



International Sanctions for Human Rights Violations: The Case of Findings

Nawal Sayah

Lecturer A, Faculty of Law, University of Algiers 1

Research Laboratory: Legal Laboratory for Artificial Intelligence and Society

E-mail: n.sayah@univ-alger.dz

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Abstract

States have opted to establish monitoring bodies responsible for overseeing the implementation of human rights conventions. These bodies are entrusted with examining complaints submitted by victims whose rights have been violated through a quasi-judicial individual communications procedure. Following the examination of such complaints, the relevant committee issues its decisions in the form of recommendations or findings directed against the State responsible for the violation.

Although the findings issued by United Nations treaty bodies do not possess legally binding force, States remain under an obligation to respect and give due consideration to them. Nevertheless, the sanctions resulting from these findings have a limited impact with regard to providing full reparation for the harm suffered by victims. Such reparation is generally ensured within the domestic legal order, which highlights the need to strengthen the findings mechanism through more effective follow-up and monitoring procedures.

Keywords: Sanction; Individual Communications; Findings; Committee; Human Rights.

Introduction

In both domestic and international law, it is commonly asserted that sanction constitutes a defining characteristic of law, insofar as a legal rule is distinguished by its enforcement through state authority. Sanction is therefore considered inherent to law itself. In other words, legal norms have often been characterized by the existence of sanctions, while sanctions are traditionally associated with state coercion, particularly within German legal doctrine, from Immanuel Kant to Rudolf von Jhering, both of whom placed sanction and coercion at the core of the legal rule.ⁱ

Von Jhering argued that the distinctive feature of a legal norm lies in its coercive nature and emphasized that such coercion is primarily exercised by public authority. According to his conception, a legal order exists only where there is a state organization capable of enforcing compliance with legal norms through coercive means.ⁱⁱ

This conception has often been invoked in discussions concerning the legal nature of the international legal order, given that, unlike domestic legal systems, international law lacks a



fully institutionalized organization capable of systematically implementing material coercion in cases of violation. In international law, a sanction is generally defined as a measure adopted by a competent international organ in response to a breach of an international norm.

A sanction must therefore be understood as a coercive measure resulting from the violation of a legal norm, rather than as an intrinsic characteristic of the norm itself.

The coercive measures adopted by the United Nations Security Council, the judgments of regional human rights courts, and the decisions of international criminal tribunals are legally binding. However, the findings issued by United Nations treaty bodies also satisfy the essential characteristics of sanctions, despite their lack of binding legal force.

Within the framework of international human rights law, sanctions may be defined as the set of measures adopted by a competent body in response to the established violation of an international obligationⁱⁱⁱ by the author of that violation. The competent body, in this context, is one recognized by an international convention and authorized to act on behalf of the international community.

States remain exclusively competent to determine the bodies whose decisions may be imposed upon them. These include the monitoring committees established under human rights treaties, as well as United Nations organs such as the Security Council, the International Court of Justice (ICJ), and international criminal tribunals.

Consequently, sanctions for human rights violations are multifaceted. They may take administrative, economic, financial, military, or criminal forms and may pursue either reparative or punitive objectives. This diversity raises questions regarding their effectiveness in protecting individuals against human rights violations.

The absence of a unified international sanctions regime for human rights violations has been compensated for by the development of international and regional mechanisms providing for two categories of sanctions: judicial sanctions and non-judicial sanctions. It is the latter category that is of particular interest here, specifically the findings resulting from the examination of individual communications, which constitute the most widespread mechanism and one that offers, to some extent, reparation to victims of human rights violations.

This raises the following question: What is the significance of the individual communications procedure, and to what extent are the findings resulting from this procedure effective in providing redress for victims of human rights violations?

To answer this question, it is first necessary to examine the importance of the individual communications procedure and then assess the effectiveness of the findings resulting from this mechanism (Part II).

1-Title I: The Relevance of an Individual Communications Procedure

States concerned with preserving their sovereignty generally prefer political methods over legal mechanisms for the peaceful settlement of disputes. Even among legal methods, they are more inclined to resort to non-judicial procedures, whose outcomes have limited binding force, rather than arbitration or judicial proceedings. By non-judicial sanctions, we mean measures that do



not result from judicial proceedings, such as the findings adopted within the framework of individual communications procedures before treaty bodies. These findings will be examined through an analysis of the functioning of this procedure (1) and its outcomes or objectives (2).

