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COMPLIANCE WITH THE EUROPEAN CONVENTION ON HUMAN RIGHTS: TESTING COMPETING THEORETICAL PERSPECTIVES WITH POST-COMMUNIST COUNTRIES

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Abstract
This research focuses on the rulings of the ECtHR from 1998-2005 regarding violations of the ECHR to analyse broad patterns of compliance by the members of the Council of Europe, while also aiming at determining if what we (still) broadly refer to as post-communist states differ in their violation patterns compared to other member states and whether regional differences in post-communism (East Europe versus former Soviet Republics) is a more meaningful distinction in identifying pattern of compliance. This article begins by outlining the theoretical literature on compliance. Enforcement theorists characteristically stress a coercive strategy of monitoring and sanctions while managerial theorists embrace a problem-solving approach based on capacity-building and technical expertise. Constructivists assume that states are socialized into the norms and rules of international institutions. This data analysis of over 5000 cases finds that the utility of the theories varies by the form of sanction imposed by the ECtHR across all members. In addition, while post-communist country behavior differs from other members, there are also considerable differences among post-communist countries.

Keywords: ECHR, ECtHR, Compliance, Infringement Proceedings

Introduction

Adopted in 1950, the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) entered into force in 1953. Unlike other human rights instruments such as the United Nations Universal Declaration on Human Rights, the Convention is the basis of legal rulings by the European Court of Human Rights (ECtHR) that can lead to significant changes in the

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domestic laws of member states. The Convention requires that all contracting states implement judgments and enforce its rights provisions in their domestic legal system. After domestic legal remedies have been exhausted, any state party, individual, group or non-governmental organization (NGO) may bring a suit to the Court claiming a human rights violation against one of the member-states. States delegate to the Court the ability to decide if the Convention and additional protocols have been violated and to issue binding rulings requiring states to comply with the treaty provisions.

The issue of state compliance with international treaties is particularly relevant in the study of post-communist states. As Falkner and Treib (2008) argue, many of these states are in the process of transitioning not only economically, but also politically and legally. The features associated with post-communist states (*e.g.*, lack of rule law, corruption and state capture) might be factors which help explain higher levels of non-compliance with treaty obligations. Goetz (2005) goes so far as to question not only the capacity, but the willingness of these states to comply with EU directives. There is indeed a large literature concerning post-communist problems in the implementation of the rule of law, elimination of corruption and effective judicial independence.[1] While much of this literature has focused on the development of the domestic judiciary within post-communist states, more recent scholarship has focused on issues of compliance with international law.

In the case of EU enlargement, Falkner and Treib examine compliance patterns of the new Member States from Central and Eastern Europe (CEE) in order to determine whether they exhibit distinct patterns of compliance from the 15 old members with regards to EU directives. Priban (2009, p.358) argues that "[a]fter the 2004 and 2007 enlargements of the EU, the problem of post-communist constitutional and political transformations and the democratic rule of law, therefore, has eventually become part of a much wider and more complex problem of democratization of the EU rule of law." For Priban while issues pertaining to the internalization of the EU rule of law culture exist in post-communist states, the real problem confronting these countries' judiciaries are much more a function of EU legislation, or the goodness of fit, than particular problems of post-communism. Thus violation of treaty mandates is indicative of a general problem facing all European countries that is not reducible to a simple post-communist/non-communist dichotomy. Reflecting King's argument (2000) more than a decade ago, it would appear

that we have entered a period of "post-post-communism" in which labels such as "Eastern European" no longer accurately characterize a diverse grouping of post-communist states. However, Popova (2012) argues that while much of post-communist East Europe is now "European" in its application of the law, former Soviet states still struggle to implement rule of law.

