PROSPECTS FOR GLOBAL ENVIRONMENTAL ACCOUNTABILITY BODIES

ASSESSING THE SUITABILITY OF THE UN HUMAN RIGHTS TREATY BODIES MODEL FOR INTERNATIONAL ENVIRONMENTAL TREATY GOVERNANCE

Master of Arts in Law and Diplomacy Thesis

Submitted by Blake L. Ratcliff

Under the Advisement of
Professor William Moomaw

February 12, 2011

http://fletcher.tufts.edu

THE FLETCHER SCHOOL

ACKNOWLEDGEMENTS

There have been many who have helped me along the way in the completion of this thesis, but I would like to thank first and foremost Professor William Moomaw for his support, inspiration, and assistance in his classes and over the long time that this paper took to finish. A debt of gratitude is owed to the entire Center for International and Environment and Resource Policy at Fletcher, including Associate Director Mieke van der Wansem, for everything stretching from encouragement to research and publication opportunities, to wonderful class offerings. Fletcher's international environmental policy community at reminds me every day that the decision to come to Fletcher after law school was indeed the correct one. I would also like to thank Professor Mark Weston Janis at the University of Connecticut School of Law, for first exposing me to the joys of public international law, and to Roger Reynolds of Connecticut Fund for the Environment, for first getting me interested in environmental regulation.

In many ways, this piece would have been impossible without the support of Dr. Michael K. Addo at the University of Exeter's Faculty of Law. Not only was Dr. Addo and his family gracious in letting me join them for dinners, but I thank Dr. Addo for opening my eyes about the possibilities of a career in public international law. Dr. Addo's practical take on International Human Rights Law—a class I originally had little interest in taking—exposed me to the life of working at the UN and as a working cog of public international law. I am indebted to him (as is this paper) for having taken our class to Geneva to see CESCR and CAT in action at the Palais Wilson.

I also extend a large thank you to my family, Mom, Dad, and Jordan in particular, for their love and support through all my varied endeavors, and by encouraging me in so many ways while this distended and maddening process has played out in the past few months. Thanks!

Thanks also to Jillian for her unceasing and unwavering support, for keeping me sane, amused, and creating, and for reminding me how extremely lucky I am.

ABSTRACT

With hundreds of multilateral environmental agreements (MEAs) currently in force, and countless others operating on a regional or bilateral basis, the decentralized system of international environmental governance is clogged with vague treaty provisions and uncoordinated and overlapping subject matter treatment that reduce treaty effectiveness. The current tools to monitor and promote compliance with MEA obligations are uneven, mostly non-binding, and ineffective in their efforts to coordinate their treaties and maximize active implementation. This research paper explores whether the UN human rights treaty bodies model, a method that has been used successfully in international human rights law for decades to urge treaty implementation and advance norms, is a framework that can be adapted and effectively employed in the framework of international environmental governance to accomplish the same goals. The treaty bodies model encompasses a system of mandatory periodic state reporting that centers on a constructive dialogue with an independent expert committee, general comments, and the adjudication of individual complaints. By exploring the development of human rights and international environmental governance, and the links between the two disciplines, this paper argues that the creation of *global environmental accountability bodies*, committees modeled closely after the human rights treaty bodies but tailored for international environmental regimes, can bring about effective and active treaty implementation and increased levels of compliance if challenges to their creation can be overcome.

TABLE OF CONTENTS

FIGURES

List of Acronyms

ACHR	American Convention on Human Rights
CAT	Committee Against Torture
CBD	Convention on Biological Diversity
CED	Committee on Enforced Disappearance
CEAFDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CEDAW	Committee on the Elimination of Discrimination Against Women
CEM	The ICJ's Chamber for Environmental Matters
CERD	Committee on the Elimination of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CMS	Convention on the Conservation of Migratory Species of Wild Animals
CMW	Committee on Migrant Workers
COP	Conference of State Parties
CRC	Committee on the Rights of the Child
CRPD	Committee on the Rights of Persons with Disabilities
ECOSOC	United Nations Economic and Social Council
GEAB	Global Environmental Accountability Body
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICEDAW	International Convention on the Elimination of All Forms of Discrimination Against Women
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ITLOS	International Tribunal for the Law of the Sea
ITPGRFA	International Treaty on Plant Genetic Resources for Food and Agriculture
First OP	First Optional Protocol to the International Covenant on Civil and Political Rights
ICJ	International Court of Justice
MEA	Multinational Environmental Agreement
NCPs	Multilateral Non-Compliance Procedures

NGO	Non-Governmental Organization
PIC	Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade
POPs	Stockholm Convention on Persistent Organic Pollutants
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCCD	United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa
UNCED	United Nations Conference on Environment and Development, held from June 3-14, 1992 in Rio de Janeiro, Brazil
UNEP	United Nations Environment Program
UNFCCC	United Nations Framework Convention on Climate Change
WTO	World Trade Organization

I. Introduction

There have been thousands of treaties that have come into force in the broad field of international environmental law, from globally-negotiated and far-reaching multinationals to regional and bilateral arrangements. While many have been concluded in an aspirational, hortatory nature, most do aim to create discrete obligations for and restrict the actions of their state parties. However, nearly all of these treaties provide for minimum to no effective enforcement of the state responsibilities contained in the provisions therein, and the often high rates of state ratification shed but little light on how the state parties have actually implemented their treaty obligations. It is the rare international environmental treaty that gets widespread domestic incorporation and enthusiastic enforcement by its state parties. Further, if large numbers of states acted on the articles contained in the treaty, and out of a sense of legal obligation, that would spur the advancement and crystallization of new norms of international environmental law.[1]

As the field of international environmental governance expands, so must the tactics employed by the treaty negotiators to ensure that the provisions of a convention are put into effect. Public international law has developed to such an extent that there are many fields that have found successful methods to encourage and ensure that state parties comply with and domestically implement their negotiated instruments. While different fields employ different methods, for various reasons of history, geopolitics, and feasibility, there is much that can be learned by international environmental governance by taking a look at those successful regimes to see if their tactics can in some way be effectively adopted or whether there can be a field-wide reorganization

[1] New international environmental norms would be derived through the application of customary international law. Norms of customary international law emerge through the satisfaction of a two-prong analysis: through state action, the objective prong; and that the states had so acted out of an understanding that they had a legal duty to do so (*opinio juris*), the subjective prong. Treaties can codify, in a sense, crystallized norms of international law, but they rarely do in the relatively recently-emerged field of international environmental law; international environmental norms generally emerge through state practice across many years driven by opinio juris. It is accepted that the longer that states behave in concert on an issue, the more it can be assumed that the acts are driven by a sense of legal obligation. So, a mechanism that would urge states to act together in a particular way has the chance to hasten along the widespread acceptance of particular concepts that may harden to new norms of customary international law.

to allow for a structure that can better monitor and guide compliance. Very often, the lawyers and practitioners of one field of public international law can become so focused, due to their extensive experience and needed concentration in that one field, that they are not aware of innovative developments and initiatives elsewhere that could potentially bear on their field.

Linkages continue to emerge and strengthen between international environmental and natural resource policy formulation and many other fields, including but not limited to: indigenous rights, sociology, development strategy, energy security, and free trade. While treaty negotiators will always seek novel, progressive strategies to build consensus and draft agreements, negotiators need not constantly strive to reinvent the wheel at each impasse. Implementing novel, creative solutions for every roadblock would be too costly, too time-consuming, and too confusing, and should be reserved for important or protracted disputes. These subjects that have recently come to bear on environmental policy surely present fresh challenges to international environmental policymaking, but they also arrive with concepts and ideas that have previously found success in their arenas. Other transnational fields have fostered the development of unique methods of public international law norm creation, paradigm shifts, international structures, or new consensus-building strategies, and it is crucial for environmental negotiators to know about and be able to benefit from those advances.

The fields of international human rights law and international environmental law are examples of two fields whose experts and practitioners generally only meet or exchange ideas at points of intersection: e.g., how environmental norms are incorporated into international human rights treaties or tribunals, looking at whether people have a human right to clean water or clean air, etc. Expert interaction may also be found around the burgeoning debates over the nexus of sustainable development and human rights or whether the right to develop is considered a human right.

What is often lacking between international human rights law and international environmental law is a broader look at whether or how advances in implementation that have been more or less successful in one can bear on problems or issues in another. This is particularly true in consideration of the respective histories of each field and challenges faced. Many parallels can be drawn between the development of international human rights law and the expansion of international environmental law a generation after. Also, both fields have surmounted and continue to battle issues of state sovereignty. Both disciplines have emerged despite strong opposition by states that have argued that a government's treatment of their citizens and their natural environment and resources should be matters of purely domestic concern and outside the condemnation of other nations. This paper aims attempts to bridge that understanding divide on the issues of treaty implementation and advancing soft law norms.

A. Research Question

This research paper will explore whether the human rights treaty bodies model, a method that has been used successfully in international human rights law to urge treaty implementation and advance norms, is a framework that can be adapted and effectively employed in international environmental governance to accomplish the same goals.

With over two hundred multinational environmental agreements[2] and thousands more at other levels, vague treaty provisions, and uncoordinated, overlapping geographic and subject matter treatment, the current fractured state of international environmental treaties and regimes makes it difficult to determine the effectiveness of agreements; instruments often have overlapping jurisdictions and differing mandates, and lack overarching coordination or enforcement for fears of some international body infringing uncomfortably on a state's sovereignty. The international

[2] Sebastian Oberthür, "Clustering of Multilateral Environmental Agreements: Potentials and Limitations," in *Reforming International Environmental Governance*, eds. W. Bradnee Chambers and Jessica F. Green (New York: United Nations University Press), 41.

human rights regimes have encountered these very same issues, and the systems constructed by the United Nations and the various regimes under other international organizations have addressed those concerns in various ways to allow for some detached, independent analysis of state compliance. Despite the creative methods being proposed and developed to deal with the complications of sustainable development, climate change, forestry issues, sustainable agriculture, and other related topics, the implementation of novel mechanisms to monitor and evaluate state performance under the environmental treaties remains stunted.

The UN human rights treaty body model is not conceptually complex. Each of the nine core UN-coordinated international human rights treaties has a dedicated body that monitors its state party accountability and implementation by coordinating a robust state reporting procedure, allowing the bodies to serve as platforms by which a panel of independent international experts receives state-prepared reports on treaty compliance. The panel then engages the state in a public, constructive dialogue on the state's active implementation, where the body provides a platform for states to tout the measures they have taken since the last report and a discussion towards the implementation of treaty provisions and goals. The body issues its concluding observation's on the state's efforts, and may also issue general comments that interpret the procedures and substantive articles in the treaties. The treaty bodies allow for individuals and non-governmental organizations to submit reports to augment—or as a rebuttal to—the state's submitted implementation report. Some of the bodies are now able to accept, adjudicate, and issue remedies for complaints filed by individuals that assert violations of treaty rights by a state party.

As all public international regimes have struggled to find ways to work around or resolve concerns of national sovereignty, the success of the UN human rights treaty body regime lies in the treaty bodies status as fora for 'naming and shaming' to exhort states to adopt soft law mechanisms and to issue interpretations that can harden, over time, into norms of international human rights law. Where states need to take more steps towards the adoption of treaty provisions, the treaty body

details in concluding observations that a state is not in full compliance with the aims or articles of a treaty, and then highlights how the state is lacking and suggests policies to consider in order to bring the state closer to full compliance ("naming"). Treaty body concluding observations that chronicle a state's implementation failures and violations can be used as a tool of reform and as a deterrent—both specifically, in that state, and generally, in efforts towards other states ("shaming"). As concluding observations are released publicly, their findings and conclusions can be tools of horizontal pressure, as states can engage insufficiently implementing states to conform to particular standards of implementation or policy, or vertically, as parties within the state's domestic political climate can pressure the government to enact conforming measures.

It is important to note that as there are different types of international environmental treaties, or different types of provisions in the same treaty, there naturally should be different strategies formulated to monitor, report, and verify a state's implementation of the obligations contained in an agreement. Pollution control treaties that measure the reduction of a chemical's generation or emission requires different implementation enforcement than an instrument that aims to guide the sustainable development and resource protection of a shared international waterbody. The former necessitates robust and accurate quantitative monitoring of compound emission and concentrations, while the latter requires more of a qualitative evaluative process that would analyze how well policies were enacted and enforced to meet the treaty's broad provisions—much like a strategic environmental assessment. The human rights treaty bodies have been used for decades as a means to provide monitoring, reporting, and non-adversarial criticism to state adoption and implementation of human rights concepts, providing a qualitative analysis that would be effective for treaty provisions that contain broad policy goals.

It can be easy to say whether a state has met its commitments under a pollution control treaty—whether or not a numeric level has been met—whereas a development or resource protection treaty may not have hard benchmarks but rater larger policy goals that require a more

nuanced analysis of a state's attempts at compliance. For example, while the negotiations over an expanded and updated successor agreement to the UNFCCC's Kyoto Protocol have dominated the world's headlines in recent years, the monitoring, reporting, and verification of greenhouse gas emission reductions by ratifying industrial countries would need different standards than a program to monitor the effective implementation of Article VIII of the International Convention for the Regulation of Whaling, which allows state parties to grant special licenses for whale takings "for purposes of scientific research."[3] A global environmental accountability body constituted in the model of a human rights treaty body could provide an adequate forum for monitoring, reporting, treaty interpretation, analysis, and a non-binding rebuke of a state's pattern of issuing whale takings permits on the basis of scientific research.

By looking at the UN human rights treaty bodies system, international environmental governance could benefit by understanding how to find ways that circumvent state sovereignty while respecting it—not eroding it—and to provide some enforcement power short of formal, legally-binding measures like compulsory dispute resolution in some legal fora and penalties for non-compliance.

B. Organization

The comparison of international legal regimes is a detailed, painstaking task, and this paper aims to present as much information as possible about the concepts, organization, and functions of the relevant structures of international human rights law and international environmental law. In a broad summary: human rights and the treaty bodies model will be examined first, followed by the monitoring and compliance mechanisms of multinational environmental agreements, and then the paper will conclude with a discussion of how the treaty bodies model could created and employed for international environmental agreements.

[3] "International Convention for the Regulation of Whaling," December 2, 1946, *161 U.N.T.S. 72*, Art. VIII.

This paper will begin with a detailed analysis of the UN human rights treaty bodies system and a discussion of its role within the UN's international human rights framework. **Section II** will provide a short history of how the UN human rights machinery developed, beginning with the League of Nations and the failed treaty system before World War II and stretching to the rise of the UN. The section will discuss the underlying treaties that are administered by the human rights treaty bodies, including an examination into how the current bodies developed. **Section III** will describe the treaty bodies themselves, from how they are organized to the functions that they provide. This section will also address the difference between the goals and functions of the treaty bodies model and the other major UN machinery that monitors human rights compliance, the Human Rights Council. Lastly, **Section IV** will examine the treaty bodies model critically, detailing the perceived successes and criticisms while discussing the impacts of a number of innovations that the model has developed that had not been originally intended.

Section V will begin the transition from human rights to international environmental law. It will chart the similarities in the historical progression of international human rights law and international environmental law, and then discuss how the implementation needs contrast. Finally, it will conclude with how the two disciplines intersect, with how international environmental norms are treated within human rights. Section V will also discuss briefly how environmental concerns are treated in other international regimes and how international environmental norms are interpreted and considered in those other regimes and their respective courts.

Section VI contains a broad overview of the current state of compliance and monitoring measures found in major multinational environmental agreements. The section will then discuss in detail and critique the four major categories of measures employed in multinational environmental regimes that are aimed to promote state compliance with and implementation of treaty obligations.

Section VII will discuss what the human rights treaty bodies model would look like if employed in, and modified for, international environmental governance. The section gives detailed

treatment as to how the modified bodies, proposed in this paper as "global environmental accountability bodies" or "GEABs," can be created, broadly organized, and composed. Most importantly, the section examines the potential scope of powers that could be given to the GEABs, which in some cases is a direct transplant of treaty body functions and in other instances a set of expanded or specifically-tailored set of competencies that would work best to increase the monitoring and implementation of major multinational environmental agreements and thus the development and effectiveness of international environmental law as a whole.

This paper will conclude with a discussion of the challenges of instituting GEABs and what the international environmental machinery will stand to gain by their creation in **Section VIII**.

C. Methodology

The author formulated the research question and the general idea for the paper after having taken extensive classes in international law, on the operations of international organizations, and on international environmental policy in graduate school and in law school.

While most international human rights law classes tend to focus more on the historical progression and the theory behind the operation and the need for universal human rights, the author was extremely fortunate to study international human rights law while abroad under a professor who was active expert in the treaty bodies system. The class focus was grounded in the practice of human rights at the UN level, and our class culminated with a class excursion to Geneva to observe two of the UN human rights treaty bodies in session at the Palais Wilson. After watching the exchange between presenting states and two committees and meeting with a number of expert committee members, the author was impressed with a sense of the model's effectiveness and influence on the development of human rights norms and interpretations even as its methods are non-binding, voluntary, and grounded very much in soft law mechanisms.

While later in graduate school primarily to explore international environmental law and regimes, the author was surprised to see that the methods in most multinational environmental agreements for compliance and monitoring implementation were so vastly different and considered ineffective, and yet those measures, too, were also non-binding, voluntary, and soft law. The author was surprised to find that, inasmuch as there have been many proposals for the reform and restructuring of international environmental governance and its compliance mechanisms that have incorporated some functions similar to those found in the human rights treaty bodies, there has been no academic attention to the question of whether the human rights treaty body model could be tailored for international environmental governance and what that model could provide.

As this paper is a novel study in comparative international regimes and transplanting compliance mechanisms, the methodology employed involved detailed legal, structural, and academic analysis of the two regimes. The author consulted legal and academic texts and journals, historical documents, international human rights treaties, international environmental agreements, and practical studies and manuals by the UN and other international bodies. The author's previous trip to Geneva to observe human rights treaty bodies in action was illustrative and served as a broad introduction, but did not contribute directly to the paper's substantive research.

II. The Evolution of the UN Human Rights Treaty Bodies

A. The UN Human Rights Climate

This paper is meant as an exercise in the transfer of the structure and ensuing functions of some aspects of the international human rights machinery towards international environmental governance, and so it is presumed that the intended audience is versed in international environmental governance. As such experts and practitioners in environmental policy may have little familiarity with the complicated, multilayered, and overlapping elements of international human rights law, some broad explanation and elucidation is necessary. Furthermore, this sub-

section will serve as a precursor to Section 5.A, which will compare the origins of international human rights law and international environmental law.

Historically, the modern system of international human rights law emerged as an outgrowth of the larger public international law doctrines of international humanitarian law, the norms regulating the conduct of war, and state responsibility, from which a custom emerged that held states responsible for wrongs committed by the state to non-citizens.[4] Widespread human rights treaty usage had been adopted for centuries to ensure the protection of groups of ethnic minorities in states, and this practice continued until the 1920s.[5] After World War I, this patchwork system of treaties yielded to the newly set-up League of Nations. The League set up institutions that guaranteed the protective rights and responsibilities contained in some of those earlier treaties and oversaw a mandated territories system that coordinated the former colonies of the powers defeated in the war.[6]

Despite its intentions and higher level of organization, the League of Nations could not prevent Europe's widespread breakdown of international law and legal protections leading up to and during World War II. While not ultimately successful in preventing war or atrocities, the League's minority system did establish a number of concepts that were to be explored and eventually expanded in United Nations human rights documents and machinery to follow. The League's protection of ethnic minorities eroded the concept of a state's absolute sovereignty over its citizens, elevated bilateral treaties and declarations to the League's international (if limited) arena, and arranged for the first multilateral planning for the rights of groups of people.[7]

The United Nations was organized in the months after World War II, following a greater understanding of the unparalleled abuses, legal failures, and the organized and systematic murder,

[4] Henry J. Steiner, Philip Alston, and Ryan Goodman, *International Human Rights in Context: Law, Politics, Morals* 3rd ed. (Oxford: Oxford University Press, 2008), Part A.2, 58-96.
[5] Steiner et al., *International Human Rights*, 96-99.
[6] Thomas Buergenthal, "The Evolving International Human Rights System," American Society for International Law, 100:4 (2006), 785.
[7] Steiner et al., *International Human Rights*, 106.

torture, and displacement of innocent human beings across Europe during the conflict. Human rights was set as one of the principal cornerstones of the new organization, as the UN Charter's Preamble reaffirmed "faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small"[8] and one of the purposes of the new endeavor as enumerated in Article 1 was "to achieve international cooperation…in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion…"[9]

While the UN Charter was an instrument that created legally binding obligations among its ratifying member states upon its entry into force on October 24, 1945, the UN Charter did not mention any specific state obligations with regards to human rights protections.[10] Wary of the failures of the League of Nations, the UN resolved to propagate stand-alone treaties to address particular human rights concerns and also to construct a many-layered structure that would provide many opportunities for the formulation, protection, monitoring, and advancement of international human rights norms and procedures. Through the creation of organs and procedural safeguards to protect norms, the UN sought to ensure the binding nature of the human rights provisions enshrined in treaties by expanding those norms from merely being laws on the books to laws that were actively implemented.[11]

While the UN Charter was being negotiated, some parties called for the Charter to include an International Bill of Rights or a statement detailing the human rights obligations of states. Due to the political vagaries of the negotiating process at the United Nations Conference on International Organization in San Francisco that adopted the Charter and that the Conference's timeframe would not allow for the deep contemplation required for a Bill of Rights, references to human rights were

[8] "United Nations Charter," June 26, 1945, *United States Statutes at Large* 59:1031, *1 U.N.T.S. 16*, Preamble.
[9] UN Charter, Article 1(3).
[10] Buergenthal, "Evolving Human International Human Rights System," 786.
[11] Zdzislaw Kedzia, "United Nations Mechanisms to Promote and Protect Human Rights," in *Human Rights: International Protection, Monitoring, Enforcement*, ed. Janusz Symonides (Burlington, VT: Ashgate, 2003), 3-91, 3.

included in the Charter but an International Bill of Rights was not.[12] The San Francisco Conference did approve for the Economic and Social Council (ECOSOC) to empanel a Human Rights Commission to promote human rights, which was to become the wellspring for the two parallel systems governing international human rights law for the United Nations: the Charter-Based System, and the Treaty-Based System.