1.1 Subtitle I: Functioning of the Procedure

Having opposed the establishment of an international judicial body for the protection of human rights on the basis of Article 2(7) of the Charter of the United Nations, States instead opted for the creation of monitoring bodies responsible for overseeing the implementation of human rights conventions. These bodies are empowered to examine complaints submitted by victims alleging violations of their rights through the individual communications procedure. Accordingly, this section first addresses the treaty monitoring bodies, also known as committees and then examines the conditions governing the admissibility and submission of complaints .

1.1.1 Treaty Monitoring Bodies

The ten treaty bodies responsible for monitoring the implementation of the principal universal human rights treaties provide mechanisms for individual communications.

This procedure is initiated by an individual who alleges a violation of a right protected under a treaty falling within the competence of the relevant monitoring committee.

These committees are treaty-based bodies composed of independent experts whose primary function is to supervise the implementation of treaty provisions by States Parties. Any individual whose rights protected under these conventions have allegedly been violated may submit a communication to one of the ten human rights treaty bodies.

These treaty bodies—including the Human Rights Committee, the Committee on the Elimination of Discrimination against Women, the Committee on the Rights of Persons with Disabilities, the Committee on Enforced Disappearances, the Committee on Migrant Workers, the Committee on Economic, Social and Cultural Rights, and the Committee on the Rights of the Child—may, under specific conditions, examine complaints or communications submitted by individuals claiming to be victims of violations of their rights.

At present, the monitoring of the implementation of the nine core international human rights instruments is entrusted to these ten treaty bodies, commonly referred to as committees. This is because the Convention against Torture is monitored by the Committee against Torture, established in 1987, and since 2007 by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as well.^{iv}

Human Rights Committee (HRC)

The Human Rights Committee may consider communications submitted by individuals alleging violations of rights guaranteed under the International Covenant on Civil and Political Rights (ICCPR) by States Parties to the First Optional Protocol to the Covenant.^v

Committee on the Elimination of Discrimination against Women (CEDAW)



The Committee on the Elimination of Discrimination against Women may examine communications submitted by individuals alleging violations of rights protected under the Convention on the Elimination of All Forms of Discrimination against Women by States Parties to the Optional Protocol to the Convention.^{vi}

Committee against Torture (CAT)

The Committee against Torture may examine communications submitted by individuals alleging violations of rights protected under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by States Parties that have made the required declaration recognizing the Committee's competence.^{vii}

Committee on the Elimination of Racial Discrimination (CERD)

The Committee on the Elimination of Racial Discrimination may consider communications submitted by individuals alleging violations of the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination by States Parties that have made the declaration required under the Convention.^{viii}

Committee on the Rights of Persons with Disabilities (CRPD)

The Committee on the Rights of Persons with Disabilities may examine communications alleging violations of the provisions of the Convention on the Rights of Persons with Disabilities by States Parties to the Optional Protocol to the Convention.^{ix}

Committee on Enforced Disappearances (CED)

The Committee on Enforced Disappearances may consider communications concerning violations of the International Convention for the Protection of All Persons from Enforced Disappearance by States that have recognized its competence through the declaration provided for in Article 31 of the Convention.^x

Committee on Economic, Social and Cultural Rights (CESCR)

The Committee on Economic, Social and Cultural Rights may examine allegations of violations of the International Covenant on Economic, Social and Cultural Rights by States Parties to the Optional Protocol to the Covenant.^{xi}

Committee on the Rights of the Child (CRC)

The Committee on the Rights of the Child may examine communications concerning alleged violations of the Convention on the Rights of the Child and its three Optional Protocols.^{xii}

The committees apply procedures that borrow many of their characteristics from judicial bodies,^{xiii} which explains why they are often described as quasi-judicial bodies. At the conclusion of these procedures, United Nations treaty bodies adopt non-binding findings identifying violations of treaty obligations. This contrasts with regional human rights mechanisms, such as the European Court of Human Rights, which may issue binding judgments against member States for violations of fundamental rights and order the payment of compensation to victims.



1.1.2. Referral and Admissibility of Individual Communications

Any complaint submitted to the relevant treaty bodies must comply with a number of conditions set out and defined either in the human rights convention concerned, its optional protocol, or the internal rules of procedure of the committee responsible for examining the complaint.

