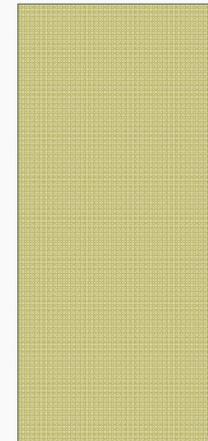


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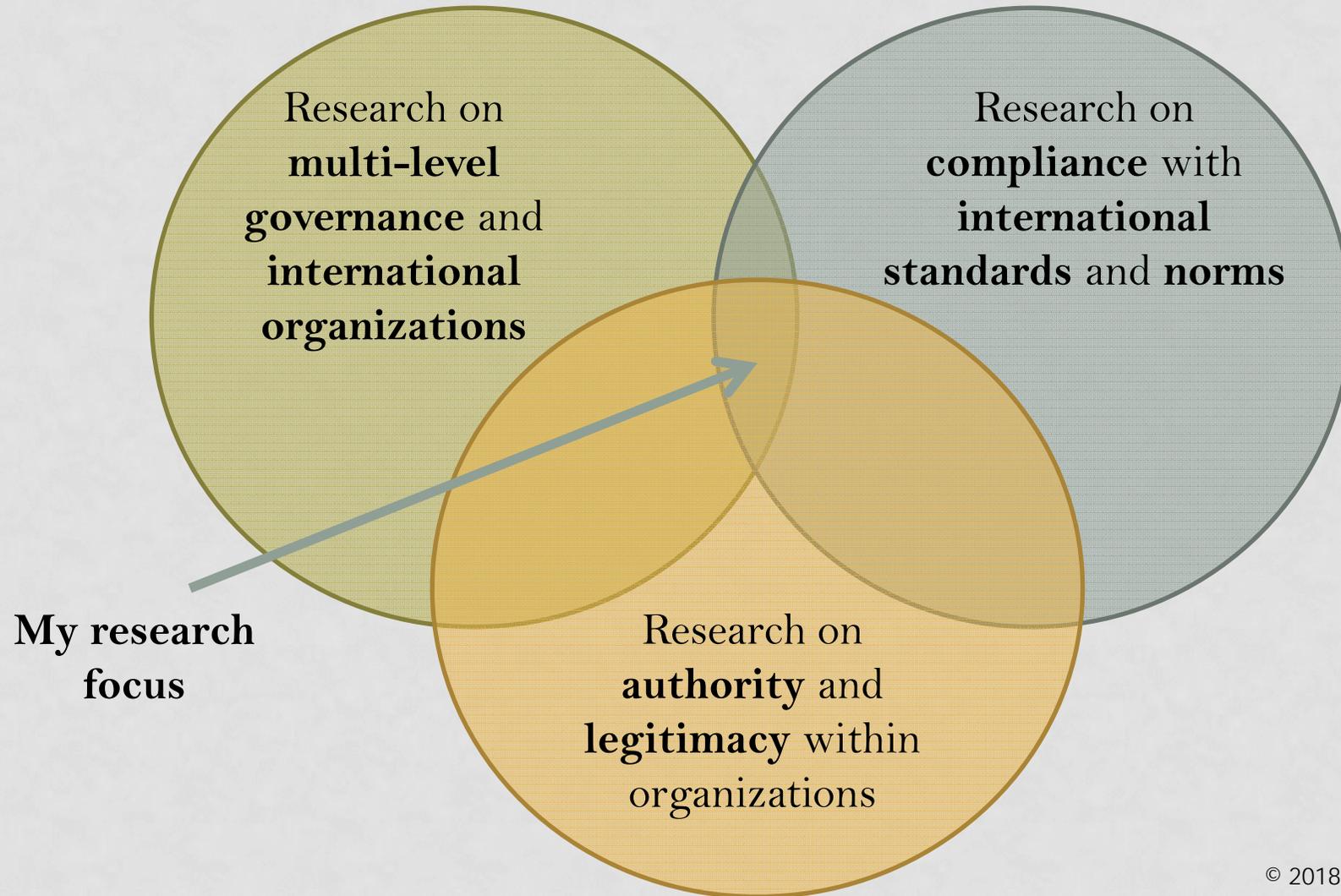
Presentation for the student group "ForUN - Forum United Nations"
University of Freiburg, July 5, 2018

