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The Role of International Human Rights Mechanisms in Enforcing State Accountability: A Critical Jurisprudential Analysis

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ABSTRACT

The protection of human rights is a basic goal of modern international law. A variety of international human rights mechanisms has been developed since the Universal Declaration of Human Rights of 1948 to oversee state action, to secure adherence by states to their human rights commitments and to enable accountability. Existing enforcement mechanisms nevertheless continue to be confronted by ongoing violations of human rights. This paper adopts a jurisprudential approach in order to assess critically the effectiveness of international human rights mechanisms in holding states accountable. Employing a doctrinal and analytical research method, the study reviews and assesses the effectiveness of treaty-based mechanisms, such as the United Nations treaty bodies, and of charter-based mechanisms, including the Human Rights Council, the Universal Periodic Review and the special procedures. It also examines how regional human rights systems in Europe, the Americas and Africa have helped to advance accountability and to safeguard individual rights, and it considers the legal principles of state responsibility and the role of international institutions in monitoring, reporting, adjudication and norm-setting. The study concludes that international human rights mechanisms have contributed to greater transparency, to the evolution of human rights norms and to accountability, but that their impact is limited by state sovereignty, political selectivity, weak enforcement powers and uneven implementation of recommendations and judgments. These systems cannot be the sole means of assuring compliance, yet they remain vital instruments for holding states to account and for reducing impunity. A more effective international human rights system in the modern international legal order requires strengthened governance and institutional capacity, improved follow-up mechanisms and greater political commitment.

Keywords: *international human rights law, state accountability, state responsibility, human rights mechanisms, Human Rights Council, treaty bodies, jurisprudence*

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I. INTRODUCTION

International human rights law has developed into a comprehensive and well-defined body of rules designed to secure the dignity of the individual and to hold states to internationally agreed human rights standards. The system works only where credible mechanisms exist to hold states to account for breaches of their international obligations. International human rights mechanisms perform that function through monitoring, reporting, adjudication and investigation.

This study examines critically the effectiveness of international human rights mechanisms in holding states to account, with particular attention to treaty-based mechanisms, charter-based mechanisms, judicial and quasi-judicial mechanisms, and regional human rights systems. It considers how these mechanisms operate, the legal bases on which they rest, and their effectiveness in securing real compliance by states.

Although these institutions have contributed significantly to human rights jurisprudence and to normative clarity, their enforcement power is limited by state sovereignty, political interference and the non-binding character of many of their outputs. Against that background, the study also draws on jurisprudential approaches in order to consider whether international human rights mechanisms are effective instruments of accountability or largely symbolic ones within a politically organised international order.

II. CONCEPTUAL AND JURISPRUDENTIAL FOUNDATIONS OF STATE ACCOUNTABILITY

A. Meaning of state accountability

The principle of state accountability is fundamental to international law, and particularly to the international human rights system, under which states must both justify and demonstrate compliance with their international obligations. Accountability is multidimensional: its legal, political and international dimensions are interconnected.

Legal accountability is the obligation of a state to adhere to binding norms of international law and to face legal consequences for breaching them. Such accountability takes many forms, but is most visibly secured through international courts, tribunals and treaty-monitoring bodies that measure compliance with international human rights treaties.¹

¹ ANDREW CLAPHAM, *HUMAN RIGHTS: A VERY SHORT INTRODUCTION* (OUP 2007).

Political accountability operates through less formal mechanisms, such as the United Nations Human Rights Council and its Universal Periodic Review, which subject states to peer review of their human rights practices.²

International accountability concerns the general responsibility of states under international law to respect, protect and fulfil human rights obligations, and entails a duty to provide a remedy whenever violations occur.³

Taken together, these dimensions illustrate how international human rights law has moved from diplomatic representation towards institutionalised scrutiny of responsibility.

B. State responsibility in international law

The doctrine of state responsibility is central to an understanding of accountability in international law. It is concerned with the legal consequences of internationally wrongful acts committed by states. A state incurs responsibility where an act or omission attributable to it constitutes a breach of an international legal obligation.⁴

The doctrine has been most comprehensively articulated in the Articles on Responsibility of States for Internationally Wrongful Acts adopted by the International Law Commission in 2001, which are widely regarded as the authoritative codification and progressive development of the customary international law governing the consequences of internationally wrongful conduct.⁵ Two elements must be established.

The first is attribution: the conduct must be legally attributable to the state, whether through its organs, its agents or entities exercising governmental authority.⁶

The second is breach of an international obligation, which occurs where a state fails to comply with its duties under treaty law or customary international law.⁷

Once these elements are satisfied, the state is obliged to cease the wrongful act, to offer assurances of non-repetition and to make full reparation, including restitution or compensation where appropriate.⁸

² PHILIP ALSTON AND RYAN GOODMAN, *INTERNATIONAL HUMAN RIGHTS* (OUP 2013) 898-901.

³ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) UN Doc A/RES/217(III).

⁴ JAMES CRAWFORD, *STATE RESPONSIBILITY: THE GENERAL PART* (CUP 2013) 47-49.

⁵ INTERNATIONAL LAW COMMISSION, *Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries* (2001) II(2) YEARBOOK OF THE INTERNATIONAL LAW COMMISSION 31, 32.

⁶ *ibid* arts 4-8.

⁷ *ibid* art 12.

⁸ *ibid* arts 30-31, 35-36.