In all cases, the communication must provide a minimum amount of information to the special procedures to enable its assessment, including the following:^{xiv}

Identification of the alleged victim or victims.

Identification of the alleged perpetrator(s) of the violation.

Identification of the individual or organization submitting the communication (this information remains confidential).

The place and date of the incident.

A detailed description of the circumstances under which the alleged violation occurred.

The committee concerned may request more detailed information. Furthermore, each committee established under the various human rights treaties requires a number of admissibility conditions for communications. Most of these conditions are similar, with only minor differences.^{xv}

Taking the example of the Human Rights Committee, the admissibility requirements for a communication are set out in Articles 1, 2, 3, 5(2)(a), and 5(2)(b) of the Optional Protocol as follows:

The Committee considers individual complaints, referred to as communications, against States Parties to both the International Covenant on Civil and Political Rights and the First Optional Protocol.

The communication must be submitted either by the alleged victim or by a person duly authorized to represent him or her.

The Committee may not examine a matter that has already been examined under another international procedure of investigation or settlement.

The communication must not be anonymous.

There must be no “abuse of the right of submission”; in other words, the right to submit a communication must be exercised reasonably and in good faith.

The communication must be compatible with the provisions of the Covenant.

The author of the communication must have attempted to pursue all available remedies before the domestic courts and authorities of his or her country, in accordance with the requirement of exhaustion of domestic remedies.

It should be noted that the Committee’s deliberations are conducted in private and that the documents relating to its work remain confidential. Nevertheless, the text of the Committee’s final decisions concerning communications is made public through an annual report published by the Committee.^{xvi}



1.2- Subtitle 2: The Standing Requirement in the Procedure (Findings)

Unlike the complaint procedure before the Human Rights Council, referral to treaty bodies is subject, on the one hand, to the status of the victim and, on the other hand, to the relationship between the victim and the existence or invocation of a violation of a provision recognized by the committees, which generally adopt a restrictive interpretation of the conventions whose implementation they monitor.^{xvii} This requirement, relating to the substantive basis of the communication, is strictly interpreted in the practice of treaty-monitoring bodies.

The purpose of this procedure is to initiate action against a State through the examination of the complaint, with the aim of obtaining a finding of the alleged violation and the legal consequences arising therefrom through the committee's decision.

1.2.1- Examination of the Communication

The admissibility of individual petitions before treaty bodies is subject to a number of conditions that place the individual in the position of a complainant challenging a sovereign State.^{xviii} The committees have developed a victim-oriented jurisprudence by broadening the concept of victim. This expansion reinforces the role accorded to individuals before treaty bodies; however, it remains limited by the committees' subject-matter jurisdiction. The petition must fall within the scope of the convention supervised by the relevant committee, and the allegation raised by the victim must be consistent with the framework accepted by the State concerned.

Recognition of Victim Status

Article 1 of the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), Article 2 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) establish the admissibility requirements applicable to the author of a communication. The complainant must be an individual or a group of individuals subject to the jurisdiction of the State against which the complaint is directed and who claim to be victims of a violation.

The practice of the Human Rights Committee, the Committee on the Elimination of Discrimination against Women, and the Committee on the Elimination of Racial Discrimination (CERD) reflects a tendency toward broadening and expanding the notion of victim. In Communication No. 28/2003, CERD affirmed that it examines only complaints submitted by individuals who are direct and personal victims of discrimination, in accordance with Article 5 of Danish Act No. 459.^{xix}

This notion includes not only the direct victim but also the victim's close relatives, provided that they can demonstrate the existence of harm resulting from the violation suffered by the direct victim. Victim status has therefore been extended to the relatives of the direct victim through the interpretation of Article 14 mentioned above.^{xx}



It should also be noted that, before treaty bodies, a victim is traditionally understood as a natural person or a group of persons. Associations and individuals acting on behalf of a company are generally excluded.

Legal entities acting in their own name are not admissible before the Human Rights Committee. However, unlike the latter, the Committee on the Elimination of Racial Discrimination (CERD) has extended its *ratione personae* jurisdiction to include legal persons, associations, and human rights non-governmental organizations (NGOs), provided that they can establish their status as victims. This interpretation is based on a broad reading of Article 14 of the Convention and is further supported by Communication No. 28/2003.

Interpretation of the Communication (*Ratione Materiae*)

The treaty bodies must examine individual communications, which must necessarily concern rights protected under the respective treaties.