**"HAPPILY EVER AFTER":
THE REAL LIFE OF INTERNATIONAL TREATIES**

LIUDMILA MIKALAYEVA



CONTEXTUALIZATION



«HAPPILY EVER AFTER»

Day of marriage



Signature of a treaty



Legal obligations

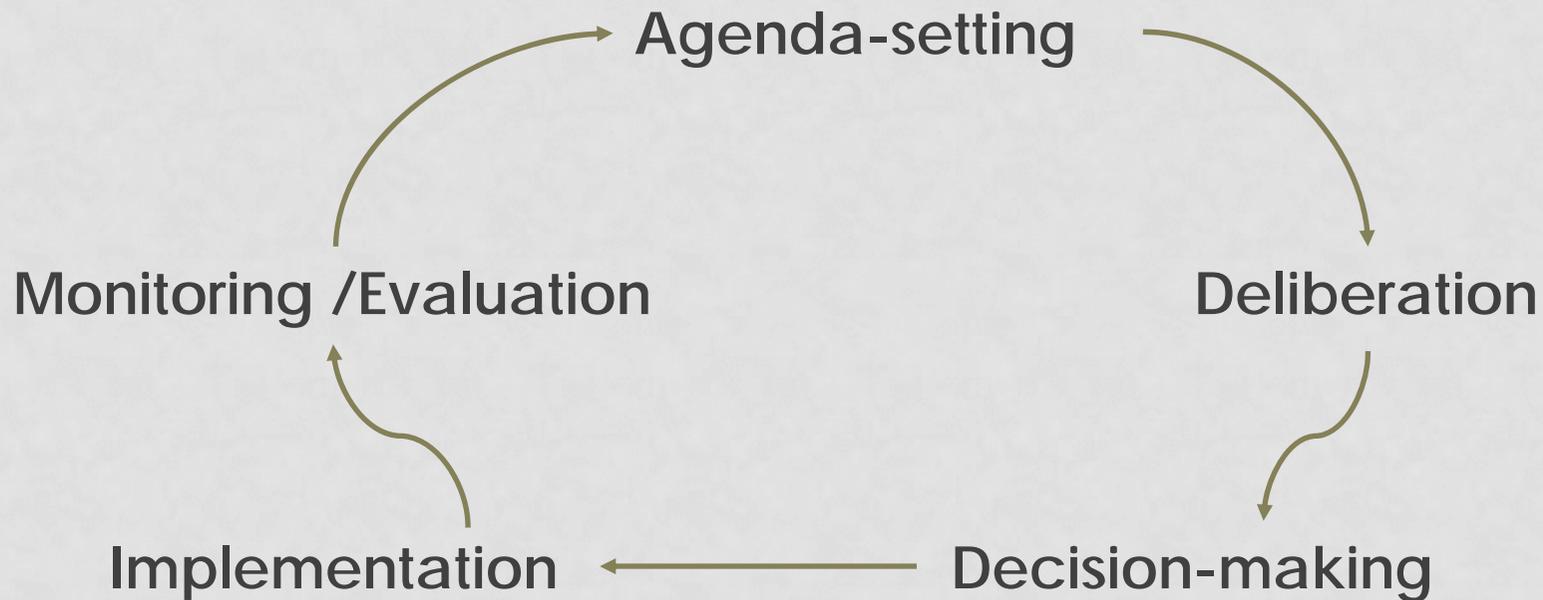


Signing and ratifying a treaty is like the bright day of marriage. Vows and promises are cemented by a legal obligation in front of a community.