International jurisprudence, and in particular the judgment of the International Court of Justice in *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)*, has reinforced these principles by clarifying the scope of state responsibility both for direct acts and for a failure to prevent internationally wrongful conduct.⁹

C. Jurisprudential perspectives

The legal and philosophical rationales for state accountability under international human rights enforcement mechanisms may also be examined through a number of jurisprudential theories.

i. Natural law theory

On the natural law account, human rights exist naturally and universally and are independent of the consent of states. State accountability is on this view a moral and universal idea of justice rather than a creature of positive law. The approach is reflected in the Universal Declaration of Human Rights, in which rights are grounded in intrinsic human dignity.¹⁰

ii. Positivist theory

According to legal positivism, international human rights obligations bind states only where they have expressly conferred their consent through treaties or customary international law.¹¹ Accountability on this view follows from voluntary submission to legal obligation, so that treaty-based instruments such as the ICCPR and the ICESCR are central to enforceability.¹²

iii. Liberal internationalism

Liberal internationalist theory emphasises the role of international institutions in promoting compliance and accountability. Institutions such as the Human Rights Council, the treaty bodies and the regional courts are seen as essential actors in monitoring state behaviour and encouraging adherence to human rights norms.¹³

iv. Critical legal studies

Critical legal scholars argue that international law is not neutral but reflects underlying structures of power. On this view the enforcement of accountability is often inconsistent,

⁹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)* (Merits) [2007] ICJ Rep 43, paras 385-450.

¹⁰ Universal Declaration of Human Rights (n 3) preamble.

¹¹ HLA HART, *THE CONCEPT OF LAW* (3rd edn, OUP 2012) 213-18.

¹² International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171; International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3.

¹³ Alston and Goodman (n 2).

politically powerful states escaping scrutiny while weaker states are more frequently called to account.

v. Third World approaches to international law

Scholarship in the tradition of Third World Approaches to International Law highlights systemic inequalities within international law, arguing that global human rights mechanisms reflect post-colonial imbalances of power and produce selective enforcement and unequal treatment of states in the global South.¹⁴

III. INTERNATIONAL HUMAN RIGHTS MECHANISMS: INSTITUTIONAL FRAMEWORK

The contemporary international human rights system is supported by a substantial institutional architecture directed to the promotion, monitoring and enforcement of the international human rights obligations of states. Since the adoption of the Universal Declaration of Human Rights in 1948, an elaborate apparatus has emerged for the protection of human rights at the international level, comprising global and regional mechanisms, judicial and quasi-judicial bodies, and treaty-based and charter-based institutions. Their principal role is to facilitate the institutionalised accountability of the state for violations of internationally recognised human rights standards.

A. Definition and classification of international human rights mechanisms

An international human rights monitoring mechanism is an arrangement established by an international or regional legal instrument and tasked with overseeing, monitoring, interpreting and, in some instances, enforcing the human rights obligations of states. Its principal functions include receiving and considering state reports, dealing with complaints, conducting investigations, making recommendations and issuing authoritative interpretations of international human rights norms.¹⁵

Scholars generally classify international human rights mechanisms into two categories, global mechanisms and regional mechanisms.¹⁶

¹⁴ ANTONY ANGHIE, *IMPERIALISM, SOVEREIGNTY AND THE MAKING OF INTERNATIONAL LAW* (CUP 2005).

¹⁵ Alston and Goodman (n 2) 892-95.

¹⁶ DINAH L SHELTON, *ADVANCED INTRODUCTION TO INTERNATIONAL HUMAN RIGHTS LAW* (2nd edn, Edward Elgar 2020) 21.

i. Global mechanisms

Global mechanisms operate within the United Nations system and are, in principle, of universal reach. They derive either from human rights treaties or from the Charter of the United Nations.¹⁷ They matter for two reasons. First, they supply standards applicable in all states. Second, they place human rights on the international agenda for every state.

The global framework comprises treaty bodies, such as the Human Rights Committee, the Committee against Torture and the Committee on the Elimination of Discrimination against Women, and charter-based bodies, such as the Human Rights Council, the Universal Periodic Review and the special procedures system.¹⁸ These bodies form the central accountability architecture of the United Nations human rights system.

ii. Regional mechanisms

Regional human rights mechanisms complement universal institutions by producing systems of protection tailored to a given region. Regional human rights systems have emerged in recognition that regional institutions may be better placed to respond to particular historical, cultural and political circumstances while upholding universal human rights standards.¹⁹

The principal regional systems are the European, the Inter-American and the African. The European system exists under the European Convention on Human Rights and the Inter-American system under the American Convention on Human Rights.²⁰ The African system operates under the African Charter on Human and Peoples' Rights.

B. Treaty-based mechanisms

A treaty-based mechanism is a body created under a particular international human rights treaty and charged with monitoring how states parties implement their treaty obligations.²¹ Unlike political mechanisms, the powers and functions of these bodies derive from the consent of states, expressed by ratification of or accession to the treaty. The ten treaty bodies of the present United Nations system were established under the core human rights treaties, save for the

¹⁷ HENRY J STEINER, PHILIP ALSTON AND RYAN GOODMAN, *INTERNATIONAL HUMAN RIGHTS IN CONTEXT: LAW, POLITICS, MORALS* (3rd edn, OUP 2008) 921.

¹⁸ OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, *THE UNITED NATIONS HUMAN RIGHTS TREATY SYSTEM: AN INTRODUCTION TO THE CORE HUMAN RIGHTS TREATIES AND THE TREATY BODIES* (Fact Sheet No 30/Rev.1, 2012) 7.

