoples worldwide have strived for improving the rights of indigenous peoples and worked towards the adoption of the United Nations Declaration on the Rights of Indigenous Peoples. When ‘UNDRIP’ was finally passed on 13 September 2007, this was conceived as a major triumph for those who strived for UN recognition of the position of indigenous peoples. Furthermore, it put an end to years of struggle with the rigidities of standard-setting in the UN system (Davis, 2008, p.439). The rigidity of this process can be seen as a reflection of the complexity of the issue UN member states had to deal with: not only did they had to accept the indigenous peoples’ right to self-determination, UNDRIP also forced states to recognize “(...) peoples’ rights to lands, territories and resources” (ibid, p.440). The question remains, however, to what extend states, such as Brazil, have complied with these international norms.

Brazil, and the Amazon basin in particular, has historically been the homeland of countless indigenous groups. Those groups on the outskirts of the Amazon region were, over the course of centuries, contacted by outsiders and developers who gradually moved deeper into the Amazon in their quest for farmland, mining-sites and logging opportunities. The size of the Amazon region and the sheer impenetrability of the area served as a successful protection for a number of indigenous groups. The *Yunomami* people, for example, had only very little contact with outsiders until the mid-1980s (Coates, 2004, pp.52-53).

Brazilian indigenous groups, such as the Yanomami, are often referred to as 'índios'<sup>29</sup>. These groups enjoy the establishment of a (legally binding) regime protecting their customary rule. The share of índios in the Brazilian society is negligible: according to the Brazilian Institute of Geography and Statistics (IBGE<sup>30</sup>) (2013) índios account for only (up to) 0.4% of the total Brazilian population<sup>31</sup>. Despite their small numbers, Brazilian indigenous peoples advocacy groups were rather successful in linking the issue of indigenous self-determination with economic and ecological oriented issues which lead to governmental recognition of indigenous peoples' rights (Eimer, 2012, pp.18-21). These advocacy campaigns, inter alia, lead (from the 1990s onwards) to an improvement in the relationship between Brazilian indigenous peoples and the state. According to Rodrigues (2002) "indigenous peoples gains in this period have no parallel in Brazilian history" (p.512), although severe challenges to indigenous peoples' way of living have attracted world-wide attention over the past years (Coates, 2004, p.53).

According to organizations such as the National Indigenous Umbrella Organization of Brazil (APIB), Brazil's compliance with international norms related to indigenous peoples' rights is lacking behind. Recently, they voiced their concerns about the current human rights situation of indigenous peoples. Amnesty International (2013) corroborated this statement, arguing that although indigenous rights are formally safeguarded in Brazilian and international law, implementation and execution of these laws has been delayed for decades. The statements of, inter alia, Rodrigues (2002) and organizations such as 'APIB' are rather contradictory. Hence, a thorough research of the causal mechanisms and processes at stake is necessary. This chapter provides the empirical part of the research, investigating what the role of the Brazilian (national) government, governmental agencies and transnational actors (such as NGOs) is in the process of putting international norms with regard to indigenous rights into day-to-day practices.

The main question in each of the following sections is whether the social mechanisms and scope conditions (see the theoretical framework presented in this thesis' second chapter) can be identified using the method of process tracing. Section 4.2 discusses the development of indigenous rights in Brazil from the mid-1980s until present, and focuses specifically on the ways in which Brazilian

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<sup>29</sup> The term 'índios' refers to the indigenous people of Brazil. Historically, the word 'índios' was used by the Portuguese to designate the people from the 'New World'.

<sup>30</sup> This abbreviation stands for *Instituto Brasileiro de Geografia e Estatística*

<sup>31</sup> Although índios account for only 0.4% of the total Brazilian population, it is comprised of over 200 ethnic groups, making it the second highest (after Peru) indigenous population in the Amazon region. The size of the indigenous groups, however, varies greatly. Some tribes, such as the *Guarani* and the *Yanomami*, are numbered in tens of thousands. The vast majority (over 70%) of the Brazilian indigenous tribes, however, has less than 1000 members (Carneiro da Cunha, 2004)

governmental actors have dealt with the implementation of, and compliance with, international norms on indigenous peoples. Section 4.3 analyzes the ways in which transnational actors have tried to shape, steer and influence the Brazilian human rights situation in general, and the rights of indigenous peoples in particular. Furthermore, we will take a closer look at UNDRIP, assess the value of this declaration and focus on the question whether UNDRIP has ‘moved’ (or has the potential to move) Brazil from commitment to compliance.

## 4.2 Indigenous Rights in Brazil

As we have argued before, mixed (and sometimes even contradictory) statements are made on the (development of) the human rights situation in Brazil. Especially with regard to the rights of indigenous peoples a lot has changed, scholars such as Rodrigues (2002) argue to the better, in the recent decades. In this section of the analytical chapter we will first discuss which (international) indigenous rights are at stake. Second, we will review the current stance of indigenous rights in Brazil, assessing which rights are currently violated, to what extent Brazilian governmental actors are responsible for those violations and to what extent commitment and compliance with international human rights norms (focusing on indigenous peoples’ rights) is achieved. Third, we will discuss the situation of indigenous rights in Brazil from the mid-1980s onwards, as this allows for tracing the development of the Brazilian (governmental) point of view with regard to indigenous rights.

### *Indigenous Rights: an Overview*

Generally speaking, indigenous rights exist to recognize the specific conditions of indigenous peoples, including not only basic human rights, but also indigenous peoples’ language, religion, preservation of their lands and cultural heritage (Gray, 2003, pp.18-19). The definition of what indigenous rights exactly are, however, differs (Lindholt, 2005). We touched upon this problem in the previous chapter, when trying to operationalize the concept of indigenous peoples, which is equally intangible. Due to this conceptual vagueness, indigenous rights are acknowledged rather differently from state to state. Furthermore, there are several (international) organizations that promote, safeguard or (at least) acknowledge indigenous peoples’ rights. Some of these are non-governmental organizations (NGOs) including<sup>32</sup>, but not limited to, the Indigenous World Association (IWA), Amnesty International (AI) and the Minority Rights Group International (MRG).

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<sup>32</sup> A complete list of NGOs and TNAs concerned with promoting or safeguarding indigenous rights is presented in this chapter’s third section.

The (international) legal representation of indigenous rights is covered by ILO Convention 169 and several UN declarations. ILO 169 is a convention of the International Labour Organisation (ILO) that, once ratified by a state's government, serves as a law protecting indigenous peoples' rights. Furthermore, ILO 169 provides a framework for the recognition of indigenous peoples' land ownership, equality and freedom. Drafted and adopted as early as 1989, over twenty countries world-wide have ratified the convention. Brazil is one of them (UNPO, 2009). The United Nations plays an active role in safeguarding indigenous rights as well, primarily through the mechanism of the 'Working Group on Indigenous Populations' (WGIP), its successor the 'Expert Mechanism on the Rights of Indigenous Peoples'; and the 'United Nations Permanent Forum on Indigenous Issues' (UNPFII)<sup>33</sup>, which is set up as an advisory body to the 'Economic and Social Council', mandated with reviewing issues related to indigenous rights and peoples (UNPFII, 2014). In 2007, after a process of negotiations and discussions that had lasted more than twenty years<sup>34</sup>, the UN General Assembly adopted the Declaration on the Rights of Indigenous Peoples (UNDRIP). Although having a non-binding status, UNDRIP provides indigenous peoples world-wide with rights concerning their culture, language, health, education and so on and so forth.

### *Indigenous Rights: Brazil's Current Stance*

In response to international pressure, mostly from the UN Human Rights Council<sup>35</sup>, the Brazilian government "has begun to recognize its failing in (...) managing indigenous land and the limited scope of its actions in indigenous communities" (MRG, 2014). Despite these messages of (slowly) improving conditions for Brazilian indigenous peoples, and despite constitutional guarantees, the successive Brazilian governments have failed to protect the rights of indigenous peoples adequately by not complying to national and international obligations to recognize these peoples' rights. Furthermore, the scarce legislative advances, as well as improvements of (for example) indigenous peoples' living conditions 'on the ground', are met regularly by opposition from various entrenched stakeholders (Chernela, 2006, p.140; Nichols et al. 2006, pp.22-28). Brazilian indigenous peoples are, more than the average Brazilian citizen, vulnerable to be subject of "atrocities and discrimination as violence, including killings, against indigenous peoples has escalated over the recent years" (Chernela, 2006, p.140 in: Osawa, 2005). According to CIMI (2013), the number of indigenous people

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<sup>33</sup> The United Nations Permanent Forum on Indigenous Issues (UNPFII) is established in 2000 by the UNHCR (United Nations Economic and Social Council, 2000)

<sup>34</sup> Negotiations started as early as 1982

<sup>35</sup> See, for example, UN document A/HRC/19/NGO/72 which stresses the need to strengthen the (juridical) protection of indigenous peoples

killed in Brazil has been rising since the early 2000s. CIMI estimates that over 450 are killed in the period 2002-2010, compared to (about) 160 killed in the period 1995-2002. The vast majority of these killings are attributed to land disputes (Chernela, 2006, p.141), and closely connected to this problem, delays of the Brazilian government in the demarcation of indigenous territories (Nichols et al., 2006, p.1).

One of the main problems when guaranteeing indigenous peoples land rights is the very concept of (land) property itself. Wiersma (2005) argues that the prevailing (western) concept of property is concerned primarily with *individual* ownership. This perception, however, differs greatly from most indigenous peoples' perception, as they perceive land or property rights as *collective* entities. Hence, indigenous peoples usually face serious obstacles when trying to adapt their (collective) communal claims for property or land to the concept of individual ownership (Wiersma, 2005, pp.1072-1074). What distinguished the 'indigenous' perception of land or territory is "their special relation to the land, whether it is physical, cultural or metaphysical" (Duffy, 2008, p.506). Rather different from the 'western' relation to land or territory, indigenous peoples find it hard to separate the concept of land, territory (or even resources) from their (cultural) values (Daes, 2001, p.7). According to Duffy (2008) a certain piece of land consists, for indigenous peoples, of several dimensions: obviously an economic one, as land provides for food; a political one, as their claim for self-determination is inherently linked with the land itself; and a cultural (or even spiritual) one, as indigenous peoples' land also represents a religious value (pp.509-511). These characteristics taken into account, Fujishima (2014) even argued that the generally accepted idea that "you can displace someone as long as you pay them the amount of money considered to be the economic value of the land, cannot be applied literally" (Fujishima, 2014, p.3) with regard to indigenous peoples' land occupation.

Hence, land rights and the (lack of) demarcation of indigenous peoples' grounds and territories are currently considered to be one of the pivotal problems. It is argued, furthermore, that the advances made at the national (constitutional) and international level are obstructed often by various actors (including statist ones) to "stall, reverse or reduce land demarcations, undermining the integrity of the Constitutional process and the rights of the indigenous peoples" (Chernela, 2006, pp.140-141). Next to the problems surrounding the legal demarcation of indigenous lands, the Brazilian government has failed to provide for (basic) healthcare and education, resulting in (inter alia), compared to the average Brazilian citizen, relatively high rates of children mortality and low life expectancy. Furthermore, a growing number of indigenous territories are infringed by migrant populations who settle in indigenous territories in their search for precious minerals, farmland and so on and so forth, or who compete for the same resources as the indigenous peoples themselves (WWF, 2014).