The structure of the article is as follows: This research seeks to integrate two substantive research questions which involve explanations as to why states comply with their treaty obligations and whether the post-communist distinction is a meaningful analytical category to understanding levels of compliance. This research focuses on the rulings of the ECtHR regarding violations of the ECHR to analyze broad patterns of compliance by the members of the Council of Europe, while also aiming at determining if what we (still) broadly refer to as post-communist states differ in their violation patterns compared to other member states and whether regional differences in post-communism (East Europe versus former Soviet Republics) is a more meaningful distinction in determining compliance patterns. This article begins this line of inquiry by examining the literature on compliance. Then, there is a discussion concerning the operationalization of compliance and the factors that might help explain violations of treaty obligations, including distinctions between post-communist/non-communist states, as well as between post-communist states. This research find that the utility of the theories varies by the form of sanction imposed across all members. While post-communist state behavior differs from other states, there are also considerable differences among post-communist states.

Theories of Compliance

In recent years, the answer to how to ensure compliance with international agreements has been framed in terms of three alternative explanations: enforcement, managerial and constructivist views. Compliance through enforcement involves the imposition of penalties or rewards, material and social (Vachudova 2005). The enforcement approach is firmly anchored in the political economy tradition of game theory and collective action theory. States are conceived of as rational actors that weigh the costs and the benefits of choices when making compliance decisions. Non-compliance can be best explained by the decision's incentive structure. States choose to defect (not comply) when confronted with an incentive structure in which the benefits of shirking exceed the costs of defection. Compliance problems are, therefore, best remedied by increasing the costs of non-compliance through monitoring and the threat of sanctions (Beach 2005). Haas (1998, p.19) argues that "even if a state may believe that signing a treaty is in its best interest, the political

calculations associated with the subsequent decision actually to comply with international agreements are distinct and quite different." Enforcement is required to deter states from shirking their international commitments. Monitoring and sanctions constitute the two central elements of this strategy. Monitoring increases transparency and exposes possible defectors. Sanctions raise the costs of shirking and make non-compliance a less attractive option. Together, monitoring and sanctions carry the capacity of deterring defections and compelling compliance (Tallberg 2002).

On the other hand, the managerial theory of compliance rejects sanctions and other "hard" forms of enforcement as the basis of compliance in favor of collective management. This approach, most closely associated with Chayes and Chayes (1993 and 1995), emphasizes the ways in which management problems influence compliance. Managerialism begins with the premise that states have a desire to comply with their international commitments. Management problems arise due to the nature of the international rules and the internal capabilities of states (Thomson, Torenvlied and Arregui 2007). In some cases, international rules are ambiguous so states are unsure of the particular course of action that they need to take in order to comply with their commitments. Another management problem arises due to the lack of state technical expertise or economic capacity to implement international rules. Finally, non-compliance may simply be a timing issue: Many international rules are quite difficult to implement and require an extended amount of time.

A third view on compliance explains state behavior in terms of the development of a culture of rule of law. Constructivists argue that states are socialized into norms and rules of appropriate behavior, including support for the rule of law (Finnemore and Sikkink 1998). States are seen as complying not base solely bases on instrumental calculations but also due to "normative concerns such a as the social costs of being seen to be breaking the law" (Beach 2005, p.124). This view concords with the "goodness of fit" hypothesis that predicts that compliance levels will increase of international law expectations closely match existing norms within states (Dimitrova and Rhinard 2005).

Following Beach, this research seeks to test each of these theories, without making a priori assumptions of their explanatory power. This work takes note from Tallberg, who challenges the conception of enforcement and management as competing strategies for achieving compliance. Based on the case of the EU and a comparison with other international regimes, he finds that enforcement and management mechanisms are most effective when

combined. For Tallberg, the combination of compliance mechanisms in the EU takes the form of a highly developed "management-enforcement ladder" combining cooperative and coercive measures that improve a state's capacity and incentives for compliance.