¹⁹ MALCOLM N SHAW, *INTERNATIONAL LAW* (9th edn, CUP 2021) 265.

²⁰ RHONA KM SMITH, *TEXTS AND MATERIALS ON INTERNATIONAL HUMAN RIGHTS* (4th edn, Routledge 2020) 120-23.

²¹ OHCHR (n 18) 8.

Committee on Economic, Social and Cultural Rights, which was created by the Economic and Social Council.²²

Among the most significant are the Human Rights Committee, established under the ICCPR, the Committee on Economic, Social and Cultural Rights, the Committee against Torture and the Committee on the Elimination of Discrimination against Women.²³

Treaty bodies perform several interconnected functions. First, they examine the periodic reports that states parties submit, considering both the measures taken and those envisaged in order to implement treaty obligations. Having reviewed a report, they issue concluding observations identifying areas of progress and of concern and indicating the measures the state should take. Some treaty bodies may also receive and determine individual communications alleging violations of the treaty.²⁴

Second, optional protocols and optional treaty provisions establish international complaint procedures allowing an individual to seek international review once domestic remedies have been exhausted. The views adopted by a treaty body at the conclusion of such a procedure are not binding in the manner of a judicial decision; they are an authoritative determination by the body entrusted with interpreting the treaty.²⁵ They nevertheless carry considerable interpretative and normative weight and have exerted a sustained influence on the reform of domestic law and judicial practice.²⁶

Third, in the field of normative development, treaty bodies issue general comments or general recommendations that have an interpretative effect on the provisions of the treaties under which they are established.²⁷

Treaty bodies remain dependent on state cooperation. Delayed reporting, non-implementation of recommendations and the absence of effective follow-up continue to limit their effectiveness.²⁸

²² *ibid.*

²³ International Covenant on Civil and Political Rights (n 12); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85; Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13. The Committee on Economic, Social and Cultural Rights was established not by treaty but by ECOSOC Res 1985/17 (28 May 1985).

²⁴ OHCHR (n 18) 18.

²⁵ Optional Protocol to the International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 302, art 5(4).

²⁶ MANFRED NOWAK, UN COVENANT ON CIVIL AND POLITICAL RIGHTS: CCPR COMMENTARY (2nd rev edn, NP Engel 2005) xxiii.

²⁷ HUMAN RIGHTS COMMITTEE, *General Comment No 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant* (26 May 2004) UN Doc CCPR/C/21/Rev.1/Add.13.

²⁸ Alston and Goodman (n 2) 924-28.

C. Charter-based mechanisms

Charter-based mechanisms are established by the Charter of the United Nations rather than by treaty. Whereas the competence of a treaty body is attributable to a particular human rights treaty, these institutions exercise competence over all Member States of the United Nations, whether or not they have ratified the relevant human rights treaty.²⁹ The United Nations Human Rights Council is the most important charter-based institution. It was established by General Assembly resolution 60/251 of 15 March 2006 in replacement of the Commission on Human Rights, and is principally an intergovernmental body for the promotion of universal respect for human rights.³⁰ It addresses situations of serious human rights violations.

A distinctive feature of the Council is the Universal Periodic Review, which regularly scrutinises the human rights record of every Member State of the United Nations through a peer-review mechanism.³¹ The process enhances transparency, dialogue and constructive engagement by allowing states, civil society organisations and others to participate actively in the review.³²

The special procedures, comprising special rapporteurs, independent experts and working groups, are a further essential mechanism within the charter-based system. Mandate holders, whose mandates are thematic or country-specific, are appointed by the Human Rights Council, a number of mandates having been inherited from the former Commission on Human Rights.³³ Their activities include country visits, communications to governments on alleged violations, and thematic reporting to the Council and to the General Assembly.³⁴

The charter-based mechanisms offer universality, flexibility and a capacity for rapid response to crises. Their impact is nevertheless often constrained by political considerations, selective scrutiny and non-binding outcomes.³⁵

D. Judicial and quasi-judicial mechanisms

International human rights enforcement also depends on the distinction between judicial and quasi-judicial mechanisms. International and regional tribunals constitute the judicial

²⁹ Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI, arts 1(3), 55 and 56.

³⁰ UNGA Res 60/251 (15 March 2006) UN Doc A/RES/60/251.

³¹ HRC Res 5/1, *Institution-Building of the United Nations Human Rights Council* (18 June 2007) UN Doc A/HRC/RES/5/1.

³² Smith (n 20) 231.

³³ OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, *Special Procedures of the Human Rights Council* <<https://www.ohchr.org/en/special-procedures-human-rights-council>> accessed 20 June 2026.

³⁴ *ibid.*

³⁵ CHRISTIAN TOMUSCHAT, *HUMAN RIGHTS: BETWEEN IDEALISM AND REALISM* (3rd edn, OUP 2014) 243-47.

mechanism and have power to take legally binding decisions. The European Court of Human Rights, the Inter-American Court of Human Rights and the African Court on Human and Peoples' Rights are the leading examples.³⁶ These tribunals determine contentious proceedings, interpret the provisions of their constituent instruments, order reparation and deliver judgments that are binding upon the states parties concerned, subject in the Inter-American and African systems to a separate acceptance of the court's contentious jurisdiction, and whose execution is supervised rather than directly enforced. Their contribution to international human rights law is considerable and they have strengthened state accountability.³⁷

Quasi-judicial mechanisms include the treaty bodies and other monitoring institutions, which exercise adjudicatory functions that are not entirely judicial.³⁸ The Human Rights Committee, the Committee against Torture and comparable bodies conduct such proceedings, but they stop short of issuing judgments; they examine communications and offer views and recommendations. Although they possess no enforcement machinery, they are persuasive and have shaped international human rights jurisprudence.³⁹

Judicial and quasi-judicial mechanisms approach accountability differently. Judicial bodies are concerned with the determination of legal rights and obligations and with binding remedies; quasi-judicial bodies emphasise supervision, dialogue and norm development. Both are important components of international accountability.