In early August 2014, Amnesty International published a report on the condition of indigenous peoples' human rights in the Americas. Evidently, the situation of Brazilian indigenous peoples is addressed as well. In this report, the malfunctioning of 'FUNAI'<sup>36</sup> is highlighted. Since the agency's establishment in 1967, FUNAI is responsible for mapping and protecting the territories that (traditionally) have been inhabited by indigenous peoples. Consequently, this agency is responsible as well for preventing 'outsiders' to violently engage with indigenous peoples within their territories. Brazil's remarkable economic growth over the recent decades has transformed this country into one of the emerging world economies. FUNAI, however, structurally lacks (financial) resources, and has not been able to lift Brazil's indigenous peoples out of their extreme poverty<sup>37</sup>. A rather recent example shows the incapability of FUNAI to act according to its own principles: in 2007 FUNAI signed a so-called 'Conduct Adjustment Agreement' with various governmental actors and over 20 leaders of Brazilian indigenous groups. In this agreement, FUNAI promised to demarcate the territories of various indigenous groups by (the end of) 2010. In August 2014, however, this agreement is still not implemented inter alia due to a lack of resources by the FUNAI (Amnesty International, 2014, p.13).

One of the policies president Rousseff inherited from the Lula da Silva presidential administration is rather controversial: the *Belo Monte* hydroelectric-dam construction. Although promoted as a project inevitable for the Brazilian economy to flourish, and as a "model of green energy that will (...) help Brazil to comply with its international environmental obligations" (Khatri, 2013, p.170), the construction of the dam poses many threats to the indigenous peoples living in the Amazon region. According to (inter alia) Jaichand and Sampaio (2013) there have been many cases of illegalities throughout the authorization and implementation processes prior to the construction of the *Belo Monte* dam (pp.411-412). President Rousseff allowed the Brazilian National Congress to vote on the construction of the dam without consulting the indigenous people that are affected majorly by the dam. Even after a court decision, arguing that "failure to consult the indigenous groups directly violated domestic and international law and, as such, the decree authorizing the dam is invalid and unenforceable" (Khatri, 2013, p.170), the construction of the *Belo Monte* dam continued. This story fits perfectly into the perception of indigenous groups on the presidency of Rousseff, as they argue that they have been "abandoned by the government, (...) pointing to the fact that since taking office in 2011, president Dilma Rousseff has not once met with indigenous leaders (Fellet, 2013)

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<sup>36</sup> 'FUNAI' (*Fundação Nacional do Índio* which can be translated into 'National Indian Foundation') is the Brazilian governmental agency issued with the protection of indigenous peoples' interests and culture.

<sup>37</sup> It is estimated that over 40% of the indigenous people in Brazil live in extreme poverty, which is more than double the percentage of the average Brazilian population (Amnesty International, 2014, p.12)

## *Brazilian Developments Since The Mid-1980s*

Although, in the previous section, we have highlighted the ‘current stance’ of Brazil with regard to indigenous peoples’ rights, we have not depicted how Brazil has arrived at this current situation. This section of the analysis tries to shed a light on the developments of Brazil from the mid-1980s onwards.

The Brazilian political landscape has changed drastically over the last several decades. In the years after the military coup<sup>38</sup>, heavy emphasis was placed on (creating) a strong state and national security. These issues, together with processes of (economic) modernizations, justified the state to “set siege to the hinterland and the indigenous peoples who lived there” (Chernela, 2006, p.138). In this period, however, the first (formal) indigenous peoples’ organizations were established. When the military regime stepped down in 1985, this increased the opportunities for indigenous peoples to employ more strategies for public action (ibid, p.139). The Brazilian constitution of 1988 can be seen as a turning point (at least formally), acknowledging the rights of indigenous peoples to get their original lands and territories back.

Brazilian Presidents 1985-2014		
Period	President	Party Affiliation
1985-1989	José Sarney	Social Democratic Party ( <i>Partido do Movimento Democrático Brasileiro</i> )
1989-1992	Fernando Collor de Mello	National Reconstruction Party ( <i>Partido de la Reconstrucción Nacional</i> )
1992-1995	Itamar Franco	National Reconstruction Party ( <i>Partido de la Reconstrucción Nacional</i> )
1995-2003	Fernando Henrique Cardoso	Social Democratic Party ( <i>Partido da Social Democracia Brasileira</i> )
2003-2010	Luiz Inácio Lula da Silva	Workers’Party ( <i>Partido dos Trabalhadores</i> )
2011- current	Dilma Vana Rousseff	Workers’Party ( <i>Partido dos Trabalhadores</i> )

Table 1: Brazilian Presidents from 1985-present

Under the supervision of the first president after the military regime, José Sarney (see table 1), Brazil’s new constitution stated that indigenous peoples had “usufruct rights to the land, as well as riches of the soil, the rivers and the lakes existing therein” (Nichols et al., 2006, p.12). Although having the usufruct rights of the soil, indigenous people were not entitled to usufruct of the *subsoil*, and hence do not legally possess any of the mineral resources hidden ‘under’ their territories

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<sup>38</sup> This military coup took place in 1964, overthrowing a (democratic) republic in which high economic growth was paired with skyrocketing inflation and social unrests. This regime lasted until 1985, when nationwide demonstrations showed that the people of Brazil wanted to elect their own government (Nichols et al., 2006, p.30).

(Ramos, 1998, p.96). The constitution contains provisions to prevent invasions of the indigenous territories, and demarcation of the territories was seen as pivotal in safeguarding this objective (Nichols et al., 2006, p.13). However, as we have touched upon earlier in this chapter as well, only a small area has been demarcated as of today. This troublesome demarcation process has its roots, primarily, in the fact that the priorities of president Sarney (national security and, especially, economic development<sup>39</sup>) were rather contradictory to the establishment of a coherent policy towards the Brazilian indigenous peoples. Many (multinational) mineral extraction companies were granted almost limitless access to the territories of indigenous peoples. Officially, these companies only received a permission to operate in these regions after consultation rounds with the indigenous communities were concluded. This was, however, a “somewhat farcical arrangement (...), as the indigenous people had no veto power over these activities” (Ramos, 1988 in Nichols et al., 2006, p.32). Second, the Brazilian governmental agency issued with the protection of indigenous peoples’ interests (FUNAI) was supposed to secure the land rights for indigenous peoples in the areas of mineral extraction. Yet, according to Cultural Survival (1988), only around 12 percent of FUNAI’s budget was allocated to supervising the process of land demarcation. Over 80 percent of the budget was used for constructing and maintaining air strips (inter alia). One could question whether a governmental agency aimed at protecting the territories and rights of indigenous peoples should provide for these facilities that were mostly used by the mineral extracting companies and ‘*garimpeiros*’<sup>40</sup> that (hence) threatened the indigenous peoples.

The following presidents (Fernando Collor de Mello and, subsequently, Itamar Franco: both affiliated with the ‘National Reconstruction Party’) made more efforts to balance between economic concerns and indigenous peoples’ rights. Collor de Mello, for example, tried to force the removal of the *garimpeiros* out of the Amazon region by dynamiting the airstrips which, ironically enough, were (partly) funded by FUNAI some years earlier (Le Breton, 1993, p.132). According to Nichols et al. (2006), however, these actions were “hailed largely as a means of appeasing the media and international NGOs” (p.33).

President Fernando Henrique Cardoso<sup>41</sup>, being the president who drafted the (rather controversial) Decree 1775<sup>42</sup>, did not put indigenous rights high on the political agenda either. Cardoso, however,

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<sup>39</sup> The so-called ‘Calha Norte’ program was the pivotal economic pillar of president Sarney’s office, comprising a plan of action (military as well as economic) for the entire region north of the Amazon rivers. Within this program’s framework, several (multination) mining-companies were granted access to the rich (sub)soils of the Amazon region (Quarterly, 1988).

<sup>40</sup> ‘Garimpeiros’ is the Portuguese designation for illegal and informal gold prospectors in the (Brazilian) Amazon river region.

<sup>41</sup> Elected in 1995 and reelected in 1998



issued the demarcation of 21 indigenous territories. Again, many scholars (such as Turner, 1996 and Ramos, 1998) argued that this should be seen as an effort to (re)gain public approval for his policies, and not as a political priority. Over the course of Cardoso's presidential reign Decree 1775 was implemented. From the start, the decree was not well received by NGOs and indigenous peoples' groups alike. Not only did these groups argue that the legal basis of the decree was specious, they argued as well that the "retroactive feature of the decree (...) allows any identified indigenous parcel to be contested provided it was not registered" (Nichols et al., 2006, p.34). Decree 1775 is in effect until the present day, resulting in a situation in which the weight of 'third parties' in territorial disputes is increased (disadvantaging the indigenous peoples groups) and the costs of land demarcation is increased. These two factors combined contribute vastly to the fact that only a small part of the indigenous territories are being registered.

Luiz Inácio Lula da Silva (2003-2010) is the first elected left-wing president. Being a former blue-collar worker, Lula da Silva is well-known for his efforts to resolve some of the economic disparity that remains one of Brazil's most prevailing economical and sociological problems. During his presidential reign, his main political concerns were, indeed, economical by nature. Although, over the years, decree 1775 "did not cause all the disastrous results that were predicted" (Stock, 2005, p.91), the decree is to blame for slowing down the process of land registration and demarcation drastically. Furthermore, it has undermined the ability and functioning of FUNAI to work according to its mandate (ibid, pp.91-92). In the years of Lula's presidency, FUNAI was ordered to implement personnel cuts of over 60% although, over the years, the number of claims by indigenous peoples has only increased (ibid, p.92).

As we have touched upon before, Brazil voted (under the reign of President da Silva) in favor of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in September 2007. In the same period, president da Silva tried to transform the Brazilian economy from an import to an export-oriented economy (Cason and Powers, 2009 in Carvalho, 2012, p.161). According to Carvalho (2012), these efforts<sup>42</sup> have had an considerable impact on the "social agenda of the Brazilian government" (p.161) as well, as they included projects including the expansion of energy supply (through the construction of dams in the Amazon region); exploitation of natural resources and expansion of the transport routes on both land and water throughout the vast Amazon region (Santano do Santos, 2012, p.28). Economic growth was, once again, given priority over issues such as

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<sup>42</sup> Decree 1775 allows "any demarcated indigenous territory not yet registered in the land registry to be challenged by any individual who believes they have an interest in the land" (Nichols et al., 2006, p.13).