EU pre- and post-accession conditionality is illustrative of the application of these competing theories of compliance. In the case of pre-accession, especially since the so-called "Fifth Enlargement," Kochenov argues that pre-accession conditionality allowed the EU to exercise "a degree of pressure sufficient to guarantee that its demands were met" (2008, p.53). One of the concerns among EU policy-makers was that absent the "carrot and stick" of EU membership, newer members would backslide as conditionality had been removed as members. Several studies have found this not to be the case. Research by Sedelmeier (2008) found that compliance was actual superior among newer members of the EU. Börzel and Sedelmeier (2017) argue that unlike the southern enlargement of the 1980s, the Fifth Enlargement has resulted in high levels of compliance among new members because of the use of pre-accession conditionality. What is the causal mechanism for this compliance?

The ability of the EU to engage in "external integration capacity" was a contributing factor towards post-accession compliance. They define external integration capacity as "about turning non-member states into member states. It refers to the ability of the EU to associate states more closely and support them to be ready for membership" (Börzel et al. 2017, p.160). The examples they provide of how the EU readies a candidate member for accession include increasing the administrative and bureaucratic capacity of candidates similar to the managerial theory of compliance noted above. Sedelmeier (2008) argues, however, the post-accession compliance can also be attributed to shaming, a feature of the constructivist theory of compliance based on norm expectations. All these studies demonstrate that there are causal mechanism sin the pre-accession period that determine the success of compliance in post-accession.

Operationalization of Compliance Theory

One of the problems in testing hypotheses on member-state violations of international treaty obligations is the diverse conceptualizations of compliance (Hartlapp and Faulkner 2009). Much of the early theory-building was not grounded in empirical analysis and operationalizing the variables associated with compliance to international agreements has only recently become fundamental to understanding the concept of compliance. While compliance

with international law can be evaluated at the adoption and implementation stage, in the case of the ECtHR, this research focuses on the execution of judgments and claims that a violation has actually occurred with regards to the ECHR.

The Dependent Variable

The dependent variable measures whether or not a state was found to be in violation of an article or protocol of the Convention (dichotomous variable).[2] If a state is found to be non-compliant, the Court can issue three types of measures to implement an ECtHR judgment; therefore, there are three models for the dependent variable. The ECtHR can rule that the state must undertake "just satisfaction" towards the victim if it finds that there is a violation of the ECHR. Typically, just satisfaction takes the form of a financial payment to the victim, often a combination of pecuniary losses, non-pecuniary losses (*e.g.*, psychological damages), court costs and even interest payments.

In addition, the Court can invite the state to implement two other types of measures: "individual" and/or "general." While just satisfaction judgements are indicated, rarely does the Court indicate what type of individual or general measure should be taken. Individual measures are meant to put the victim into the same position enjoyed prior to the violation. Individual measures can include the following examples: (1) Speeding-up or conclusion of pending proceedings, (2) reinstatement of the claminant's rights, (3) official statement by the government on the claminant's innocence, (4) modification of a sentence by administrative measure such as pardon/clemency/non-execution of judgment, (5) measures concerning restitution of/access to property or use thereof, (6) measures concerning the adaptation of proceedings, (7) modification in criminal records or in other official registers, (8) special refunds, (9) re-opening of domestic proceedings, (10) measures concerning the right to residence (right granted/reinstated, non-execution of expulsion measure and (11) special measures (pictures destroyed, meetings organized between parents and children).

The Court can also expect states to undertake general measures which are not intended to remedy the specific violation that has been ruled on, but to prevent future violations that can arise under similar circumstances. General measures could include the following examples: (1) Legislative changes, (2)

[2] For the data analysis, judgments of the ECtHR were which were initially coded as "not considered," "no violation" and "not necessary to examine" were collapsed into a "no violation" variable for purposes of constructing the dependent variable.

executive action in the form of regulations of changes of practice, (3) changes of jurisprudence, (4) administrative measures, (5) publication of judgments/resolutions, (6) practical measures like recruitment of judges or construction of prisons and (7) dissemination.[3] Given the financial and even more important sovereignty costs involved, states may be averse to complying with judgments.