For example, before the Committee on the Elimination of Discrimination against Women (CEDAW), an individual communication may only be submitted regarding the violation of a right guaranteed by the Convention, as defined in Article 1 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The rights that may be invoked before the Committee encompass all provisions of the Convention. Pursuant to Article 4 (b) of the Optional Protocol, the Committee shall declare inadmissible any communication that is incompatible with the provisions of the Convention. This provision excludes all allegations of violations that do not relate to one of the rights recognized therein.

The committees must also determine whether the alleged violation concerns an incident that occurred after a specific date, namely:

In relation to the Covenant, the date on which the Optional Protocol entered into force for the State concerned.

In relation to a convention, the date on which the relevant declaration entered into force, such as Article 22 of the Convention against Torture (CAT).

Accordingly, if a violation, such as an act of torture, occurred before the relevant date, any communication concerning that violation will be deemed inadmissible. This principle is known as *ratione temporis*.

However, States Parties undertake to respect and ensure the rights recognized in the treaties for all individuals within their territory and subject to their jurisdiction (*ratione loci*).

The Committee must also verify that the individual has exhausted all available domestic remedies within a reasonable period and that the matter is not being examined by another international body.

1.2.2. The Committee's Decision

The treaty body system has undergone significant expansion over recent decades, owing both to the increasing number of ratifications of the relevant treaties and to the growing use of individual complaint procedures, as well as the substantial body of jurisprudence that has emerged from them.^{xxi}



In the case of a communication submitted to the Human Rights Committee, the complaint is first transmitted to the Secretariat of the Office of the United Nations High Commissioner for Human Rights. Once the Secretariat considers that sufficient information has been provided to process the communication, it prepares a summary of the case and forwards it to the members of the Committee. The Special Rapporteur then decides whether to register the communication, provided that it satisfies the admissibility requirements and raises a *prima facie* issue on the merits.

The Human Rights Committee subsequently examines the merits of the case and determines whether the facts presented disclose a violation of the Covenant. The final decision on the merits may contain one or more findings of violation, non-violation, or both.

The purpose of examining individual complaints is to establish or reject allegations concerning violations of treaty obligations invoked by the individual. This is reflected, *inter alia*, in Article 5(4) of the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) and Article 22 of the Convention against Torture. These provisions stipulate that the Committee shall communicate its findings to both the State Party concerned and the individual complainant.

Pending a final decision, the Committee may initiate a procedure for interim measures. Such measures are frequently requested under the Convention against Torture because many cases concern the expulsion or deportation of individuals to countries where they may face a risk of torture. Upon request by the complainant, the Committee may ask the State concerned not to expel the individual until a final decision has been rendered on the communication.

An analysis of the Human Rights Committee's jurisprudence suggests that the Committee does not merely issue findings concerning violations. Rather, it has adopted a broad interpretation of Article 5(4) of the Optional Protocol to the ICCPR.

For example, in Communication No. 240/1987, *Willard Collins v. Jamaica*, submitted on 25 August 1987, the Committee adopted its Views on 1 November 1991. Acting under Article 5(4) of the Optional Protocol to the ICCPR, the Committee held that the facts disclosed violations of Article 7 and Article 10(1) of the Covenant. From this finding, the Committee derived two consequences: first, it called for the cessation of the violation; second, it requested that adequate compensation be granted to the victim.^{xxii}

Finally, following its adversarial and confidential examination of the communication, the Committee issues a reasoned decision determining whether the alleged violation has occurred and recommending the measures that the condemned State should adopt in order to provide redress for the harm suffered by the victim.

2. Title II – The Effectiveness of This Type of Sanction

Whether in the form of findings or concluding observations, it is generally accepted that the decisions issued by the United Nations treaty bodies responsible for monitoring the implementation of human rights treaties are not legally binding. This constitutes the principal distinction between these quasi-judicial bodies and international human rights courts.



However, the absence of the authority of *res judicata* does not necessarily deprive their decisions of all obligatory effect or legal value. This issue will be examined in the first section. On the other hand, given the reluctance of some States to provide compensation to victims of human rights violations, additional measures have been developed to strengthen the individual communications procedure.^{xxiii}

2.1 Subtitle 1: The Scope and Legal Value of the Decisions of Treaty Bodies

States, often protective of their sovereignty, tend to reject the notion of national subordination to international oversight. Although it may be difficult for a State to challenge the assessments made by these committees, it may nevertheless resist implementing their decisions.