<sup>43</sup> These efforts to transform the Brazilian economy include primarily the so-called 'national program to accelerate growth (which is abbreviated into PAC). This program was launched in 2007.

deforestation (see: Carvalho, 2012, p.158). Such issues, although not directly related to indigenous peoples, negatively affect their living conditions which is, in many cases, contradictory to the wording of (for example) UNDRIP. Furthermore, the (planned) construction of hydroelectric dams, primarily the *Belo Monte* project, which received many negative reactions from various actors including scholars, indigenous people and NGOs (Fujishima, 2014, p.2). Despite these protests, President Lula da Silva gave 'green light' for the start of the construction on February 1<sup>st</sup>, 2010 (Santano do Santos, 2012, p.35).

We will conclude this section with analyzing the specific role of the president (since the Cardoso era) in the Brazilian political landscape. Looking back at the 'scope conditions' (see the theoretical framework), we argued that "the degree to which decision-making is centralized with regard to norm compliance makes a difference" (Lutz and Sikkink, 2000 in: Risse, Ropp and Sikkink, 2013, p.18): the more centralized decision-making is, the 'easier' it is to comply with (international) rules and norms. Several scholars have argued that the Brazilian president plays a decisive role<sup>44</sup> in foreign as well as domestic policy-making. According to Cason and Power (2009), the policy-making process in the Cardoso-Lula era has been marked by "the advent of presidentially led diplomacy" (p.119). Prior to the mid-1990s, Brazilian presidents were highly dependent on various ministries and (other) governmental actors and agencies, as the ministries were accorded with great autonomy in policy-making (ibid, pp.121-122). President Cardoso, however, started with a political reform to centralize authority in the presidency; a trend that has been continued under the reign of president Lula da Silva (Emerson, 2014, p.4). These reforms have made Brazil a state where the legislative branch of government (only) reacts, while the executive branch (including the president) acts. In order to 'get things done', a good relation with the president has become a must (ibid, pp.4-5).

Weaver and Rockman (1993) have argued that in a governmental configuration or setting in which there is a strong concentration of power (which tends to be the case in the Brazilian '*presidentialist*' system), the "executive tends to perform better at the steering task of government than those that diffuse power" (Weaver and Rockman, 1993 in: Emerson, 2014, p.11). This concentration of (executive) power enhances policymaking, as a strong executive (in this case, the president) is able to assign and promote new "areas of action that would have otherwise been less likely" (Emerson, 2014, p.11). We might see this effect come into play when we look at the role of president Lula da Silva in promoting the construction of the *Belo Monte* dam project. The diffusion of (executive) power, on the other hand, is argued to contribute to the maintenance of the status quo, or

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<sup>44</sup> Scholars such as Cason and Power (2009) and Emerson (2014) referred to this form of governance as 'Brazilian presidentialism'

maintenance of the current ‘way’ of implementing new policies. By diffusing power, governmental actions become, in a way, more predictable which contributes to the likeliness that a government adheres to its commitments (ibid, pp.11-12).

### 4.3 Transnational Actors and Indigenous Rights

In the previous section of this chapter, we focused on the ways in which individual presidents, the Brazilian government and other governmental actors (such as FUNAI) influenced the rights and lives of Brazilian indigenous peoples. This section takes a different position, namely that of transnational actors (TNAs). TNAs advocate for change in (governmental) actors’ behavior. In this research, we focus solely on the efforts of TNAs to ‘push’ these actors from commitment to compliance with international norms on indigenous peoples’ rights. In order to account for these processes, we will analyze the actions of TNAs<sup>45</sup> along the lines of the three hypotheses we presented in the third (methodological) chapter.

First of all, we will focus on those actions by TNAs aimed at threatening governmental actors with (the loss of) reputation. Second, attention will be paid to the efforts of TNAs to create attractive and convincing incentives for governmental actors to comply with international norms. Third, we will focus specifically on TNA usage of so-called ‘persuasive arguments’. Carefully describing these processes allows us to analyze which factors are crucial for ‘pushing’ governmental actor from commitment to actual compliance with international norms related to indigenous peoples’ rights.

#### *Actions aimed at (the loss of) reputation*

As argued in the previous chapters, the concept of ‘reputation’ is rather intangible. Therefore, we came forth with a typology, stressing that reputation can be seen as a “judgment of a state’s character, used to predict and explain its future behavior” (Mercer, 1996, p.6). Hence, in this section, we will pay close attention to the actions of (transnational) actors aimed at influencing or altering the state’s reputation in the international system. With regard to organizations or movements based in Brazil, COIAB<sup>46</sup> is a good example of an organization which has ‘kick started’ transnational resistance,

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<sup>45</sup> Incorporating a wide range of (different) organizations ranging from (inter alia): international organizations, (international, regional and national) NGOs, and advocacy groups. See table 2 for a detailed overview of all the transnational actors included in this research. We do not claim, however, that this research covers *all* the (transnational) actors advocating for indigenous peoples’ rights. We are convinced, though, that the actors listed in table 2 are representative for the wider population of actors involved.

<sup>46</sup> COIAB is a “consortium of Amerindian social movements of the Brazilian Amazon” (Hoefle, 2006, p.240).

primarily by forming alliances with the Amazon Conservation Team (a regionally focused organization) and the United Nations Permanent Forum on Indigenous Issues (UNPFII). Having the confidence to be ‘backed up’ by this alliance, COIAB “started to pressure the Brazilian government to offer protection to the indigenous peoples in the continuous territories” (Gonçalves, 2009, p.149). COIAB’s main argument was that the vast majority of the non-registered (indigenous) territories in the Amazon region were used illegally for activities ranging from farming or lumbering to (gold) prospecting at which the Brazilian regional and national government gave tacit approval at (ibid.).

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**(Transnational) Actors Involved with (Brazilian) Indigenous Peoples’ Rights**

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Type of Organization	Name of the Organization
<i>International NGOs</i>	Amazon Watch
	Amnesty International (AI)
	Center for World Indigenous Studies (CWIS)
	Cultural Survival
	Earth Peoples
	Ecoterra International
	Forest and the European Union Resource Network (FERN)
	Forest Peoples Programme (FPP)
	Friends of People Close to Nature (fPcN)
	Global Forest Coalition (GFC)
	Indigenous Environmental Network (IEN)
	Indigenous Peoples Center for Documentation Research & Information (DOCIP)
	Indigenous Peoples Council on Biocolonialism (IPCB)
	Indigenous Peoples Issues and Resources (IPIR)
	Indigenous Peoples Law and Policy Program (IPLP)
	Indigenous World Association (IWA)
	International Indian Treaty Council (IITC)
	International Land Coalition (ILC)
	International Work Group for Indigenous Affairs (IWGIA)
	Minority Rights Group International (MRG)
	Survival International
	World Rainforest Movement (WRM)
<i>International Governmental Organizations</i>	United Nations Commission on Human Rights
	Unrepresented Nations and Peoples Organization (UNPO)
	United Nations Permanent Forum on Indigenous Issues (UNPFII)
	United Nations Working Group on Indigenous Populations (WGIP)
<i>Regional Organizations</i>	Amazon Conservation Team (ACT)
	Coordinator of Indigenous Organizations of the Amazon River Basin (COICA) <sup>47</sup>
<i>National (Brazilian) Organizations</i>	Articulation of the Indigenous People of Brazil (APIB)
	Fundação Nacional do Índio (National Indian Foundation)
	Conselho Indigenista Missionário (CIMI)
	Coordenação das Organizações Indígenas da Amazônia Brasileira/ Confederation of the Indigenous Organizations in the Brazilian Amazon (COIAB)

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**Table 2: Overview of Transnational Actors (TNAs)**

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<sup>47</sup> COICA coordinates the actions of nine Amazonian indigenous organizations. COIAB is the Brazilian (national) organization within the COICA framework.

Gonçalves (2009) stresses the importance of (foreign) NGOs (and other transnational actors, such as governmental agencies<sup>48</sup>) in this process, as they provide the necessary (financial) sponsorship to actors such as COIAB (p.150).

Other indigenous movements have discovered the “power of the media in promoting their cause” (Coates, 2005, p.258) as well. In general, we might argue that (international) protest and public disapproval (as well as boycotts, on which we will elaborate in the following section) have become much used tools for indigenous movements in order to push for (governmental) reforms from actors that, at first hand, rejected indigenous peoples’ requests for negotiations on issues such as land rights and property demarcation. As a consequence, various (international) networks have emerged through which (national) governments are pressurized to change (or, to implement) certain policies. The rise of the internet in the recent decade has spurred this form of advocacy enormously. The online representation of indigenous movements “has improved response time and permitted a rapid expansion of the protest” (ibid, p.259). Indigenous peoples have used these opportunities to ‘use’ the (international) public debate to pressurize their regional and national governments and (other) governmental actors into action. Of course, the tactics used to ensure these goals vary from time to time and from situation to situation. Typically, however, these tactics involve mailing campaigns and other forms of mass writing. ‘Survival International’ (see table 2) is a primary example of an (international) organizations which is rather effective in organizing effective petitions, sending letters to governments and attract (public) attention by publicizing news stories. Furthermore, organizations such as Survival International and IWGIA (International Work Group for Indigenous Affairs) provide in-depth and background research papers in order to highlight certain developments within the ‘indigenous context’. An example of the latter endeavor can be found in the work of the ‘Indigenous Peoples Center for Documentation Research and Information’ (DOCIP)<sup>49</sup> and the Indigenous Peoples Law and Policy Program (IPLP), which is dedicated to further research and training in (international) law on indigenous peoples (University of Arizona, 2014).

NGOs such as Amazon Watch clearly aim at persuading governmental decision-makers to “honor the rights of indigenous peoples over ‘development’ decisions in their territories, and to rectify past harms” (Amazon Watch, 2014a). Again, media exposure and shareholder campaigns are seen as the primary tool to reach those actors. In recent years, most of the Amazon Watch campaigns related to the rights of indigenous peoples have centered around some of the hydroelectric dam projects, most

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<sup>48</sup> In the Netherlands, for example, the Ministry of Foreign Affairs is able to grant subsidies to (local) NGOs or (human rights related) organizations (Ministry of Foreign Affairs, 2014).

<sup>49</sup> This non-profit organization is dedicated to publishing, inter alia, a quarterly journal on pivotal (international) processes with regard to indigenous issues worldwide (DOCIP, 2014).

notably the *Belo Monte* project. Amazon Watch (2014b) argues that the Brazilian government has failed to recognize the rights of indigenous peoples during and prior to the construction of these projects, violating the Brazilian constitution as well as international conventions (such as UNDRIP). Accordingly, the work of Cultural Survival is aimed at investigating atrocities, in order to report them to the United Nations, or (other) international fora (Cultural Survival, 2014).

As highlighted earlier, the (almost) endless opportunities of the internet allow all sorts of (non-governmental) actors to “spread news of dangers and crises around the globe within minutes, thus mobilizing public protest in ways unimaginable (...) years ago” (Coates, 2005, p.259). This development has increased the effectiveness of indigenous movements. As a result, (national) governments often feel incensed when their policies or actions are criticized. Often, such governments react on these forms of criticism by arguing that “indigenous groups and their supports spread inaccuracies and one-sided perspectives” (ibid). In the case of Brazil, an example can be found in the words of the president of the Brazilian National Confederation of Agriculture, (Senator) Katia Abreu, who argued that the public outcry of NGOs and indigenous movements (to the Brazilian government ) for a better protection of their territories and lands was exaggerated as “indigenous peoples do not suffer from a shortage of lands: (...) indigenous peoples have been given 12% of the Brazilian territory” (Fellet, 2013), while making up less than one percent of the overall population.