IV. TREATY-BASED AND CHARTER-BASED HUMAN RIGHTS MECHANISMS: ENSURING STATE ACCOUNTABILITY

International human rights law works through institutional mechanisms that perform supervisory, monitoring and promotional roles and that seek to secure compliance with human rights commitments. The international system possesses no enforcement authority comparable to that available within a domestic legal order. The treaty-based and charter-based mechanisms have nevertheless developed a sophisticated practice designed to enhance accountability and

³⁶ Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 4 November 1950, entered into force 3 September 1953) ETS No 5 (ECHR); American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978) 1144 UNTS 123; Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (adopted 10 June 1998, entered into force 25 January 2004) OAU Doc OAU/LEG/EXP/AFCHPR/PROT (III). On the binding force of judgments and the supervision of their execution see ECHR art 46; on the separate acceptance of contentious jurisdiction see ACHR art 62 and the African Court Protocol arts 5(3) and 34(6).

³⁷ DINAH SHELTON, *REMEDIES IN INTERNATIONAL HUMAN RIGHTS LAW* (3rd edn, OUP 2015) 12-15.

³⁸ NIGEL S RODLEY AND MATT POLLARD, *THE TREATMENT OF PRISONERS UNDER INTERNATIONAL LAW* (3rd edn, OUP 2009) 34.

³⁹ SARAH JOSEPH AND MELISSA CASTAN, *THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS: CASES, MATERIALS, AND COMMENTARY* (3rd edn, OUP 2013) 24-26.

transparency and to restrain the impunity of states. They are the architecture through which states are held to account, by way of reporting procedures, individual complaint systems, investigations and normative interpretation.

A. Treaty-based mechanisms and state accountability

Treaty-based mechanisms derive their authority directly from the human rights treaties that states have ratified. Their jurisdiction rests upon state consent, reflecting the consensual character of international law. The United Nations treaty body system presently comprises several committees established under the core human rights conventions, each entrusted with monitoring implementation by states parties.⁴⁰

i. Human Rights Committee

The Human Rights Committee is established by Part IV of the ICCPR and forms an essential element of the treaty body system.⁴¹ It consists of independent experts who monitor implementation of the Covenant through periodic state reporting, the consideration of individual communications under the First Optional Protocol, and the adoption of general comments interpreting the provisions of the Covenant.⁴²

The ICCPR requires states parties to submit periodic reports on the measures taken to give effect to the rights guaranteed by the Covenant. After discussion with representatives of the state party, the Committee adopts concluding observations identifying gaps and deficiencies and recommending reform.⁴³ Although not legally binding, these carry significant normative and political weight within domestic legal systems. The individual communications procedure is one of the most important accountability mechanisms in international human rights law.

A person claiming that a state has violated rights under the Covenant may bring the matter before the Committee only after exhausting domestic remedies.⁴⁴ The Committee's jurisprudence under that procedure has substantially expanded the protection available.

In *Toonen v Australia* the Committee adopted views finding that the Tasmanian provisions criminalising consensual sexual relations between adult men arbitrarily interfered with the author's right to privacy under article 17(1), read with article 2(1), of the ICCPR.⁴⁵ The views led to legislative reform in Australia and remain a landmark on sexual orientation and non-

⁴⁰ OHCHR (n 18) 7.

⁴¹ International Covenant on Civil and Political Rights (n 12) arts 28-45.

⁴² Joseph and Castan (n 39) 18-25.

⁴³ OHCHR (n 18) 18.

⁴⁴ Optional Protocol to the ICCPR (n 25) art 5(2)(b).

⁴⁵ *Toonen v Australia*, Communication No 488/1992 (31 March 1994) UN Doc CCPR/C/50/D/488/1992.

discrimination. General Comment No 31 is likewise important.⁴⁶ The Committee there makes clear that the obligations of states parties under the Covenant are not merely negative but positive, so that states must ensure effective remedies. The general comment states that a state party may incur international responsibility not only for violations committed by its own organs but also where it fails to exercise due diligence to prevent, investigate and punish violations.

ii. Committee against Torture

Under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Committee against Torture performs an important function in combating torture.⁴⁷ Beyond the examination of state reports, it may consider individual communications and conduct confidential inquiries into systematic torture.⁴⁸

The Committee's decision in *Agiza v Sweden* remains a significant authority. The Committee held Sweden responsible for the removal of Ahmed Agiza to Egypt in the face of a credible risk of torture, and determined that Sweden had violated article 3 of the Convention, both substantively and procedurally, as well as article 22.⁴⁹ The decision confirmed the absolute character of the principle of non-refoulement and stressed that states must conduct a risk assessment before removal.

iii. Committee on the Elimination of Discrimination against Women

Through periodic reporting, individual complaints under the Optional Protocol and general recommendations, the Committee on the Elimination of Discrimination against Women monitors implementation of the Convention on the Elimination of All Forms of Discrimination against Women.⁵⁰ It has substantially advanced the development of standards of gender equality.⁵¹

The Committee has interpreted discrimination under the Convention as encompassing gender-based violence.⁵² It has enhanced accountability by requiring states parties to exercise due

⁴⁶ Human Rights Committee (n 27) paras 8, 15-18.