The Human Rights Commission was tasked first with drafting an International Bill of Rights and for proposals to effectively implement those human rights. The Commission eventually decided to pursue a non-binding Declaration to be followed up by a binding Convention.[13] In 1948, the Commission completed, adopted, and submitted to the UN General Assembly a draft declaration, and the General Assembly adopted an amended version after quick deliberation that same year as the Universal Declaration of Human Rights.[14] The Universal Declaration touched on the full range of human rights as understood in the postwar period, enumerating such varied rights and freedoms as the right to life, liberty and security, government participation, education, founding a family, domestic movement, civil rights, etc., and the freedom of expression, of thought and conscience, from torture, from slavery, etc. [15]

The Declaration was the first truly international document to attempt a comprehensive catalogue of human rights. It shifted the operative focus of the human rights and freedoms to the individual, where it remains today, rather than for groups of people based on characteristics such as race, national origin, religion, language, or political belief. The Declaration was not intended to be a binding document as it was adopted and proclaimed by the UN General Assembly, and not put up for state ratification. It was intended to influence states by what are today considered soft law measures: through exerting a political and moral pressure on states to conform their laws to adopt

[12] Ibid., 3-4.
[13] Ibid., 5.
[14] Steiner et al., *International Human Rights*, 135.
[15] "Universal Declaration of Human Rights," December 10, 1948, G.A. Res. 1386 (XIV) ("UDHR").

the Declaration's articles, rather than as a legally-binding instrument that would require domestic incorporation or implementation.[16]

The Human Rights Commission planned to use the Universal Declaration as a template for a subsequent treaty that would be put for ratification that would have binding intent with repercussions for non-compliance. After a few years and the international realities of a world divided along Cold War lines set in, the general human rights concerns of the Declaration became politicized. Negotiations in the General Assembly and in ECOSOC turned on whether to include economic and social rights in the treaty, as the West did not wish to add those rights to the covenant. Western states argued that the package of civil and political rights were fundamentally different from economic, social, and cultural rights, as the former could be claimed by individuals and were legally enforceable and applicable in a court of law, where as the latter required the state to act and were seen to be better achieved gradually.[17] In a contentious decision that one participant stated "split the United Nations down the middle,"[18] the General Assembly decided to split the convention into two, with one to contain civil and political rights, and the other to include economic, social, and cultural rights.[19] The split may not have been necessary, as they could have crafted one document with two parts, with two different implementation schemes for each parcel of rights.[20]

The result eventually became the two bedrock treaties of international human rights law. After over a decade of debate, the International Covenant on Civil and Political Rights (ICCPR)[21]

---

[16] Steiner et al., *International Human Rights*, 135.
[17] Kitty Arambulo, *Strengthening the Supervision of the International Covenant on Economic, Social and Cultural Rights* (Antwerpen: Intersentia, 1999), 17.
[18] John P. Humphrey, *Human Rights & the United Nations: A Great Adventure* (Dobbs Ferry, Transnational Publishers: 1984), 162.
[19] Dominic McGoldrick, *The Human Rights Committee: Its Role in the Development of the International Covenant on Civil and Political Rights* (New York: Oxford University Press, 1991) 7.
[20] Humphrey, *Human Rights & the United Nations*, 162.
[21] "International Covenant on Civil and Political Rights," December 16, 1966, *999 U.N.T.S. 171* ("ICCPR").

and the International Covenant on Economic, Social and Cultural Rights (ICESCR)[22] were both adopted by the General Assembly in 1966 and then entered into force in 1976. The ICCPR and ICESCR's pre-eminent status is apparent as the two documents combined with the Universal Declaration of Human Rights are known as the International Bill of Rights,[23] and that those two instruments were named "conventions" while the subsequent UN human rights treaties have all been named "conventions."

The ICCPR and the ICESCR became the first of the series of issue-specific, UN-written international human rights treaties that evolved into the UN's Treaty-Based System. The General Assembly and ECOSOC wanted more direct influence and the ability to intervene in human rights situations, and so wider powers were given to the Human Rights Commission and other bodies were constituted to meet those goals. After drafting the Declaration and assisting in the covenants, the Human Rights Commission was given more powers to develop complementary mechanisms to protect against human rights violations. ECOSOC launched thematic commissions pursuant to the authority of certain articles of the UN Charter, including the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities[24] and the Commission on the Status of Women,[25] and the General Assembly chartered other human rights-related offices under its general plenary power to investigate, promote, and make recommendations on any matter within the scope of the UN Charter.[26] The Human Rights Commission has developed a series of thematic and country-specific special procedures to deal with particular human rights violations or emergencies,[27] and the Office of the UN High Commissioner for Human Rights was created and charged with a host of duties to generally protect and promote human rights, provide leadership to human rights

[22] "International Covenant on Economic, Social and Cultural Rights," December 16, 1966, *993 U.N.T.S. 3* ("ICESCR").
[23] McGoldrick, *The Human Rights Committee*, 10.
[24] Gerd Oberleitner, *Global Human Rights Institutions: Between Remedy and Ritual* (Cambridge: Polity Press, 2007), 71. This body is now known as The Sub-Commission on the Promotion and Protection of Human Rights.
[25] Ibid., 77.
[26] Steiner et al., *International Human Rights*, 137.
[27] Oberleitner, *Global Human Rights Institutions*, 54.

implementation, and to serve as the Secretariat for other UN-promulgated human rights instruments.[28] These organs are but a small sampling of the UN Charter-Based Human Rights, as they ultimately derive their legitimacy directly from the UN Charter.

B. The Underlying Treaty Basis of the UN Human Rights Treaty Bodies

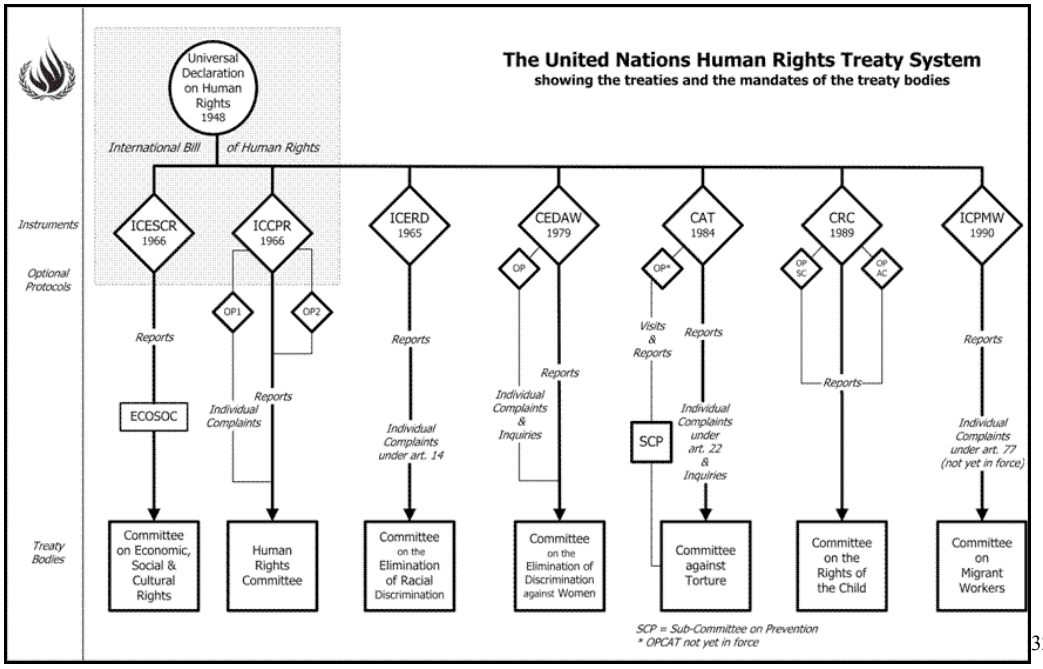
There are currently nine UN human rights treaty bodies, each monitoring a corresponding human rights treaty that is currently in force (as well as any subsequent protocols). These treaty bodies monitor the implementation of what are generally referred to as the 'core UN human rights treaties':[29]

- the **Human Rights Committee** (HRC) monitors the International Covenant on Civil and Political Rights (ICCPR; approved for ratification in 1966 and entered into force in 1977), the First Optional Protocol (entered into force in 1976), and the Second Optional Protocol (entered into force in 1991);
- the **Committee on Economic, Social and Cultural Rights** (CESCR) monitors the International Covenant on Economic, Social and Cultural Rights (ICESCR; approved in 1966 and entered into force in 1976);
- the **Committee on the Elimination of Racial Discrimination** (CERD) monitors the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD; approved in 1965 and entered into force in 1969);
- the **Committee on the Elimination of Discrimination Against Women** (CEDAW) monitors the Convention on the Elimination of All Forms of Discrimination against Women (approved in 1979 and entered into force in 1981) and the Optional Protocol (entered into force in 1999);
- the **Committee Against Torture** (CAT) monitors the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (approved in 1984 and entered into force in 1987) and the Optional Protocol (entered into force in 2006);[30]
- the **Committee on the Rights of the Child** (CRC) monitors the Convention on the Rights of the Child (CRC; approved in 1989 and entered into force in 1990) and the First Optional Protocol (entered into force in 2002);

[28] Ibid., 89.
[29] Ibid., 93.
[30] The Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment ("OPCAT") has created another body, the Subcommittee on Prevention of Torture ("SPT"). SPT is empowered under OPCAT to visit places in signatory states where liberty is taken away, investigate conditions, recommend action to be taken to improve the conditions of detainees, and assists states with implementing detention safeguards. Office of the United Nations High Commissioner for Human Rights, "Optional Protocol to the Convention Against Torture (OPCAT): Subcommittee on Prevention of Torture," http://www2.ohchr.org/english/bodies/cat/opcat/index.htm. Due to its recent creation and limited scope of powers, the SPT will not be considered on par with the other Treaty Bodies in this paper.

- the **Committee on Migrant Workers** (CMW) monitors the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (approved in 1990 and entered into force in 2003);
- the **Committee on the Rights of Persons With Disabilities** (CRPD) monitors the International Convention on the Rights of Persons with Disabilities (approved in 2006 and entered into force in 2008) and the Optional Protocol (entered into force in 2008); and
- the **Committee on Enforced Disappearance** (CED) monitors the International Convention for the Protection of All Persons from Enforced Disappearance (approved in 2006 and entered into force in 2010).[31]

The schematic below details the structure of the UN Human Rights Treaty Body System, before the recent entry into force of the latest two instruments, the Conventions on the Rights of Persons with Disabilities and for the Protection of All Persons from Enforced Disappearance:



[32]

[32] "United Nations Human Rights Treaty System," United Nations High Commissioner for Human Rights, 1, http://www2.ohchr.org/english/bodies/treaty/docs/TBs_Sep2009.ppt.

While the Human Rights Commission was working on and formulating the monitoring and implementing structure of the ICCPR and the ICESCR, the first treaty body to begin work was CERD in 1969, as the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) was conceived, drafted, and approved for ratification before the ICCPR

[31] Office of the United Nations High Commissioner for Human Rights, "Human Rights Treaty Bodies," http://www2.ohchr.org/english/bodies/treaty/index.htm.

[32] Office of the United Nations High Commissioner for Human Rights, "The United Nations Human Rights Treaty System," http://www2.ohchr.org/english/bodies/treaty/docs/TBs_Sep2009.ppt.

and ICESCR, and it also took effect a few years before the covenants entered into force.[33] Nonetheless, the archetypal treaty body is considered the Human Rights Committee, as its concept, composition, and functions were sufficiently flushed out by the time the drafters of ICERD turned to craft the treaty's implementing mechanisms. As stated by a former Deputy Director of the UN's Division of Human Rights who participated in the discussions concerning the drafting of ICERD, the treaty bodies contemplated in the then-draft ICCPR and ICESCR, "particularly those of the draft [ICCPR]," "served as a model" for "the measures of implementation" of the treaty.[34]

The treaty body model emerged during the Human Rights Commission negotiations for the ICCPR and ICESCR as a compromise between the recurrent forces in international treaty-making: states that urged strong, enforceable international measures, and states that stressed the powers and responsibility of sovereignty. The Soviet negotiating bloc originally did not want any implementing committees, and an Afro-Asian bloc wanted identical committees for each covenant and yet did not want the committees linked to the International Court of Justice (ICJ), the UN's de facto 'world court.'[35] The text and the ICCPR's *travaux préparatoires* make it clear that the drafters understood that the rights set out in the ICCPR could only be implemented progressively, over time, even though one of the justifications for bifurcating the covenants was that civil and political rights could be enacted immediately. Drafters removed language calling for time constraints, or even language calling for implementation "within a reasonable time."[36] What emerged as the Human Rights Committee was a compromise, as a committee that was de jure independent from other UN machinery like the ICJ, with some functions compulsory (state reporting) and others left to optional

[33] Oberleitner, *Global Human Rights Institutions*, 93.
[34] Egon Schwelb, "The International Convention on the Elimination of All Forms of Racial Discrimination," *International & Comparative Law Quarterly* 15 (1966): 1032.
[35] Torkel Opsahl, "The Human Rights Committee," in *The United Nations and Human Rights: A Critical Appraisal*, ed. Philip Alston (Oxford: Clarendon Press, 1992), 369-443, 371-72.
[36] Farrokh Jhabvala, "The Practice of the Covenant's Human Rights Committee, 1976-82: Review of State Party Reports, *Human Rights Quarterly* 6 (1984): 97-98.

protocols (individual complaints).[37] Ultimately, in a conclusion that resonates among all other binding treaty obligations, parties decided that compliance with a committee to serve as an international measure of implementation was an exercise of sovereignty and national jurisdiction, rather than contrary to the principles of sovereignty enshrined in the UN Charter.[38]

C. Status of the Committee on Economic, Social and Cultural Rights

In understanding the constellation of treaty bodies and taking note of how the model can be applied to an existing treaty, it is important to note the peculiar situation of the Committee on Economic, Social and Cultural Rights as the ICESCR did not originally have a provision for a treaty body. The Covenant included articles calling for states to submit mandatory "reports on the measures which they have adopted and the progress" towards fully implementing the rights contained in the treaty, [39] which is language very similar to the respective article in the ICCPR.[40] While the ICCPR provided for the creation of the Human Rights Committee, the ICESCR stated that reports would ultimately end up with ECOSOC.[41] Also, the ICESCR provided that ECOSOC would determine the reporting procedural and coordinate of the distribution of the reports to other relevant UN bodies, as well as collect any comments in response generated from those other bodies.[42]

The reasons for the ICESCR initially not having a treaty body stem from the heated debate between the perceived differences between the nature of civil and political rights and economic, social, and cultural rights that initially caused the initial bedrock human rights covenant to be

[37] Opsahl, "The Human Rights Committee," 372.
[38] McGoldrick, *The Human Rights Committee*, 13. "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require Members to submit such matters to settlement under the present Charter…" UN Charter, Art. 2(7).
[39] ICESCR, Art. 16(1).
[40] "The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the full enjoyment of those rights…" ICCPR, Art. 40(1).
[41] ICESCR, Art. 16(2)(a).
[42] ICESCR, Arts. 17 – 22.

cleaved into the ICCPR and ICESCR. The ICCPR's rights were intended to be immediately implemented, whereas the ICESCR's rights required domestic government implementation at a gradual level, through incremental policies.[43] States that were amenable to creating a state complaint mechanism under the ICCPR, whereby a state could submit a report that another state party was "not fulfilling its obligations under the [ICCPR]," thought that the nature of economic, social, and cultural rights did not allow those rights to be the basis of quasi-judicial determinations.[44] It was debated whether specialized agencies already in existence (like the International Labor Org., World Health Org., and the UN Education, Scientific, and Cultural Org.) would be better suited to implement economic, social, and cultural rights.[45] Proposals from 1951 through 1966 that called for an independent, expert treaty body were defeated, due to varied arguments that: a new body would weaken ECOSOC and the General Assembly's role in human rights, that there was no criteria capable of providing the basis for a quasi-judicial action, that states would not be willing to submit themselves to the examination of complaints about the basis of their economic, social, and cultural life, fears of a proliferating UN bureaucracy might strain the resources and competencies of small nations, and there were sovereignty concerns—fears of political intrusion into domestic affairs.[46]

However, ECOSOC approved a proposal to create the Committee on Economic, Social and Cultural Rights after little deliberation in 1988.[47] States wanted to elevate a working group that ECOSOC had empanelled to help with the incoming reports and the Eastern European states had warmed to a more elaborate monitoring scheme for that packet of rights, but the change in opinion was chiefly due to the elevation of the status of economic, social, and cultural rights in the two

[43] Arambulo, *Strengthening the Supervision*, 23.
[44] UN General Assembly, Tenth Session, Official Records, *Annotations on the text of the draft International Covenants on Human Rights*, A/2929, 1955, 41.
[45] Ibid., 40, 42.
[46] Arambulo, *Strengthening the Supervision*, 24-27.
[47] UN Economic and Social Council, Official Records, Supplement 1, *Resolutions and Decisions of the Economic and Social Council*, E/1985/85, 1985, 15.

decades since the convention was adopted. There was increased concern from the General Assembly, ECOSOC, and from other UN bodies that an ICESCR treaty body could elevate the status and development of economic, social, and cultural rights, which were beginning to play a significant role in improving economic development.[48]

ECOSOC recognized the success of the Human Rights Committee model when creating the new Committee on Economic, Social and Cultural Rights (CESCR), as the new committee's structure and functions were patterned very closely on the ICCPR articles that created the HRC.[49] However, it is important to note that while ECOSOC organized CESCR after the HRC, one fundamental difference remains between CESCR and the rest of the other treaty bodies. As the rest of the treaty bodies trace their purpose and legitimacy back to their respective human rights treaties, CESCR was chartered through an ECOSOC resolution. As such, ECOSOC could effectuate any significant change to the composition, workings, or procedures of CESCR very easily, through a subsequent resolution, while significant changes to the other treaty bodies would require the entry into force of a protocol to their respective treaties. Under international law, then, CESCR's "legal status and competence are temporary," resting on a resolution rather than from a treaty. It could be argued that the relative ease with which CESCR could be modified may allow for an easy expansion of duties, or to allow for any problems to be nimbly rectified, but there could be equal fears that CESCR could have its powers scaled back to impede its monitoring functions.[50] Notwithstanding CESCR's different international legal standing, discussions of the functions and treaty bodies in the following sections will include CESCR for all intents and purposes.

[48] Arambulo, *Strengthening the Supervision*, 31.
[49] McGoldrick, *The Human Rights Committee*, 98.
[50] Arambulo, *Strengthening the Supervision*, 34.

III. Describing the UN Human Rights Treaty Bodies

A. Structure of the Human Rights Treaty Bodies

While every treaty body has been tailored by drafters to meet the needs of their respective underlying human rights treaty, they all share a common structure and organization. Subsequent treaty bodies were constructed on the Human Rights Council model, although the negotiation compromises of some agreements have produced slightly different structural iterations. For ease of description, when particular examples or treaty language is necessary the HRC and its constituting articles in the ICCPR will be used.