In the previous paragraphs of this section, we have provided a description of the ways in which transnational actors ‘make use’ of coercive mechanisms to induce Brazilian compliance with international norms on indigenous peoples’ rights. Although the words of Senator Katia Abreu shed some light on the rhetoric often used by governments to support their reasons for not complying with the norms in question, we have not elaborated (so far) on the question why the social mechanism in question (aimed at reputational losses) does not ‘work’ in the case of Brazil.

Although the effectiveness of TNA advocacy campaigns is rather difficult to measure (Hall and Taplin, 2006, pp.5-6), looking back at the Risse, Ropp and Sikkink’s (2013) model and the (preceding) ‘spiral model of human rights change’ might help to understand why transnational actors have failed to ‘pressurize’ Brazilian governmental actors into compliance with indigenous peoples’ rights related international norms. Risse-Kappen, Ropp and Sikkink (1999) argued that norm-violating states’ reactions on accusations by transnational actors often consists out of denial as they oppose the “suggestion that its national practices in this area are subject to (international) jurisdiction” (p.23) and (still) have a range of strategies at their disposal to counter the pressure by TNAs. One example can be found in the way the Brazilian National Indigenous Foundation (FUNAI), which is (rather ironically) the governmental agency assigned with the task of protection the Brazilian indigenous

population, has reacted on the construction of the *Belo Monte* hydroelectric dams. Although various TNAs, for example Amazon Watch and Survival International, have argued that the *Belo Monte* project will cause a situation in which “thousand of indigenous peoples will lose their homes, their livelihoods and their lives” (Survival International, 2014), FUNAI has claimed the construction of the dams will not directly affect any indigenous groups (Minority Rights Group International, 2012, p.95). To phrase it in a positive way; this statement is only partly true, as FUNAI’s guarantee does not apply to those indigenous peoples (possibly including uncontacted tribes) that live on lands that are not (yet) demarcated as tribal or indigenous territory. In fact, whereas the Brazilian government estimates that the *Belo Monte* project will result in the displacement of around 16.000 people (FUNAI, 2012), transnational actors (such as minority Rights Group International) argue that over 40.000 (mostly indigenous) people will be displaced). They argue, furthermore, that the dam will also indirectly threaten the lives of indigenous peoples living downstream the river (Minority Rights Group International, 2012, p.96).

In 2010, a group of local, national and transnational actors (including environmental organizations and scientists as well) formed a united opposition against the *Belo Monte* project under the banner of the ‘Movement of People Affected by Dams’. Eventually, this movement filed a complaint against the dam project at the Inter-American Commission of Human Rights (IACHR), claiming that “their right to free, prior and informed consent<sup>50</sup> had not been respected” (Minority rights Group International, 2012, p.96). In the course of 2011, the IACHR as well as a Brazilian federal court ordered the Brazilian government to stop the (licensing of) the construction of the dams until “its developers consulted with the indigenous groups and environmentalists in the area” (ibid.). The Brazilian government, however, responded in a rather unexpected way as it firmly rejected the IACHR request, calling it ‘unjustified’. Moreover, the Brazilian government also decided to stop funding the IACHR and cancelled Brazil’s contribution (of approximately \$800.000) immediately, which lead up to the suspension of the “(...) membership on the IACHR of Brazil’s candidate – a former Human rights Minister under the Lula presidency” (ibid, p.97). In June 2011, the Brazilian government gave final approval to (the construction of) the *Belo Monte* hydroelectric dam project.

It is important to understand that it matters *who* (i.e. which actor) is the violator of international norms, human rights in general and indigenous peoples’ rights more specifically. Actions of TNAs aimed at threatening states with (the loss of) reputation in the international system do only ‘work’ if the state (including, for example, governmental agencies) is violating human rights or (other) international norms. As we have seen previously, there are other actors as well (next to the state)

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<sup>50</sup> Note that this rights is protected under the Brazilian constitution.

who violate indigenous peoples rights. One can think, for example, of (multinational) companies, mineral extracting companies or individuals engaging in (illegal) logging activities that result in the degradation or destruction of the forests and (hence) the livelihood of the Brazilian indigenous peoples. A large number of actions by COIAB, for example, are aimed at creating awareness about the countless incidents of logging and (gold) prospecting within the indigenous territories. When criticizing these sorts of actors<sup>51</sup>, one has to be aware of the fact that the Brazilian government cannot be held accountable (directly) for this breach of indigenous peoples' rights. It is, however, the task of the Brazilian (national) government (especially FUNAI) to protect indigenous peoples from the various actors (besides the state) that affect, and often violate, their rights.

On the other hand, we can also identify various actions by TNAs, such as Amazon Watch, aimed specifically at statist actors: most recently these actions have centered around the *Belo Monte* hydroelectric dam project. As we have argued before, the Brazilian government violated the rights of indigenous peoples during, and prior to, the construction of the *Belo Monte* dam. In this case, it is clear that the Brazilian government is the pivotal (some might say even the only) actor able to change its policies<sup>52</sup> concerning the *Belo Monte* project and (hence) the violation of indigenous peoples' rights. However, even in this case, in which it is abundantly clear that the Brazilian government is a violator of international norms (and, therefore, the 'right' target of actions by TNAs aimed at threatening with the loss of reputation), the licensing and building of the *Belo Monte* dam continuous without any change in policies.

### *Actions aimed at creating incentives*

In this section of the analytical chapter, we will focus on the actions of TNAs aimed at creating incentives for governments to comply with certain international norms. As we have argued before, mechanisms of sanctions and rewards (respectively negative and positive incentives) are used by actors to change a state's utility calculations. We argued, however, that (positive) incentives may also include help in (re)building state capacity as this is seen as a necessary condition in order to overcome the problem on involuntary non-compliance.

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<sup>51</sup> Clearly, the actors engaging in these forms of, for example, illegal logging are not related (directly) to a statist actor. Some argue (see: Gonçalves, 2009, p.149), however that the Brazilian government has given *tacit* approval to these (illegal) activities.

<sup>52</sup> A change in policy, for example, to include the indigenous peoples in the decision-making process on the construction of the *Belo Monte* dam, could be considered as a 'move' into the direction of better compliance with international norms on the rights of indigenous peoples.



According to Börner et al. (2011) positive incentives are, to state the obvious, measures designed specifically to encourage (the protection of) indigenous peoples' rights (p.10). Incentive mechanisms can take the form of 'payments for environmental services'<sup>53</sup> (PES), which are based on the '*quid pro quo*' idea that, for example, local (governmental) actors as well as indigenous people may benefit from protecting the ecological system in which they live, or any other goal that is promoted by a TNA. In the case of Brazil specifically, a rather small number of TNAs have strived for establishing "socially inclusive PES initiatives" (Rosa et al., 2003, p.6) aimed at battling deforestation with the goal to create a project of 'local carbon storage' (Grieg-Gran et al., 2005, p.1518). These actions are, however, undertaken only by a couple of (regional) socio-environmental NGOs, such as the *Instituto Ecológica*. This institute is, in fact, a Brazilian NGO that has been "mitigating the effects of climate change through (...) community-based sustainability activities" (Instituto Ecológica, 2014) for over a decade. 'Instituto Ecológica' developed the *social carbon* concept, incorporating carbon trade within the PES practices (ibid.). *Instituto Ecológica's* PES approach, however, is aimed solely at local (governmental) actors, not targeting (and, therefore, hardly affecting) the Brazilian (national) government and its policies concerning international norms.

Negative incentives are, as we have argued in the theoretical part of this thesis as well, quite rare as no TNA has the financial means, nor the political power, to impose financial sanctions on (national) governments (Huettner, 2012, pp.24-26). Instead, it is more likely that TNAs engage with tactics aimed at *threatening* to stop (or suspend) positive incentives. *Boycotts*, however, are often seen as a tool for TNAs to "threaten to interfere with economic activities in uncooperative states" (Betsill and Corell, 2008, p.23). One of the most eye-catching boycott campaigns of the last decades is the so-called 'Mahogany is Murder' campaign<sup>54</sup> initiated by Friend of the Earth (FOE). This campaign, and the subsequent boycott, focused on illegal wood lumbering and its negative impacts on the indigenous people living in the Amazon region. Next to calling for a boycott on Brazilian wood, FOE also highlighted the lack of resources and the high level of corruption within Brazilian governmental agencies (such as FUNAI) that are issued with protection the indigenous peoples and their lands (Zhou, 2000, p.39). Other boycotts, aimed at drawing attention to the situation of indigenous

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<sup>53</sup> Payments for Environmental Services (PES) are (positive, mostly financial) incentives offered to local actors in exchange for providing some (ecological) services. According to Tacconi (2012), PES offers a "transparent system for the additional provision of environmental services through conditional payments to voluntary providers" (p.34) and, hence, promotes the conservation of resources within the indigenous territories.

<sup>54</sup> This campaign raised a lot of attention in (especially) Europe, as the commercial accompanying the boycott argued that "it costs a lot to have a toilet seat made from the world's last mahogany trees. If the Brazilian Indians, who own the trees, don't want to sell them, they can pay with their lives. The killing won't stop until you take action" (Zhou, 2000, p.40).

peoples in Brazil, targeting sectors or parts of the Brazilian economy<sup>55</sup> that are not (directly) related to the lands and livelihood of indigenous peoples could not be found by the researchers.

The third incentive we identified in the theoretical framework deals with (re)building state capacity. As Turner and Karl (2008) argue, the changing nature of indigenous peoples' rights violations in Brazil over the last decades necessitates a heavier emphasis on developing and rebuilding state capacity (p.4). Emerging states often lack the capabilities (and sometimes even authority) to implement and execute certain tasks. NGOs are often "believed to be able to substitute a wide range of state functions" (Kasa and Næss, 2005, p.792). With regard to the Brazilian case (and as we have seen earlier on in this research as well), a network of (transnational) actors has emerged that linked Brazilian environmental (primarily concerning the rainforests in the Amazon region) to human rights and indigenous people' issues. From the 1990s onwards, various NGOs (ranging from WWF Brazil, friends of the Earth (FOE) to Greenpeace) started to engage in (inter alia) forest management initiatives (ibid, p.797). It is not so much the case, however, that NGOs *substitute* state functions. Rather, "the links between the government and NGOs (...) in the Amazon region resemble a synergistic approach" (Kasa and Næss, 2005, p.799), in which the state makes use of resources and efforts made available by NGOs.

At this point, the role of Brazilian NGOs (in contrast to the *international* NGOs that are listed in table 2) in state-building, sometimes also addressed as 'civic leadership', has to be discussed. See table 3 for an overview of Brazilian NGOs<sup>56</sup>.