⁴⁷ Convention against Torture (n 23).

⁴⁸ MANFRED NOWAK AND ELIZABETH MCARTHUR, THE UNITED NATIONS CONVENTION AGAINST TORTURE: A COMMENTARY (OUP 2008) 609-15.

⁴⁹ *Agiza v Sweden*, Communication No 233/2003 (20 May 2005) UN Doc CAT/C/34/D/233/2003.

⁵⁰ Convention on the Elimination of All Forms of Discrimination against Women (n 23); Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (adopted 6 October 1999, entered into force 22 December 2000) 2131 UNTS 83.

⁵¹ MARSHA A FREEMAN, CHRISTINE CHINKIN AND BEATE RUDOLF (EDS), THE UN CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN: A COMMENTARY (OUP 2012) 25-30.

⁵² COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN, *General Recommendation No 19: Violence against Women* (1992) UN Doc A/47/38.

diligence in relation to violence against women, whether committed by state organs or by non-state actors.

iv. Committee on Economic, Social and Cultural Rights

Economic, social and cultural rights were initially regarded as non-justiciable and as goals or aspirations. The Committee on Economic, Social and Cultural Rights has been instrumental in changing that orthodoxy, through its general comments and through the Optional Protocol to the ICESCR.⁵³ The Committee has clarified the normative content of economic, social and cultural rights and increased accountability under the Covenant.⁵⁴

General Comment No 3 states that the steps taken towards the progressive realisation of Covenant rights should be ‘deliberate, concrete and targeted’ and that they must be taken within a reasonably short time after the entry into force of the Covenant for the state concerned.⁵⁵ On that reading the Covenant imports an immediate duty to act. Subsequent general comments have spelt out obligations in relation to health, housing, food and education, so that economic and social rights are progressively acquiring legal content.

v. Critical assessment of treaty-based mechanisms

International accountability has benefited substantially from the treaty bodies, through closer monitoring, greater transparency and authoritative interpretation of treaty obligations.⁵⁶ Their jurisprudence has shaped constitutional adjudication, statutory reform and public policy in developed and developing jurisdictions alike.

There are nevertheless limits. The findings of treaty bodies are not legally binding in the manner of judicial decisions.⁵⁷ The working of the compliance mechanism depends largely upon state cooperation and upon a willingness to implement recommendations in good faith. Delays in reporting, non-compliance and inadequate follow-up persistently undermine effectiveness.⁵⁸

⁵³ Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (adopted 10 December 2008, entered into force 5 May 2013) UNGA Res 63/117 UN Doc A/RES/63/117.

⁵⁴ MALCOLM LANGFORD (ED), *SOCIAL RIGHTS JURISPRUDENCE: EMERGING TRENDS IN INTERNATIONAL AND COMPARATIVE LAW* (CUP 2008) 3.

⁵⁵ COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, *General Comment No 3: The Nature of States Parties' Obligations (Art 2, Para 1, of the Covenant)* (14 December 1990) UN Doc E/1991/23, annex III, para 2.

⁵⁶ Alston and Goodman (n 2) 917-28.

⁵⁷ Shelton, *ADVANCED INTRODUCTION* (n 16) 84.

⁵⁸ Tomuschat (n 35) 236-39.

B. Charter-based mechanisms and accountability

In contrast to treaty bodies, charter-based mechanisms derive their authority directly from the Charter of the United Nations and therefore exercise competence over all Member States irrespective of treaty ratification.⁵⁹

i. United Nations Human Rights Council

The Human Rights Council was established by General Assembly resolution 60/251 of 15 March 2006 in replacement of the former Commission on Human Rights. Its role within the United Nations is to promote universal respect for the protection of all human rights and fundamental freedoms.⁶⁰ It addresses situations of human rights violations and makes recommendations upon them, and works to ensure that the human rights machinery of the United Nations is coherent and efficient.⁶¹

ii. Universal Periodic Review

The Universal Periodic Review is a distinctive feature of the Council. It was established in 2007 to review the human rights record of every Member State of the United Nations on a periodic basis.⁶² The review proceeds on the basis of three principal documents: a national report submitted by the state under review; a compilation of United Nations information; and a summary of stakeholder submissions, the last two being prepared by the Office of the United Nations High Commissioner for Human Rights.⁶³

The Universal Periodic Review has succeeded in universalising scrutiny, encouraging dialogue and promoting voluntary undertakings by states. Participation by civil society organisations has also increased, with growing transparency about human rights within states.⁶⁴

The peer-review character of the process nevertheless leads to considerable bargaining over recommendations, which are frequently couched in deferential terms.⁶⁵ Implementation rates are mixed and the mechanism is limited in the accountability it can deliver.

⁵⁹ UN Charter (n 29) arts 1(3), 55 and 56.

⁶⁰ UNGA Res 60/251 (n 30).

⁶¹ *ibid* para 2.

⁶² HRC Res 5/1 (n 31).

⁶³ *ibid* annex paras 15-17.

⁶⁴ EDWARD R McMAHON, *THE UNIVERSAL PERIODIC REVIEW: A WORK IN PROGRESS. AN EVALUATION OF THE FIRST CYCLE OF THE NEW UPR MECHANISM OF THE UNITED NATIONS HUMAN RIGHTS COUNCIL* (Friedrich-Ebert-Stiftung 2012) 9-12.