Still, entering a contract does not guarantee compliance. The implementation of treaties is often delayed, selective, or superficial.

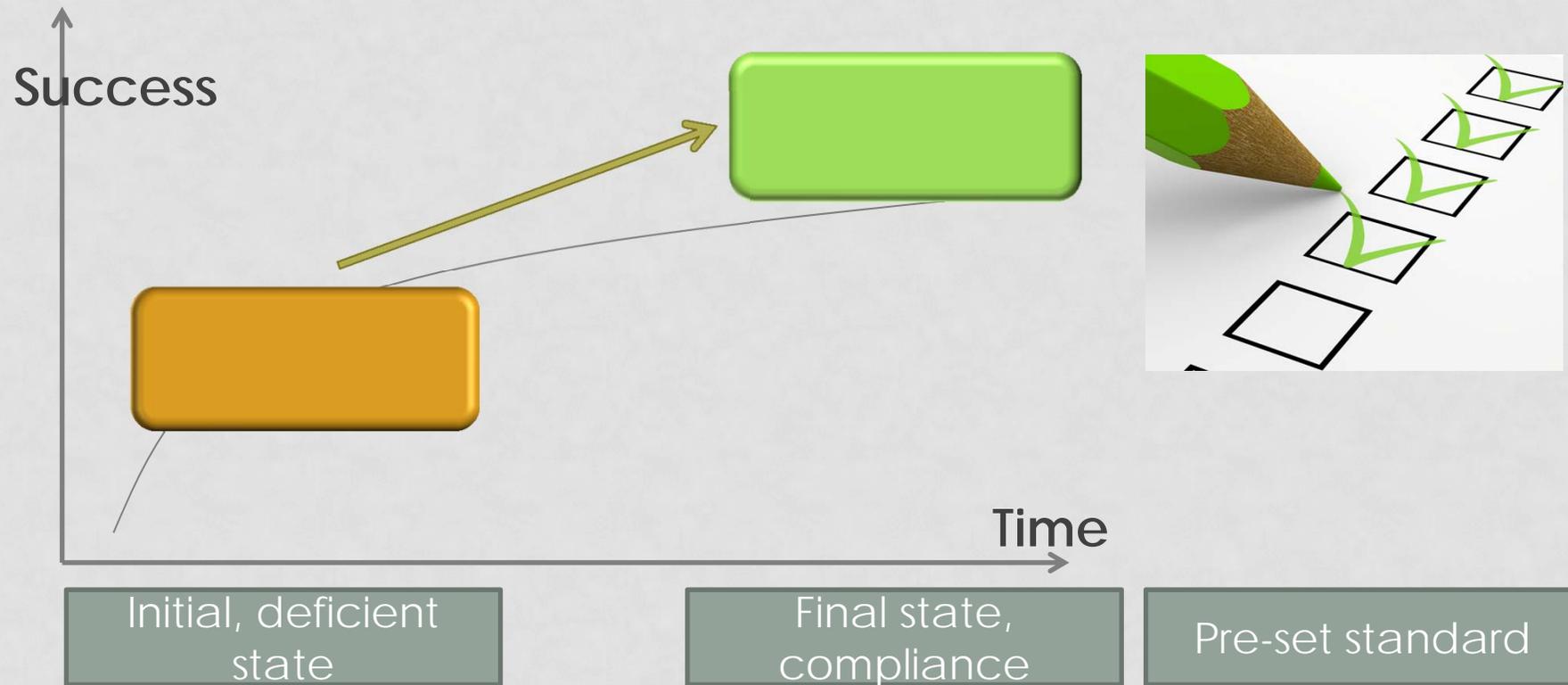
Mechanisms of monitoring and control are introduced to improve compliance. These mechanisms are at the center of my research.

IMPLEMENTATION OF INTERNATIONAL TREATIES



In this positivist approach to policy-making, policy monitoring and evaluation takes place after the implementation. This model presents monitoring as a stage separable from decision-making and implementation, and ignores actors and their interaction.