The Independent Variables

The enforcement theory of compliance posits that sanctions and monitoring yields a reduction in violations. If the enforcement theory is correct, then the higher the costs of violations, the more likely a member-state will comply with their treaty obligations and refrain from future violations. The enforcement theory is based on a cost/benefit analysis in which the operationalization of the cost is fundamental. The costs of sanctions can take many forms, and this research identifies both financial and sovereignty costs based on the type of judgment rendered by the ECtHR (just satisfaction, individual measures or general measures).

Ideally, the cost would be defined as the specific form of just satisfaction the Court ordered the state to pay for Model 1. However, the Court's database (HUDOC) does not contain the actual monetary award in the judgment. Therefore as a proxy for the cost of the violation in Model 1 (just satisfaction), included is an independent variable for the relative strength of the member-state's economy measured by GDP reported in real dollars, logged.[4] No matter what the monetary award is, the expectation is that members who have stronger economies will be better able to absorb the costs of the ECtHR sanctions and thus be less likely to comply with the ECHR (Börzel, Hofmann and Panke 2012; Mbaye 2008). This line of logic flows from studies such as by Börzel *et. al*. (2010) in which they argue that richer states with more demanding

[3] Because the number of observations of individual and general measures are relatively few, there was a concern that the rarity of the event would lead to an underestimate of the event's probability. King and Zeng (2001a; 2001b) have shown that binary dependent variables in which observations of the event are substantial less than no events can cause severe estimation problems. Therefore, the second and third test were rerun using the relogit program (available at: http://gking.harvard.edu/stats.shtml) and found virtually the same results indicating that the estimates are robust to rare events bias. Relogit was not run on the just satisfaction test as the number of event observations was much higher.

[4] Since there is considerable variation in GDP which creates a skewed distribution, the variable was logged.

regulatory standards generally face lower costs in adjusting to EU legislation than poorer states. Given the GDP of post-communist member-states, the expectation is that the financial sanctions for these countries are a relative and absolute higher cost compared to other members. Thus, post-communist members should violate the ECHR less often compared to other members with larger economies.

In the case of individual and general measures (models 2 and 3), it is anticipated that the costs imposed by the violation are more a function of threats to sovereignty. Amending court records in the case of individual measures and especially amending national legislation in the case of general measures entails sovereignty costs for the state which the GDP variable will not capture.[5] Thus for models 2 and 3, the independent variable of interest to capture the enforcement theory changes. Operationalizing sovereignty costs within the international relations literature often revolves around the particular issue under exploration. For example, Johnston 2001 and Sandler 2004 examine burden sharing and sovereignty within international organizations focused on membership dues and contributions. In the present research, the sovereignty costs of compliance with the ECHR is in one respect a function of the supremacy of international versus national law (Sweet and Kahler 2008).

Members of the Council of Europe have different views as to whether international law must be translated into national law in order to be transposed. Monist states such as The Netherlands accept that international law does not need to be translated into national law to be incorporated—international law automatically becomes part of domestic law. On the other hand, dualist states such as Great Britain hold that international law must be translated into national law in order to have effect. Individual and general measures for monist states should entail less sovereignty costs as the state already accepts that international law is binding domestically and changes to domestic law are automatic while costs for dualists states are greater as any ECtHR individual and general judgment require a corresponding change and translation into domestic law. Therefore, based on the enforcement theory, it is expected that the sovereignty costs are higher for dualists states which should lead to fewer violations among these members than those which are monists. As most post-communist states are monist, it is anticipated that there will be fewer violations among post-communist states compared to others.

[5] While there are certainly financial costs involved with individual and general measures, the primary purpose of these awards is to change state practice either in terms of the individual claimant or more generally.

Models 2 and 3 include an incorporation variable as the substantive variable of interest for the enforcement theory.