Each treaty body is composed of a number of expert members that are nominated by their respective state, and who are subsequently elected through a secret ballot by parties to the treaty. Most committees have eighteen members, although CEDAW has twenty-three,[51] CMW has fourteen,[52] and CAT has ten.[53] For each, there is a rough geographic quotient to ensure that areas of the globe are represented in equal measure. Each treaty requires its committee members to be experts or knowledgeable in human rights or international affairs and of high moral standing; historically, most states nominate jurists, professors, attorneys, or former diplomats.[54]

All treaties call for their committee members to "serve in their personal capacity,"[55] which means that their views and work should impart a measure of independence compared with the official views of their nominating state. While on one hand, member independence is usually touted as another way that the treaty bodies are removed from UN or state government politics; on the other, it is difficult to measure how objective and detached members are.[56] As committee

[51] "International Convention on the Elimination of All Forms of Discrimination Against Women," December 18, 1979, *1249 U.N.T.S. 13*, Art. 17(1) ("ICEDAW").
[52] "International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families," December 18, 1990, *2220 U.N.T.S. 93*, Art. 72(1)(b).
[53] "Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment," December 10, 1984, *1465 U.N.T.S. 85*, Art. 17(1) ("CAT").
[54] Steiner et al., *International Human Rights*, 846.
[55] ICCPR, Art. 28(3).
[56] Oberleitner, *Global Human Rights Institutions*, 94.

membership is only a part-time job, as committees meet just a few times a year for a few weeks to go over reports and tend to treaty-related mattes, nominated experts very often are still under the employ of their state government. The HRC, for example, only meets for three sessions a year, with each session lasting three weeks. Members receive but a token stipend, so full-time employment is assumed elsewhere.[57] While members may state that their views are their own and do not necessarily reflect the official views of their state, traditional political and ideological views can dominate certain issues and be reflected in discussions.[58] Committee members serve for a term of four years and may be re-elected, and voting is staggered—allowing half a committee to be elected every two years—as a balance between continuity and change.

All treaty body proceedings, with some exceptions, are open to the public but not recorded. Open proceedings allow for attendance by the media and for attendance by nationals when a particular state is having its state report reviewed, although attendance is not usually robust since the committees all meet either in Geneva or New York, and do not generally seek out attention or publicity when they do meet.[59] Usual attendance can include domestic or international NGOs or student groups, but the media does report on dialogues between committee members and state presenters and on the resulting general comments. Treaty bodies can call for closed proceedings when discussing complaints by individuals or other states, if their treaties or protocols provide for such (as the ICCPR and its Optional Protocol so provides for the HRC).[60] The HRC issues press releases and publishes compilations of its decisions, but as it aims to be a sober, depoliticized body its proceedings may not be as salacious or timely as other human rights organs that respond to

[57] Steiner et al., *International Human Rights*, 847.
[58] Opsahl, "The Human Rights Committee," 376.
[59] Steiner et al., *International Human Rights*, 847.
[60] McGoldrick, *The Human Rights Committee*, 48.

immediate human rights violations, it is less apt to receive continued international media coverage.[61]

Each treaty body is able to establish its own procedural rules, although all treaties call for decisions to be made either by a majority vote, either a simple majority or a supermajority of two-thirds. The ICCPR stipulates that the HRC should formally vote on matters, but in practice the Committee reaches decisions by consensus to avoid hostile political voting and to keep the HRC's work moving, but reaching a consensus compromise can erode positions and result in a tamer response.[62] In cases where a member may hold a dissenting view from the Committee's decision, the HRC has allowed for that member to write a dissenting opinion to accompany the HRC's general comments to a state's report (which will be detailed below).[63]

Lastly, while the UN Human Rights Treaties establish the treaty bodies as independent regimes operating apart from other UN machinery, UN assistance is crucial for the success of their mandate. The ICCPR states that "the Secretary-General of the [UN] shall provide the necessary staff and facilities" for the HRC to fulfill its mandate,[64] and that assistance and funding comes from the Office of the High Commissioner for Human Rights.[65] The committees are not to take instructions from any UN bodies, yet the committees meet in UN offices, are assisted by UN staffers, receive UN funds, and the proper administration of a charged duty or the implementation of one of the rights in the treaty may involve consultation or engagement with the UN Secretariat, ECOSOC, the General Assembly's Third Committee, or other specialized UN agencies.[66]

---

[61] Ibid., 50.
[62] Steiner et al., *International Human Rights*, 847.
[63] Ibid., 848.
[64] ICCPR, Art. 36.
[65] CEDAW is the one Treaty Body that does not receive support from OHCHR assistance, as it receives support from the UN Division on the Advancement of Women. Oberleitner, *Global Human Rights Institutions*, 94.
[66] Opsahl, "The Human Rights Committee," 384-94.

B. Functions of the UN Human Rights Treaty Bodies

The functions of the treaty bodies are all enumerated by their respective treaties and any applicable protocols, and there are duties and responsibilities common to each committee. The functions provide the important substantive measures to effectively monitor and implement the human rights set out in their respective treaties. The implementation scheme of the treaty body model centers on: state reporting, inter-state complaints, individual complaints, inspections, and general comments.

1. State Reporting Procedures

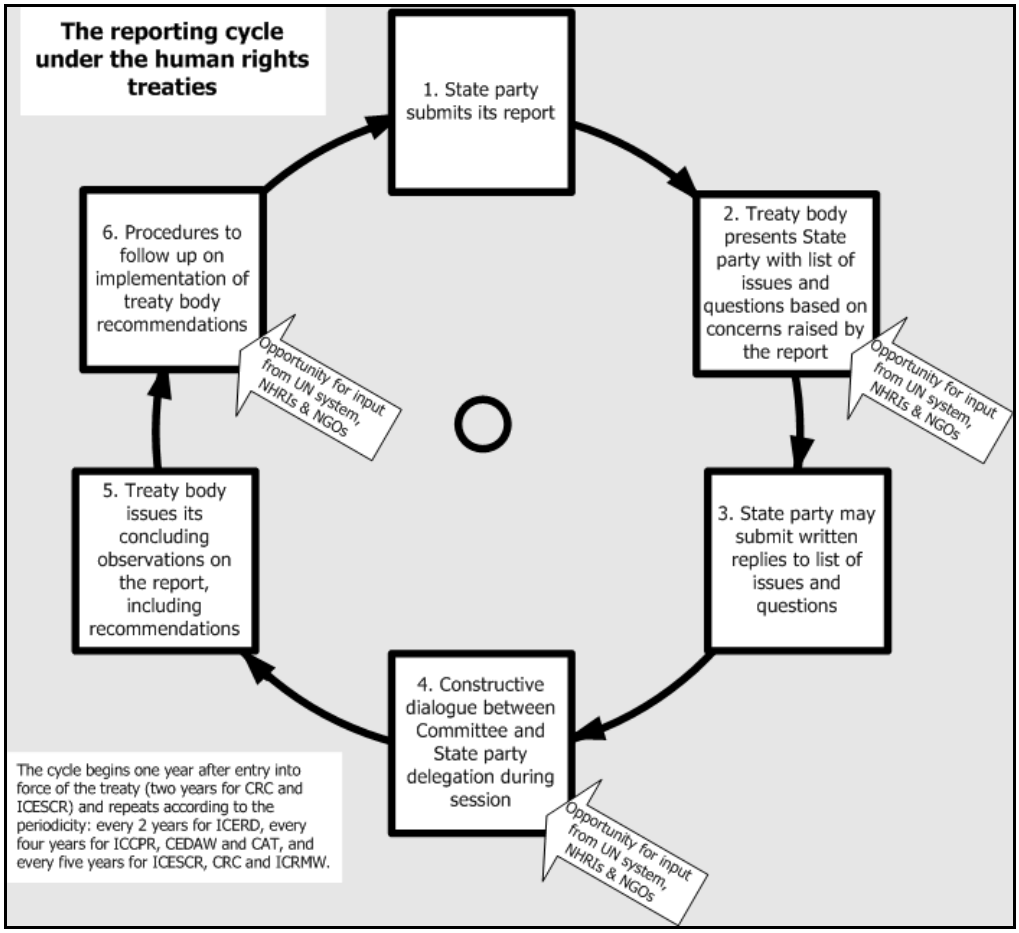
The paramount function of the UN treaty bodies is to coordinate and facilitate state parties with meeting their reporting obligations under each respective treaty, with the overarching goal that this reporting procedure helps states adopt and implement the rights contained in each treaty. Indeed, it is the coordination of the state reporting function that the author believes would be most useful for implementing international environmental treaties, and so this section will go into some detail as to how the treaty body reporting procedures work. This section will talk in broad terms about reporting among each committee, but will focus specifically on only the procedures under the Human Rights Committee. This is not only because it is easier to focus on one body rather than to summarize the minutiae of all eight, but also because the Human Rights Committee was the template for the rest of the organs and its procedures have been replicated among the other treaty bodies.

Due to the concerns of states wishing to avoid dispute settlement mechanisms or giving states or individuals a right of complaint, state participation in the reporting procedures is the only mandatory requirement found in the treaties.[67] Nonetheless, periodic state reporting has gone on to

[67] Thomas Buergenthal, "The Human Rights Committee," *Max Planck Yearbook of United Nations Law* 5 (2001) 345.

become the "most widespread and established implementation technique for the international implementation of human rights."[68]

Each of the UN core international human rights treaties contains an article that requires that state parties submit an initial report to the respective committee upon ratification or accession that details what measures the states have taken to adopt, implement, and enforce the contained rights. For the HRC, the reporting process is detailed in Article 40 and committee practice through the years has grown into a number of steps, detailed broadly in the graphic below.



"The Reporting Cycle Under the Human Rights Treaties," United Nations High Commissioner for Human Rights, http://www2.ohchr.org/english/bodies/docs/ReportingCycle.gif.

The process for each treaty begins with a state party preparing and submitting to the Secretary General, who then transmits the reports to the respective treaty body, a report detailing the realistic laws and practices that the state has enacted and taken in order to adopt, implement, and

[68] McGoldrick, *The Human Rights Committee*, 62.

enforce each of the treaty's rights, as well as any "factors and difficulties" that would hinder giving those rights effect.[69] In theory, a state can submit three different reports. An initial report is required at some designated timeframe (usually one or two years; one year for the HRC) after the treaty comes into force for the state, either from ratification and the treaty's subsequent entry into force, or the treaty's entry into force and the state's subsequent accession. A periodic report is required at some regular interval, as determined by the respective committee. The HRC has adopted the practice of requiring follow-up reports every five years.[70] Also, a state may be prompted to provide an additional or supplementary report when the state promises to make available further information following the ensuing exchange with the Committee. These supplementary reports may include omitted information, material to make the report current, or answers to questions posed by committee members or in the committee's following general comments.[71]

Each committee has a set of guidelines to facilitate states with the generation of the reports, with an eye both to standardizing the reporting to ease analysis and to assist with states that may have limited resources available to produce the human rights reports. Following pressure from the General Assembly to simplify and streamline the reporting procedure, so that states could cut down on duplicative and tardy reporting,[72] an annual inter-committee meeting of the chairpersons of each body began. In 2006, the inter-committee meeting produced a set of harmonizing guidelines to guide a new treaty body process,[73] and each individual committee has since amended and expanded on that framework. The HRC adopted new guidelines in 2010, and they are currently in effect.

---

[69] ICCPR, Art. 40(1)-(2).
[70] McGoldrick, *The Human Rights Committee*, 67.
[71] Ibid., 65.
[72] Steiner et al., *International Human Rights*, 919-21.
[73] Fifth Inter-Committee Meeting of the Human Rights Treaty Bodies, *Harmonized Guidelines on Reporting Under the International Human Rights Treaties, Including Guidelines on a Common Core Document and Treaty-Specific Documents*, May 10, 2006, HRI/MC/2006/3 ("Harmonizing Guidelines").

The new harmonization guidelines coupled with the HRC's new guidelines improve but do not drastically alter the historical process of reporting under the ICCPR. The harmonization guidelines reiterated the reasons for reporting: fulfilling treaty obligations to "respect, protect, and fulfill" the human rights enshrined in the treaties, to take stock of a state's domestic efforts at planning and implementing treaty rights, to encourage civil society engagement over human rights at the national level, and to spark a constructive dialogue at the international level.[74] A considerable amount of the value of the reporting process stems from the state's generation of a report. A state must evaluate exactly how its domestic laws and procedures have implemented the treaty rights, and this self-evaluation can serve as a platform for a national dialogue about how the state can better understand and give effect to international human rights.[75] States often may not dwell on the effectiveness of a measure after it is enacted, and gauging the success of implementation may prove particularly useful to states with limited independent media or public participation in government.

Under the streamlined procedure, for each state report due for a treaty body, a state must submit two separate components: a "common core document" and a "treaty-specific document." The common core document will include: general information about the reporting state, including social, economic, cultural, governmental, and demographic information; the state's framework for human rights protections, including relevant laws and treaties ratified, and how the treaty body report is written; and measures taken by the state to ensure non-discrimination and equal protection before the law.[76] The common core document is envisioned as a standard document that will require a large expenditure of resources at its first production, and then will require only updating as laws, policies, or conditions change.

The treaty-specific document will contain the information relating to a state's implementation of a particular set of international human rights as contained per treaty. Each treaty

[74] Harmonizing Guidelines, 4-5.
[75] Steiner et al., *International Human Rights*, 851.
[76] Harmonizing Guidelines, 8-15.

body was allowed to write its own set of guidelines. The HRC wrote two new sets of guidelines, as the HRC has now resolved to accept two different types of treaty-specific documents in fulfillment of state reporting obligations under the ICCPR. States must submit full reports for an initial report under the ICCPR and whenever the Committee requests a full report (e.g., as a supplementary report), or whether the state wishes.[77] For other periodic reporting, the HRC has developed an optional procedure to allow a state to focus their report to a small set of questions developed in advance by the Committee. Both procedures will be detailed below in turn.

The HRC's guidelines request that the full treaty-specific report contain two parts: a concise legal framework that enacts and protects civil and political rights, and specific information regarding the implementation of particular articles (and thus rights).[78] Also, if applicable, each subsequent report should explicitly address any particular issues of concern identified by the Committee in the concluding observations following the last state report to be presented.[79]

Historically, after the committee members receive a state's full report, the Committee appoints a subset of members to act as a 'country report task force,' and one member is designated the 'country rapporteur' for that state. The task force and rapporteur study the submitted report and any information submitted by other UN agencies or NGOs, and produces a list of questions for the state. That list is submitted to the HRC at large for approval at the committee meeting right before that state is scheduled to meet with the Committee. The state must then respond with answers to those questions, in a concise document of less than thirty pages.[80]

The HRC recently took steps to consolidate the process to generate the inquiry list, in order to further assist states in the production of a "focused" periodic report and to ensure that states

[77] Human Rights Committee, *Guidelines for the Treaty-Specific Document to the Submitted by States Under Article 40 of the International Covenant on Civil and Political Rights*, October 4, 2010, CCPR/C/2009/1, para. 13 ("HRC Reporting Guidelines").
[78] Jhabvala, "The Practice," 101.
[79] Steiner et al., *International Human Rights*, 851.
[80] Ibid., 854.

"fulfill their reporting obligations in a timely and effective manner."[81] For all other periodic reports that do not require a full report, the HRC will now a state to submit a report under the 'list of issues prior to reporting' ('LOIPR') procedure.[82] Under this procedure, the HRC has now undertaken to generate an inquiry list first, so that a state need only produce a pointed, focused response to that list of questions in its periodic report before meeting with the committee.[83]

The LOIPR procedure means that a state can save time and resources producing only one document, rather than a full report and then a set of responses. Also, the focused nature of the LOIPR response should mean that the state's report and the committee presentation could be more direct and efficient. The HRC will also be able to re-initiate a dialogue with those states that are overdue in submitted a periodic report.[84]

A LOIPR report for the HRC will contain one section detailing a state's general situation regarding the implementation of civil and political rights. This will allow states to discuss and highlight any positive developments in policy or implementation measures.[85] The second section will contain the answers to the list of issue-specific questions sent by the Committee in advance, and should also address the recommendations to the state in the concluding observations generated by the HRC after the last state report.[86]

The treaty bodies continue to place no restrictions on the source of information contained in the report, and it is not surprising that states commonly couch their initiatives in a positive light and commonly do not engage certain interested groups (lobbies, groups of particular ethnicities or gender, indigenous people, NGOs, etc.) in the production of the state report.[87] To balance these

[81] HRC Reporting Guidelines, para. 14.
[82] Human Rights Committee, *Focused Reports Based on Replies to Lists of Issues Prior to Reporting (LOIPR): Implementation of the new optional reporting procedure (LOIPR Procedure)*, September 29, 2010, CCPR/C/99/4 ("HRC LOIPR Reporting Guidelines").
[83] HRC LOIPR Reporting Guidelines, 1.
[84] Ibid., 1-2.
[85] Ibid., 3.
[86] Ibid.
[87] Steiner et al., *International Human Rights*, 851.

perhaps skewed descriptions, the HRC allows for other specialized UN agencies and NGOs to submit reports on a state's implementation of civil and political rights. Of course, committee members should make available the widest possible range of materials to ensure that the most reliable snapshot of a state's human rights picture can be determined.[88] Committees that accept individual petitions must rely on reports provided by those alleged victims of human rights violations,[89] and all of the committees not only receive reports from NGOs regarding a state's implementation but have recognized in the last few years that NGOs can play a vital role in supplying accurate and documented examples of enforcement.[90] The HRC listed possible sources of information in its LOIPR guidelines and included reports from the UN and other international organizations, NGOs, and the catch-all "any other document deemed as relevant by the Committee."[91]

After the state has submitted its report and answers to the committee's questions, the next step involves the state sending a delegation to defend and publicly explain their report and answers in front of the committee. The session consists of a short prepared statement by the attending state, followed by a 'constructive dialogue' between the treaty body members and the state delegation that involves a series of questions posed by committee members with answers by the delegation. Generally, the country report task force asks the questions, but other members are free to question also. This polite yet interrogatory format, not heavy-handed or in the form of a trial, is meant to elicit frank and earnest responses from states, and should contribute to the overall climate of the treaty bodies to facilitate state adoption and implementation of rights.[92]

---

[88] McGoldrick, *The Human Rights Committee*, 175-79.
[89] Anna-Karin Lindblom, *Non-Governmental Organizations in International Law* (Cambridge: Cambridge University Press, 2005), 225-26.
[90] Ibid., 395. *See* Section V.B.2, *infra.*
[91] HRC LOIPR Reporting Guidelines, 3-4.
[92] Alex Conte and Richard Burchill, "Introduction," in *Defining Civil and Political Rights: the Jurisprudence of the United Nations Human Rights Committee*, eds. Alex Conte and Richard Burchill (Burlington, VT: Ashgate, 2009), 10.

A committee may meet for two to three weeks at a time but only conduct dialogues for a few days out of that time. A state's session spans two days: committees start the dialogue in an afternoon session, and conclude the following morning. This allows the state delegation the opportunity to contact other officials for answers or supplementary documents to any questions committee members might pose during the dialogue. Some committees may also allow an individual who is not affiliated with the government to speak for a very short time, generally someone speaking or reading a statement on behalf of an NGO or society group.

Transcripts from some dialogues of the HRC show that sessions have dealt with some weighty and controversial affairs. One such example would be the last time the United States reported under the ICCPR was in 2006, at the height of the wars in Afghanistan and Iraq. During the HRC's July, 2006 session, the HRC members and the U.S. delegation participated in a far-reaching exchange that touched on a number of controversial issues of American foreign and domestic policy. The U.S., one of the original and vocal proponents of the ICCPR and its enumerated civil and political rights, was first gently chastised by the committee for submitting its periodic report seven years late. The HRC members questioned about the use of its federal system as a barrier for implementation, domestic prison system, detainment of individuals from the wars in Afghanistan and Iraq outside of American soil and subsequent mistreatment (hinging on the extraterritorial application of the treaty), failed policies promoting abstinence over contraception, and the U.S.' continued failure to ratify the Convention on the Rights of the Child.[93] The U.S. respected the Committee by sending a very experienced, high level delegation of senior officials from across the government, including the principal deputy director for policy planning at the U.S. Department of State, a special advisor for refugee and asylum affairs at the U.S. Department of

[93] Human Rights Committee, Eighty-Seventh Session, "Summary Record of the 2380th Meeting," July 18, 2006, CCPR/C/SR.2380.

Homeland Security, an assistant legal advisor for the Department of State, an assistant attorney general at the Civil Rights Division of the U.S. Department of Justice.[94]

After the dialogue, the treaty body will draft their concluding observations (or "general comments" in the phrasing of the ICCPR)[95] and distribute copies to the state party and to the Secretary General and other relevant UN organs.[96] A treaty body's concluding observations is a summation of the committee's findings regarding that state's implementation of the rights contained in the relevant underlying treaty, and it provides both an assessment of the state's past efforts and prescriptive recommendations as to what could be done to rectify shortcomings. There has been a move in recent years away from broad generalizations, towards committees providing specific policy prescriptions that a state can enact to overcome obstacles to implementing treaty rights.[97] Some states do not submit a report on time (or may miss a periodic reporting entirely); in those instances, a committee may consider a state's status without a state report and issue concluding observations nonetheless.