<b>Brazilian NGOs and 'civic leadership'</b>	
<b>Name of the organization</b>	<b>Description/type</b>
Instituto Brasileiro de Análises Sociais e Econômicas (IBASE)	Applied Research
Federação de Órgãos de Assistência Social e Educacional (FASE)	Grassroots Movement
Instituto de Estudos, Formação e Assessoria em Políticas Sociais	Training and Technical Assistance
Instituto de Estudos Sócio-Econômicos (INESC)	Information Sharing

**Table 3: Overview of Brazilian NGOs aimed at enhancing civic leadership (various sources)**

The NGOs listed in table 3 employ a broad spectrum of activities, ranging from helping governments (on a local, regional or national level) to act with regard to (the violence against) street children, providing (organizational) assistance to community organizations to providing "training and technical assistance in the areas of urban planning, public transport (...) and community participation in governmental decision-making to neighborhood associations, labor unions and governmental agencies throughout Brazil (Garrison, 2006, p.251). Only very few of the Brazilian NGOs are, however,

<sup>55</sup> For example, calling for a (general) boycott of Brazilian products.

<sup>56</sup> Again, we do not claim that this table provides an exhaustive overview of all the Brazilian NGOs active. The NGOs mentioned serve, therefore, merely as an example of Brazilian NGOs aimed at enhancing civic leadership.

involved in state-building (or 'civic leadership') activities concerning indigenous peoples. The Instituto de Estudos Sócio-Econômicos (INESC) is among the few to engage in topics related to human rights, and indigenous rights in specific (ibid, p.252).

In this section, we have looked closely at the efforts of various TNAs in creating (positive as well as negative) incentives. At this point, the question remains in what ways the Brazilian government has reacted on these efforts. If we take a look at the arguments posed by Hopgood (2014), we see that many TNAs fail to answer the question what difference their actions make: human rights issues appear to be merely "(...) output and comparatively little outcome" (p.13). TNAs aiming at improving the human rights of certain groups may have a "too narrow range of permissible strategies" (ibid), which appears to be a rather ineffective way of pushing for change. The same logic of reasoning is applicable to the case of TNA advocacy for better (Brazilian) compliance with international norms on indigenous peoples' rights. Both with regard to negative and positive incentives (the latter encompassing both 'rewards', such as PES-projects, and incentives aimed at (re)building state capacity), there seems to be only very little incentives for the Brazilian government to change its policies into the direction of (better) compliance with international norms. Last year, for example, indigenous peoples' groups occupied the *Belo Monte* hydroelectric dams and travelled to Brasília to meet with representatives of (inter alia) FUNAI. Despite their threats to occupy the dam once more, and the actual occupation of the FUNAI headquarter, the Brazilian government (including FUNAI) largely ignored the indigenous groups and their call for more recognition of their rights. According to Amazon Watch, representatives of various indigenous groups stated that they "(...) understood what the government is saying – that they will build dams on our lands without caring about what we think. Even if they consult us, our opinion will not matter" (Amazon Watch, 2013). Even though projects like the *Belo Monte* dams are considered by experts as cost-ineffective projects "rarely delivering what they promise" (Leslie, 2014) that are (above all) detrimental for the indigenous peoples and their livelihoods, the Brazilian government does not appear to change its policies into the direction of better compliance with international norms on indigenous peoples' rights.

### *Actions aimed at creating persuasive arguments*

In the following section of this chapter we will focus on the process of creating persuasive arguments by TNAs, aimed in particular at changing the mechanisms through which the discourse around a certain international norm (in this case the rights of indigenous peoples) is framed. As we will see, this goal can be achieved using multiple techniques, including (but not per se limited to) broadening a policy field or linking a certain norm to other norms, goals or practices.

From the end of the twentieth century onwards, indigenous groups all over Latin America, but certainly in Brazil as well, have challenged the discourse around the various (national) projects aimed at nation building and assimilation of indigenous people into the societies. Most of the efforts by indigenous peoples' movements were (and still are) aimed at questioning the necessity of so-called 'outward' assimilation into the societies of Latin America, trying to influence the agenda setting of governments and administrations while striving for (constitutional) recognition of the "multiethnic and pluri-national composition of their countries" (Yashar, 2005, p.288). The (openly) emergence of indigenous peoples' denunciation of central government led assimilation-policies has "challenged the conception that (...) a 'mestiço'<sup>57</sup> nation' does or should correspond to the existing state" (ibid, p.289). Instead, many indigenous movements advocated the notion of a more heterogeneous (ethnically as well as culturally) nation or state. In order to achieve this goal, many indigenous groups appealed to international norms and laws. Most notably, they have lobbied (national) governments to ratify international conventions, such as the ILO 169 convention on indigenous and tribal peoples<sup>58</sup> and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Brazil ratified, as one of the last in South-America, 'ILO 169' in 2002. This convention is widely regarded as a mechanisms or tool for indigenous peoples to push for (constitutional) reforms with regard to the issue of ethnically heterogeneous populations (ibid.).

Indigenous peoples in Brazil have become, over the past decades, better able to voice their dissatisfaction with the predominant (Brazilian) discourse on indigenous people. Indigenous peoples' notion of 'indigeneity' often counters the leading discourse on sovereignty and (the practice of) citizenship (Gonçalves, 2009, p. 134). The articulation of (grassroots) indigenous movements in Brazil 'exploded' from the late 1990s onwards, as (international) NGOs gained interest in the struggles of indigenous people. Many NGOs "connected sustainable development, local political representation, and the participation of traditional communities in the stewardship of the forest" (ibid, p.141). Next to action from international NGOs, local (or regional) indigenous movements started to raise their political voice, primarily as a reaction to the limited forms of citizenship that were granted to them. The largest of these indigenous movements is the *Confederation of the Indigenous Organizations in the Brazilian Amazon* (abbreviated to COIAB). COIAB's main project are centered around indigenous peoples and their role in the sustainable development of the Amazon forest, (hence) linking the issue

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<sup>57</sup> The term *Mestiço* was used to refer to people of mixed European and (South) American/Indian ancestry. Today, however, the word '*coboclo*' is used more often to refer to a person of mixed backgrounds (Daniel, 2012, p.148).

<sup>58</sup> With regard to the efforts of indigenous peoples to advocate for a (more) heterogeneous society, ILO convention 169 was rather important, as "at a minimum, it calls on states to recognize ethnic heterogeneity where they had previously advanced (...) aspirations of homogeneity" (Yashar, 2005, p.289).

of indigenous peoples' rights (focusing on access to education and healthcare) and the preservation of the forest which is, after all, the indigenous peoples' living area (ibid, p.142). Although movements like COIAB are organized locally, most of them build alliances with NGOs or (other) international organizations which provide them primarily with financial aid (ibid, p.144). Hence, indigenous concerns "have gathered transnational force" (Tsing, 2007, p.42) through the concept of issue-linkage. Indigenous movements have successfully engaged in alliances with, primarily, the so-called 'environmental movement'. According to Tsing (2007) the "environmental-indigenous axis (...) offers an opportunity for 'indigenous voice' for those communities with neither treaties nor legacies of national inclusion" (p.48), empowering their approach to national governmental actors.

The majority of indigenous movements take great care in 'selecting' the network within which they set up their advocacy campaigns. Often, NGOs can be of help, even if they are established (originally) for different purposes. Amnesty International can be seen as an example in this respect. Throughout the years, Amnesty set up multiple so-called 'watching briefs' on indigenous prisoners, aimed at ensuring that the Brazilian government would treat (indigenous) prisoners with fairness. These forms of issue-linkage can be found by environmental groups alike (for example Ecoterra International or the Forest and the European Union Resource Network), as they advocated for the protection of flora and fauna in the Amazon region. Although these organizations (individually) are not committed (per se) to indigenous peoples and their rights, they share some of indigenous peoples' goals, making them ideal actors to 'pair up' for indigenous movements (Coates, 2005, p.247).

NGOs focusing specifically on promoting and defending indigenous peoples' rights emerged, for the first time, during the late 1960s and early 1970s. Groups such as the International Work Group for Indigenous Rights (IWGA) "researched and publicized the plight of indigenous peoples and sought to alert the (...) governments involved to the needs and demands of indigenous communities" (Coates, 2005,p.248) gaining reputation for high-impact actions (inter alia through extensive media coverage), based on strong ties with the indigenous movements involved (ibid.). Hence, organizations such as IWGA provide rather valuable assistance to (Brazilian) indigenous movements. According to Coates (2005), most of the NGOs currently undertaking action in the Amazon region "take their lead from the tribal peoples" (p.249). Hence, their role is limited to providing assistance (organizational, financial or promotional by nature) to those (indigenous) movements that otherwise would have major difficulties with reaching national and international (political) attention. 'Earth Peoples' is a good example of such an organization, as their purpose is to "share, exchange, and disseminate information (...) with indigenous groups" (Earth Peoples, 2014), as well as assisting these groups "in their struggle for empowerment" (ibid.).

The reactions of the Brazilian government on transnational actors' efforts to change the overall discourse on indigenous peoples' rights do not, however, differ much from the governments' reactions on TNA efforts aimed at changing the incentive structure or pressurizing governmental actors through (threatening with) the loss of reputation. FUNAI (the Brazilian National Indigenous Foundation), for example, did not address the various calls from indigenous movements to change its attitude (discourse) towards the role of indigenous peoples in protecting the natural resources and wildlife of the Amazon region. Furthermore, FUNAI has systematically downplayed the impact of large infrastructural and (hydro)electric projects (such as the *Belo Monte* dams), arguing that such projects will not "directly affect the livelihoods or survival of indigenous peoples" (Minority rights Group International, 2012, p.96) who live near the *Belo Monte* dams or downstream the river Xingu.

On the other hand, we have to note that it appears as if the Brazilian government is (more) receptive to (international) pressure (e.g. by TNAs) to adhere to norms with regard to environmental issues. As we argued before, these issues may be linked to indigenous peoples' related topics and issues. Greenpeace (2014), for example, highlights the Brazilian compliance with international agreements on the creation of a so-called 'conservation area' in the Amazon region<sup>59</sup>. The same can be seen if we look at the way in which Brazil reacted to international mechanisms such as REDD and REDD+<sup>60</sup>. According to Long (2012) "Brazil is (...) becoming a world leader<sup>61</sup> in developing national and sub-national REDD+ frameworks" (p.1) aimed at providing financial remunerations for diminishing carbon emissions through the avoidance of (illegal) lumbering and other forms of deforestation. The implementation of these REDD+ frameworks, however, has repercussions for the indigenous peoples living in the Amazon areas in question, as they are frequently excluded from REDD+ policy and decision-making processes and often feel excluded from national and sub-national negotiations towards REDD+ agreements (ibid, pp.16-17). Indigenous movements have repeatedly stressed their concerns that REDD+ "as currently conceived may promote the view of the forest as simply a carbon store, rather than a holistic forest, and draw attention to the potential for abuse of indigenous populations through inequitable REDD+ arrangements" (Long, 2012, p.19). Moreover, indigenous movements fear that the Brazilian (national) government, but also (multinational) companies or even

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<sup>59</sup> This conservation area in the Amazon region was established under the reign of president Lula da Silva in 2006. President Lula de Silva's decree "calls for around 1.6 million hectares to be permanently protected and totally off limits to logging and deforestation" (Greenpeace, 2014).