On the other hand, the managerial theory suggests that conformity is due to increasing capacity, transparency and simplification in rules. Given that the rules in this case are the same for all states, it is expected that the variation in management results from the technical expertise of the states. There is no direct measure for the expertise; however, the length of membership in an organization can serve as a proxy for expertise as technical knowledge takes time to evolve. From a managerial perspective, it is anticipated that over time, members develop greater institutional capacity to fulfill their obligations. Since managerial theory assumes that states want to comply with their international commitments, time provides members an opportunity to increase their capacity and understanding of rules to avoid future violations. Therefore, the models include a variable for time measured as the number of years the state has been a member of the Council of Europe as the substantive variable of interest for this theory. Given that post-communist states did not join the Council until the early 1990s, these members should be more likely to violate the Convention due to a lack of time to increase their capacity and understanding of the rules. Indeed, Sedelmeier argues that the "`management' approach to compliance focuses on sources of involuntary non-compliance, especially on administrative capacity limitations. The legacies of communism make severe limitations of state capacity a distinctive challenge for the CEECs. The administrative and institutional structures necessary to implement and enforce EU rules often had to be created from scratch" (2008, p.813). This variable of interest is the same for all three models.

Finally, constructivists assume that states are socialized into the norms and rules of international institutions, and states cease to violate because of their support for the rule of law. From a constructivist perspective, it is expected that as states embrace a rule of law culture, violations of treaty obligations will decrease. Measuring rule of law has only recently received the attention of organizations and social scientists. Indeed, Kochenov (2008) argues that in the case of EU pre-accession, democracy and rule of law are difficult to measure, especially in a post-communist context. However, several research agendas have begun the process of operationalizing these concepts. For example, the World Justice Project has begun developing a measure for rule of law, but unfortunately, their data only begins with 2012. Two of the factors that they include in their measure are the absence of corruption and free and fair elections. Thus, this research includes a rule of law composite measure of

corruption and democracy.[6] It is anticipated that post-communist states which exhibit less of a rule of law culture (especially in the 1990s and early 2000s due to the limited time period for the transition to democracy) should be found in violation of the ECHR more often than other members. This substantive variable of interest for the constructivist theory is used in all three models.

My three models (*e.g.*, enforcement, managerial and constructivist) include an additional independent and control variable.[7] First, a dichotomous post-Soviet variable is included which codes for all post-communist states which were a former Soviet Republic. As Popova (2012) and others argue, the real distinction among states is not post-communism *per se* but rather post-Soviet post communism versus East European post-communism. Second, the three models also include a population control theorizing that population size may influence the number of cases brought before the ECtHR.

This research examines ECtHR member-state characteristics that have a bearing on a ruling that a violation has occurred. The dataset includes all cases in which a judgment was rendered by the Court from 1998-2005. The year 1998 was chosen because by that year, most post-communist countries were members of the ECtHR. The year 2005 was chosen to end the data collection because a series of reform packages centered on Protocol 14 changed the nature of compliance matters within the ECtHR. Given that the article focuses on theories of compliance in which free rider problems exist, it was determined that 2005 was an appropriate cut-off date.[8] The dataset contains over 5,000 cases among the forty-seven ECtHR member-states.[9] This research

[6] To create a composite measure of corruption and democracy, this research combines the member-state's corruption score using Transparency International's Corruption Perceptions Index (CPI) from 1998-2005 (ranging from 0 to 10) and their democracy score based on Freedom House ratings which measure states from free (one) to not free (seven). This composite measure recodes and standardizes the Freedom House democracy score to the Transparency CPI score. The Freedom House score is highly correlated with similar scores from Polity IV.

[7] Other independent variables were also coded that were not include in the final models because they were insignificant in all the preliminary tests.

[8] There is data coded that goes back to 1960. Before 1998, there had been less than 700 decisions rendered. Protocol 14 was created to assist in the enforcement of judgements by the Committee of Ministers. The Committee can now ask the Court for an interpretation of a judgement and can even bring a member state before the Court for non-compliance of a previous judgement against that state.