States must address any questions, concerns, or recommendations in a committee's general observations in their next periodic report. While some treaty bodies have started adding on procedures to ensure that a state reports back to a committee before the next periodic report (as in requesting a supplemental report), the treaty bodies are not empowered with any mechanisms to compel a state to enact any policies or address concerns; a committee can only wait until the next cycle to submit questions concerning performance.[98] Committees also publish their concluding observations, so that governments and other members of that state's civil society can hopefully build upon the dialogue started in session to improve the adoption and active implementation of treaty rights.

---

[94] Colette Connor, "Recent Development: The United States' Second and Third Period Report to the United States Human Rights Committee," *Harvard International Law Journal* 49, no. 2 (Summer 2008): 515.
[95] ICCPR, Art. 40(4).
[96] Oberleitner, *Global Human Rights Institutions*, 96.
[97] Ibid., 96.
[98] Kedzia, "United Nations Mechanisms," 34.

The final step in the reporting process involves a committee's continued communication with a state party after the concluding observations, in order for a treaty body to maintain, restore, or establish a dialogue between reports. Committees can once again appoint a special rapporteur for a state, who will engage the state government for updates as to how recommendations are being met. In the HRC, how the states respond to this follow-up procedure may influence when the Committee decides to request the state's next report.[99]

2. Individual Complaints

Five of the nine UN international human rights treaties now provide for the right of individuals to file individual complaints to the corresponding treaty body alleging that a state party has violated their treaty rights. For three of the treaty bodies—HRC, CEDAW, and CRPD—individuals can submit individual complaints about a state party that has ratified an optional protocol; for two of the treaty bodies—CAT and CERD—individuals can submit individual complaints against state parties to the treaty that have made an affirmative declaration that they accept the competency of the respective treaty body to accept such petitions.

When the ICCPR was being drafted, negotiators debated whether to add a provision allowing for an individual complaint and subsequent adjudication mechanism. The matter was dropped from the treaty over concerns that only states—not individuals—were proper subjects of international law and that individuals should seek redress at the national level, that individual complaints would be unnecessary due to the other provisions in the treaty, and that the notion of international responsibility for domestic human rights violations had not yet developed and thus the inclusion of an individual complaint mechanisms might have jeopardized the ratification of the ICCPR by many states.[100]

[99] Office of the United Nations High Commissioner for Human Rights, "Overview of the Working Methods of the Human Rights Committee," http://www2.ohchr.org/english/bodies/hrc/workingmethods.htm#a4.
[100] McGoldrick, *The Human Rights Committee*, 122.

The concept of an individual complaint was split away from the ICCPR. The individual complaint mechanism was incorporated into the ICCPR's First Optional Protocol ("First OP"), which was approved for ratification by the General Assembly at the same time as the ICCPR. The First OP received enough ratifications to enter into force concurrently with the ICCPR.[101] As other UN human rights treaties began being drafted, it was concluded that developments in the human rights landscape had changed the status of the individual in international law, and the optional nature of the mechanisms would prevent abuse. Other conventions then incorporated the individual complaint mechansm.[102]

Under the ICCPR's First OP, when an individual complaint is received from a party to the protocol, the HRC must determine a) whether the complaint is admissible;[103] and b) whether the individual has had ICCPR treaty rights violated by the state. A complaint is admissible to the HRC if the complainant has exhausted all domestic remedies, and that the matter is "not being examined under another procedure of international investigation or settlement."[104]

If the complaint is admissible, the HRC will forward the complaint to the accused state party, who has six months to respond with a written statement that either clarifies the matter or details the remedies taken.[105] After the state response is received, the complainant is given an opportunity to rebut; the HRC allows this back-and-forth until it is satisfied that it has enough information to make a determination. The Committee then holds a closed door session to decide, based solely on the written evidence before it.[106]

If the HRC finds that a state has violated the ICCPR with regards to the complainant, it generally requires the state to take some remedial action to rectify the situation. The remedial

[101] "First Optional Protocol to the International Covenant on Civil and Political Rights," December 16, 1966, *999 U.N.T.S. 171* ("ICCPR First OP").
[102] McGoldrick, *The Human Rights Committee*, 123.
[103] ICCPR First OP, Arts. 2, 3, and 5.
[104] ICCPR, First OP, Art. 5(2).
[105] ICCPR, First OP, Art. 4(2).
[106] Conte and Burchill, "Introduction," 12.

actions could stretch from securing a promise that the state will not repeat the action to amending laws, to providing services or compensation to the victim. [107] Any treaty body decision and remedy is not, by definition, binding and enforceable, so in most contexts a committee will note that a violation took place, suggest a remedy, and leave the matter in the hands of the state to remedy.

An added significance to the use of individual complaints is that a committee may make substantive interpretations of the treaty rights while adjudicating whether a treaty violation was committed. In issuing its summary reports in settling individual complaints, the HRC has oftentimes interpreted the boundaries of the rights in the ICCPR. For instance, in the determination of one complaint, the HRC ruled that that family members may be considered victims of human rights violations perpetrated on one of their relatives, and would thus have standing to submit a complaint or receive remedies.[108]

Many states have ratified optional protocols or publicly declared to permit citizens to file individual complaints in respective treaty bodies, and, unlike the inter-state complaint option, the individual complaint system has been used widely. From 1977 to mid-2008, the HRC received a total of 1,777 complaints with eighty-two states as parties to the First OP; from those, 617 were admissible and adjudicated with 489 findings that a violation occurred and 128 findings of no violation.[109] The individual complaint workload of the other committees is increasing. There have been 27 complaints filed with CEDAW (with 7 violations found).[110] Of the two individual complaint procedures requiring state declarations to the competency of treaty bodies to accept petitions, sixty-four states have recognized CAT's competency, resulting in 439 filings and 52

[107] Dinah Shelton, *Remedies in International Human Rights Law* (Oxford: Oxford University Press, 2000), 142-43. For a larger discussion of remedies and the UN human rights treaty bodies, see Section V.B.4 below.
[108] Ibid., 186.
[109] Office of the United Nations High Commissioner for Human Rights, "Statistical Survey of Individual Complaints dealt with by the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights," April 9, 2008, http://www2.ohchr.org/english/bodies/hrc/stat2.htm.
[110] Office of the United Nations High Commissioner for Human Rights, "CEDAW – Optional Protocol, Status of Registered Cases," October 1, 2010, http://www2.ohchr.org/english/law/docs/CEDAWOPSURVEY10.xls.

violations found;[111] and fifty-four states have recognized CERD's competency, resulting in 45 filings and 10 findings of violations.[112] The Optional Protocol to the CRPD entered into force in mid-2008, and it appears that CRPD has not yet received with or decided any individual complaints.[113]

3. Inter-state complaints

Four of the nine UN international human rights treaty bodies—HRC, CERD, CAT, and CMW—have been given the power to accept complaints by states alleging that another state is "not fulfilling its obligations" under the treaty.[114] States ratifying or acceding to ICERD must accept the competence of CERD to receive inter-state complaints; states becoming a party to the other three treaties must make a separate declaration that they accept that the competency of the attached treaty body in order to accept such complaints.[115] Thus, under the ICCPR, State A may only bring a complaint against State B if both states have made declarations accepting the HRC's competency to receive inter-state complaints, and State A must exhaust any possible domestic remedies.

As in keeping with the spirit of the treaty body model, the adjudicative measures for responding to inter-state complaints are conciliatory rather than adversarial. The HRC's Rules of Procedure detail that after the Committee receives an inter-state complaint under the ICCPR's Article 41, the reporting and alleged-unfulfilling states will be given six months to satisfactorily work out a solution, and then the Committee will hold a closed door hearing where states will have an opportunity to submit information and provide testimony. If those measures fail, the HRC can

[111] Office of the United Nations High Commissioner for Human Rights, "Status of Communications Dealt With By CAT Under Art. 22 Procedure," November 30, 2010, http://www2.ohchr.org/english/bodies/cat/docs/CATSURVEY45.xls.
[112] Office of the United Nations High Commissioner for Human Rights, "Status of Communications Dealt With By CERD Under Art. 14 Procedure," July 22, 2010, http://www2.ohchr.org/english/bodies/cerd/docs/CERDSURVEYArt14.xls.
[113] *See* Office of the United Nations High Commissioner for Human Rights, "Committee on the Rights of Persons with Disabilities," http://www.ohchr.org/EN/HRBodies/CRPD/Pages/CRPDIndex.aspx.
[114] ICCPR, Art. 41(1).
[115] Oberleitner, *Global Human Rights Institutions*, 97.

appoint an *ad hoc* Conciliation Committee to promote an "amicable solution" for all states concerned.[116]

It is important to note that no state has yet to file an inter-state complaint with the HRC or any of the other treaty bodies.[117] This is no doubt due to the political sensitivity of launching such charges. Given the availability of complaints or adjudication in other venues like the ICJ or regional courts of human rights, this procedural option may never fully be used.[118]

4. Inspections: On-Site Visits

Some of the newer UN international human rights instruments have empowered treaty bodies have been authorized to conduct on-site visits or inquiries for various reasons. This is a new expansion of treaty body powers, and it remains to be seen how the empowered treaty bodies balance their current high level of workload and other responsibilities with their ability to conduct potentially expensive and time-consuming investigations of ongoing violations that may be best administered by other, more responsive UN human rights machinery.

The Convention on Torture[119] and the Optional Protocol to the Convention on the Elimination of Discrimination Against Women,[120] have authorized CAT and CEDAW, respectively, to send committee members on confidential trips to state parties after the committees learn of widespread or systematic treaty right violations. The state party must consent to the trips, and the confidentiality of the trip has generally been waived after the return of the committee delegation.[121]

The Optional Protocol to the Convention on Torture constituted a new Subcommittee for Prevention in 2007, and states ratifying the optional protocol have given the Subcommittee the right

[116] Human Rights Committee, "Rules of Procedure of the Human Rights Committee," January 13, 2011, CCPR/C/3/Rev.9, 15-17, http://www2.ohchr.org/english/bodies/hrc/docs/CCPR-C3-Rev9.doc.
[117] Oberleitner, *Global Human Rights Institutions*, 97.
[118] Conte and Burchill, "Introduction," 11.
[119] CAT, Art. 20.
[120] "Optional Protocol to the Convention on the Elimination of Discrimination Against Women," October 6, 1999, A/RES/54/4, Art. 8.
[121] Steiner et al., *International Human Rights*, 919.

to visit any place of detention and to examine the treatment of the incarcerated. The Subcommittee aims to help state parties with protecting against torture and maltreatment.[122] State parties must grant visiting Subcommittee members unrestricted access to prisons and detaining areas, furnish any information requested, and must allow members to speak with the detained, government officials, prison officials, etc.[123] Also, the new Committee on Enforced Disappearances, which began work in 2010, has been given the authority to send members on state party visits upon "reliable information" that a state party is "seriously violating" treaty rights,[124] and to report any "widespread or systematic" practice of enforced disappearance to the General Assembly.[125]

5. General Comments

The rights enshrined in the UN human rights treaties are sometimes broad, vague concepts, and so monitoring and implementation can naturally be a challenge when state parties are able to apply their own interpretation and understanding in an effort to avoid adoption or active implementation. The treaty bodies have published general comments that provide explanations of the meaning of particular enumerated rights or which have clarified procedural or overarching issues. The concept of general comments has since become "a tool of fundamental importance" in promoting international human rights law.[126]

The concept of general comments emerged from a very small mention in the ICCPR about the HRC's role in the state reporting procedure, that the HRC can send to states "reports, and such

[122] Office of the United Nations High Commissioner for Human Rights, "Optional Protocol to the Convention Against Torture (OPCAT): Subcommittee on Prevention of Torture," http://www2.ohchr.org/english/bodies/cat/opcat/index.htm.
[123] Office of the United Nations High Commissioner for Human Rights, "UN Subcommittee on Prevention of Torture Concludes Twelfth Session, Announces Programme of Work in the Filed for 2011," November 19, 2010, http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10548&LangID=E.
[124] "International Convention for the Protection of All Persons from Enforced Disappearance," December 20, 2006, United Nations General Assembly Resolution A/61/177, Art. 33 (ICPPED).
[125] ICPPED, Art. 34.
[126] Steiner et al., *International Human Rights*, 876.

general comments as it may consider appropriate."[127] The phrasing, whose meaning was not fully understood at the time of drafting, drew a distinction between two types of documents, has evolved over the years to the HRC's current understanding that it can write issue-specific comments to clarify procedures and the meaning of rights in the ICCPR.[128] The HRC has since expounded that the purpose for setting out general comments are to assist states in the fulfillment of their reporting obligations by making available its experience in reading and evaluating state reports, making states aware of what constitutes insufficiencies in reporting, and improving and clarifying the reporting process—with the ultimate goal to have every state ratify the ICCPR and adopt and implement its civil and political rights.[129] Again following the lead of the HRC, every committee has since issued their own general comments for the same reasons.[130]

The HRC's general comments have provided interpretations of many provisions in the ICCPR that have now been adopted as definitive views among international human rights law. While the actual legal status of the general comments is non-binding on matters of substance, their authority has been described as falling between the status of advisory opinions and "authoritative interpretations of treaty provisions."[131] The HRC has written detailed understandings as to the right to life, torture, sexual equality, the freedom of expression, war propaganda, privacy rights, and the treatment of detainees.[132] These comments, delivered without binding authority but delivered as the product of consensus by a panel of experienced, independent experts, have proven to be not only

[127] ICCPR, Art. 40(4).
[128] Conte and Burchill, "Introduction," 11.
[129] United Nations Office of the General Secretary, "Compilation of General Comments and General Recommendation Adopted by Human Rights Treaty Bodies," Human Rights Committee introduction to comments made on May 19, 1989, HRI/GEN/1/Rev.7, 124-125.
[130] Office of the United Nations High Commissioner for Human Rights, "Human Rights Bodies – General Comments," http://www2.ohchr.org/english/bodies/treaty/comments.htm.
[131] Oberleitner, *Global Human Rights Institutions*, 101.
[132] Conte and Burchill, "Introduction," 11.

persuasive, but have directly led to the strengthening of the treaty rights of the ICCPR and thus to the advancement of norms of international human rights.[133]

C. Differences from the Human Rights Council

Three generations of innovation have continued to separate the purpose, competency, and procedures of the treaty bodies from the Human Rights Council and its Charter-based human rights system. While the treaty body System was fueled by the innovations in the HRC and the CESCR, the First Optional Protocol to the ICCPR, and the adoption and entry into force of the subsequent subject matter-specific conventions, the Human Rights Council, the recent successor body to the Human Rights Commission,[134] has had many different duties and responsibilities in response to the wishes of ECOSOC and the General Assembly. The different historical paths are reflected in the important differences between the treaty bodies and the Human Rights Council today, and the two models contrast most notably in function, member composition, and relationship with the UN.

As the Commission and the Council were often subject to the political whims of its state members, ECOSOC members, and the General Assembly members at large, ECOSOC resolutions historically expanded and modified responsibilities over the years. The treaty bodies have evolved into independent expert bodies that combine ongoing treaty monitoring and rights enforcement (in state reporting), quasi-judicial adjudication of treaty violations (individual complaints), and

[133] Oberleitner, *Global Human Rights Institutions*, 101.

[134] The UN General Assembly established the Human Rights Council in 2006 to replace and continue the legacy of the Human Rights Commission. UN General Assembly Resolution 60/251, *Human Rights Council*, A/RES/60/251, March 15, 2006. The switch was prompted by years of criticism towards the Commission, which became marginalized and ineffective in the 2000s for two chief reasons: a) having serious human rights violators on the serving on the Commission and chairing its sessions; and b) a growing perception among developing states that the body had become dominated by Western states, which in turn led to pressure on the developing states, a preferential focus on civil and political rights over economic rights, and an unwillingness to address the human rights violations in the Western. Oberleitner, *Global Human Rights Institutions*, 45-46. For clarification, all references in this paper to "The Human Rights Council" or "the Council" will encompass both the historical legacy of the Human Rights Commission and today's Human Rights Council unless noted.

interpretations of the rights and reporting procedures contained in their treaties (general comments).[135]

The Human Rights Council is intended to be the UN's primary body dedicated solely for the discussion, implementation, and development of international human rights. While many features of the Human Rights Council mirror the functions of the treaty bodies, the Council is very different as it is concerned with the full roster of international human rights and not an independent, treaty-specific subset, and it is also structured to be more of an operative body to respond to human rights emergencies. As an over-arching body, the Council gives advisory services for the implementation of human rights, serves as a platform for dialogue on human rights and the promulgation of new international human rights law efforts, promotes the adoption and implementation of the full roster of human rights treaties, and makes general recommendations. As an operative body, the Council must act to prevent and respond to human rights crises, and in the few years since its re-launch the Council has raised violations in debate and held a number of special sessions on acute crises. The Council has issued country-specific resolutions about the human rights situation of Palestinians in Israel-occupied territories, and Darfur in Sudan. These resolutions have led to studies, official visits to, and further treatment about these areas at the General Assembly and Security Council levels.[136]

The most surprising two new functions given to the Council at its re-launch in 2006 was the introduction of a Universal Periodic Review (UPR), a periodic in-depth review of a state's human rights treatment, and the institution of a complaint procedure whereby both individuals or groups can confidentially report state violations of human rights. Both of those initiatives have taken elements from the state reporting and individual complaint procedures successfully implemented in the treaty bodies.

[135] Jose Alvarez, *International Organizations as Law-Makers* (Oxford: Oxford University Press, 2005), 318.
[136] Steiner et al., *International Human Rights*, 811-23.

Under the Council's UPR, states will periodically submit to the Council a document detailing the status of adoption, implementation, and enforcement of all international human rights norms (generally and specifically), the Council and the state will hold a constructive dialogue, and the Council will issue a document highlighting successes and areas and methods for improving adoption and implementation. The UPR will provide a regular focused review on each state's human rights treatment, not just a subset that have ratified a treaty, and it will give attention not to just to persistent and gross violators but ensure that even powerful states like the permanent members of the Security Council are scrutinized.[137] The Council's complaint procedure seems to be an option for group complaints and for individual complaints that fall outside the scope of the UN international human rights treaties.[138] The Council's complaint system has procedures and petition admissibility standards similar to those of the HRC; the Council has further constituted two working groups, composed of Human Rights Council state representatives, to coordinate that process.[139]

In composition, the Human Rights Council is comprised of forty-seven member states, elected by secret ballot by a vote of the General Assembly. While any state may be elected to the Council, member states are required when voting to take into account a candidate state's commitments to human rights and voluntary pledges made to promote or protect human rights. The Council also periodically reviews members' commitments and pledges to human rights and their cooperation with the Council over the course of their term (although there are apparently no repercussions for non-compliance).[140] The treaty bodies have no such robust membership requirements and review: as mentioned above, the treaty bodies are comprised of experts chosen by their representative state to sit in their independent capacity, with nominating states rotating from

[137] Steiner et al., *International Human Rights*, 794, 806.
[138] Office of the United Nations High Commissioner on Human Rights, "Human Rights Bodies – Complaints Procedures," http://www2.ohchr.org/english/bodies/petitions/index.htm.
[139] UN Human Rights Council, "Human Rights Council Complaint Procedure," http://www2.ohchr.org/english/bodies/chr/complaints.htm.
[140] Oberleitner, *Global Human Rights Institutions*, 64-65.

geographical areas. Each Treaty body is much smaller and more responsive, with most at eighteen members but some having from ten to twenty-three.

The Human Rights Council is now a subsidiary body of the General Assembly (rather than ECOSOC under the Commission), which allows the Council to remain flexible to address concerns, respond to situations, or take on greater duties as the General Assembly sees fit.[141] The treaty bodies have a more complicated, and more distanced, relationship with the UN. The treaty bodies pursue their mandates as set out in each respective governing treaty, but are generally without overarching oversight as they are not, strictly speaking, a body of the United Nations. As they have established themselves as autonomous bodies, they are free to operate within their competencies. As the treaty bodies are insulated from UN political response, they are more apt to explore, address, and admonish human rights violations from powerful states. The treaty bodies thus influence the adoption of human rights norms by monitoring and enforcement, and by allowing civil society members and NGOs (and state actors) to push for address shortfalls or violations to be addressed domestically and other states to push on the international level.

The treaty bodies, however, do receive all support from UN machinery: their budget, work space (in the UN palaces in Geneva or at the UN headquarters in NY), administration support, etc. The Human Rights Committee has as its Secretariat the UN Center for Human Rights in Geneva, and it has been argued that the Secretariat has influenced the work of the Human Rights Committee in its preparatory work, informing Committee members, and developing training assistance and technical capacity to assist state parties in their reporting requirements. In a relationship similar to that between the U.S. Congress and 'independent' U.S. federal agencies, while the UN could do little to affect the substantive responsibilities of the treaty bodies without new protocols, the General Assembly could severely stifle their activity—and thus their effectiveness—by providing insufficient funding or logistical assistance to the treaty bodies.

[141] Ibid., 64.