2.1.1 The Limited Scope of the Decisions

The current system of human rights protection established under international law has been subject to criticism by States. Such criticism reflects the lack of consensus regarding the legal effect of decisions adopted by the bodies established within the United Nations system. The primary function of these bodies is to monitor the proper implementation of human rights treaties, ensuring that States comply with their obligations while also providing victims with the opportunity to submit allegations of violations to international monitoring mechanisms.^{xxiv} States appear to comply with the decisions of UN treaty bodies in a selective and sometimes opportunistic manner, while non-compliance does not necessarily result in sanctions. Indeed, the development of international human rights law, which initially imposed obligations on States for the benefit of individuals whose rights they were required to protect, entered a second phase with the emergence of the individual as a subject of international concern. This evolution was accompanied by the establishment of monitoring bodies accessible to individuals, enabling them to assert their rights before international institutions.

The observation that States implement the decisions of UN committees inconsistently is well established. This issue is closely linked to the historical context in which international human rights law developed. During the drafting of the two International Covenants on Human Rights, States deliberately granted these monitoring bodies only limited decision-making powers. In practice, while committees may determine that a victim is entitled to reparation, they refer the matter to the responsible State, which retains exclusive competence to determine the nature and form of the remedy to be provided.^{xxv}

The effectiveness of such reparation therefore depends largely on the willingness of the State concerned and remains subject to its discretion. The term finding may itself be understood as encompassing both the committee's determination regarding the alleged violation and the recommendations concerning remedies addressed to the State party concerned.

Furthermore, Article 2 of the International Covenant on Civil and Political Rights (ICCPR) establishes the general obligation of States Parties to provide remedies to individuals whose recognized rights have been violated. Paragraph 3 of that article states:



“Each State Party to the present Covenant undertakes to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy...”^{xxvi}

The Human Rights Committee interpreted the expression “effective remedy” in its General Comment No. 31 as requiring States to provide appropriate forms of reparation to individuals whose Covenant rights have been violated. Such reparation may take various forms, including restitution, rehabilitation, legislative reform, guarantees of non-repetition, and the prosecution of those responsible for the violation. Nevertheless, States retain a certain margin of discretion in determining the most appropriate remedies within their domestic legal systems.^{xxvii}

Although these bodies are empowered to issue decisions, they do not possess the means to compel States to comply with them. Consequently, their decisions are generally regarded as non-binding and are often considered to carry primarily moral, political, and diplomatic weight. For many States, compliance with such decisions is viewed as a matter of cooperation rather than a strict legal obligation.

The non-judicial status of treaty bodies contrasts with their supervisory functions and methods of operation. Their quasi-judicial nature means that, from a strictly legal perspective, their decisions are not formally binding. This position has frequently been reiterated by domestic courts, particularly in France, where judicial authorities have considered these committees to be no more than groups of experts. As a result, their findings are regarded as having primarily interpretative value and producing no direct legal effects within the domestic legal order.

Accordingly, it becomes essential to examine the legal value of the decisions issued by the United Nations human rights treaty bodies.^{xxviii}

2.1.2 The Legal Value of Decisions (Views)

As the Human Rights Committee itself has stated, the individual communications procedure possesses all the formal characteristics of a judicial dispute-settlement mechanism. The Committee’s views are the outcome of an examination conducted in a judicial spirit, particularly characterized by the impartiality and independence of its members.

The decisive nature of these decisions is further reinforced by the fact that the procedure is conducted on an adversarial basis and under conditions that respect the requirements of a fair trial.^{xxix}

The nature of a body depends on the function entrusted to it. A body is considered judicial when its function is to resolve a dispute through a binding decision based on legal rules.

Indeed, it may be argued that, while the Committee decides cases on the basis of law, it is empowered to resolve only part of the dispute existing between the victim of a violation and the perpetrator of that violation. The First Optional Protocol does not authorize the Committee to rule on compensation for damages resulting from the violation; rather, its competence is limited to determining whether a violation has occurred. Consequently, its decisions are confined to issuing purely declaratory judgments.

The only element that remains subject to debate is the binding nature of the Committee’s views. On this issue, the Committee’s position appears somewhat ambiguous. To justify its refusal to



characterize the individual communications procedure as judicial, the Committee relies on the terminology employed in the First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR).