⁶⁵ HURST HANNUM, *RESCUING HUMAN RIGHTS: A RADICALLY MODERATE APPROACH* (CUP 2019) 157-60.

iii. Commissions of inquiry and fact-finding missions

The Human Rights Council makes increasing use of commissions of inquiry and fact-finding missions to collect evidence relating to alleged breaches of international human rights law and international humanitarian law.⁶⁶

The Independent International Commission of Inquiry on the Syrian Arab Republic has documented atrocities throughout the Syrian conflict, generating a substantial body of evidentiary material relating to war crimes and crimes against humanity.⁶⁷ The Independent International Fact-Finding Mission on Myanmar concluded in 2018 that there was sufficient information to warrant the investigation and prosecution of senior officials in the Tatmadaw chain of command, so that a competent court might determine their liability for genocide in relation to the situation in Rakhine State, and it further concluded that crimes against humanity had been committed.⁶⁸

These mechanisms perform an important accountability function: they preserve evidence, identify those responsible and make later proceedings possible.

iv. Critical evaluation

Charter-based mechanisms offer universality, flexible procedures and the capacity to act quickly as crises arise. The political composition of the United Nations system and the selectivity of its scrutiny limit their effectiveness. The membership of the Human Rights Council has been criticised on the ground that states with poor human rights records sit upon it, and critics argue that geopolitical considerations determine which states attract scrutiny and which do not.

Treaty-based and charter-based mechanisms are the principal instruments of international human rights accountability. Neither can secure compliance alone, and each possesses capacities the other lacks. Operating together, they subject states to monitoring, norm development, transparency and international scrutiny, and have narrowed the room for impunity within the existing international legal order.

V. REGIONAL HUMAN RIGHTS MECHANISMS AS ACCOUNTABILITY TOOLS

Global mechanisms call human rights violators to account at the international level. Regional human rights systems perform a comparable function at the regional level, various treaties and organs offering redress to individuals against violations committed by states within the region.

⁶⁶ Alston and Goodman (n 2) 945.

⁶⁷ HUMAN RIGHTS COUNCIL, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic* (13 August 2015) UN Doc A/HRC/30/48.

⁶⁸ HUMAN RIGHTS COUNCIL, *Report of the Independent International Fact-Finding Mission on Myanmar* (12 September 2018) UN Doc A/HRC/39/64, paras 83, 87-88.

A. European human rights system

The European system, founded on the European Convention on Human Rights of 1950, is the most developed regional accountability system. The European Court of Human Rights is its principal organ, exercising compulsory jurisdiction over the member states of the Council of Europe with binding legal effect.⁶⁹ Its case law has substantially improved state accountability. In *Soering v United Kingdom* the Court held that extradition would engage the responsibility of the extraditing state under Article 3 of the Convention where substantial grounds had been shown for believing that the person concerned faced a real risk of inhuman or degrading treatment in the receiving state, thereby extending the extraterritorial obligations of states.⁷⁰

In *Hirst v United Kingdom (No 2)* the Grand Chamber held that the blanket ban on voting by convicted prisoners in the United Kingdom violated Article 3 of Protocol No 1 to the Convention, reiterating that prisoners do not by reason of their detention forfeit their Convention rights.⁷¹

The principal strengths of the European system are the binding character of its judgments and the supervision of their execution by the Committee of Ministers.

B. Inter-American human rights system

The Inter-American system comprises the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, which operate under the American Convention on Human Rights.⁷²

The system has played a vital part in responding to grave violations of human rights within processes of transitional justice. In *Velásquez Rodríguez v Honduras* the Court held that a state may be responsible not only for direct violations but also for a failure to prevent, investigate and punish enforced disappearances.⁷³ In *Barrios Altos v Peru* the Court held that domestic amnesty provisions for serious human rights violations were incompatible with the Convention and declared that they lacked legal effect.⁷⁴

The effectiveness of the Inter-American system has been curtailed by uneven state compliance and by a lack of resources.

⁶⁹ ECHR (n 36).

⁷⁰ *Soering v United Kingdom* App no 14038/88 (ECtHR, 7 July 1989); (1989) 11 EHRR 439.

⁷¹ *Hirst v United Kingdom (No 2)* App no 74025/01 (ECtHR [GC], 6 October 2005); (2006) 42 EHRR 41.

⁷² American Convention on Human Rights (n 36).

⁷³ *Velásquez Rodríguez v Honduras* (Merits) IACtHR Series C No 4 (29 July 1988) paras 166-77.

⁷⁴ *Barrios Altos v Peru* (Merits) IACtHR Series C No 75 (14 March 2001).

C. African human rights system

The African human rights system is composed principally of the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights, which exercise promotional, protective and judicial functions respectively.⁷⁵

In *Tanganyika Law Society v Tanzania* the African Court held that the restrictions preventing independent candidates from standing for election breached the African Charter, and affirmed the right to participate in government.⁷⁶

The African system has achieved a good deal in normative terms but remains beset by serious difficulties, among them inadequate funding and low rates of state compliance. A further difficulty is the withdrawal by several states of the declaration permitting individuals and non-governmental organisations to bring cases directly before the Court.

D. Comparative assessment

By reason of its institutional architecture, the binding character of its judgments, the supervision of their execution and the greater political will of its member states, the European system remains comparatively the most effective.⁷⁷ The Inter-American and African systems are affected by structural constraints, political resistance, shortages of resources and the non-implementation of decisions. All three regional systems have nevertheless contributed substantially to strengthening human rights accountability at the international level and to reducing the impunity of states.