IV. Critiquing the Impact of the treaty body Model

As with all treaties aimed towards advancing rights throughout the world, the UN human rights treaties have as their main goal the ratification and domestic implementation of the rights contained therein. Finding ways to work around or undercut sovereignty, and to urge states to alter their domestic legislation and enforcement and to adopt emerged or still-emerging international norms, is difficult. From decades of debate, stretching from the years during the negotiated compromise that became the HRC to the evolved practices of the committees as they emerged in treaties and crafted their own procedures, the treaty body model took shape.

Much has been written about the perceived shortcomings of the treaty bodies system, from its soft law mechanisms to the long-term incremental goal to the many states that are late in filing reports. But the committees—starting with the first conceived body and the usual innovator, the Human Rights Committee—have been structured with such flexibility in mind to allow the committees to not only succeed in their main goal of promoting the implementation of human rights, but to broaden their mandate and expand their tools to promote human rights. Perhaps there is no greater proof of the treaty body model's success that it endures today amid innovations and further calls for reform, and that its innovations have consistently been included into newer UN international human rights conventions.

A. Achievements

In the decades since CERD began working in 1969, the model of the UN Human Rights treaty bodies have emerged as one of the jewels in the UN's efforts to promote and implement a universal standard of human rights across the globe. The treaty body functions have been embraced and followed by state parties, individuals who have suffered from violations by state parties, who can file complaints some committees, and NGOs, whose collaborative role has grown increasingly

important in recent years.[142] Within the UN sphere, the treaty bodies have increased their relationship with other specialized agencies, and treaty body-developed innovations have been added to the Human Rights Council.

While universal ratification remains a goal, as not every state is a party to all of the UN international human rights treaties and related optional protocols, every UN member state is a party to at least one of the treaties and 75% of UN members are party to four or more of the treaties.[143] A total of 77% of states are party to the Convention Against Torture, and the rest of the first six treaties have ratification levels above 83%.[144]

The treaty bodies have helped inculcate the notion that state sovereignty with regards to human rights has its limits. How a state treats its citizens and the rights afforded within its borders are unquestionably of international import; that was far from an accepted notion at even the end of World War II. What is stunning is that ratification of the human rights treaties and participation with the treaty bodies are purely voluntary acts undertaken by states.[145] The rise, compliance with, and replication of the requirement to submit periodic reports on state implementation are, together, another triumph. In the early days of the UN, it would be hard to imagine that within a few decades states would willingly submit to an international body a report covering purely domestic legal progressions and the development of the delicate relationship between a state's citizens and its government, and then submit to a frank discussion and defense of that document, publicly, with a panel of international experts.[146]

The flexible model has allowed committees to make changes and interpretations to assist states fulfill their recording obligations under the treaties. Committees have been able to craft their

---

[142] Ibid., 102
[143] Steiner et al., *International Human Rights*, 921.
[144] For ratification information on each of the UN human rights treaties, *see* United Nations Treaty Collections, "Chapter IV: Human Rights," http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en.
[145] Anne Bayefsky, *The UN Human Rights Treaty System: Universality at the Crossroads* (The Hague: Kluwer Law International, 2001), 4-6.
[146] Steiner et al., *International Human Rights*, 850.

own rules of procedure, address concerns, provide interpretations of their monitored rights, and increase the participation of non-state actors like NGOs and individuals into the international human rights sphere. Committees have served as platforms for debate, by which state parties have added optional protocols that have allowed for individuals to file complaints against state parties that may have been violating their treaty rights and obligations.

As independent bodies, the committees have been to reduce the politics out of judging state implementation reports by assuming a detached, legal character. When states appear before the committees to discuss their reports, the committee member engage in a professional, constructive dialogue rather than an inquisition. The state reporting procedure is a soft law mechanism that allows states to take a broad look at their implementation of the treaty rights and to see what they can do to increase compliance. Since reporting is asked for all state parties it avoids the perception that the committee will treat reporting states unequally (although, naturally, states with a history of violations will be scrutinized more closely). It also forces states to think of international norms of human rights rather than allow the states to think of some concerns as culturally-specific or regional traditions.[147]

The main implementing function as realized today revolves around periodic state reporting, which has fashioned a system that relies on factors both internal and external to influence states to take action. Internal pressures, from within the state government, from independent media, and from NGOs and citizens groups, can arise throughout the reporting process. In the production of initial and periodic state reports, governmental organs taking stock of their own policies and implementation measures can assess from within. States may not need to be told in a body's concluding observations that there is work to be done in certain areas as failings may become obvious in the report drafting process. As domestic media can publicize a treaty body's concluding observations, societal groups could put pressure on governments to change policies and conditions

[147] Oberleitner, *Global Human Rights Institutions*, 96.

or grant rights. Also, publicized results can bring pressures to reform from other states or international NGOs. There are many instances of legal reform, and legislative action brought on by committee action and using treaty norms as baselines.[148]

The reporting process also allows for long-term, gradual adoption and implementation of rights. The UN international human rights treaties is not concerned with states enacting laws that may ensure that the rights in the treaties are on the books; the treaty body system is looking for states to internalize those rights and freedoms and to provide for active implementation. Many of the rights contained in the treaties are broad within their subject field, so it is assumed that most states would not already have those rights in its laws and would not yet be implementing them. The treaties, which allowing for gradual, layered incorporation, without a set time limit to be enacted, takes into account that states have different constitutional, legislative, and enforcement structures that must be engaged upon ratification.

B. Innovations

Since the conception of the idea to have the civil and political rights of the ICCPR monitored and implemented by an independent expert body, the treaty bodies model has never ceased to be able to change and adapt in the face of emerging concerns. In the last decade alone, there have been two more UN human rights treaties entered into force and thus two more treaty bodies empanelled, more optional protocols that mandate new powers to treaty bodies, and there has been a wholesale restructuring of state periodic reporting, one of the system's keystone functions. Also, the treaty body model has continued to serve a vital and separate purpose from other sections of the UN's human rights efforts, as the system endures amid the reorganization of the Human Rights Commission into the Human Rights Council.

[148] Bayefsky, *Universality at the Crossroads*, 6.

The treaty body model has also instituted its own innovations, adding tools to the committees to advance human rights and to improve monitoring and implementation that were not originally intended. Four of these innovations that could have a particular effect in international environmental governance are: advancing norms, increasing the role of non-state actors, instituting an individual complaint system, and beginning to issue remedies.

1. Interpreting Treaty Rights

The treaty bodies were intended to be quasi-judicial bodies, as the original negotiations for the HRC noted that the evaluative, inquisitive, and adjudicative nature of the committee's role in the state reporting process. The treaty bodies were not, however, originally intended to have the power to interpret the treaties.[149] The emergence of general comments (discussed in some detail above in Section IV.B.5) has provided a means for the committees to interpret the treaty articles, providing a measure of context and meaning on issues of procedure and substance.

The nature of treaty negotiation demands that some entity eventually articulate what is meant in the contained articles. This is vital as many norms of human rights are unfortunately, but necessarily, vague.[150] As states reduce their negotiated comprises into articles, contentious issues remain unresolved even as states approve a draft treaty and move towards ratification. As the instrument is approved and enters into force, recourse to interpretation by the ICJ or clarification in another protocol cannot be sought every time there is a disagreement as to the meaning of a provision. In the treaty body model, expert committee members unconnected to the drafting of the instrument are called to determine meaning to quiet state understanding and facilitate the state reporting process. The treaty bodies wish to see their human rights actively implemented, and thus

[149] Marc J Bossuyt, *Guide to the "Travaux Préparatoires" of the International Covenant on Civil and Political Rights* (Dordrecht: Martin Nijhoff, 1987), 628.

[150] Philip Alston, "The Historical Origins of the Concept of 'General Comments' in Human Rights Law," in *The International Legal System in Quest of Equity and Universality: Liber Amiocorum Abi-Saab*, eds. Laurence Boisson de Chazournes and Vera Gowlland-Debbas (The Hague: Kluwer Law International, 2001), 767.

deciding that a treaty right should be applied in a broader way serves to advance the right in question and reduce misunderstanding. This continued process leads to the accumulation of jurisprudence for a particular treaty, and thus an expansion and advancement of norms.[151]

The form and substance of the interpretations in general comments have varied, but the fact remains that the interpretations are acknowledged and do influence state action and color international understanding of particular rights. States often use the interpretation in a committee's general comments States may disagree with a committee's interpretation, sometimes vehemently, but their loud rebuttals only serve to draw increased attention to the particular interpretation and bolster the interpretation's authority. State dissent "helps to establish [interpretations in general comments] as a benchmark against which alternative interpretations will be forced to compete at something of a disadvantage."[152]

The Human Rights Committee has issued so far issued thirty-three general comments (and has drafted a thirty-fourth)[153] that have interpreted nearly all of the civil and political rights contained in the ICCPR, and have also developed a significant body of jurisprudence with regards to its adjudications of individual complaints under the First OP.[154] Further, this body of interpretation sits outside of and apart from other regional international human rights courts like the European Court of Human Rights or the Inter-American Court of Human Rights. The HRC aims to forge a truly universal body of human rights law interpretation.[155]

Some other committees have also began to issue general comments, and have been successful with their approaches to interpret and advance their human rights norms. The interpretive work of CERD has allowed the provisions of ICERD to be able to be applied to new types of group conflict. While there was some debate as to whether the conflicts in the Balkans,

[151] Ibid., 776.
[152] Ibid., 765.
[153] Office of the United Nations High Commissioner of Human Rights, "Human Rights Committee – General Comments," http://www2.ohchr.org/english/bodies/hrc/comments.htm.
[154] Conte and Burchill, "Introduction," 14-15.
[155] Ibid., 16.

Chechnya, Chiapas, and Algeria were problems of racial discrimination as understood in the treaty, CERD's general comments have served to broaden the definition of ethnic or racial groups to ensure that their rights prohibited discrimination or harm towards groups that may be difficult to distinguish on some levels.[156] CEAFDAW has rephrased general comments as "general recommendations" in its treaty language,[157] and as such CEDAW issues general recommendations that urge state parties to apply treaty provisions to particular issues that affect women.[158] CEDAW has further adopted a novel approach to drafting general recommendations that involves close collaboration with and input from other UN organs and NGOs.[159]

2. Increasing the Role of NGOs

In recent years, the treaty bodies have afforded increasing opportunities for NGOs to become involved in human rights treaty monitoring. Now, NGOs play a vital role in many committee functions, including state reporting and being able to file an individual complaint on behalf of a person who is physically unable to submit one themselves,[160] as well as providing critiques of the system and issuing recommendations for reforms. None of the nine UN human rights treaties mention explicitly mention NGOs, let alone spell out a role for them in any processes, but NGO participation has been encouraged and is now a vital part of the treaty body model. NGOs interacting with the treaty bodies do not need any official accreditation, as is needed for NGOs consulting with ECOSOC.[161]

---

[156] Michael Banton, "Decision-Taking in the Committee on the Elimination of Racial Discrimination," in *The Future of UN Human Rights Treaty Monitoring*, eds. Philip Alston and James Crawford (Cambridge, Cambridge University Press: 2000), 76-77.
[157] ICEDAW, Art. 9(2).
[158] Office of the United Nations High Commissioner for Human Rights, "Committee on the Elimination of Discrimination Against Women – General Recommendations," http://www2.ohchr.org/english/bodies/cedaw/comments.htm.
[159] Mara R. Bustelo, "The Committee on the Elimination of Discrimination Against Women at the Crossroads" in *The Future of UN Human Rights Treaty Monitoring*, eds. Philip Alston and James Crawford (Cambridge, Cambridge University Press: 2000), 97.
[160] Lindblom, *Non-Governmental Organizations*, 229.
[161] Ibid., 374-75.

In state reporting, NGOs are now involved at many stages. NGOs may be consulted by state parties in preparation of the official governmental report. And when a state is called upon to submit their periodic report, NGOs are encouraged to submit parallel reports.[162] These NGO-submitted reports provide vital information on the developments and on-the-ground implementation of a state's human rights practices. Committee members look to NGO reports to help determine the most serious and immediate issues or situations, which leads to the generation of more accurate and more effective list of issues and more pointed questions to the state delegations at session.[163]

In recognition of the vital role played by NGOs in state reporting, the HRC and other treaties now have included NGOs in their committee working methods and formally urge NGOs to submit reports. NGOs are encouraged and able to submit information at nearly every state of the reporting process.[164] The HRC allows NGO representatives to give oral testimony to the committee on the first morning of plenary sessions and also during the lunch time before the committee starts considering a state's report in session.[165] CESCR is technically a body under ECOSOC, and so it has accreditation procedures for NGOs that wish to submit reports or work with the committee.[166] CESCR also allows NGOs to participate in the drafting of new general comments,[167] and CERD holds regular "thematic discussions" that allow NGOs and other groups to present information and their views in helping the committee shape the development of a topic in preventing racial discrimination.[168]

While progress has certainly been made, treaty bodies must continue to work to bring NGOs to more of a prominent role in their processes. It is still difficult for most national and smaller

[162] Kedzia, "United Nations Mechanisms," 35.
[163] Lindblom, *Non-Governmental Organizations*, 395.
[164] International Service for Human Rights, *Simple Guide to the UN Treaty Bodies* (Geneva, ISHR: 2010), 35 ("ISHR Guide").
[165] Office of the United Nations High Commissioner for Human Rights, "Human Rights Committee – Working Methods," para. VIII, http://www2.ohchr.org/english/bodies/hrc/workingmethods.htm.
[166] Lindblom, *Non-Governmental Organizations*, 397-98.
[167] Ibid., 398.
[168] ISHR Guide, 43.

NGOs to attend committee sessions, as they are held in Geneva or New York and are too far away for most organizations to afford transportation. NGOs may be able to submit reports but not attend the public hearings in person to refute claims made by the state. Treaty bodies should also work to integrate NGOs as much as possible, and continue to pursue reforms that allow for uniformly high levels of national and international NGO involvement in each committee.[169]

3. The Individual Complaint Procedure

Individual complaints were an idea that was hotly debated at the time of the drafting of the ICCPR, and yet the wide embrace of the ICCPR's First OP has helped to develop the idea that individuals, and not just states, can be actors in international law. Specifically, the HRC's acceptance and adjudication of individual complaints has helped to cement the individual complaint procedure as an essential mechanism of international human rights law monitoring.[170]

Like the use of the general comments, deciding individual complaints and issuing written decisions is another opportunity for treaty bodies to interpret the norms in their treaties. Not only did the work of the HRC on individual complaints increase dramatically in the years following the ratification of the First OP, but the nature of the claims involved became more legally complex.[171] Moving beyond decisions involving situations that were easier to interpret form a legal point of view, the HRC has had to examine in individual complaints such issues as how the social security programs in some countries discriminates, or "the economics aspects of the enjoyment of minority rights."[172]

---

[169] Bayefsky, *Universality at the Crossroads*, 44.
[170] Henry J. Steiner, "Individual Claims in a World of Massive Violations: What Role for the Human Rights Committee?" in *The Future of UN Human Rights Treaty Monitoring*, eds. Philip Alston and James Crawford (Cambridge: Cambridge University Press, 2000), 15.
[171] Markus G. Schmidt, "Individual Human Rights Complaints Procedures Based on United Nations Treaties and the Need for Reform," *British Institute of International and Comparative Law* 41, no. 3 (July, 1992): 647-648.
[172] Ibid., 648.

The success of the ICCPR's First OP has inspired other human rights treaties and other regional human rights regimes to allow for individual complaint procedures.[173] For example, the ratification of Protocol 11 to the European Convention on Human Rights[174] now makes the right to file an individual complaint with the European Court of Human Rights mandatory across the EU.[175]

4. The Use of Remedies

The HRC and the other treaty bodies have primarily focused on ensuring the implementation and enforcement of the rights contained in their respective treaties, rather than the protection of individual victims.[176] Victims of ongoing human rights abuses are usually administered to by other UN agencies like the OHCHR or Human Rights Council or by other international organizations. None of the UN international human rights treaties makes explicit reference to making traditional legal remedies—eg., monetary compensation, declaratory judgments, punitive damages, non-monetary remedies—available to victims of violations of the treaty's human rights. However, the five treaty bodies that offer a right of individual complaint against a state for violation of treaty rights have in some cases compelled remedies against the violating state. Even though the treaty bodies lack the power to issue binding orders,[177] states now accept that the Committees can not just determine that a violation has occurred but state what should follow, be it punitive measures or preventive actions.[178]

The Human Rights Committee has never specifically discussed parameters as to when to issue remedies, but it has recommended states take the following actions: undertake public

[173] Steiner, "Individual Claims," 16.
[174] "Protocol 11 to the European Convention for the Protection of Human Rights and Fundamental Freedoms," May 11, 1994, *2061 U.N.T.S. 7*.
[175] António Cançado Trinidade, "The European Human Rights Convention: Protocol No. 11, Entry into Force and First Year of Application" (Paper presented at the "Inter-American System of Human Rights Protection at the Eve of the 21st Century" seminar in San Jose, Costa Rica, November 23-24, 1999), http://www.gddc.pt/actividade-editorial/pdfs-publicacoes/7980-a.pdf, 224.
[176] Opsahl, "The Human Rights Committee," 419.
[177] Shelton, *Remedies*, 294.
[178] Opsahl, "The Human Rights Committee," 427.

investigations to determine facts; try the perpetrators criminally; amend laws; provide restitution; provide medical care and treatment; pay compensation; and ensure that the state does not allow a repetition of the violation.[179] The HRC routinely stresses that states must strictly enforce the rights included in the ICCPR and ensure that violations are not repeated.[180] Also, the HRC has issued judgments calling for states to pay compensation to the family members of victims of torture or forced disappearance for the presumption of suffering prior to their death.[181] The HRC has also tried to assert through its implied powers that a state is compelled to honor and implement its decisions, as it has concluded that the duty to "consider" individual complaints under the ICCPR's First Optional Protocol[182] means that the Committee's responsibility does not end with an adjudication of the claim but rather that the HRC has a responsibility to engage "in those tasks deemed necessary to ensure full implementation of the provisions in the [ICCPR]."[183] Thus, the HRC has instated a procedure to ensure that states follow up with the Committee within 90 days regarding the implementation of the adjudicative decision.[184]

In addition, CERD has also recommended that compensation be paid by a state under the individual complaint article in ICERD after finding that authorities did not adequately respond to racial threats directed at the victim nor provide suitable protection under the treaty.[185] In response to another individual complaint, CAT instructed a state to adopt "appropriate measures of reparation" towards a victim who was tortured by the state legally under domestic law before the entry into force of the Convention Against Torture. Even though the torturous acts were committed before the treaty entered into force in the offending state, CAT argued that there existed a

[179] Shelton, *Remedies*, 142-43.
[180] Ibid., 143.
[181] Ibid., 186.
[182] First Optional Protocol to the ICCPR, Art. 5(1).
[183] Human Rights Committee, "Recommendations for Enhancing the Effectiveness of the United Nations Activities and Mechanisms: Follow-Up Views Adopted Under the Optional Protocol to the International Covenant on Civil and Political Rights," World Conference on Human Rights, A/CONF.157/TBB/3 (June 9, 1993).
[184] Shelton, *Remedies*, 144.
[185] ICERD, Art. 14.

customary norm of international law that states should set up measures to prohibit state-sanctioned torture.[186]

C. Criticism and Responses

No coordinated international law endeavor is seemingly without criticism, and the structuring, functions, and effectiveness of the treaty body model has been challenged since the negotiation process. As situations of slavery and torture exist today, and governments continue to violate the freedoms of their populations to worship, express themselves, participate in the political process, etc., the work of the treaty bodies and other human rights organs is far from over. The UN has been in an effort to engage experts and treaty body members since the committees began work, and there have been frequent and continuous calls for reform from both within the system and from without.

As one expert retained by the UN to offer recommendations for reform stated in 1989: "the reporting system, for all its shortcomings or weaknesses, has developed very rapidly in less than two decades and that it has, in a number of respects, surpassed the expectations that might reasonably have been held out for it originally. Thus, the principles underlying the system remain valid. What is required is not a sweeping overhaul but a systematic endeavour to respond to changing circumstances."[187]

The underlying current in criticism of the treaty body model is that a wide gulf exists between the model's intended goals and the actual, realized results. This is a criticism that could be levied against nearly any institution, but it cannot be disputed that despite all of the recent reforms there are still challenges for the system to address.

---

[186] Shelton, *Remedies*, 144-45.

[187] UN General Assembly, Forty-fourth session, *Effective Implementation of International Instruments on Human Rights, Including Reporting Obligations Under International Instruments on Human Rights*, Initial Report of the Secretary-General's Independent Expert, Philip Alston, November 8, 1989, A/44/668, 21.