It notes that Article 5(4) requires it to communicate its “views” to the State Party concerned and to the individual concerned.

The Committee emphasizes that the term views is used rather than judgment, complaint, or petition. Consequently, interpretation of the Protocol is necessary to determine whether the act concluding the procedure is legally binding upon the parties.

Nevertheless, account should be taken of the Committee’s extensive jurisprudence, in which it has frequently adopted a teleological approach linking compliance with its views by States Parties to the very fulfillment of their treaty obligations.^{xxx} Proceeding from the premise that a State Party, by ratifying both the Covenant and the First Optional Protocol, has accepted the legal obligation to give effect to their provisions, the Committee maintains that “the State Party is under an obligation to take appropriate measures to give legal effect to the Committee’s views concerning the interpretation and application of the Covenant.”

Other treaty bodies have adopted a similar approach in asserting the binding force of their own decisions.

Although, in its first General Comment of 1996, the Committee stated that it “is neither an appellate body, nor a quasi-judicial or administrative body, but rather a monitoring body established by the States Parties to the Convention itself and endowed solely with declaratory powers,”^{xxxix} it subsequently indicated that its views should be regarded as decisions.^{xxxii}

The Committee has repeatedly used the term decisions to describe its views.

Finally, it stresses that States are required to act in good faith and that this obligation entails a duty to cooperate with the Committee in implementing its views.^{xxxiii}

It may therefore be argued that the Committee’s views are binding upon the parties insofar as they resolve a dispute on the basis of law. However, they can only acquire practical binding force when States voluntarily choose to comply with them within the framework of their duty of cooperation and the application of the principle of good faith in fulfilling all treaty obligations.^{xxxiv}

It should also be noted that these views are final and preclude the submission of the same matter to other international bodies. There is no doubt that they possess legal authority, even if they do not enjoy the authority of *res judicata*. In this regard, as Frédéric Sudre observes, one may speak of the authority of the “established matter” (*la chose constatée*).^{xxxv}

The views issued by treaty bodies are presented in a manner similar to judicial decisions, including a statement of facts, procedural history, the parties’ claims and arguments, legal reasoning, and finally the operative part. Nevertheless, they do not possess legally binding force in the strict sense.

Even if it is accepted that recommendations lack mandatory legal force, this does not diminish their effectiveness. Follow-up mechanisms designed to encourage States to provide remedies to victims at the domestic level serve to compensate for this limitation.



2.2. Subtitle II: Strengthening the Communications Review System

The examination of individual communications by treaty bodies constitutes the most advanced mechanism within the United Nations system for the protection of human rights. Nevertheless, the “views” or recommendations issued by treaty committees do not always guarantee effective remedies for victims at the domestic level without a follow-up mechanism (1), which itself remains constrained by the principle of State sovereignty (2).

2.2.1. The Follow-Up Mechanism

Neither the International Covenant on Civil and Political Rights (ICCPR) nor its Optional Protocol initially contained provisions concerning follow-up mechanisms. However, within the framework of the United Nations, the follow-up procedure developed by the Human Rights Committee was subsequently adopted by all treaty bodies.

The establishment of such a mechanism does not alter the fact that committee decisions lack the authority of *res judicata*. Rather, it reflects the significance attached to findings of human rights violations made by treaty bodies through the individual communications procedure. The implementation of decisions adopted by UN committees has regularly been discussed during the annual meetings of the chairpersons of treaty bodies, which, since 2016, have formally endorsed cooperation with National Human Rights Institutions (NHRIs) to ensure effective follow-up.^{xxxvi}

To avoid leaving the implementation of recommendations entirely to the discretion of States, treaty bodies have developed follow-up procedures based on a continuous exchange of information between the State concerned and the committee.

Furthermore, several human rights conventions have established mechanisms for monitoring, supervising, or overseeing the implementation of committee findings. This is the case with the Optional Protocol to the ICCPR concerning the follow-up of the Committee’s Views. In 1990, the Human Rights Committee decided to adopt measures aimed at monitoring the implementation of its findings^{xxxvii} and at putting an end to ongoing violations of victims’ rights after the transmission of its Views to States Parties. Among these measures was the appointment of a Special Rapporteur, whose mandate is defined in the Committee’s Rules of Procedure (Article 95). The Rapporteur is entrusted by the Committee with facilitating^{xxxviii} dialogue between the State and the victim. Within this framework, victims may bring the matter before the Committee if the State fails to comply with the Committee’s Views.