IMPLEMENTATION OF INTERNATIONAL TREATIES



IMPLEMENTATION OF INTERNATIONAL TREATIES



Compliance \neq convergence with a clear, pre-established standard.

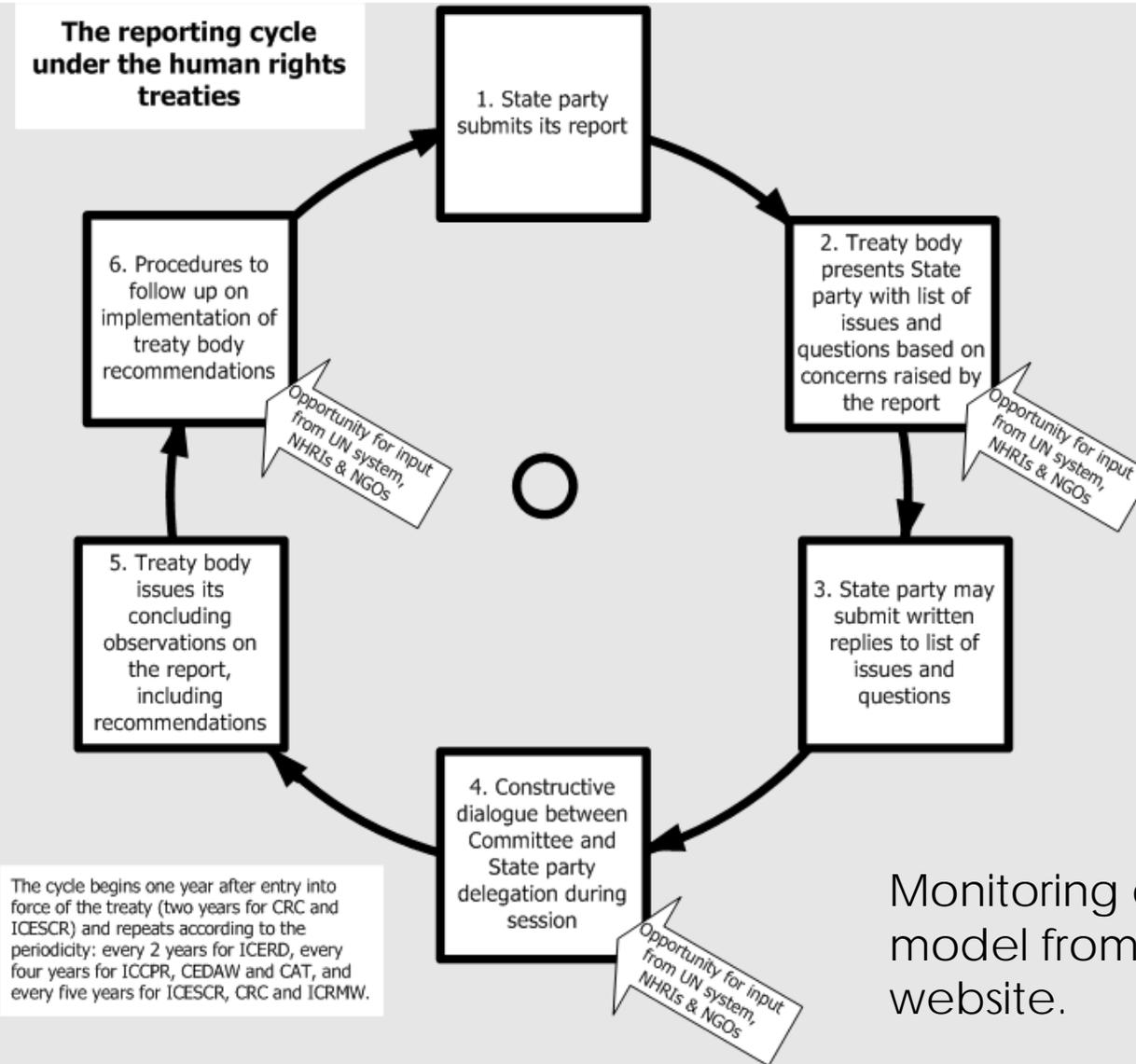
Compliance = a “moving target”.