VI. CHALLENGES AND CONSTRAINTS ON INTERNATIONAL HUMAN RIGHTS MACHINERY

International mechanisms have undergone numerous reforms over the years, yet the extent to which states are in practice held to account for their human rights conduct remains limited.⁷⁸ A range of structural and political factors constrains the machinery.

One key limitation is the principle of state sovereignty. Sovereignty allows states full control over their internal affairs and severely restricts the enforcement of international human rights obligations. States commonly accept treaty obligations and then withdraw from full engagement at the stage of implementation.

⁷⁵ African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) 1520 UNTS 217; Protocol to the African Charter on Human and Peoples' Rights (n 36).

⁷⁶ *Tanganyika Law Society and Legal and Human Rights Centre v United Republic of Tanzania*; *Mtikila v United Republic of Tanzania* App nos 009/2011 and 011/2011 (AfCtHPR, 14 June 2013).

⁷⁷ Shelton, REMEDIES (n 37) 245-48.

⁷⁸ UN Charter (n 29) art 2(7).

States frequently decline international review on the ground that the conduct complained of falls within their domestic jurisdiction, and monitoring bodies have repeatedly recorded the adverse effect of such refusals on the protection of the rights at issue.

Closely related is the absence of binding enforcement power in most international human rights mechanisms. With the exception of certain regional courts, notably the European Court of Human Rights, global mechanisms operate through soft-law instruments such as recommendations, concluding observations and general comments.⁷⁹ These carry considerable interpretative weight but are not strictly binding. In the absence of coercive enforcement, compliance depends principally upon political will, diplomatic pressure and reputational cost rather than upon legal obligation.

Political selectivity is a further difficulty and is said to undermine the legitimacy of the system. Where the application of legal measures is shaped more by geopolitical interest than by consistent application of the law, difficulties arise.⁸⁰ Powerful states rarely endure prolonged scrutiny, while weaker or politically isolated states attract intense monitoring and criticism. Critics argue that this inconsistency defeats any claim to neutrality.

Institutional and resource limitations also hamper effectiveness. Many treaty bodies operate with restricted financial and administrative capacity, which delays the examination of state reports and individual complaints.⁸¹ The growing caseload of mechanisms such as the Human Rights Committee and the Committee on Economic, Social and Cultural Rights has generated substantial backlogs, affecting the timeliness and the impact of their interventions.⁸² Recommendations are, in addition, not systematically implemented or monitored, there being no follow-up mechanism in many cases.

Non-implementation reflects an entrenched implementation gap in treaty body processes. Most states accept the recommendations of treaty bodies, but in the absence of an efficient enforcement mechanism implementation is partial and delayed. The implementation gap describes the situation in which states endorse the normative content of recommendations without giving them practical effect, so that compliance rests upon dialogue.

⁷⁹ Shelton, *ADVANCED INTRODUCTION* (n 16) 84-86.

⁸⁰ Alston and Goodman (n 2) 938-42.

⁸¹ OHCHR (n 18) 28-30.

⁸² Tomuschat (n 35) 236-39.

VII. CRITICAL JURISPRUDENTIAL ANALYSIS

The institutional system of human rights mechanisms has become sophisticated, but a coherent, effective and clear set of rules is not always attainable. Normative weight is frequently inconsistent with actual enforcement capacity.

A. Accountability beyond formal compliance

Formal compliance consists in submitting a report, attending a review or responding formally to recommendations. Accountability entails a change in patterns of behaviour.⁸³ The distinction between formal and substantive compliance is a long-standing one in international law. In the human rights field, commentators observe that many states engage at the procedural level and meet reporting requirements while declining to implement the views of treaty bodies or the recommendations of the Human Rights Council.⁸⁴ The same point is often put as the difference between compliance on paper and compliance in practice.

B. Legitimacy of international human rights frameworks

International human rights mechanisms are numerous. The most effective are those attached to treaties and consisting of monitoring committees.⁸⁵ The Universal Periodic Review, which is in substance a peer review of states, exists alongside them. The legitimacy of these mechanisms is under continuous scrutiny and the charges vary widely.⁸⁶ They range from a deficiency of democratic accountability to a deficiency of state consent, since states do not permit the operation of such mechanisms on their territory without consenting to them.⁸⁷

C. Practical effectiveness and symbolic significance

A central question in contemporary human rights scholarship is whether the various international mechanisms possess transformative power or are largely symbolic. The regional courts illustrate the difficulty.⁸⁸

The European Court of Human Rights delivers judgments against member states and the execution of those judgments is supervised. That capacity distinguishes such courts from global mechanisms, which rarely possess it.⁸⁹ What global mechanisms can offer in its absence is an

⁸³ HELEN KELLER AND GEIR ULFSTEIN (EDS), *UN HUMAN RIGHTS TREATY BODIES: LAW AND LEGITIMACY* (CUP 2012) 145-48.

⁸⁴ Alston and Goodman (n 2) 923-26.

⁸⁵ Joseph and Castan (n 39) 22-25.

⁸⁶ JÜRGEN HABERMAS, *BETWEEN FACTS AND NORMS: CONTRIBUTIONS TO A DISCOURSE THEORY OF LAW AND DEMOCRACY* (William Rehg tr, Polity Press 1996) 356-60.

⁸⁷ McMahan (n 64) 41-44.

⁸⁸ Hannum (n 65) 162-65.