<sup>60</sup> REDD and REDD+ are (a series of) mechanisms under negotiation by the UNFCCC (United Nations Framework Convention on Climate Change) aimed at reducing emissions from deforestation and forest degradation.

<sup>61</sup> Since president Rousseff came into power, however, the Brazilian government's commitment to environmental issues "came under question as well, (...) as the government has supported amnesty programs for individuals who engaged in illegal deforestation" (Long, 2012, p.3).

NGOs, will 'carve up' forests (within indigenous territories) "to the exclusion or disadvantage of indigenous and traditional communities" (Griffiths, 2007, p.16).

### *Recent advances: is UNDRIP a game changer?*

Looking closely at the way in which TNA's have reacted to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) might help us to answer the question whether this declaration can be considered as a 'game changer'. This question is highly relevant, as many (non-governmental) organizations as well as (other) TNAs, such as 'Cultural Survival', argue that "all our (...) work is predicated on the United Nations Declaration on the Rights of Indigenous Peoples" (Cultural Survival, 2014). The question remains, however, whether these actions have led to (better) compliance with international norms on indigenous peoples' rights.

At this point, it appears as if all three mechanisms deducted from the Risse, Ropp and Sikkink (2013) model 'work'. TNAs employed activities aimed at (governmental) actors' loss of reputation, created (primarily positive) incentives for governmental actors, and tried to change the overall discourse on 'indigeneity' to the benefit of the indigenous peoples themselves. However, although the three mechanisms played in role in advocating for (compliance with) international norms on indigenous peoples' rights, we have to note that these mechanisms were not as 'strong' as expected on beforehand. Not only did we found no evidence of (governmental) actors working towards better compliance, many of the actions by TNAs seemed to badly coordinated as well. There are, for example, multiple groups (Earth Peoples, Forest Peoples Programme or Friends of People Close to Nature, to name only a few) that advocate for improving the living situation of indigenous peoples through preserving the Amazon forests. Their activities are, however, almost in no cases mutually coordinated. Every organization seems to focus on its own 'little' area of interest. Furthermore, although many of the actions by TNAs are influencing the Brazilian government one way or another, the vast majority of them are not aimed *primarily* at influencing governmental behavior or inducing compliance with international norms on indigenous peoples. If we take a look, for example, at 'Survival International' we have to conclude that this organization is primarily aimed at attracting (attention) to issues connected to indigenous peoples and their living environments. Although governmental actors are also affected by public attention, they are not influenced directly.

UNDRIP is a rather recent declaration<sup>62</sup>. Still, the signs are not too promising. Ms. Guajajara, national coordinator of the Brazilian Association of Indigenous Peoples (APIB) argued at the 25<sup>th</sup> UN Human Rights Council that the Brazilian government is currently devastating indigenous peoples' livelihoods through the construction of dam constructions in the Amazon region, putting "Brazil's reputation on the international stage at stake" (Amazon Watch 2014b). In a similar way, the 'Interamerican Association for Environmental Defense' (AIDA) criticized the Brazilian government for the continued usage of the so-called 'Security Suspension' (*Suspensão de Segurança*) that allows "chief justices, upon request from the government, to identify suspend legal ruling in favor of indigenous peoples' rights based on allegations of supposed threats to national security' (ibid.). This law, which originates back to the era of Brazil's military dictatorship, is still used in the 'post-UNDRIP' years: most recently, in the case of the *Belo Monte* hydroelectric dam projects (ibid.). By abiding to this law, the Brazilian government fails to ensure the rights of indigenous peoples as described in its own constitution (Jaichand and Sampaio, 2013, p.423). Moreover, the (recent and rather frequent usage of) *Suspensão de Segurança* makes it, per definition, impossible for Brazil to comply with international norms on indigenous peoples' rights, including ILO convention 169 and UNDRIP. Hence, despite attempts to make the non-compliance of the Brazilian government visible, it seems that "the alliance of economic interests and political power represent a major crisis for the implementation of indigenous rights in today's Brazil" (APIB, 2013). Hence, calls by the UN Human Rights Council (2012) to the Brazilian government to "respect and make effective indigenous peoples rights guaranteed by ILO Convention 169 and the United Nations Declaration on the Rights of indigenous Peoples" (p.4) are not likely to be taken into account.

As for UNDRIP specifically, the current stance of the Brazilian government does not violate any international as (we have touched upon this issue as well in the first section of this chapter) this UN General Assembly resolution "cannot be considered binding on states that have signed it" (Jaichand and Sampaio, 2013, p.425). Nevertheless, denying indigenous peoples their (constitutionally protected rights) for what the government deems to be the (economical) interest of the Brazilian society should not only be seen as a "step backward on the road to a multicultural world" (ibid, p.446), but also as a clear sign that the Brazilian government does not care too much about indigenous movements nor international norms with regard to indigenous peoples' rights. The situation with regard to 'the indigenous question' has only deteriorated since the Rousseff administration, as from that period onwards the Brazilian government is promoting and implementing rather contradictory policies. On the one hand, it promotes greater social justice

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<sup>62</sup> Recall that UNDRIP is adopted by the UN General Assembly in 2007



(aimed at indigenous peoples as well), on the other hand the government promotes relentless (economic) developments without regard for the rights of indigenous peoples (Morton and Carniero da Cunha, 2013). Moreover, in December 2013, the Brazilian Chamber of Deputies voted on a so-called 'Complementary Bill' which deals with the Brazilian indigenous lands and territories. This decision legalizes "exceptions to Indigenous peoples' exclusive possession and usufruct rights, in cases where the Federal Republic has a relevant interest (ibid.). Besides the fact that it is rather vague (and hard to define) what exactly a 'relevant interest' is for the Brazilian state, practically every decision of the Brazilian government can (potentially) be framed under this definition. Many TNAs fear that governmental actors as well as (multinational) companies will employ a broad range of activities on indigenous lands and territories referring to this decision (Xerente and Pinheiro da Silva, 2013). Some even argue that this policy is the result of the Brazilian government "giving in to pressure from major landowners, bargaining away indigenous rights in exchange for support" (Morton and Carniero da Cunha, 2013).

As Swepton and Plant (1985) already argued some decades ago, international norms (such as UNDRIP) are only effective if they are 'fitting' to the needs of the people they are supposed to protect. At the same time, effectiveness of (the implementation of, and compliance with) international norms is also affected by the "resources, knowledge and access to legal and administrative machinery (Swepton and Plant, 1985, p.92) at the disposal of the (indigenous) peoples concerned. Apparently, the various TNAs addressed in this research were not able to provide the indigenous peoples of Brazil with these kinds of resources or knowledge. Hence, despite various actions by TNAs, UNDRIP does not live up to its aspiration and cannot be seen as a 'game-changer' with regard to the way in which Brazil deals with indigenous peoples' rights.

#### 4.4 Summary of the Chapter

This chapter was aimed at analyzing the Brazilian compliance with international norms on indigenous peoples' rights and the role of various actors in 'pushing' the Brazilian government from commitment to compliance with these norms. This chapter should be considered as the core part of this research.

First, we discussed which international 'mechanisms' are available to safeguard indigenous peoples' rights. The international legal representation of these rights is primarily covered by ILO Convention 169 and several UN working groups and declarations. Most recently, 'UNDRIP' was adopted (in 2007) by the UN General Assembly. Although having a non-binding status, UNDRIP is aimed at providing indigenous peoples with rights concerning their culture, language and so on and so forth.

Second, we focused on Brazil's current stance with regard to (compliance with) norms on indigenous rights and argued that land rights and the (lack of) demarcation of indigenous peoples' grounds and territories in particular should be seen as one of Brazil's pivotal problems with regard to indigenous rights. Furthermore, we highlighted the malfunctioning of the governmental agency FUNAI: partly due to the fact this organization is structurally underfunded, FUNAI is incapable to act according to its own principles. These findings are, however, not unsurprising if we take the historical context into account. We argued that the successive Brazilian governments (from the mid-1980s onwards) have failed to protect the rights of indigenous peoples adequately, as they did not comply with (inter)national conventions and obligations to recognize these peoples' rights. Most recently, the (planned) construction of the *Belo Monte* hydroelectric dam poses a broad range of threats to the indigenous peoples living in the Amazon region.

Third, we analyzed the efforts of TNAs aimed at advocating for change in (governmental) actors' behavior along the lines of the three hypotheses posed in the methodological part of this research. We argued that various actors work towards influencing or altering a state's reputation. Through (for example) the formation of alliances with various organizations, TNAs (such as COIAB) have been able to pressurize the Brazilian government. TNAs also constructed various incentive mechanisms, primarily 'positive' by nature. So-called PES mechanisms allowed for including a broad variety of (local) actors in the protection of the Brazilian forests. With regard to the role of TNAs in (re)building state capacity, which we argued should also be seen as a positive incentive as well, it appeared that TNAs did not substitute state functions. Rather, the TNAs (most of them originating from Brazil) worked together with the Brazilian government in a 'synergistic' approach. Only few of these actors, however, are involved in state building activities concerning indigenous peoples. The third (and last) hypothesis is concerned with the role of TNAs in creating so-called persuasive arguments for the Brazilian government to comply with norms on indigenous peoples. TNAs created these arguments by, inter alia, broadening a policy field and linking a certain norm to other norms, goals or practices. Historically seen, indigenous groups have put much effort into challenging the discourse around various projects aimed at the assimilation of indigenous peoples into the Brazilian society. In recent decades, (western) TNAs have assisted these groups in formulating their demand at the national and international level. Indigenous peoples' demands have been articulated more clearly through the concept of issue-linkage: primarily by groups linking the issue of indigenous rights with the preservation of the forests.

It appears as if all three 'mechanisms' work. However, although they played in role in advocating for compliance with international norms on indigenous peoples' rights, we have to note that these mechanisms were not as 'strong' as expected on beforehand. UNDRIP, the latest advancement of the

United Nations in protecting the rights of indigenous peoples worldwide, does not change the day-to-day situation of Brazilian indigenous peoples, as the various TNAs were not able to 'move' the Brazilian government from commitment to compliance with this international norm.

## Chapter 5 Reflection on the Theory

### 5.1 Introduction

Within this chapter, we will link the empirical reality (as investigated in the previous chapter) with the theoretical framework we constructed earlier in this thesis. Recall that in this framework we focused on norm *compliance*: we formulated expectations on the conditions under which we expected actors to ‘live up to their words’ and implement and execute international (human rights) norms in their day-to-day practices. Risse, Ropp and Sikkink (2013) argued that there are four so-called *social mechanisms* that foster compliance with international human rights norms: coercion, incentives (sanctions and rewards), persuasion and capacity-building (pp. 13-16). The Risse, Ropp and Sikkink (2013) model, however, did not provide us with an in-depth conceptualization of the mechanisms. Therefore, we complemented this model on norm compliance with insights from other IR scholars and constructed ‘our own’ theoretical framework with regard to the mechanisms believed to induce compliance with international norms. Based on this framework, we came forth with three hypotheses, which we tested in the previous chapter.