It makes more sense to see compliance as a **negotiation** on the standard, policies, and roles of actors, rather than a legal-technical process of fulfilling pre-set criteria.

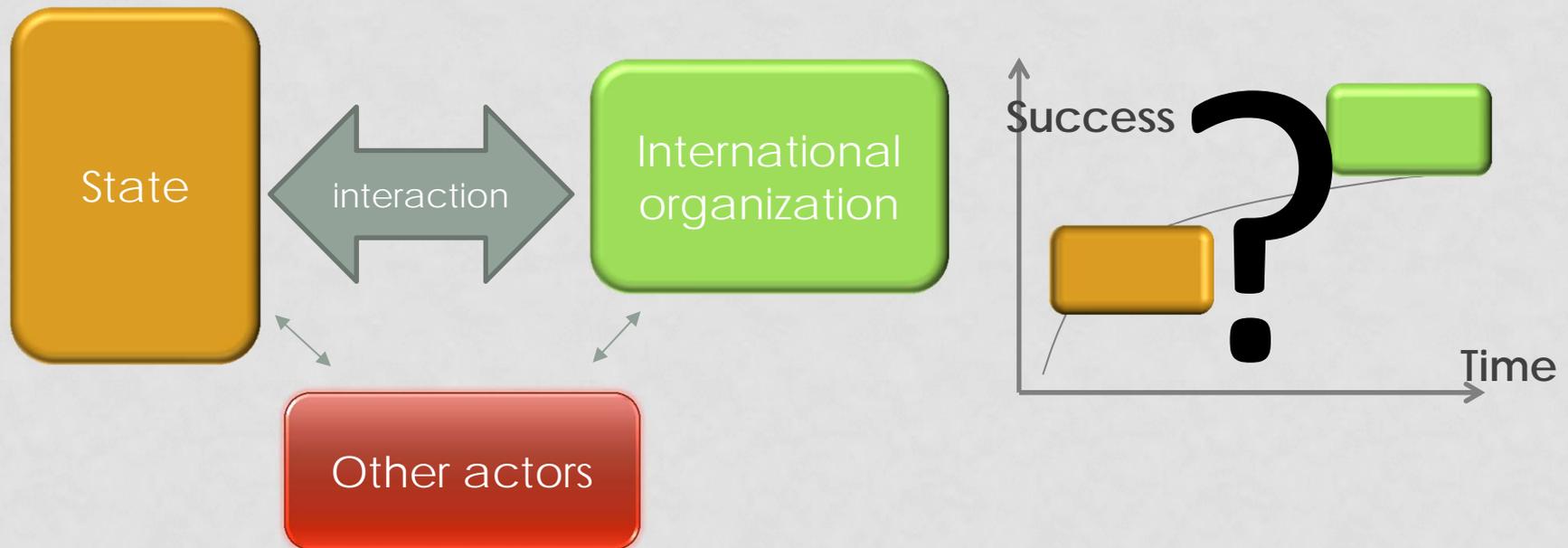
In relatively newly internationalized sectors (human rights and freedoms, environment) monitoring and evaluating compliance is especially tricky.