⁸⁹ STEVEN GREER, *THE EUROPEAN CONVENTION ON HUMAN RIGHTS: ACHIEVEMENTS, PROBLEMS AND PROSPECTS* (CUP 2006) 171-75.

important question. It has been suggested that the international mechanisms, and international human rights law as a whole, operate principally through normative influence rather than through coercion.⁹⁰

D. The TWAIL critique

Third World Approaches to International Law offer a structural critique of the enforcement of international human rights.⁹¹ On this account the institutions of international law reproduce a global hierarchy inherited from the colonial and post-colonial periods, so that enforcement is structurally more likely to be directed against weak states than against powerful ones.⁹² Enforcement mechanisms accordingly single out weaker states while powerful states remain free from accountability.⁹³ On the TWAIL account this pattern belies the claimed universality of human rights law, and the same scholarship voices concern about hierarchical forms of global governance.⁹⁴

E. Cosmopolitan and global constitutional perspectives

Cosmopolitan legal theory and global constitutionalism take a different approach, treating international human rights mechanisms as elements of an emerging global legal order.⁹⁵ On these accounts the norms and principles of human rights increasingly form part of the constitutional law of the international system, limiting in principle the competences of states and protecting rights capable of vindication through global institutions.⁹⁶ Global constitutionalism accordingly treats the treaty bodies, the regional courts and the Human Rights Council as specialised organs of a global constitutional law which, through interconnected adjudication and inter-institutional dialogue, constitutes a global constitutional order, albeit a highly fragmented one.⁹⁷

⁹⁰ Shelton, *ADVANCED INTRODUCTION* (n 16) 88-90.

⁹¹ Anghie (n 14) 196-210.

⁹² BS Chimni, *Third World Approaches to International Law: A Manifesto* (2006) 8 *INTERNATIONAL COMMUNITY LAW REVIEW* 3, 12-15.

⁹³ Makau Mutua, *Savages, Victims, and Saviors: The Metaphor of Human Rights* (2001) 42 *HARVARD INTERNATIONAL LAW JOURNAL* 201, 205-10.

⁹⁴ Obiora Chinedu Okafor, *Critical Third World Approaches to International Law (TWAIL): Theory, Methodology, or Both?* (2008) 10 *INTERNATIONAL COMMUNITY LAW REVIEW* 371.

⁹⁵ Anne Peters, *Compensatory Constitutionalism: The Function and Potential of Fundamental International Norms and Structures* (2006) 19 *LEIDEN JOURNAL OF INTERNATIONAL LAW* 579.

⁹⁶ Alec Stone Sweet, *A Cosmopolitan Legal Order: Constitutional Pluralism and Rights Adjudication in Europe* (2012) 1 *GLOBAL CONSTITUTIONALISM* 53, 78-82.

⁹⁷ Mattias Kumm, *The Cosmopolitan Turn in Constitutionalism: On the Relationship between Constitutionalism in and beyond the State* in JEFFREY L DUNOFF AND JOEL P TRACHTMAN (EDS), *RULING THE WORLD? CONSTITUTIONALISM, INTERNATIONAL LAW, AND GLOBAL GOVERNANCE* (CUP 2009) 258, 261-65.

VIII. RECOMMENDATIONS

1. **Strengthening enforcement.** Improve the capacity of human rights bodies to secure implementation by strengthening follow-up and compliance review.
2. **Monitoring state compliance.** Create a common mechanism to monitor the decisions and recommendations of treaty bodies.
3. **Improving follow-up.** Introduce mandatory, time-limited follow-up reporting by states on progress in implementation.
4. **Reducing political influence.** Adopt merit-based and less politicised selection in bodies such as the Human Rights Council.
5. **Supporting regional systems.** Give more robust financial and institutional assistance to regional human rights courts and commissions.
6. **Expanding victim access.** Streamline complaints procedures and enhance access to legal aid for those pursuing international remedies.
7. **Enhancing transparency.** Require states to report transparently and uniformly on their human rights obligations.
8. **Strengthening national institutions.** Support national human rights institutions in giving effect to international obligations.
9. **Expanding special procedures.** Extend the mandate and the independence of special rapporteurs and investigative bodies.
10. **Promoting cooperative compliance.** Combine accountability with capacity building in order to promote genuine long-term compliance by states.

IX. CONCLUSION

This study has examined the contribution of international human rights mechanisms to holding states to account. The system comprises treaty-based bodies, charter-based institutions and regional human rights courts, which together monitor states and encourage respect for human rights.

These mechanisms have contributed greatly to the promotion of human rights norms and to the definition of state responsibility, but enforcement remains weak. Although the Articles on Responsibility of States for Internationally Wrongful Acts offer a solid doctrinal basis for accountability, enforcement continues to depend upon state consent and political will rather than upon coercion. The reporting procedures, individual complaints mechanisms and investigative powers of the treaty bodies and of the charter-based mechanisms are of

considerable importance, and regional courts have demonstrated increasing enforcement capacity in some jurisdictions. Political selectivity, the non-binding character of many outputs, institutional limitations and uneven implementation nevertheless continue to affect overall effectiveness.

From a jurisprudential point of view the study exposes the tension between sovereignty and international supervision, and between ideals and facts. Critical approaches such as Third World Approaches to International Law reveal structural inequalities in the application of a law that claims to be fair and consistent.

International human rights mechanisms are, in the result, essential but incomplete instruments of accountability. They operate principally through normative influence rather than strict enforcement, and further change in practice is needed if the gap between law and practice is to be narrowed.