The treaty bodies have been criticized for having nine distinct bodies to monitor treaties, rather than a single body to oversee them all. This is partly a function of design—to have a dedicated body focused on one particular subset of international human rights laws—but it mostly stems from the fact that the treaties were drafted and adopted piecemeal, as that was considered easier and more politically expedient than adopting a series of protocols.[188] Many protocols to the same treaty could have the advantage of having monitoring and implementation evaluation done by just one body. Having one body would cut down on what is perceived as duplicative reporting on some measures across the committees, as well as the development of conflicting interpretations of some rights that can be found in more than one of the UN human rights treaties.[189] The responsibilities of producing state reports for up to nine different committees can be burdensome on some states. It also remains to be seen how the Treaty Bodies will interact with the newly-constituted Human Rights Council.

The Treaty Bodies have worked together for many years to try to harmonize their procedures and functions as best as possible. The change in state reporting to having a core document and a treaty-specific document was an outcome of these inter-committee meetings with collaborations with the UN Secretary General and other relevant UN agencies, and this new procedure is expected to save states time and expense in fulfilling their reporting obligations.[190] These inter-committee meetings continue annually, and allow for states, NGOs, and representatives from UN agencies to contribute reports, sit in, or participate in discussion.[191]

The Treaty Bodies do not have binding and extensive enforcement for state party non-compliance, adjudicated violations towards individuals, or for remedies issued in conjunction with

[188] Eric Tistounet, "The Problem of Overlapping Among Different Treaty Bodies," in *The Future of UN Human Rights Treaty Monitoring*, eds. Philip Alston and James Crawford (Cambridge, Cambridge University Press: 2000), 383.
[189] Ibid., 384-396.
[190] UN Office of the United Nations High Commissioner for Human Rights, "Enhancing the Human Rights Treaty Body System: Harmonized Guidelines for Reporting to the Treaty Bodies," http://www2.ohchr.org/english/bodies/treaty/CCD.htm
[191] Kedzia, "United Nations Mechanisms," 35.

individual complaints. That is precisely the nature of a body intended to operate through voluntary reporting and naming and shaming, and experts have stated that "this lack of authority may actually be both prudent and appropriate.[192] Nonetheless, the committees have created a single broad, comprehensive corpus of international human rights jurisprudence, one on which states and experts can build their understandings and base their implementation measures.[193]

The Treaty Body model has been criticized for deficiencies in the state reporting procedure that have led to many instances of non-reporting, long gaps between a state's submission of a report and their committee session, and the building up of a mountainous backlog of reports and complaints to be considered.[194] Also, it has been argued that committees have been ill-equipped to handle complaints in some languages.[195]

Reporting problems could partly be explained by another area of concern: inadequate resources. It is well documented that the Treaty Bodies are given paltry amounts of funds to conduct affairs, and the committee secretariats are understaffed and over-specialized. A small, overtaxed cadre of staff work for the central secretariat that administers, prepares, and organizes sessions for all of the committees. It is difficult to deal effectively with the volume of complaints and reports when the committees must make do with insufficient resources. The committees have operated effectively and have adopted policies to streamline measures for the committees, like considering the human rights implementation of states who have not submitted a state report. But more resources are needed, and it is not anticipated that the committees will receive any substantial infusion of resources even as new functions and committees develop.[196]

---

[192] Michael O'Flaherty and Claire O'Brien, "Reform of UN Human Rights Treaty Monitoring Bodies: A Critique of the Concept Paper on the High Commissioner's Proposal for a Unified Standing Treaty Body," *Human Rights Law Review* 7 (2007), 164.
[193] Oberleitner, *Global Human Rights Institutions*, 102.
[194] Bayefsky, *Universality at the Crossroads*, Executive Summary, *xv*.
[195] Ibid., 107.
[196] James Crawford, "The UN Human Rights Treaty System: A System in Crisis?" in *The Future of UN Human Rights Treaty Monitoring*, eds. Philip Alston and James Crawford (Cambridge, Cambridge University Press: 2000), 6-7.

Any reforms, however, must be careful not to upset the momentum and authority gained by the Treaty Bodies in states that that do comply, that do report, and who have internalized and actively implemented the human rights contained in the treaties and interpreted by the committees. The treaty body model keeps most states engaged in a cyclical and long-term dialogue, with self-assessment, on the progressive implementation of treaty norms. Committees remind states that non-compliance with state reporting and the non-implementation of treaty rights are in fact breaches of international law and not just the harmless collateral of conflicting domestic policies and legislation.

V. Comparing Human Rights and International Environmental Governance

In order to argue that one structure that has been successful in monitoring and promoting international human rights can be set up for international environmental governance, it must be proved that there are similarities in the development of both regimes and in the underlying conceptual framework for implementation. The author's optimism for the success in instituting the Treaty Body model for environmental governance is rooted in the similar historical developments of each movement; parallels in concepts, challenges, and implementation strategies of each, and in the existing linkages between the two disciplines.

A. Similar Historical Development

There are many shared patterns in the history of the development of international environmental law and international human rights law. Both movements existed as very broad concepts as set out in only a few treaties before world events awoke the popular consciousness about the needs for state and international action. Then, the modern growth of both movements began with aspirational, non-binding declarations that preceded a flurry of international and regional instruments that dealt with specific subsets of rights or problems.

In human rights law, there were a few bilateral or multilateral treaties on specific concerns before the world community came together after World War II (detailed above in Section II.A).

Before international environmental consciousness developed and took off in the 1960s, there was a history of previous agreements to regulate transboundary environmental and pollution concerns. There was a growing concern about the need to coordinate and manage the takings of particular species with commercial value in order to preserve animal stocks. The Northern Fur Seal Convention of 1911, signed between the United States, Russia, Japan, and Great Britain to manage the commercial taking of fur seals in a cluster of islands in the Bering Sea, is considered the first treaty aimed at wildlife management. The treaty also settled land ownership claims of the islands in question, with the islands situated between the Alaskan mainland and the Aleutians and close to mainland Russia and other Japanese-held islands.[197] Other international instruments addressed transboundary issues such as migratory birds,[198] watercourses, and energy transmission.[199]

The international community began to galvanize towards serious treaties towards international human rights following the atrocities of World War II. The international environmental movement began to take shape following a number of incidents after World War II in the 1950s and 1960s, but on a much less urgent pace. As mentioned above, one of the bedrock principles of the United Nations was the preservation and promotion of human rights; there was little by way of environmental concerns in UN machinery for some decades after the organization was founded in 1945. The environmental movement organized slowly over the growing understanding of the destructive power of humans over the natural environment, with fears of radiation, pesticide use, and hazardous spills.

States began negotiating after World War II about human rights, and soon agreed to the Universal Declaration of Human Rights. Similarly, with the seminal birth of international environmental movement at the widely-attended 1972 UN Conference on the Human Environment

[197] "Convention Between the United States and Other Powers Providing for the Preservation and Protection of Fur Seals," July 7, 1911, *United States Statutes at Large* 37:1542.
[198] "Migratory Bird Treaty Act of 1918," *United States Statutes at Large* 40:755 (July 3, 1918).
[199] David Hunter, James Salzman, and Durwood Zaelke, eds., *International Environmental Law and Policy*, 3rd ed. (New York: Foundation Press, 2007), 166.

in Stockholm, the UN helped addressed concerns over the protection of the human environment and natural resource management with the Stockholm Declaration on the Human Environment. The Stockholm Declaration was the first widely-accepted international document to proclaim a set of broad principles on environmental stewardship: that man has a duty to protect natural resources and ecosystems for present and future generations against threats of pollution, overuse, and it also spelt out that such goals must be accomplished with international cooperation against transboundary damage and effects, rational planning, and assistance to developing states.[200] The Stockholm Declaration's Principle 21 articulated a state's cardinal right and duty regarding state action and environmental treatment: that every state has "the sovereign right to exploit their own resources pursuant to their own environmental policies," and yet "the responsibility to ensure that activities within their jurisdiction or control do not cause" transboundary environmental damage to neighboring areas or states.[201]

After the Universal Declaration, the UN planned and drafted later, binding treaties for particular human rights that became the ICCPR, ICESCR and the rest of the UN international human rights treaties. Regional human rights arrangements in Europe, the Americas, and Africa eventually followed. Likewise, the non-binding Stockholm Declaration was followed in the 1970s by a number of treaties around more specific first-generation environmental issues such as reducing air or water pollution, and wildlife protection and conservation. These broad agreements were also followed with regional or bilateral instruments for the management of shared resources or specific transboundary pollution problems.[202] There was no political support for a sweeping, binding treaty to encompass the goals and duties of the Stockholm Declaration. Instead, more non-binding measures were drafted and approved to restate the contemporary understanding and conceptual

[200] "Declaration of the United Nations Conference on the Human Environment," June 16, 1972, A/Conf.48/14/Rev. 1, http://www.unep.org/Documents.multilingual/Default.asp?DocumentID=97&ArticleID=1503 ("Stockholm Declaration").
[201] Stockholm Declaration, Principle 21.
[202] Hunter et al., *International Environmental Law*, 173.

development of the principles of the Stockholm Declaration, like the 1982 World Charter for Nature.[203]

The United Nations created machinery to coordinate its environmental activities, although not on the level as the responsibilities for implementing various human rights on different layers as divided among ECOSOC, the Human Rights Commission, or any of the Treaty Bodies. Individual environmental agreements also contain provisions for monitoring and implementing bodies, but with little enforcement mechanisms. The United Nations Environment Program was organized at Stockholm, and it is intended to promote environmental action and coordinate the UN's initiatives for resource and environmental protection. In the negotiations creating UNEP, states did not see the need for environmental protection and coordination to be controlled by a robust body that had mechanisms for enforcement. Developing states wanted environmental coordination and concerns to be divided amongst the UN's existing machinery or regional, focused environmental organizations rather than a new, central body.[204] The United States and France did not wish the new organ to be very robust or well-funded. The vision put forth by powerful U.S. and France won out, as UNEP was created not as an agency with a set budget but rather as a program that relied on voluntary donations, and situated far from most other UN agencies in Nairobi.[205]

While UN human rights machinery has undergone continuous reforms to centralize and harmonize actions and priorities, international environmental governance has continued to expand in a relatively uncoordinated and ad hoc fashion. UNEP has coordinated the UN's environmental efforts, particularly towards developing nations, but international treaties for issues like waterbodies, emissions control, resource protection, transboundary pollution, and procedural

[203] Marie-Claire Cordonier Segger and Ashfaq Khalfan, *Sustainable Development Law: Principles, Practices and Prospects* (Oxford: Oxford University Press, 2004), 17.
[204] Elizabeth R. DeSombre, *Global Environmental Institutions* (New York: Routledge, 2006), 10.
[205] Ibid., 10.

aspects continue at the bilateral, regional, and multinational level often without much UNEP coordination or assistance.[206]

In recent years, human rights conventions have expanded to develop new human rights for groups of people like the physically disabled, migrant workers, and victims of enforced disappearance policies. Multinational environmental treaties (MEAs) have also expanded to address different subjects, but not in any overarching framework. Successful agreements were concluded to address specific environmental situations, including hazardous wastes, reducing the growing hole in the ozone layer, and biological diversity, and existing regimes such as international trade, world health, and even human rights have begun to consider environmental issues under provisions in their treaties and conceptual framework.

The most significant development in international environmental law and treaty-making over the past generation has been the inclusion, and consideration, of development concerns. The concept of sustainable development emerged as a mainstream idea internationally in the late 1980s after the publication of the World Commission on Environment and Development's *Our Common Future* (more commonly referred to as 'The Brundtland Report, after the Commission's chair). The Brundtland Report succinctly defined sustainable development as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs."[207]

Five years later, the UN continued the focus on environment and development, as the UN—not merely UNEP—held the United Nations Conference on Environment and Development (UNCED, also referred to as the 'Rio Conference' or 'Earth Summit'). The very title of the conference reflected the shift to incorporate development concerns. Rio resulted in two binding instruments, the UN Framework Convention on Climate Change and the Convention on Biological

[206] Hunter et al., *International Environmental Law*, 174.
[207] World Commission on Environment and Development, *Our Common Future* (Oxford: Oxford University Press, 1987), 43.

Diversity, and more three soft law instruments focused on sustainable development: Agenda 21, the Forest Principles, and the Rio Declaration. Agenda 21 was adopted as a sprawling, detailed document outlining best practices along many varied fields of environmental regulation, referencing and building off of the Stockholm Declaration's Principle 21.[208] The Forest Principles was another soft law mechanism calling for the responsible and sustainable harvest and management of forest land, recognizing the important role that forests play in biodiversity, ecosystem services, and regulating climate change.[209] The Forest Principles were also novel in that they called for states to provide opportunities for the participation of all interested parties in forest management, calling for the recognition of the rights of indigenous peoples and their important role in forest stewardship.[210]

The Rio Declaration, in the tradition of the Stockholm Declaration and the World Charter for Nature, was another broad, hortatory international document that stated the world's political consensus regarding environmental and natural resource issues in 1992. The Rio Declaration reaffirmed the principles of the Stockholm Declaration and incorporated development concerns. The Rio Declaration re-stated the Stockholm Declaration's Principle 21 and included concepts like intergenerational equity, the precautionary principle, that the polluter pays for the cost of pollution, environmental impact assessment, public participation in environmental planning, and state cooperation. Addressing development concerns, the Rio Declaration also mentioned the "special situation and needs" of developing states, the need to eradicate poverty, that states have common

[208] "Agenda 21," *Report of the United Nations Conference on Environment and Development*, 1992, A/CONF.151/26/Rev.1 (Vol. 1), http://www.un.org/esa/dsd/agenda21/index.shtml.

[209] "Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation, and Sustainable Development of All Types of Forests," *Report of the United Nations Conference on Environment and Development*, 1992, A/CONF.151/26/Rev.1 (Vol. 3), http://www.un.org/documents/ga/conf151/aconf15126-3annex3.htm ("Forest Principles").

[210] Wolfgang E. Burhenne, "The Role of NGOs," in *Sustainable Development and International Law*, ed. Winfried Lang (London: Graham & Trotman, 1995), 218.

but differentiated responsibilities with regards to sustainable development, and the important role that indigenous people can play in environmental management.[211]

The Rio Declaration's negotiating process exposed and entrenched the divisions—that largely continue today—between states regarding international environmental regulation and how those concerns are bound up with discussions of development in the heated discussions regarding the conference's namesake agreement. Developed nations largely hoped for measures that incorporated sustainable development, and developing nations wanted to guarantee their right to be able to continue to develop and secure additional assistance from developed states, sums in addition to their levels of official development assistance, for their sustainable economic development.[212] The U.S. largely opposed binding measures—and did not ratify the Convention on Biodiversity—and developing nations were wary of the U.S. focus on forest preservation as a way to avoid having to curb consumption and greenhouse gas emissions and pass on responsibility to the developing nations to instead protect their forests as areas of carbon reservoirs and CO_2 reduction.[213]

Today, the debate for reform for international human rights centers on how to improve the effectiveness of already-existing UN bodies, be they the Treaty Bodies or the Human Rights Council. In international environmental governance, the ad hoc development of MEAs and other treaties has led to a fractured system that is decentralized, has many overlapping or incoherent obligations, and that lacks effective enforcement methods.[214] Calls for structural reform for international environmental governance thus can look to other international regimes like the WTO to address more environmental concerns, but often returns to ways to organize the many treaties already at hand or for creating a central governance structure. There have been calls to cluster

[211] "Rio Declaration on Environment and Development," *Report of the United Nations Conference on Environment and Development*, June 14, 1992, A/CONF.151/26 (Vol. I), http://www.un-documents.net/rio-dec.htm.
[212] Hunter et al., *International Environmental Law*, 182.
[213] Ibid., 183.
[214] W. Bradnee Chambers and Jessica F. Green, "Introduction: Towards an Effective Framework for Sustainable Development," in *Reforming International Environmental Governance*, eds. W. Bradnee Chambers and Jessica F. Green (New York: United Nations University Press), 5-8.

MEAs, linking organizational elements, funding, and functions, on the basis of issue addressed, region concerned, or function,[215] or to revisit the longstanding idea of organizing international environmental governance around a central umbrella institution, either a wholly new body, inside or outside of the UN, or through the elevation of UNEP to the status of a UN agency.[216] Reforms in human rights have become possible through the international adoption of the notion of human rights, whereas issues of environmental and resource management continue to evolve and deep ideological divisions between states have not yet been rectified to a level that would make those solutions politically realistic.

B. Contrasting Implementation Needs

The similarities between international human rights law and international environmental law extend to the underlying, substantive concepts as well as today's current challenges. The implementation needs of human rights and international environmental law differ on the need for mutual state action, whether regulated conduct is at the public or private level, and the nature of negotiated treaty provisions.[217]

Successful international environmental governance requires state cooperation. Most environmental or natural resource issues confronted stretch across state boundaries, involve the global commons, or simply cannot be effectively dealt with by controlling the action of one or two states. Collective effort requires assurances from states that they will join with other state in modifying or curbing their conduct. States that shun collective environmental regulation may put

[215] Oberthür, "Clustering of Multilateral Environmental Agreements," 51-52.
[216] *See* E.W. Seabrook Hull and Albert W. Koers, *Introduction to a Convention on the International Environment Protection Agency*, Law of the Sea Institute, University of Rhode Island, Occasional Paper No. 12 (Kingston, RI: Law of the Sea Institute, 1971); Steve Charnovitz, "A World Environmental Organization," in *Reforming International Environmental Governance*, eds. W. Bradnee Chambers and Jessica F. Green (New York: United Nations University Press), 93-123.
[217] Daniel Bodansky, "The Role of Reporting in International Environmental Treaties: Lessons for Human Rights Supervision," in *The Future of UN Human Rights Treaty Monitoring*, eds. Philip Alston and James Crawford (Cambridge, Cambridge University Press: 2000), 363.

other states at risk or reap economic benefits.[218] On a theoretical level, it can be argued that violations of human rights are an attack upon human rights everywhere or civilization as a whole, but human rights are state responsibilities directed at individual citizens, not just towards other states. The success of one state's adoption and implementation of human rights law does not necessarily depend on similar action taken by other states. Collective action in human rights strengthens and advances the development of norms and protects against widespread or systematic violations that may spread across borders, but that is a different level of collective confrontation than is required with international environmental problems.

International environmental regulation typically urges states to adopt measures that primarily affect and change behavior of private actors. It is usually not the state that is emitting the pollutants or taking and trading the endangered species, although the state often plays a role in the regulation of those activities. MEAs require compliance and implementation by states to change private behavior, and reporting procedures may focus on the activity of private entities.[219] In contrast, states themselves are often the guarantor of human rights protections and the primary subject of human rights treaties. The human rights treaties do hold states accountable for the actions of non-governmental entities that violate the treaties if the state condones or allows the actions, but enforcement is but one of the human rights regime; the other goals of adoption, promotion, and implementation all require action at the governmental level.

The nature of negotiated treaty provisions is also very different between international environmental and human rights instruments. Human rights treaties adopt a very detached legal nature as their provisions are described as "rights." Such classification tends to divorce states from political squabbling today, although the formulation of the UN international human rights treaties was rife with such political concerns, especially concerning the drafting of the ICCPR and the

[218] Ibid.
[219] Ibid., 363-64.

ICESCR. As concepts of international environmental law are newer, ideas and notions are still being debated among states. Many international environmental concepts have not yet been widely accepted by states, or crossed into customary international law. This mentality extends to compliance and implementation measures, as most international environmental regimes are overseen by a conference on parties rather than independent experts, which imparts a highly politicized nature to compliance discussions.[220]

C. Environmental Norms Asserted as Human Rights or in Other Regimes

As this paper aims to address structural issues of international environmental monitoring and compliance, this paper will not dwell long on the recent efforts to enforce environmental rights as human rights, nor will it discuss in great depth the assertion of environmental issues in other international regimes. Both topics have emerged with the growing international awareness of environmental concerns. The consideration of extending human rights regimes to include development rights or environmental rights, or to address or enforce environmental concerns in the WTO or ILO regimes has emerged partly due to the insufficient mechanisms of enforcement, compliance, and implementation in MEAs.

It is interesting to note that the Stockholm Declaration couched its opening principle as a "fundamental right," stating that "man has a fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being." Mankind also bears "a solemn responsibility to protect and improve the environment for present and future generations."[221] This "fundamental right" has not been enshrined in a binding, enforceable instrument, and the language in terms of rights was not used later in the Rio Declaration or the

[220] Ibid., 364.
[221] Stockholm Declaration, Art. 1.

Johannesburg Declaration on Sustainable Development[222] that resulted from the World Summit on Sustainable Development in 2002.