IMPLEMENTATION OF INTERNATIONAL TREATIES

The reporting cycle under the human rights treaties



NEGOTIATING COMPLIANCE



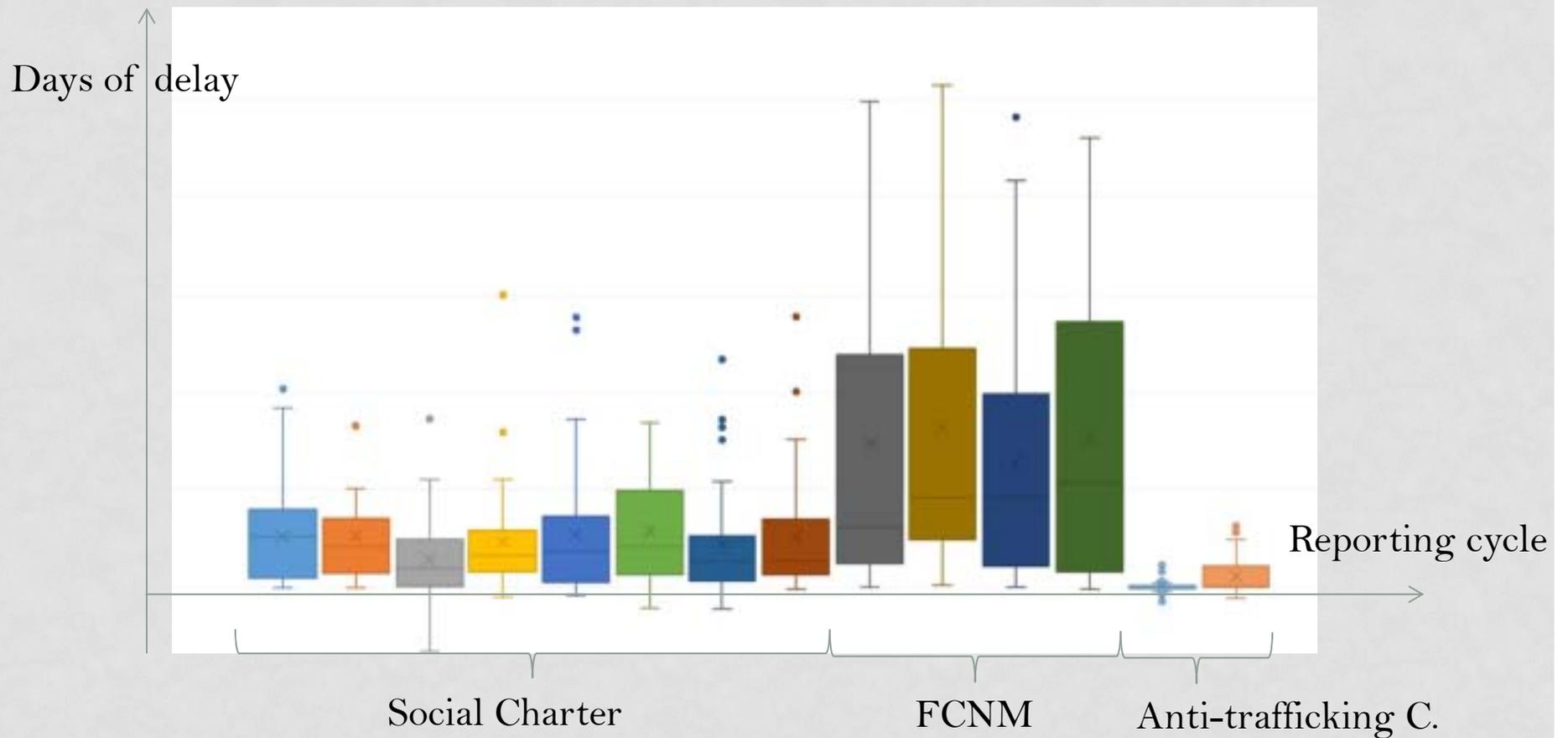
Compliance = dynamic result of a **negotiation** between state actors and other actors on the interpretation of the standard, the policies, but also the roles of actors.

The result of the negotiation depends on **mobilization of authority**.

Mobilization of authority is a **dynamic** process and takes place on the **institutional** and **discursive** levels.