[9] This data set includes twenty-one post-community countries including (in order of date of accession): Hungary, Poland, Bulgaria, Estonia, Lithuania, Slovenia, Czech Republic,

codes for every article of the ECHR and its additional protocols (the data set only codes for the material provisions enshrining rights and freedoms) in which there was a claim of violation and judgment (thirty-three in all). Pooled cross-sectional time series and logit estimation are used to assess factors associated with the Court's judgment.

Results and Discussion

One of the concerns when using any form of regression involves the possibility of multicollinearity. Methods such as variance inflation factor (VIF) indicated a high degree of multicollinearity in the initial models that contained several additional independent variables. While detecting multicollinearity is rather straightforward, what to do about the problem involves a series of decisions and trade-offs ranging from acknowledging the problem to dropping variables from the model. In this case, some variables were simple to exclude on the basis that their explanatory power was captured by other variables.[10] In addition, the creation of the composite rule of law measure eliminated the correlation between corruption and democracy. When the models were rerun after these decisions, the tolerance and VIF were quite acceptable. The models report the coefficient estimates and the odds ratios for the variables.

As shown in Table 1 for Model 1, where the Court issues a ruling of just satisfaction, the only theoretical variable of interest which is in the expected direction is GDP. Table 1 shows that wealthier members violate the ECHR more often. The results suggest that post-communist countries (with lower GDP) were less likely to violate the ECHR. On the other hand, the years of membership and rule of law variables while significant are not in the direction which the managerial and constructivist theories would predict. Countries that tend to violate the ECHR and are required to provide just satisfaction to a claimant tend to be those that have been a member of the Council of Europe longer as well as have political and judicial systems judged to be fairer (see table 2). The direction of these variables seems to indicate that post-communist states were less likely to violate the ECHR than older members. These findings are somewhat surprising given that the literature indicates

Slovakia, Romania, Latvia, Albania, Moldova, Macedonia, Ukraine, Russia, Croatia, Georgia, Armenia, Azerbaijan, Bosnia and Herzegovina and Serbia.

[10] For example, originally included was a variable for EU membership which was highly correlated with the GDP variable. Excluding the EU variable reduced the problem of multicollinearity while not decreasing the overall robustness of the model. In addition, initially included was a specific post-communist variable but it was also highly correlated to GDP and years a member so it decided to excluded this variable as well.

significant judicial and rule of law problems among post-communist countries. However as reported in Table 2, seven of the ten countries with the most judgments of just satisfaction were not post-communist countries.[11]

Table 1: Judgment of Just Satisfaction (Model 1)

	Odds ratios	B (robust standard errors)
GDP	1.253	0.225** (0.096)
Years Member of the CoE	1.011	0.011** (0.004)
Rule of Law	1.012	0.012** (0.001)
Post-Communist Region	0.996	-0.004** (0.002)
Population	0.994	-0.057 (0.105)
Constant	-2.217	
N	5,447	
X^2	140.460***	
Nagelkerke R^2	0.034	

Notes: Dependent variable is whether just satisfaction was awarded in any form (0 = no award; 1 = financial award). *N* includes all cases before the ECtHR between 1998-2005.
GDP and population were logged.
**p* < .10, ***p* < .05 and ****p* < .001.

The results from Model 1 also indicate that countries that are former Soviet republics were less likely to be judged in violation of the ECHR compared to East European countries. This result is also somewhat surprising given that several former Soviet republics have figured prominently in recent discussions concerning the caseload of the ECtHR (most notably Russia). While this finding could be an artifact of the time under investigation, the majority of former Soviet Republics became members of the Council of Europe prior to 2000.