1. Environmental Concerns in Human Rights

With nine major international human rights treaties and more regional human rights instruments in effect, it is not surprising that some may contain provisions that relate to the protection of the environment or natural resources. General provisions mentioning the environment are not uncommon, and enforcement bodies or courts have been increasingly called to decide cases of substantive and procedural rights relating to environmental conditions in recent years.[223] Human rights bodies or courts may interpret substantive rights to involve an environmental component, such as: the right to life,[224] the right to health and well-being,[225] or the right to use and enjoy property.[226] However, in the absence of explicit or substantive environmental rights, human rights bodies and courts have found violations of procedural human rights (usually civil or political rights) where there are "limited derivative rights in the environmental field."[227]

The African Charter of Human and Peoples' Rights, the binding document of the African regional human rights system, states that people have a right to "a general satisfactory environment favorable to their development."[228] The progressive Additional Protocol to the American Convention on Human Rights ("Protocol of San Salvador") enshrines economic, social, and cultural rights for the Inter-American human rights system, and it includes a "right to a healthy environment" and mandates that the state parties "shall promote the protection, preservation, and

---

[222] "Johannesburg Declaration on Sustainable Development," September 4, 2002, A/CONF.199/20.
[223] Tim Stephens, *International Courts and Environmental Protection* (Cambridge: Cambridge University Press, 2009), 311.
[224] UDHR, Art. 3; ICCPR, Art. 6.
[225] ICESCR, Arts. 11-12; "American Convention on Human Rights," November 21, 1969, *O.A.S.T.S. No. 36*, *1144 United Nations Treaty System 143*, Art. 10 ("ACHR").
[226] ACHR, Art. 21.
[227] Mariana T. Acevedo, "The Intersection of Human Rights and Environmental Protection in the European Court of Human Rights," *New York University Environmental Law Journal* 8, no. 2 (2000): 454.
[228] "The African Charter on Human and Peoples' Rights," June 17, 1981, *1520 United Nations Treaty System 217, 245*, Art. 25.

improvement of the environment."[229] The provision in the African Charter has led its implementing body to conclude in a complaint that the extraction of oil in Nigeria violated numerous human rights including the right to a satisfactory environment, and remedies were ordered to have the state protect the environment.[230] Also, the Protocol of San Salvador was successfully invoked by indigenous peoples in Nicaragua and Brazil whose land had been given away as logging concessions or bisected by a major highway, respectively.[231] It is not uncommon for human rights bodies or courts to refer to environmental issues when directly addressing larger issues of health. The European Court of Human Rights (ECHR), which oversees the most actively implemented of the regional human rights regimes, the European Convention for the Protection Human Rights and Fundamental Freedoms, has found a provision calling for "the protection of health and morals"[232] to apply to cases of severe environmental pollution.[233]

The Treaty Bodies have also touched on environmental issues, addressing the right to a healthy environment in their general comments. CESCR has interpreted the rights in the ICESCR that guarantee the highest available standard of health[234] and the right to water[235] to include the right to a healthy environment. CERD, CEDAW, and the CRC include similar provisions to health standards and the right to water, and have adopted CESCR's interpretation to broaden the understanding of their provisions to include a right to a healthy environment.[236]

---

[229] "Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ('Protocol of San Salvador'), November 17, 1988, *O.A.S.T.S. No. 69*, Art. 11.
[230] Stephen J. Turner, *A Substantive Environmental Right: An Examination of the Legal Obligations of Decision-Makers toward the Environment* (Alphen aan den Rijn, Netherlands: Kluwer Law International, 2009), 18.
[231] Ibid., 20.
[232] "European Convention for the Protection of Human Rights and Fundamental Freedoms," November 4, 1959, *213 United Nations Treaty Series 221*, Art. 8.
[233] *Lopez Ostra v. Spain*, 303 Eur. Ct. H.R. (1994).
[234] ICESCR, Art. 12; CESCR, "General Comment No. 14," August 11, 2000, E/C.12/2000/4.
[235] ICESCR, Art. 11, CESCR, "General Comment No. 15," January 20, 2003, E/C.12/2002/11.
[236] Office of the United Nations High Commissioner for Human Rights, "Human Rights Bodies – General Comments," http://www2.ohchr.org/english/bodies/treaty/comments.htm.

2. Environmental Treatment in Other Regimes

Other international regimes have addressed environmental issues as part of the adjudication of cases or complaints. The dispute resolution mechanism of the International Court of Justice, the World Trade Organization ("WTO"), and the International Tribunal for the Law of the Sea ("ITLOS") have been the three most prominent fora that have settled issues or advanced norms for international environmental law. In addition, the very earliest articulations of what was to become international environmental law were crafted as bilateral arbitration hearings in the late 19th Century and earliest 20th Century.

The International Court of Justice, the principle court of the United Nations, has played an important role in the development of international environmental norms. The ICJ has the competency to hear disputes between states that have adopted the statute of the court or that have recognized the authority of the ICJ to hear and decide disputes in a particular instance.[237] In addition, the ICJ may issue advisory opinions "on any legal question" if so requested by a body that has been given the power by the UN to ask for an advisory opinion.[238] The ICJ has played an important historical role in adjudicating cases and articulating norms of international environmental law, as explicit articulation in an ICJ opinion is one major way to articulate that a norm of customary international law has crystallized.

As the principal judicial organ of the United Nations and with a broad subject matter jurisdiction, the ICJ is ideal to decide and articulate matters of international environmental law between states. Further, as the ICJ has been described to be "situated at the apex of international tribunals," it enjoys a position of special trust to be able to decide matters concerning the global

[237] "Statute of the International Court of Justice," *United States Statutes at Large* 59:1031, June 26, 1945, Art. 36.2 ("ICJ Statute").
[238] ICJ Statute, Art. 65.

commons.[239] While its decisions have no precedential value and apply only to the claimants in dispute (and are often considered non-binding as there is a lack of enforcement power to realize the decisions), the ICJ's opinions often herald new norms of international law and provide the only judicial treaty interpretation an instrument is likely to receive at the international level. In its various decisions, the ICJ has decided a number of significant cases of international environmental law, and has come to articulate a few environmental norms such as the precautionary principle, the need for environmental impact assessment,[240] that states should not permit their territory to be used so as to cause transboundary damage to a neighboring state, that states should operate in good faith when managing shared water resources,[241] and that states have a duty to respect and protect the natural environment.[242]

In order to organize itself in the best position to hear cases and issue advisory opinions on environmental matters, the ICJ established a special Chamber for Environmental Matters (CEM) in 1993. While the ICJ regularly empanels ad hoc chambers with three to five judges, the CEM was envisioned as a permanent chamber and assigned seven judges. At the time, experts hailed the creation of the CEM as an important milestone in international environmental law, and as an important tool for the ICJ to strengthen and clarify environmental norms.[243] Today, though, the CEM is considered a failed experiment: no states submitted a dispute to the CEM and the judges empanelled had no greater experience or expertise in environmental matters than the other judges. While the CEM technically still exists, the ICJ stopped holding annual elections for its seats in 1996.[244]

---

[239] *Request for an Examination of the Situation in Accordance with Paragraph 63 of the Court's Judgment of 20 December 1974 in the Nuclear Tests (New Zealand v. France) case*, 288 ICJ Rep. (1995).
[240] Stephens, *International Courts*, 149.
[241] Ibid., 166.
[242] Ibid., 231.
[243] Ibid., 39.
[244] Ibid., 40.

As only states have standing to submit a case for adjudication in the ICJ, individuals and groups cannot allege state violations. This is troubling in that states may not always undertake environmental regulations or enforcement that benefits its citizens. States may likewise approve harmful private economic activity that may harm its citizens. Under those governments, citizens may not have suitable or effective domestic remedies; such situations may fall outside of substantive environmental laws contained in a treaty.

The underlying tension between environmental and natural resource protection and conservation and economic concerns has played out in the international trade law regime under the structure of the WTO. The WTO, which was founded in 1995[245] and developed out of the previous trade regime under the General Agreement on Tariffs and Trade that emerged after World War II, seeks to promote free trade and reduce the domestic barriers to trade (quotas, tariffs, discrimination, etc.). The WTO's Doha Declaration in 2002 declared that the goals of free trade and sustainable development are not in direct contrast, affirming a commitment to sustainable development and stating that "the aims of upholding and safeguarding an open and non-discriminatory multilateral trading system, and acting for the protection of the environment and the promotion of sustainable development can and must be mutually supportive."[246] Experts are mixed in that regard, as reduced barriers to trade may encourage states to adopt environmentally-harmful policies or cause activities to move to areas with poor environmental standards in a race to the bottom, but the system may reduce domestic subsidies to unsustainable practices like hydrocarbon extraction, carbon intensive agriculture, or overfishing.[247]

States party to the WTO are members of its accompanying compulsory and binding adjudication procedure, whereby states can bring disputes out of being economically harmed by

[245] "Marrakesh Agreement Establishing the World Trade Organization," General Agreements on Tariffs and Trade 1994, April 15, 1994, *1867 United Nations Treaty Series 187* ("GATT 1994").
[246] "Ministerial Declaration," World Trade Organization, November 14, 2001, WT/MIN(01)DEC/1 (2002), par. 6 ("Doha Declaration"), http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm.
[247] Stephens, *International Courts*, 322.

another state's violation of the system's treaties and agreements and receive remedies for successful adjudications. The WTO dispute settlement mechanisms are widely used and an integral part of preserving the goals of the WTO, and it has adjudicated disputes based on underlying environmental issues. The WTO structure allows for states to adopt policies that would violate its articles or tariff schedules if the qualify under an exception and is not a disguised restriction on international trade, and there is an explicit exception in Art. XX(g) for a measure undertaken "relating to the conservation of exhaustible natural resources,"[248] which has been interpreted to also potentially include living and renewable resources.[249]

The WTO's Appellate Body and other dispute settlement mechanisms have sought to integrate their adjudication and interpretation of its exceptions based on measures to protect human, animal, or plant life or health, or to conserve natural resources, with prevailing concepts of international environmental law. A number of adjudications in the WTO sphere have involved environmental issues. In the *US-Shrimp-Turtle* case, the WTO's Appellate Body found that a United States ban on the importation of certain shrimp because of concerns over methods that caused the incidental taking of sea turtles met the XX(g) exception (although the measure was ruled to have been applied in a discriminatory manner).[250] In *US-Shrimp-Turtle*, the Appellate Body engaged in a detailed examination of the meaning of the Article XX(g) exception and considerations of the meanings of relevant concepts of international environmental law and sustainable development.

Through globalization and the continued march of free trade, the linkages between environmental issues and international trade will strengthen. There is only a limited extent to which

[248] GATT 1994, Art. XX(g).
[249] *United States – Import Prohibition of Certain Shrimp and Shrimp Products*, WTO Appellate Body, November 6, 1998, WT/DS58, par. 128 "*US-Shrimp-Turtle*").
[250] *US-Shrimp-Turtle*; Stephens, *International Courts*, 129.

the WTO machinery can take environmental considerations into account.[251] The WTO dispute mechanism has been integrative towards international environmental law and concerns, but the gains and favorable rulings are not afforded precedential value and may be overturned or marginalized. The Appellate Body's decisions are binding only to the parties involved in the particular situation in dispute, and so other future cases may examine international trade law in isolation from international environmental law.

The WTO has formed a Committee on Trade and the Environment to study the relationship between trade and environmental concerns with an eye towards sustainable development, and to make any recommendations as to how WTO system are required,[252] but the Committee's progress so far towards meeting that broad mandate has not been significant.[253]

The United Nations Convention for the Law of the Sea (UNCLOS) provides for the creation of a judiciary body to adjudicate disputes that arise out of violations of the treaty in certain circumstances, the International Tribunal for the Law of the Sea (ITLOS). UNCLOS itself is a sprawling treaty that contains a detailed section, Part XII, on the "Protection and Preservation of the Marine Environment."[254] Part XII focuses on living marine resources, limiting marine pollution, encouraging global and regional state cooperation to conserve marine resources, providing technology to enable developing states to increase their capacity to protect the marine environment, and puts forward mechanisms to enforce the agreement through dispute settlement at ITLOS.

UNCLOS provides for four possible methods to adjudicate disputes that arise under the convention: recourse to the ICJ or the ITLOS, or two different binding arbitration mechanisms. Concerning international environmental matters, the ITLOS may hear a case if states declare it as first choice as a venue, or if the subject matter of the dispute arises out of UNCLOS or a similar

[251] Turner, *A Substantive Environmental Right*, 192.
[252] World Trade Organization, "Environment: Regular Work: Items on the CTE's Work Programme," http://www.wto.org/english/tratop_e/envir_e/cte00_e.htm.
[253] Turner, *A Substantive Environmental Right*, 192.
[254] "United Nations Convention on the Law of the Sea, December 10, 1982, *1833 United Nations Treaty Service 3, 397*, Part XII.

treaty "related to the purposes of [UNCLOS]," parties seek provisional remedies under UNCLOS, or if the tribunal declares that it has jurisdiction. Also, the ITLOS may issue advisory opinions regarding UNCLOS or other international agreements relating to it.[255]

The ITLOS has not yet fulfilled its promise of being a significant interpreter of its treaty or of related ones. In the years since it began operation in 1996, it has seen eighteen cases; only in ten of those cases were significant issues of international environmental law brought up, and none of those were decided on the merits or helped interpret or articulate any norms of international law.[256] The ITLOS has the potential to be able to contribute to the interpretation and advancement of international law norms.

VI. Current State of MEA Monitoring and Implementation

As with all international treaty obligations, the success and effectiveness of regimes created by MEAs hinges on widespread state adoption, transparency in the treaty's obligations, domestic implementation and enforcement, international methods ensure compliance, and state cooperation. It is often said that agreements on international environmental issues are set apart by their need for collective action and state consensus to tackle environmental problems,[257] but similar appeals for collective action appear necessary for other regimes, including international humanitarian law, human rights, and international trade. This section will discuss the compliance mechanisms found in MEAs in a practical sense, without dwelling on the considerable body of theory focused on environmental compliance.

[255] International Tribunal for the Law of the Sea, "Proceedings and Cases – Competence," October 27, 2010, http://www.itlos.org/start2_en.html.
[256] Stephens, *International Courts*, 46; International Tribunal for the Law of the Sea, "Proceedings and Cases – List of Cases," January 12, 2011, http://www.itlos.org/start2_en.html.
[257] Hunter et al., *International Environmental Law*, 360.

A. Describing Non-Compliance Mechanisms in MEAs

Non-compliance mechanisms all have in common the fact their aim is to further the implementation of their underlying treaty and/or created treaty regime. In some disciplines of international law, these mechanisms and their coordinating body are explicitly provided in the agreement; MEAs, however, usually do not include the measures but provide parameters for non-compliance measures to be added later through an enabling clause.[258] For example, the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters ("Aarhus Convention") merely states that a subsequent, to-be-determined compliance mechanism be "non-confrontational, non-judicial and consultative."[259] The Aarhus Convention and similar MEAs leave the final compliance measure to be decided and implemented by their Conference of State Parties ("COP"), or decided by the COP and implemented by a subsidiary body that be of varied composition, independence, and subject expertise.[260]

Among MEAs, it is striking that there are few agreements with provisions for external monitoring and evaluating state implementation.[261] MEAs do have enforcement mechanisms, but they rarely are they binding, enforced, or effective. As MEAs are inherently agreements negotiated to a compromise with concepts that are not considered norms, state ratification and participation is seen as purely voluntary and fragile. Enforcement mechanisms that are perceived as too robust may destroy the needed consensus, by keeping away states from joining the regime or by fears that states will leave if enforcement measures are levied against them. These fears are reflected in the very

[258] Tullio Treves and others, eds., *Non-Compliance Procedures and Mechanisms and the Effectiveness of International Environmental Agreements* (The Hague: T.M.C. Asser Press, 2009), 2-3.
[259] "Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters," June 25, 1998, *2161 United Nations Treaty Service 450*, http://www.unece.org/env/pp/documents/cep43e.pdf, Art. 15.
[260] Treves et al., *Non-Compliance Procedures*, 3-4.
[261] Michael Bothe, "Ensuring Compliance with Multilateral Environmental Agreements – Systems of Inspection and External Monitoring," in *Ensuring Compliance with Multinational Environmental Agreements: A Dialogue Between Practitioners and Academia*, eds. Ulrich Beyerlin, Peter Tobias-Stoll, and Rüdiger Wolfrum (Danvers, MA: Brill Academic Publishers, 2006), 251.

language used to describe state action: whereas human rights treaties speak of trying to stop state party *violations*, MEAs speak of trying to curb state party *non-compliance*.

B. Types of Non-Compliance Mechanisms in MEAs

There are four types of compliance mechanisms found in MEAs: performance review information; multilateral non-compliance procedures; non-compliance response measures; and dispute settlement procedures.[262] These mechanisms can occur in an MEA together or separately, and in a binding or non-binding capacity. The table below gives can overview of the compliance mechanisms found in major MEAs as of 2007.

Overview of MEA Compliance Frameworks

Convention	National Performance Information	Multilateral Non-Compliance Procedures	Non-Compliance Response Measures	Dispute Resolution Procedures
Ramsar	√	√	√	
World Heritage	√	√	√	√
CITES	√	√	√	√
CMS	√			√
CBD	√			√
UNCCD	√	Pending		√
ITPGRFA		Pending		√
Basel	√	√	√	√
PIC		Pending		√
Biosafety	√	√	√	√
POPs	√	Pending		√
Vienna Ozone	√			√
Montreal Protocol	√	√	√	√
UNFCCC	√	√	√	√
Kyoto Protocol	√	√	√	√
Whaling	√	√		
London	√			
UNCLOS				√
Fish Stocks				√

Gregory Rose, *Compliance Mechanisms Under Selected Multilateral Environmental Agreements*, United Nations Environment Program (Nairobi: UNEP, 2007), Table 3.1, 104.

[262] Gregory Rose, *Compliance Mechanisms Under Selected Multilateral Environmental Agreements*, United Nations Environment Program (Nairobi: UNEP, 2007), 9.

In multinational agreements and some MEAs, the nature of the potential conflict created by noncompliance sometimes guides the type of compliance measures included. For instance, a state treaty violation of the WTO or the UNCLOS often results in discernible damage (economic, trespass) to another state (like direct transboundary harm).[263] UNEP's *Manual on Compliance with and Enforcement of Multilateral Environmental Agreements* offers information for states that are considering adding a compliance mechanism to a particular MEA in negotiation. It suggests considering the experience of MEAs with similar aims or approaches; asking states to fill out a questionnaire to identify what actions would trigger the mechanism; and then waiting for an unspecified time while the MEA takes effect and is implemented before determining the nature of the implementation and compliance problems.[264]

1. Performance Review

Performance review is a type of state reporting that is commonly found in most MEAs. It requires states to file annual reports with an MEA's Secretariat that document a state party's national implementation. Some MEAs require more information, such as import/export statistics, catch/permit records, hazardous waste disposal, production data for listed pollutants, etc.[265] Some MEAs require no annual reporting: perhaps transactional (ITPGRFA)[266] or import decisions (PIC),[267] or none at all, like the UNCLOS. Note that annual reports are sent to a Treaty's Secretariat that is often subject to a treaty's controlling COP.

Once annual reports are provided, most MEAs do not provide for third-party verification or monitoring, or further analysis to determine whether a state's implementation of the treaty has been

[263] Bothe, "Ensuring Compliance," 248.
[264] United Nations Environment Program, *Manual on Compliance with and Enforcement of Multilateral Environmental Agreements* (Nairobi: UNEP, 2006), 156.
[265] Rose, *Compliance Mechanisms*, 105.
[266] "International Treaty on Plant Genetic Resources for Food and Agriculture," United Nations Food and Agriculture Organization, November 3, 2001, ftp://ftp.fao.org/docrep/fao/011/i0510e/i0510e.pdf ("ITPGRFA").
[267] "Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade," September 11, 1998, ftp://ftp.fao.org/docrep/fao/011/i0510e/i0510e.pdf ("PIC").

successful.[268] The Secretariats for the Ramsar Convention[269] and the UNFCCC/Kyoto Protocol[270] do provide for third-party monitoring, authorizing for on-site verification. Some MEAs provide for verification by a third-party, but third-party verification may not look to the veracity of a state's performance review but only to describing the methods by which a state has attempted to implement its treaty obligations.[271] CITES provides for the rare third-party verification of actual state performance, allowing the NGOs TRAFFIC and the World Custom Organization to become involved.[272] In other words, most MEAs do not provide for third-party verification, and those that do provide for it look only to see what measures the state has taken to implement the convention but do not have the authority to critique the state report for accuracy or look to see if the state has been successfully or actively implementing its treaty obligations.

When performance review has uncovered that a state is in violation of its MEA treaty obligations, non-compliance response may be triggered—if a MEA includes one. MEAs rarely have non-compliance response information in place, and those measures may take the form of further reporting, third-party verification, or third-party monitoring.[273] The table below gives an overview of performance review measures for various major MEAs as of 2007.