METHODS

FORMAL COMPLIANCE DATA



Preliminary data on report submission delays, since 2008
Data obtained together with Angela Geck, Uni Freiburg

NEGOTIATING COMPLIANCE

Negotiating the **'facts' / definition of the situation:**

The study revealed that the articles concerning ethnicity were usually appropriate, openly racist opinions only existed in certain letters to the Editor, and foreigners were hardly ever called by despising names. (Finland, First FCNM Comments)

Negotiating the interpretation of **state policy:**

In the Government's view neither the National Board of Forestry nor any other authority has prevented the Sami from maintaining their own culture. (Finland, First FCNM Comments)

NEGOTIATING COMPLIANCE

Negotiating the **limits of state action**:

Teaching has been impeded by inadequate financial resources in the municipalities in charge of the provision of instruction, the fact that the pupils are scattered to different places..., lack of teachers, and inadequate textbook supply. (Finland, Second FCNM Report)

Negotiating the **goals of state action**:

Land disputes in northern Lapland have “many complicated aspects” and brings forward such principles as economic, ecological and social sustainability, the preservation of biological diversity and the productivity of the forests as the grounds for the political decisions taken. In the Comments’ words, “the disputes most often involve a search for an equilibrium between various factors relating to sustainable development and employment”. (Finland, First FCNM Comments)

NEGOTIATING COMPLIANCE

Negotiating the **way the norms are interpreted**:

The Government would, however, like to submit a general remark that while evaluating the situation in each Contracting State it is important to take into account the historical background of each State as well as demographic, economic, political and other developments in a given country. (Estonia, First FCNM Comments)

Negotiating the **interpretative authority** itself:

[T]he High Commissioner on National Minorities of the OSCE... has publicly stated that the amended text of the Language Act is in conformity with Estonia's international obligations and commitments. (Estonia, First FCNM Comments)

NEGOTIATING COMPLIANCE

Legal scholars usually view such interpretation of legal norms as a complex, but rather technical process, requiring specialist knowledge. I see this interpretation as inherently **interactional** and **constitutive** of the norms and actors.

The result of the negotiation depends on **mobilization of authority**.

Interpretation of legal norms by actors other than sovereign states is problematic in international law. This right has to be claimed and defended.

Mobilization of authority is a **dynamic** process and takes place on the **institutional** and **discursive** levels.

I study how international organizations and treaty bodies in particular manage to mobilize authority, successfully claim the right to interpret legal norms and contribute to a better implementation of international human rights treaties.

HOW IS AUTHORITY MOBILIZED?

Findings on **discursive dynamics** of authority mobilization

The **treaty body**:

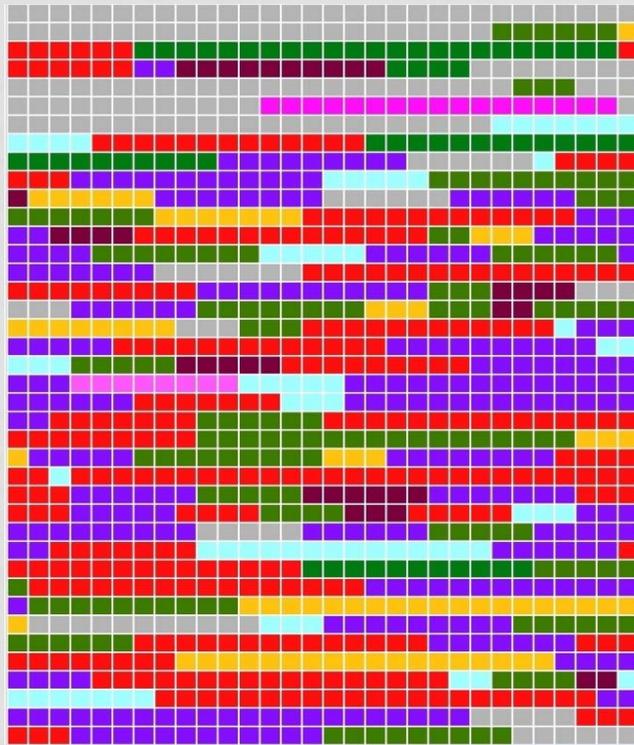
- ✓ standardized structure, content, and language of its opinions
- ✓ learned to balance praise and criticism
- ✓ engaged some reticent states into a sustained interaction