Based on the enforcement view, when non-compliance entails a financial cost (as in the case of just satisfaction), state-member's behavior can be altered. States that can easily bear the cost of the sanction are not deterred from violation. As post-communist states' GDPs are lower, they predictably have lower levels of violations. The results also indicate that when the sanction is financial, technical expertise and rule of law culture play less of a role in explaining the compliance levels of member-states, thus providing less support to managerial and constructivist accounts. The combination of theoretical

[11] These are the countries that Falkner and Treib (2008) associate with the world of transposition neglect and the world of dead letters.

explanations is much more robust when individual measures (Model 2) are imposed by the Court. As reported in Table 3, state-members of the ECtHR which have a dualist view of international law are indeed less likely to violate the ECHR. However, this finding should be considered in light of the fact that post-communist states, which are overwhelmingly monist, tend to be found in violation for individual measures more frequently than other members.[12]

Table 2: Countries which Most Often Violate the ECHR by Judgment of Just Satisfaction

Country	Number of Judgments	Rule of Law Score	Years Member of CoE
Italy	1,075	13.6	49
Turkey	573	6.4	49
France	312	15.7	49
Greece	158	12.9	49
Poland	171	13.6	7
United Kingdom	133	17.7	49
Austria	80	16.5	42
Romania	69	11.0	5
Portugal	63	15.5	22
Czech Republic	54	13.6	5
Average		13.6	32

In addition, the results reported in Table 3 also support the managerial theory of compliance. Those states that have been members of the Council of Europe for a longer period of time are less likely to be judged in violation of the ECHR in which individual measures are imposed. This finding is consistent with the monist/dualist result— post-communist states which have been members for a far shorter period of time of the Council than others are more likely to be sanctioned with individual measures.[13] While the rule of law variable is in the expected direction, it is not statistically significant, indicating that compliance with the ECHR is not a function of the rule of law culture found among member-states. In terms of the post-communist regional variable, it is once again significant but the change in direction indicates that violations which

[12] It is found that the percentage of post-communist violations of individual measures is more than twice as much as other members; albeit, the absolute number of violations among all members is far lower than in the case of just satisfaction.

[13] On average, post-communist countries during the period of this investigation (1998-2005) had been members for over ten years while the average for all other countries was fifty.

result in individual measures are more likely among former Soviet Republics than East European countries.

Table 3: Judgment of Individual Measures (Model 2)

	Odds ratios	B (robust standard errors)
Incorporation	0.972	-0.028** (0.012)
Years Member of the CoE	0.973	-0.027** (0.011)
Rule of Law	0.995	-0.005 (0.005)
Post-Communist Region	1.008	0.008* (0.004)
Population	0.176	-1.736*** (0.214)
Constant	9.063	
N	5,447	
X^2	101.022***	
Nagelkerke R^2	0.125	

Notes: Dependent variable is whether just satisfaction was awarded in any form (0 = no award; 1 = financial award). *N* includes all cases before the ECtHR between 1998-2005.
Population was logged.
**p* < .10, ***p* < .05 and ****p* < .001.

The results for the judgment of general measures (Model 3) as reported in Table 4 is consistent with the results reported for individual measures except that incorporation is no longer significant. While the variable is in the expected direction, the monist/dualist distinction does not contribute to our understanding of the judgment for general measures. Therefore as the sovereignty costs increase, the explanatory ability of the enforcement theory decreases. The years a member of the Council, however, is statistically significant and in the theoretical expected direction. The greater the amount of technical expertise that members gain through years of activity in the Council system the less they are found in violation of the ECHR. For general measures, post-communist and former Soviet republics were more likely to violate than other members. Given the significance of a judgment of general measures in which the legal framework or juridical code must be amended, it is perhaps not surprising that post-communist states and especially former Soviet Republics are the most frequent violators. Once again, the rule of law variable is not statistically significant, challenging the constructivist view of compliance in all of my three models.

Table 4: Judgment of General Measures (Model 3)

	Odds ratios	B (robust standard errors)
Incorporation	0.991	-0.009 (0.007)
Years Member of the CoE	0.984	-0.016** (0.008)
Rule of Law	0.994	-0.006 (0.004)
Post-Communist Region	1.009	0.009** (0.003)
Population	0.233	-1.459*** (0.162)
Constant	-3.445	
N	5,447	
X^2	117.860***	
Nagelkerke R^2	0.089	

Notes: Dependent variable is whether just satisfaction was awarded in any form (0 = no award; 1 = financial award). *N* includes all cases before the ECtHR between 1998-2005.
Population was logged.
**p* < .10, ***p* < .05 and ****p* < .001.