It is important to note that we started to build our ‘new’ theoretical framework with three (instead of four) social mechanisms. We did not perceive ‘capacity building’ as a social mechanism in itself. Rather, we argued that the social mechanism of ‘incentive structures’ should be seen as a more general and overarching mechanism encompassing not only sanctions and rewards<sup>63</sup>, but also actions, initiatives and processes aimed at enhancing or (re)building state capacity. This should not be seen as an adjustment to the Risse, Ropp and Sikkink (2013) model per se, but it highlights that there are other, perhaps more logical or feasible, ways to structure the social mechanisms that are at the center of the theoretical model.

### 5.2 Improving the Theoretical Model

In this section we will discuss how to adjust the Risse, Ropp and Sikkink (2013) model in order to account for the Brazilian non-compliance with international norms on indigenous peoples’ rights. We will propose several (new) scope conditions that may affect the ‘working’ of the social mechanisms and (hence) the likeliness that statist actors will comply with certain international norms.

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<sup>63</sup> Risse, Ropp and Sikkink (2013) perceive (only) sanctions and rewards as part of the incentive structure.

First of all, we will focus on incorporating the (perceived) salience of an issue into the theoretical model. This scope condition takes the perspective of the (transnational) actor's advocacy campaign on a specific issue. Second, we address the considerations (and concerns) of the state (which is the target of transnational actors' (advocacy) campaigns), as we argue that the relative weight of 'gains' and 'losses' should be incorporated in the theoretical model as another scope condition. The third part of this section focuses on the importance of the target actor's 'nature'. We argue that it makes a difference whether the violator of (international) norms is a state or a non-state actor.

### *The (perceived) salience of the issue at stake*

Within this research, it appeared that the social mechanisms identified in the Risse, Ropp and Sikkink (2013) model were not sufficient for compliance to occur. As argued in the previous chapter, many of the actions by TNAs influence the Brazilian government one way or another, but the vast majority of them are not aimed *primarily* at influencing governmental behavior or inducing statist compliance with international norms on indigenous peoples. Furthermore, many actions by TNAs are not aimed *specifically* at indigenous peoples, although these people and their rights may be affected one way or another. If we take a look, for example, at 'Survival International'<sup>64</sup> we have to conclude that this organization is primarily aimed at attracting (public) attention to a broad range of issues connected (in various degrees) to indigenous peoples and their living environments. Although governmental actors are affected by these actions aimed at changing the discourse on indigenous peoples and their rights, they are not influenced directly. Another examples can be found if we have a look at 'Earth Peoples', which has initiated several projects centered around the sustainable development and preservation of the Amazon forest. As the Amazon is the indigenous peoples' living area, they are 'linked' to the projects of 'Earth Peoples'. There are, however, only very little projects aimed solely at empowering indigenous movements, changing the discourse, pressurizing the Brazilian government to adjust its stance towards indigenous peoples, or other actions aimed specifically at improving the rights of indigenous peoples.

Therefore, we argue that a mechanism which could be described as 'the perceived salience of the issue at stake' should be added to the model. The underlying thought is that compliance with a certain norm can only be induced when a rather large number of (different) organizations (such as transnational actors) is able (and willing) to invest great amounts of (financial) resources in, for

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<sup>64</sup> See chapter 4 (Analysis) for a more elaborate discussion of the actions by TNAs.

example, an advocacy campaign on the *specific* issue at stake (in this case, thus, a specific focus on indigenous rights).

The ‘salience’ of indigenous rights is (or, at least, has been) rather low. Apparently, other issues such as the preservation of the Amazon forest have gained more salience with TNAs (and other actors) in the recent decades. As we argued before, this does not mean that indigenous peoples did not benefit from actions and campaigns by TNAs. It implies, however, that various TNAs were concerned more (or had an external impetus to do so) with (inter alia) norms or issues with regard to the Amazon forest.

### *Incorporating the relative weight of ‘gains’ and ‘losses’*

The second scope condition we propose to add to the original Risse, Ropp and Sikkink (2013) model is centered around the thought that a government is more likely to comply with international norms if its ‘gains’<sup>65</sup> (for complying with the norm) are higher than the ‘losses’<sup>66</sup> (for *not* complying with the norm). This scope condition borrows heavily from the work of, inter alia, Verbeek (2012), who argued that states always ‘balance’ between (short-term) losses and (long-term) benefits. Although complying with international norms enables states to enhance their reputation and to “pursue their interests in a relatively inexpensive way” (Verbeek, 2012, p.198), one might argue that for Brazil it is (apparently) more attractive to oppose international norms (at the expense of Brazilian indigenous peoples and their rights) and to pursue economic benefits.

Although this is a rather *realist* perspective, we argue that it is exactly this phenomenon that is at stake in the case of the Brazilian (non) compliance with international norms on indigenous peoples’ rights. One might argue that, in recent decades, Brazil could ‘win’ more by (for example) constructing various hydroelectric dam projects in the Amazon region (most notably the *Belo Monte* project) or turning forests into agricultural lands and (hence) not complying with international norms. Apparently, the various transnational actors addressed in this research have not been able to create attractive or convincing incentives for the Brazilian government to comply with international norms on indigenous peoples’ rights. One might, therefore, argue that the actions by TNAs, such as Amnesty International, were not effective in changing Brazil’s utility calculations.

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<sup>65</sup> For example economic gains.

<sup>66</sup> ‘Losses’ for not complying with an international norm are (typically) not measured in economic terms, but center around the idea that a state’s international reputation diminishes. See the theoretical framework (Chapter 2.4) for a more elaborate discussion on the role of reputation in IR.

### *'Who did it'? The importance of the actor's nature*

The third, and last, scope condition we propose to add to the Risse, Ropp and Sikkink (2013) model is concerned with the argument that the social mechanism aimed at threatening governmental actors with the loss of (international) reputation only 'works' if a governmental actor (for example a governmental agency) is the violator of the international norm(s) in question. This scope condition may sound rather trivial, but Risse, Ropp and Sikkink (2013) largely neglect the fact that there is a broad range of (non-governmental) actors, such as (multinational) companies, oil and gas extracting companies or (individual) illegal loggers that violate (inter alia) the rights of indigenous peoples in the Amazon region.

In the analytical part of this research (fourth chapter), we argued that various actions by TNAs (for example COIAB) are aimed at denouncing illegal loggers and (gold) prospectors within the Brazilian indigenous territories. It is rather questionable whether criticizing these non-governmental actors will influence the Brazilian government and its compliance with international norms, as the Brazilian government cannot be held directly accountable for the actions of non-governmental actors. Hence, when advocating for indigenous peoples' rights, for example by threatening governmental actors with the loss of (international) reputation, TNAs have to take into account that governmental actors cannot always be held accountable for indigenous rights' violations. Instead, TNAs could focus more on ensuring that governmental actors<sup>67</sup> fulfill their pledge with regard to protecting indigenous peoples' territories and safeguarding their (human) rights as prescribed by national and international law, treaties and declarations.

## 5.3 The 'New' Conceptual Model

Recall that, in the third chapter, we constructed a conceptual model which provided a concise graphical display of the theoretical framework, as well as an overview of the expected causal mechanisms at stake. In the previous section of this chapter, we came forth with three additional scope conditions that may influence the model's social mechanisms that foster compliance with international human rights norms. Figure 4 (see next page) depicts the renewed conceptual model, in which the (three) new scope conditions are taken into account: the first five scope conditions are presented in the original Risse, Ropp and Sikkink (2013) model as well, the last three scope conditions (depicted in yellow) are new and presented in this research.

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<sup>67</sup> With regard to the Brazilian case, it is the task of the *Fundação Nacional do Índio* (FUNAI or National Indian Foundation) to protect the indigenous peoples from the various non-governmental actors that affect, and often violate, their rights.

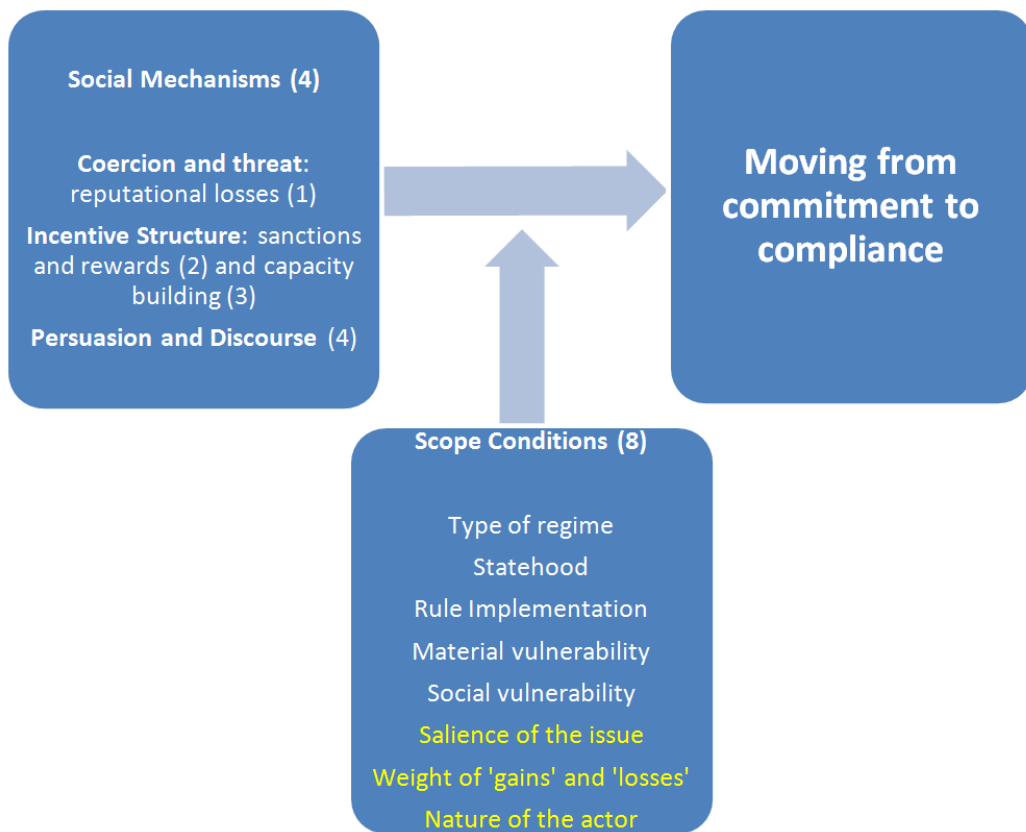


Figure 4: The Renewed Conceptual Model



# Chapter 6 Conclusion

## 6.1 Introduction

This thesis' last chapter is, rather logically, dedicated to a concise conclusion, focusing on validating or discarding the three hypotheses and, consequently, answering the research question. We will provide a so-called 'contextualization' of the results as well, in which we will reflect on the (sort of) evidence on which our results are based, and also link this research' results to the objectives of Amnesty's 'Strategic Studies Project'. Lastly, we will propose some suggestions for future research on the topic of norm compliance in general, and testing or improving the Risse, Ropp and Sikkink (2013) model more specifically, including the adjustments to the theoretical model we proposed in the previous chapter.