The **reporting states** new to the reporting:

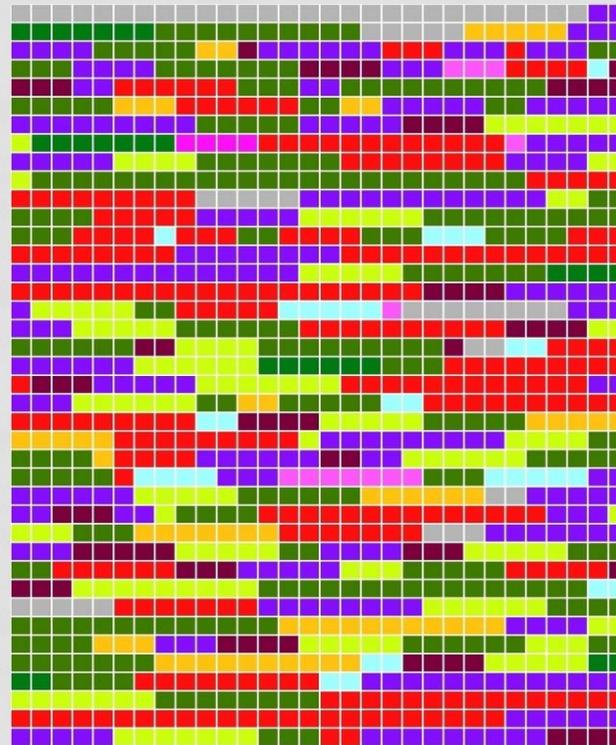
- ✓ developed a new institutional genre of state reports
- ✓ learned to “speak the language” of the Council of Europe
- ✓ learned to anticipate and prevent criticism

METHOD

RHETORICAL STRUCTURE ANALYSIS



1st monitoring cycle



2nd monitoring cycle

Critique
Praise
Recommendation

Rhetorical structure of treaty body opinions

In the second monitoring cycle of the FCNM, the treaty body adopted a general rhetorical structure for each Article: Praise – Critique – Recommendation.

METHOD

First cycle	Average sentence length in reports of experienced reporters	26.76
	Average sentence length in reports of novice reporters	30.08
Second cycle	Average sentence length in reports of experienced reporters	33.91
	Average sentence length in reports of novice reporters	32.83

L. Mikalayeva, "Reporting under International Conventions: a Genre Analysis",
The Hague Journal of Diplomacy 7(3). 2012. Pages 287-312

HOW IS AUTHORITY MOBILIZED?

Findings on **institutional / interactive dynamics** of authority mobilization

The **treaty body**:

- ✓ Interprets its role in the monitoring (for example, as a judicial-like body, as a mediator, as a facilitator)
- ✓ Adjusts its procedures and interaction patterns accordingly, internally within the international organization and externally with states and other actors (type of information included, actors consulted, interpretation given)
- ✓ Reacts to the way the interaction develops and the treaty is implemented

METHODS

CONTENT ANALYSIS

Principle	Social Charter	Anti-Trafficking	National Minorities (FCNM)
Independence	8,75	7,3	5,75
Expertise	4,75	10,5	14,75
Transparency and ownership	15,25	40,3	31

Preliminary data on mentions of guiding principles in activity reports, 3 treaty bodies of the Council of Europe

Data obtained together with Angela Geck, Uni Freiburg

SUMMARY

Processes of control and monitoring of state compliance with international obligations: the “happily ever after” of international treaties and accords.

Monitoring is a setting where compliance is negotiated by the actors.

In this negotiation actors mobilize available resources of authority on the institutional and discursive levels.

I study these processes of resource mobilization from the platform of institutional theory of constructivist leaning.

Challenges:

- Measuring authority (and changes thereof) and the impact of treaty bodies in a complex multi-level system.
- Attributing agency to actors who have interest in playing it down.