Conclusions

This analysis of the ECtHR shows the complexity of understanding compliance with international legal agreements. The goal of this research was to evaluate the competing theoretical expectations to compliance by enforcement, managerial and constructivist accounts. The results broadly support the proposition that when the costs of sovereignty are the lowest and defined financially (*i.e.*, just satisfaction), only the enforcement theory which stresses sanctioning power appears to explain the compliance patterns of states. For states in which the financial sanction is the most costly, violation levels are lower compared to those members which can easier bear the cost of the sanction. This finding echoes follows from EU compliance findings of according to which the "differences in compliance costs resulting from wealth differentials could explain the compliance problems resulting from the Southern enlargement" (Börzel & Sedelmeier 2017, p. 212). For member-states, it is less costly to pay just satisfaction than to re-adjust domestic legislation. This calculation which increases compliance rates occurs irrespective of the years a member of the Council or the level of rule of law culture of the state, or managerial and constructivist variables of interest. The findings also show that post-communist states with a lower GDP are less likely to have a judgment of just satisfaction, and thus there is a distinction between members based on the strength of their economy and the sanctioning power of the ECtHR.

It is only when we examine higher sovereignty costs situations such as the imposition of individual and general measures that it is found that

incorporation and years of membership become important in explaining compliance patterns. The enforcement and managerial variables of interest are significant in Model 2 while only the managerial variable is significant in Model 3. We interpret this to mean that as sovereignty costs increase and learning occurs, the behavior of states is likely to change. The same states that are not deterred from violating when the costs are low (*i.e.*, financial as in just satisfaction judgments) are more likely to be found in compliance based on enforcement and managerial accounts in the case of judgments involving individual and general measures.

One of the surprising findings of this research is that constructivist accounts of compliance offered little explanatory power to my models. However, this could be an artifact of the nature of the Convention. One argument in the literature is that compliance might be the result of pre-existing domestic factors that led states to commit to the particular international rules in the first place. Therefore, compliance is not the result of international rules but existing state norms. The legal rules of an international organization simply codify state behavior and place no special requirement on the state for compliance. Studies have recently shown that compliance with human rights treaties is higher in countries with more robust civil societies in which the norms of human rights pre-exist. Thus, international organizations do not establish aspirational goals but serve as an avenue to codify pre-existing state behavior. If organizations and rules are created based on a minimum common rule of law culture, then there will be little variation among members in regards to compliance behavior. These results might confirm the view of many that international organizations do not create new norms of behavior but instead codify existing state practice and culture.

In all three models, the difference among post-communist and other members also contributes to our understanding of the sanctioning power of the ECtHR. When the nature of the sanction is financial, post-communist states respond by complying with a greater degree than other members. However, when the sanction changes to take on a sovereignty characteristic in which compliance is much more a function of technical expertise, post-communist countries violate as a percentage more frequently that other states. Post-communist states do not have the same capacity of other members or as Börzel et al. (2017) term it "external integration capacity." Equally important, my findings indicate that differences among post-communist states are just as important as difference between them and other states.

This research thus also reveals that the concept of "post-communism" needs to be re-thought as an analytical category for research purposes. In all three models, post-communist state behavior differs from other members, but often in unexpected ways. In the case of violations involving just satisfaction, post-communist states are actually more likely to comply with the ECHR (this finding is in line with similar findings by Börzel and Sedelmeier (2017) in regards to post-accession EU compliance. If one disaggregates among post-communist countries to focus on East European and former Soviet Republics, the difference among members also becomes obvious as the sovereignty costs increase. Thus, this research contributes to the literature which over the past decade has questioned the continued usefulness of post-communism as an analytical category.

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