The follow-up procedure constitutes a natural extension of the examination of individual communications under Article 1 of the Optional Protocol.^{xxxix} Its existence may also be justified by the doctrine of implied powers recognized in international institutional law. Another example can be found in the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Article 7, paragraphs 4 and 5,^{xl} establishes a follow-up procedure enabling the Committee to receive information regarding the implementation of its Views. The State concerned is expected to consider the Committee’s recommendations and may either accept or reject them. If the State rejects the Committee’s



decision, follow-up becomes ineffective. However, if the State accepts the decision, it must submit a written response to the Committee within six months, informing it of all measures taken in light of the Committee's findings. In addition, under Article 18 of the Convention,^{xli} States Parties are required to submit periodic reports, which contribute to monitoring the implementation of the Committee's recommendations.

Pursuant to Article 173 of the Rules of Procedure of the CEDAW Committee,^{xlii} entitled "Follow-up to the Committee's Views," a specialized subsidiary body is established, either in the form of a Rapporteur or a Working Group. Its mandate is to verify whether States Parties have taken measures to give effect to the Committee's findings. The role of this ad hoc body is to maintain a permanent and dynamic dialogue among the State concerned, the Committee, and the victim. Such dialogue, conducted either through the Special Rapporteur or the subsidiary body, lies at the heart of the follow-up procedure adopted by treaty bodies. It is often accompanied by measures of publicity^{xliii} designed to enhance the effectiveness of the follow-up process.

This publicity procedure consists of publishing the follow-up activities of the Special Rapporteur in the committees' annual reports. Consequently, all information submitted by States Parties and victims becomes publicly available.

Publicity carries significant moral value. Monitoring mechanisms that operate transparently tend to be more effective than those conducted under strict confidentiality. This effectiveness is reinforced by States' desire to preserve their reputation on the international stage and to avoid being perceived as disrespectful of human rights. Although the publication of committee decisions and the monitoring of their implementation have contributed to changing States' attitudes toward treaty bodies,^{xliv} the effectiveness of these mechanisms remains limited, particularly from the perspective of victims who often struggle to obtain the remedies recommended by the committees.

2.2.2. The Limitations of the Follow-Up Mechanism

The notion of binding force in international law does not necessarily carry the same meaning as it does in domestic law. As Alain Pellet observes: "Neither repression nor sanction truly constitutes the criterion of law; rather, it is the perception among the addressees of legal norms that a certain conduct is expected of them, regardless of any personal preference."^{xlv} Regardless of their source, the implementation of international norms remains the responsibility of the State, which is the primary subject of international law and the holder of sovereignty over its territory. Decisions adopted by monitoring bodies, particularly those issued within the framework of individual communications, are no exception to this principle. Irrespective of the scope of the remedies recommended by a committee, such remedies will become a reality for the victim only if the State concerned takes the necessary measures to give effect to them.

The measures recommended by treaty bodies invariably require implementation at the domestic level. Such measures may include requesting the State concerned to ensure that the victim has



prompt access to all available domestic remedies, to guarantee protection against any form of threat or intimidation, and to provide adequate reparation for the harm suffered.

This predominance of domestic implementation has been confirmed by the European Court of Human Rights^{xlvi}, which emphasized that “the fundamental responsibility for protecting fundamental rights and freedoms lies with national courts and authorities, and it is at this level that protection can be guaranteed in the most effective manner.” Although this priority accorded to the domestic legal order in follow-up activities may be perceived as limiting their effectiveness, it remains an inherent characteristic of the international human rights protection system. The incorporation and application of international human rights standards within domestic legal systems are indispensable to ensuring effective protection, since human rights guarantees acquire practical significance only through the participation of national legal frameworks.

This primacy of the domestic legal order in implementing human rights norms also reflects the underlying purpose of international monitoring procedures. Follow-up activities are carried out by the various treaty bodies responsible for issuing decisions. The monitoring procedures they employ do not create new obligations for States; rather, they constitute mechanisms of cooperation and dialogue among the State concerned, the victim, and the committee itself. Consequently, these follow-up activities possess a predominantly political character, which many observers regard as an obstacle to the effectiveness of monitoring mechanisms established under international human rights conventions.