## 6.2 Findings

In the introductory part of this research, we argued that the contemporary academic literature on the concept of international norms, and specifically Risse, Ropp and Sikkink's (2013) model aimed at explaining (international) norm compliance, could not account for Brazil's deviant behavior. Hence, the question guiding this research stated as follows:

*"Why does Brazil not comply with international human right norms while, according to Risse, Ropp and Sikkink (2013) one would expect Brazil to do?"*

Based on a review of the current academic literature on norm compliance, and (subsequently) the construction of 'our own' theoretical model, we came forth with the following hypotheses:

- |                     |  |
|---------------------|--|
| <b>HYPOTHESIS 1</b> | <i>If transnational actors are able to threaten governmental actors with the loss of reputation, these latter actors will be inclined to comply with international norms</i> |
| <b>HYPOTHESIS 2</b> | <i>If transnational actors are able to create attractive and convincing incentives, governmental actors will be inclined to comply with international norms</i>              |
| <b>HYPOTHESIS 3</b> | <i>If transnational actors are able to raise persuasive arguments, governmental actors will be inclined to comply with international norms</i>                               |

After analyzing the ‘empirical reality’ in this research’ analytical chapter, we corroborate our initial argument that Brazil does not comply with international human rights norms on indigenous peoples’ rights. Issues surrounding land rights and the (lack) of demarcation of indigenous peoples’ territories, the malfunctioning of FUNAI, and the failure to consult indigenous groups with regard to the construction of the *Belo Monte* hydroelectric dam projects are problems, to name only a few, that impede the Brazilian compliance with international norms on indigenous peoples’ rights. The three hypotheses, however, could be validated, although they were not as ‘strong’ as we expected on beforehand: not only did we found only very little evidence of transnational actors (TNAs) working explicitly on (better) statist compliance with international norms, the actions of the various TNAs involved were badly coordinated as well.

Transnational actors were able to threaten the Brazilian government (as well as other governmental actors) with the loss of (international) reputation, were able to create attractive and convincing incentives and raised persuasive arguments for governmental actors to comply with the international norms in question. As, despite the presence of these social mechanisms, no compliance ‘occurred’, we argued that there are also other issues and processes at stake that influenced the Brazilian (willingness to) comply with international norms next to the social mechanisms identified in the initial Risse, Ropp and Sikkink (2013) model. We argued, for example, that a theoretical model aimed at explaining states’ ‘move’ from commitment to compliance with an international norm should incorporate the relative weight of (economic) ‘gains’ and ‘losses’. Furthermore, we highlighted that the ‘nature’ of an actor may be of importance as well: actions by TNAs, for example aimed at threatening governmental actors with the loss of reputation, are only an effective tool for pushing states towards (better) compliance with international norms if a statist actor is the violator of the norm(s) in question. Third, we argued that ‘the perceived salience of the issue at stake’ should be taken into account, as TNAs are only effective in advocating for better compliance with international norms if various actors are committed to (long-term) investments in a campaign on a *specific* issue at stake. In this research, we argued that there were almost no advocacy campaigns aimed solely at (improving) the position, living conditions or (human) rights of indigenous peoples.

Unfortunately, we cannot provide a clear-cut answer to the question what it takes to ‘move’ Brazil from commitment to actual compliance with international norms on indigenous peoples’ rights. We came forth, however, with some explanations why the Risse, Ropp and Sikkink (2013) model failed to account for the current Brazilian non-compliance. In the previous chapter, we proposed three new scope conditions (see figure 4) that may have the potential to affect the ‘working’ of the model’s social mechanisms and hence the likeliness that statist actors will comply with certain international norms.

### 6.3 Contextualization of the Results

In this section of the conclusive chapter, we aim to put this research' results in a broader context. First of all, we will provide a methodological contemplation: what sort of evidence do we have 'in our hands'. Second, we will try to link the results from this research to Amnesty International's<sup>68</sup> research agenda.

As Bennett (2010) argues, this research is based on the (qualitative) method of process tracing, which helps us to answer the question "whether the X and Y are correlated, (...) and whether this is because X caused Y, or whether this is because of some other (third) variable" (p.209). Hence: "process tracing can help establish whether there is a causal chain of steps connecting X to Y, and whether there is such evidence for other variables" (ibid.). Of course, as has certainly been the case in this research as well, there is no guarantee whatsoever that researchers using the method of process tracing are able to include *all* the variables that actually caused the dependent variable into their analysis. Nevertheless, it allows uncovering processes, mechanisms, and (scope) conditions that were not considered previously. Corroborating Bennett's (2010) arguments, we argue that the results of this research should be seen as an initial impetus, or first step, towards further testing and improving the initial Risse, Ropp and Sikkink (2013) model on norm compliance.

Amnesty International's 'Strategic Studies Project' is, as we have argued before, aimed at "mapping international social and political developments which may affect the future of human rights and the work of Amnesty International in particular" (Lettinga and van Troost, 2014, p.2). The question remains how this research on (explaining) the Brazilian non-compliance with international norms on indigenous peoples' rights 'fits' the objectives of the 'Strategic Studies Project'. Hopgood (2014) may provide us with an answer to this question, as he argues that the "*endtimes* are coming for human rights as effective global norms. (...) Not only is there a decline in European and American power, and the enhanced influence of (...) newly emerging and re-emerging powers that want, at the very least, to renegotiate some global rules and institutions, there is also an increasing contestation inside and outside the human rights movement" (p.11). Hopgood (2014) characterizes this new 'reality' as a *Neo-Westphalian* one, in which emerging powers (such as the BRICS) "do not necessarily want to sustain, and certainly do not want to expand, the hierarchical system of rules and norms centered around human rights" (ibid, p.18). This research provides TNAs, such as Amnesty International, with some highly necessary insights into the processes and mechanisms that may influence states' move from commitment to actual compliance with international norms on indigenous peoples' rights.

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<sup>68</sup> More specifically, we will try to link this research and its conclusions with (the objectives of) Amnesty International The Netherlands' *Strategic Studies Project*.

In the Risse, Ropp and Sikkink (2013) model, five scope conditions were identified that affected the 'working' of the social mechanisms and (hence) the likeliness that statist actors would comply with international norms. We argued, however, that this initial set of scope conditions should be regarded as *necessary*, but not *sufficient* intervening factors for compliance to occur: the so-called salience of the issue at stake, the weight of (economic) 'gains' and 'losses' as well as the nature (statist or non-statist) of the actor in question are likely to influence the process of states moving from commitment to compliance with international norms as well. These findings might have repercussions for the work of transnational actors such as Amnesty International. Therefore, we propose several practical recommendations, which may (inter alia) help TNAs to design and execute more effective advocacy campaigns.

First of all, we argue that transnational actors should put more effort into coordinating their actions: (inter alia) building alliances with other like-minded groups or organizations might be helpful in order to push for states' compliance with international norms. Moreover, and in contrast to what we have witnessed in the Brazilian case under research, when (trying to) build alliance, TNAs should ensure that its peers are equally able and willing to invest (financial) resources in advocacy campaigns (or other forms of action) aimed at the specific issue at stake as well. Second, as we argued that for Brazil it is apparently more 'attractive' to oppose international norms and pursue economic gains<sup>69</sup>, TNAs might try to influence the economic attractiveness of the states' non-compliant behavior. Although states' economic gains might be (at least partially) an external condition (in the sense that it is not very likely that TNAs are able to change the economic attractiveness of certain state actions<sup>70</sup>) outside of TNA's scope of action, transnational actors might consider to put more emphasis on advocating the non-financial or non-economic benefits<sup>71</sup> for a country to comply with international norms. By increasing awareness of the *non-economic* benefits of compliance, TNAs might be able to 'counterbalance' the (perceived) economic benefits, and depict compliance with international norms as a feasible and attractive policy alternative. Third, especially if non-governmental actors are the violator of the international norm(s) in question, we argue that transnational actors should put more effort into ensuring that governmental actors (including governmental agencies such as FUNAI) fulfill their duty with regard to protecting the indigenous peoples' human rights and their territories as prescribed by national and international law. Moreover, TNAs such as Amnesty International should remind the various governmental actors of their responsibility with regard to norm violation by *non-governmental* actors. Although the Brazilian government cannot be held accountable *directly* for the

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<sup>69</sup> See the second section ('Incorporating the relative weight of 'gains' and 'losses') of paragraph 5.2

<sup>70</sup> Think, for example, of the *Belo Monte* Hydroelectric dam project.

<sup>71</sup> In this context, one can think of (inter alia) societal, social or environmental benefits.

actions of non-governmental actors, they have responsibilities with regard to the actions of companies or (multinational) corporations if they were aware (or could have known<sup>72</sup>) of their norm-violating behavior. By turning a blind eye on these breaches of (inter)national law, states "incur international responsibility where corporations violate (or are complicit in violations of) international human rights law" (McCorguodale and Simons, 2007, p.624).

## 6.4 Suggestions for Future Research

In this thesis, we came forth with some improvements for the Risse, Ropp and Sikknk (2013) model. In short, we argued that three (new) scope conditions should be added to the model. Future research could focus on testing our results in other cases and with other (international) norms. We are, for example, very curious whether the reluctance to comply with international norms is unique for the Brazilian case or whether other cases (including various other emerging powers) depict the same outcomes with regard to compliance with international norms on human rights. Similarly, we are very curious whether our findings hold in research on different international norms (for example international norms with regard to LGBT right, to name just one) as well.

Second, we would like to stress that this research on Brazilian (non)compliance with international norms has the potential to advance more if a broader range of sources will be taken into account. In this thesis research, it was practically impossible to examine primary sources due to lack of knowledge of the Portuguese language. For future researchers, who are able to communicate in Portuguese, it would be rather beneficial to conduct in-depth interviews with key stakeholders in the Brazilian national and regional governments, governmental agencies<sup>73</sup> and representatives from the various indigenous communities living all across the Amazon region.

Third, we started this research by stating that under pressure from geopolitical shifts, and accelerated by fast economic developments, emerging countries (such as the BRICS) reassess their policy agendas and consequently their attitude towards human rights. It would be rather interesting to see whether the same processes can be found in other parts of the (developing) world as well. In this way, future researchers could assess whether the act of reassessing (foreign) policy agendas is a trend uniquely seen amongst emerging (regional) powers, or whether it is a more general trend across various states all around the globe.

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<sup>72</sup> Clapham (2006) refers to the notion of *silent complicity* to describe this situation in which states (deliberately) ignore the human rights violations of non-state actors (pp.222-223).

<sup>73</sup> For example with the Brazilian governmental agency 'FUNAI'

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