When States created the human rights treaty bodies, they did not intend to vest them with judicial authority, nor did they intend to confer legally binding force upon their decisions. As William Schabas aptly notes: “Indeed, some States continue to maintain that a finding is not a judgment and that the committee’s conclusions in contentious matters do not possess binding force. Nevertheless, there remains considerable moral pressure on a State to act when the committee rules against it.”^{xlvii}

Conclusion

The United Nations human rights treaty system is founded on a consensus among States, of which the treaty-established committees form an integral part. Ten United Nations human rights instruments entrust their respective treaty bodies with the examination of individual complaints, reflecting the emergence of an international right of petition.

Such broad support from the international community significantly strengthens the legitimacy of these bodies. Although they are not formally structured as courts, they possess several judicial characteristics, including the independence and impartiality of their members, who serve as independent experts rather than as representatives of their States. They benefit from the privileges and immunities of the United Nations and cannot be removed by the States that nominated them, thereby safeguarding their independence. This independence has been further reinforced by United Nations General Assembly Resolution 68/268 and by the Addis Ababa Guidelines adopted by the treaty bodies themselves in 2014.



The treaty bodies, often described as quasi-judicial organs, have established themselves as guardians of the object and purpose of United Nations human rights treaties and as guarantors of the effectiveness of the individual complaint mechanism. By strengthening their supervisory role, they have contributed to an implicit judicialization of contentious procedures within the international human rights protection system.

The legitimacy of these bodies is further enhanced by their interaction with international human rights courts. The authority of the decisions of the Human Rights Committee is evidenced by the considerable number of references made to its jurisprudence by both the European Court of Human Rights and the Inter-American Court of Human Rights, which frequently rely upon its findings to support their judicial reasoning.

However, in the absence of institutional mechanisms capable of compelling States Parties to comply with the obligations arising from the individual communications procedure, and given the non-binding nature of the decisions issued by these bodies, treaty organs must strike a delicate balance between firmness and diplomacy. Nevertheless, they remain unable to compel States to fully honor their commitments under the treaties to which they are parties.

Through their jurisprudence, these bodies have made a significant contribution to the development of international human rights law.

The examination of individual communications by treaty bodies constitutes the most advanced mechanism within the United Nations human rights protection system. It is a quasi-judicial procedure which, although its recommendations lack binding legal force, is supported by follow-up mechanisms designed to encourage States to provide remedies to victims at the domestic level.

In response to the limitations of these non-judicial sanctions, the United Nations Security Council has addressed the most serious cases of human rights violations, particularly where such violations constitute a threat to international peace and security, pursuant to Chapter VII of the Charter of the United Nations and within the framework of the collective security system. This mechanism has also been strengthened through judicial sanctions imposed by international criminal tribunals, including the ad hoc tribunals and the International Criminal Court, in accordance with Article 5 of its Statute.

Given the diversity of both non-judicial and judicial sanctions, it would be more appropriate to move toward the establishment of an International Human Rights Court, modeled on the European Court of Human Rights and the Inter-American Court of Human Rights.

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^{vi} See the Convention on the Elimination of All Forms of Discrimination against Women (1979) and its Optional Protocol of 6 October 1999.

^{vii} Pursuant to Article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984).

^{viii} Pursuant to Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination, adopted by the United Nations General Assembly in December 1965.

^{ix} See the Optional Protocol to the Convention on the Rights of Persons with Disabilities of 13 December 2006.

^x See Article 31 of the International Convention for the Protection of All Persons from Enforced Disappearance (2006).

^{xi} See the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. The Committee was established in 1985.

^{xii} Optional Protocols to the Convention on the Rights of the Child concerning the sale of children, child prostitution and child pornography; the involvement of children in armed conflict; and the Third Optional Protocol establishing a communications procedure (14 April 2014).

^{xiii} General Comment No. 33 on the obligations of States Parties under the Optional Protocol to the ICCPR confirms this view: “Although the function entrusted to the Human Rights Committee in considering individual communications is not, strictly speaking, that of a judicial body, the Views issued by the Committee under the Optional Protocol exhibit some of the principal characteristics of a judicial decision.” See General Comment No. 33: The Obligations of States Parties under the Optional Protocol to the ICCPR, Human Rights Committee, UN Doc. A/64/40 (Vol. I), Annex V, 2008, p. 240.

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