Overview of MEA Performance Review Measures

Convention	Review Format		National Performance Review			Non-Compliance Response Information		
	Template	*Guidelines*	*Reporting*	*3rd Party Verification*	*3rd Party Monitoring*	*Reporting*	*3rd Party Verification*	*3rd Party Monitoring*
Ramsar	√		√		√			√
World Heritage		√	√		√			√
CITES	√		√	√	√		√	

[268] Rose, *Compliance Mechanisms*, 106.
[269] "Convention on Wetlands of International Importance especially as Waterfowl Habitat," February 2, 1971, *996 United Nations Treaty Service 245*, http://www.ramsar.org/cda/en/ramsar-documents-texts-convention-on/main/ramsar/1-31-38%5E20671_4000_0__ ("Ramsar Convention"); Rose, *Compliance Mechanisms*, 34.
[270] "Kyoto Protocol to the United Nations Framework Convention on Climate Change," December 11, 1997, FCCC/CP/1997/7/Add.1, http://unfccc.int/resource/docs/convkp/kpeng.pdf, Art. 8(1) ("Kyoto Protocol").
[271] Rose, *Compliance Mechanisms*, 106.
[272] Ibid., 41.
[273] Ibid., 109.

CMS		√	√					
CBD		√	√					
UNCCD		Pending	√					
ITPGRFA				√				
Basel	√		√	√	√			
PIC								
Biosafety		√	√			√		
POPs		√	√					
Vienna		√	√					
Montreal Protocol		√	√					
UNFCCC		√	√	√				
Kyoto Protocol		√	√	√	√	√		
Whaling			√	√	√			
London			√					
UNCLOS								
Fish Stocks								

Gregory Rose, *Compliance Mechanisms Under Selected Multilateral Environmental Agreements*, United Nations Environment Program (Nairobi: UNEP, 2007), Table 3.2, 108.

2. Multilateral Non-Compliance Procedures

Multilateral non-compliance procedures (NCPs) are different than dispute settlement mechanisms, which, if they occur in an MEA, for larger violations that cause damage to another state party. NCPs are triggered by smaller incidents or a situation of non-compliance—but a treaty violation nonetheless—that could, if the treaty so provides, lead to adoption of a non-compliance response measure. Potential NCPs are brought to the attention of the COP by the state itself (in a situation of self-reporting), by other states, the treaty Secretariat, or a third-party if provided by the agreement.[274] For MEAs that provide for third-party monitoring, like CITES as described above, those third-parties can alert the COP to an alleged instance of non-compliance. Most major MEAs already have NCPs and others have their procedures pending.

NCPs are coordinated by the COP, or a subsidiary committee established by the COP. If a MEA has created a specialized subsidiary compliance committee, that body coordinates the

[274] Ibid., 110.

investigation of non-compliance and suggests a non-compliance response measure, but the COP generally retains the authority to make an official, final determination on both counts. Otherwise, the COP itself considers cases of alleged non-compliance, makes a final determination, and recommends follow-up action for the state. The recommended action is based on its available choices as determined under the treaty (as discussed in the next section).[275] It is interesting to note that none of the MEAs allow petitions or complaints by individuals to trigger NCPs.

The table below gives an overview of the NCPs for major MEAs, including whether the MEA's NCPs are operational or pending, who can trigger the MEA, and which body coordinates the NCP process.

Overview of Multilateral Non-Compliance Response Procedures

Convention	Procedure		Trigger Body			Decision-Making Body	
	Established	*Pending*	*Member*	*Secretariat*	*Other*	*COP*	*Committee*
Ramsar	√			√		√	
World Heritage	√		√	√	√	√	
CITES	√		√	√	√	√	√
CMS							
CBD							
UNCCD		√					
ITPGRFA		√					
Basel	√		√	√		√	√
PIC		√					
Biosafety	√		√	√		√	√
POPs		√					
Vienna							
Montreal Protocol	√		√	√		√	√
UNFCCC	√		√	√		√	√
Kyoto Protocol	√		√	√	√	√	√
Whaling							
London							
UNCLOS							
Fish Stocks							

Gregory Rose, *Compliance Mechanisms Under Selected Multilateral Environmental Agreements*, United Nations Environment Program (Nairobi: UNEP, 2007), Table 3.3, 112.

[275] Ibid.

3. Non-Compliance Response Measures

Once a COP determines that a state is in non-compliance, there is the chance that the MEA will allow for the issuance of a non-compliance response measure, which are the most robust measures available to enforce and urge compliance with MEAs. Outside of binding, compulsory dispute resolution mechanisms—exceedingly rare in MEAs, as will be detailed in the next section—binding non-compliance response measures offer the most effective measures to move states to full compliance with their treaty obligations. Non-compliance response measures can take two forms: those that provide incentives for seeking compliance, and those that issue disincentives for remaining in violation.

In order to build and maintain the broad consensus and universal compliance needed to tackle international environmental problems and not drive states either away from joining or to leave agreements, most MEAs include incentivizing non-compliance response measures. The goal of providing incentives is to assist violating states into complying in a non-adversarial manner, by assisting the states to determine the cause of their non-compliance and then to address those causes through providing technical and financial assistance. The non-adversarial nature of those incentives and the promise of receiving assistance can urge states to self-report that they are in non-compliance in good faith in order to gain access to the available help.[276]

Implementing assistance can either come in the form of technical support (which includes capacity building, research, and technology transfer) or financial assistance. All major MEAs provide for technical and/or financial implementation assistance when a state first ratifies or accedes to an agreement in order to target compliance problems, not just after non-compliance. Promises of initial assistance incentivize states to join the MEA regime so that the technical and financial assistance can help the state to craft and implement policies and projects that allow the state to meet

[276] Blake Ratcliff, "Copenhagen: Dim Prospects for Stronger Enforcement Mechanisms," *IDEAS Journal: International Development, Environment and Sustainability* 6 (Fall 2009), Center for International Environment and Resource Policy, http://fletcher.tufts.edu/ierp/ideas/pdfs/issue6/Ratcliff.pdf, 2.

their treaty obligations. It is less common for MEAs to offer technical or financial assistance as a result of a COP determination of non-compliance stemming from the performance review.[277] Financial assistance can be disbursed through a trust-fund created by the MEA, through the MEA's link to the Global Environment Facility, or through a combination of both.

Developing states consider the provision of technical and financial assistance, especially technology transfer, as a crucial prerequisite for the participation of developing states in MEAs. Once financial assistance is made available, the providing funds commonly attach conditions to ensure that the funds are properly spent. Developed states have been less enthusiastic about making funds available without robust monitoring of how the funds are spent. Developed states have been hesitant to provide technology transfers absent assurances (and even with strong assurances) that the technology will be used solely to comply with MEA obligations and not to provide the states with an unfair competitive advantage.[278]

The table below lists the available implementation assistance available for major MEAs, broken down by technical and financial incentives at the initial stage or as a result of the operation of a NCP.

Available MEA Implementation Assistance

	Non-Compliance Response Assistance			**Primary Implementation Assistance**	
	Technical	*Financial*		*Technical*	*Financial*
Ramsar	√			Implementation guidelines developed by Ramsar Bureau; information exchange; clearinghouse mechnanism	Ramsar Small Grants Fund
World Heritage	√	Emergency Assistance		Technical and scientific cooperation and capacity building	World Heritage Fund, Reserve Fund and Funds in Trust
CITES	√			Capacity building	Trust fund
CMS				Capacity building (Global Information System and Register)	Trust fund

[277] Rose, *Compliance Mechanisms*, 113.
[278] Hunter et al., *International Environmental Law*, 432-33.

CBD				Technical and scientific cooperation, capacity building, technology transfer and development of guidelines; clearinghouse mechanism	Global Environment Facility
UNCCD				Technical and scientific cooperation, capacity building, technology development and transfers; coordinate, collect and exchange data	Global Mechanism
ITPGRFA				Technical and scientific cooperation, capacity building and technology transfer; Global Information System	Trust Fund
Basel	Tech/perform reporting assistance	√		Establishment of regional centers for training and technology transfers; information sharing	Trust Fund for the Implementation of the Convention; Tech. Coop. Trust Fund to Assist Dev. Countries
PIC				Capacity building and information exchange	Pending
Biosafety Protocol	√	√		Scientific and technical cooperation and capacity building; clearinghouse mechanism and performance review reports	Global Environment Facility
POPs				Capacity building and information exchange	Global Environment Facility Interim
Vienna				Technical and scientific cooperation, training and technology transfers; information exchange	Trust Fund
Montreal Protocol	Tech/perform. reporting assistance	√		Technical cooperation and technology transfers; information exchange	Multilateral Fund and Global Environment Facility
UNFCCC	√	√		Technology transfers and clearinghouse mechanism	Global Environment Facility, Special Climate Change Fund and the Least Developed Countries Fund
Kyoto Protocol	√	√		Technical and scientific research and cooperation, technology transfers and capacity building	Global Environment Facility and Adaptation Fund
Whaling Convention					Research, General and Voluntary Funds
London				Technical Cooperation Programme	
UNCLOS				Technical and scientific cooperation to developing parties, transfer of marine and deep sea-bed technologies; information exchange	
Fish Stocks				Human resources development, technology transfers and advisory and consultative services for developing countries; information exchange	Assistance Fund

Gregory Rose, *Compliance Mechanisms Under Selected Multilateral Environmental Agreements*, United Nations Environment Program (Nairobi: UNEP, 2007), Table 3.4, 115.

MEAs can also contain NCPs that trigger penalties that provide disincentives for remaining in non-compliance. Penalties generally follow a progression of increasing severity that involves the issuance of a warning to the state, the suspension of state privileges under the MEA, trade sanctions if appropriate under the MEA, and then a finding of state liability that would compel remedies for their treaty violations. As privileges under a treaty can vary, a state could lose its permitting responsibility (under CITES) or the ability to gain financial assistance or technology transfer (under the Montreal Protocol).[279]

The situations that trigger disincentivizing non-compliance response measures still fall below the severity threshold for violations that begin dispute resolution proceedings. The chart below details the available non-compliance penalties in major MEAs. Not surprisingly, many have no penalties and those that do offer very limited ones and do not often or quickly spring for penalties so as to keep as many states within the agreements as possible and assist their compliance.

Non-Compliance Penalties in Major MEAs

Convention	Warning	Suspension of Privileges	Trade Sanctions	Liability
Ramsar				
World Heritage		Exclusion of membership from World Heritage Committee		
CITES	√	Secretariat takes control of issuing permits	Suspension of trade in CITES-listed species and imposition of conditions	
CMS				
CBD				
UNCCD				
ITPGRFA				
Basel	√			Re-import illegal exports. Liability Protocol.
PIC				
Biosafety	√			Liability Protocol pending.
POPs				
Vienna				

[279] Rose, *Compliance Mechanisms*, 117.

Montreal Protocol	√	Suspension of rights in institutional arrangements, financial mechanism and transfer of technology	Suspension of trade, production and consumption rights	
UNFCCC				
Kyoto Protocol			Suspending right to trade in and use flexibility mechanisms	Carry-over of obligations
Whaling Convention	Diplomatic pressure.		Unilateral fisheries trade or access restrictions	
London				Liability subject to further negotiation: Article X.
UNCLOS				Several related liability treaties.
Fish Stocks				

Gregory Rose, *Compliance Mechanisms Under Selected Multilateral Environmental Agreements*, United Nations Environment Program (Nairobi: UNEP, 2007), Table 3.4, 117-18.

4. Dispute Resolution Procedures

All major MEAs provide state parties to bring another state party that is in actual, or perceived, non-compliance to some method of formal or information dispute resolution. Outside of the formal options of a judicial courtroom such as the ICJ or, for UNCLOS, the ITLOS, that may provide for serious or binding most MEAs provide for the settlement of disputes—either the adjudication of damages or the granting of provisional remedies like injunctions—through non-binding, less adversarial alternative dispute mechanisms ordering the states to negotiate, come to a conciliation, or participate in binding arbitration.[280]

The more binding these measures are, the less they are compulsory and judicial in nature. States are disinclined to enter into treaty regimes that may compel binding resolution procedures that could produce unexpected, predictable, politically-motivated consequences. While avoiding courts and judicial trappings also conforms to the prevailing MEA goal to urge compliance and universal participation, this also means that MEAs and international environmental law in general lose out on a valuable opportunity to have judges or a quasi-judicial body of experts interpret the meaning of MEA provisions and the nature of international environmental norms. The results of MEA dispute resolution proceedings generally are negotiated political solutions that may not

[280] Rose, *Compliance Mechanisms*, 12.

become publicized, bind only the parties to the dispute, and which offer little towards the development of international environmental norms. Such narrow mechanisms do not have broad use outside of the MEA at the center of the dispute.

The chart below summarizes the current dispute resolution procedures available in major MEAs. Outside of the compulsory binding arbitration procedures in UNCLOS and its associated Fish Stocks convention,[281] MEA dispute resolution procedures are weak, and tend to draw parties in dispute towards the voluntary, less adversarial, political mechanisms of negotiation and conciliation.[282]

Dispute Resolution Procedures of Major MEAs

Convention	Negotiation		Conciliation		Binding Arbitration	
	Voluntary	*Compulsory*	*Voluntary*	*Compulsory*	*Voluntary*	*Compulsory*
Ramsar						
World Heritage						
CITES		√			√	
CMS		√			√	
CBD		√		√	√	
UNCCD		√		√	√	
ITPGRFA		√		√	√	
Basel		√		√	√	
PIC		√		√	√	
Biosafety Protocol		√		√	√	
POPs		√		√	√	
Vienna		√		√	√	
Montreal Protocol		√		√	√	
UNFCCC		√		√	√	
Kyoto Protocol		√		√	√	
Whaling Convention						
London						
UNCLOS		√	√			√
Fish Stocks		√	√			√

Gregory Rose, *Compliance Mechanisms Under Selected Multilateral Environmental Agreements*, United Nations Environment Program (Nairobi: UNEP, 2007), Table 3.4, 120.

[281] "United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks," December 10, 1982, *2167 U.N.T.S. 3*, http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N95/274/67/PDF/N9527467.pdf?OpenElement ("Fish Stocks Convention").

[282] Rose, *Compliance Mechanisms*, 120-21.

VII. Implementing the Human Rights Treaty Body Model for International Environmental Treaties

The introduction of bodies modeled after the UN Human Rights Treaty Bodies into the structure of MEAs would add a different dimension of compliance monitoring that is currently lacking across major MEA regimes. Organizing and empowering Treaty Bodies in the international environmental sphere could help to organize, systematize, and understand a fractured, ad hoc system of international environmental treaty-making where instruments across many levels can leave state obligations not fully understood, unenforced, and contradicting. While there are a number of international environmental treaties that look effective and comprehensive at their face, states do not always effectively and actively implement all of their provisions. Besides being effective for MEAs that call for direct, measured action—e.g., reducing pollutants, ending elicit exports—the Treaty Body model can also help states to be more effective in actively implementing provisions that may be aspirational or open-ended, such as to promote sustainable development or promote the general conservation of a resource without numerical precision. For discussion in this section, the phrase 'Global Environmental Accountability Bodies'—or 'GEABs'—will be used to refer to the model for MEAs, to differentiate them from the original UN Human Rights Treaty Bodies.

While there may be some logistical hurdles that would need to be overcome for their creation and funding for GEABs, it is important to note that the Treaty Bodies are already the product of deep, measured debate and subsequent reforms at the international level. The model was created to respect and work with the sovereignty of states, to have a measure of independence that has worked to quell the deep political divisions in human rights, and to be flexible enough to be able to expand and reform as expectations change; it could operate similarly in the international environmental debate. In addition, most states have had decades of experience working in that model and understanding their responsibilities within the discipline of human rights. GEABs

adopting the Treaty Bodies' model of state reporting, coordinated by a committee of independent experts, would add another non-adversarial tool that could help promote a public, constructive dialogue about successful state policies and other implementation strategies that could urge progressive compliance. GEAB committees could also take an active role in interpreting MEAs with general comments, include greater roles for NGO and individual participation and verification, and assist in the process of creating norms of international environmental law.

This section will explore how GEABs can be set up, what functions they can have, and—most importantly—what they can bring to assist in promoting implementation and compliance within international environmental regimes.

A. Creating Global Environmental Accountability Bodies

1. Logistics of Creation

Creating GEABs, like any proposal for the reform of an international legal regime, would require a coordinated multinational effort. GEABs can be set up for one treaty, individually for a series of treaties, or as one central body with specialized chambers, and what emerges will depend on political will and the balance struck between the negotiating states. Negotiations would likely involve most if not all states, as most states are parties to a number of MEAs and would have different obligations under GEABs than currently under reporting procedures under COPs or subsidiary committees.

For GEABs to be created under most MEAs, proposals for creating GEABs would have to be brought at the annual COP meeting. States would negotiate how the GEAB model would work for that particular treaty regime, but in order for the model to be most effective, the author argues for all of the general Treaty Body functions to be included: periodic state reporting and sessions in front of the committee and a constructive dialogue about implementation resulting in concluding observations, general comments, and procedures for complaints alleging violations of treaty

obligations by individuals. On-site visits are only allowed in a subset of the Treaty Bodies, and some MEAs already allow for that in a limited sense; as a tool, they can be useful but they are, however, time-consuming and may use precious funds that may be better be allocated towards administering state reporting. Also, inter-state complaints could be considered, but they are not used in human rights. MEAs do often provide for inter-state non-compliance reports, so it might be in the best for COPs to preserve their NCP procedures and have the GEABs operate in parallel; the GEAB model would not prevent states to file complaints with the ICJ or the ITLOS, trigger MEA dispute resolution mechanisms, or allow COPs to issue incentivizing or penalty non-compliance measures.

If proposals are approved, it would be best for the GEAB proposal to be crafted into a new protocol establishing the GEAB and explicitly stating the GEAB's organization, composition, and functions. The protocol could be optional or binding upon a certain percentage of state party ratification, and incentives could be provided in order to gain consensus and universal ratification. This would elevate the GEAB's obligations, including periodic state reporting, to the status of treaty obligations on par with the other obligations in the underlying MEA.

To incentivize adoption, the GEAB protocol must offer assistance to state parties to provide them with assistance on how to prepare their initial state report. The MEA could reach out to the UN Office of the High Commissioner of Human Rights or to particular Treaty Bodies specifically, in order to provide lectures at COP meetings and subsequent workshops to assist states with what is expected during the periodic state reporting process. States should be reminded that the ultimate GEAB state reporting process should be familiar to them as they have perhaps been operating in the Treaty Body model for some years. There could be staggered initial reporting timeframes with the GEAB, as with the Treaty Bodies, which would allow a state's initial report to be due, for example, two years after ratification of the GEAB protocol.

2. Organizational Structure

The adopting MEAs must decide at which level the GEABs will operate, what the jurisdiction of the GEABs will be, and how resources to fund the new committees will be provided. As the Treaty Bodies now operate for all of the UN human rights treaties, they operate independently of UN oversight (except for CESCR, which is a technically an ECOSOC body as described above in Section II.C) but under the auspices of the United Nations, hold inter-committee meetings, and have linked staff, funds, and meeting locations. While most major MEAs were negotiated with UN assistance at some level, they all do not operate within the UN system, may not receive UN funds for operation, and may have geographic disparate (and rotating) COP meeting locations. Also, there are limited linkages between COPs administering MEAs, even when concerned with the same general subject, resource, or geographic region, unless the MEAs are related or protocols to the same framework convention.

MEA COPs have a few options regarding how their GEAB can be managed: a) COPs can engage each other to create one central organ to manage the GEABs; b) COPs can engage the UN to create an overarching structure; c) COPs can engage the COPs of MEAs concerned with the same subject or resource to create an overarching subject-specific GEAB; or d) each MEA can form its own GEAB. In order to save money, time, and resources, and for coordinated procedures, it would make the most sense for multiple MEA GEABs to have strong linkages and be managed by some overarching structure.

The choice of having the UN provide the support and structure may not be wise, even if the system has experience administering the Treaty Bodies. No suitable body exists in the UN that has the capacity to organize, coordinate, and provide the resources, staffing, and locations for a centralized umbrella of GEABs. UNEP, the UN's main environmental organ, is organized as a coordinating program for capacity building and environmental assessment, and not an specialized UN agency with much implementing authority, and currently does not have experienced staff that

could work to prepare for the GEABs, dedicated locations to serve as permanent or rotating GEAB meeting locations, or the funds to spare to fund GEABs. UNEP headquarters in Nairobi is too far from major MEA Secretariats and UN machinery to be useful.

It might be possible for the UN to centrally coordinate the GEABs in some capacity that does not involve UNEP. That would add layers of difficulty in creation, as there would have to be lobbying and negotiations at the General Assembly level, but the General Assembly could authorize funds for GEAB coordination, location, and staff. Such a General Assembly may only be a one-time appropriation, and it would be difficult to plan long-term budgets without dedicated funding recurring funding. The UN Human Rights Treaty Bodies are mostly coordinated out of and hold sessions at the Palais Wilson in Geneva, with some committees holding sessions at the Palais des Nations in Geneva and the UN headquarters in New York. Having observed some Treaty Bodies in action at the Palais Wilson, the author is skeptical as to whether that location is large enough to be able to also serve as an anchor location for GEABs, and there are likely too many other bodies and agencies that vie for meeting space at the Palais des Nations and the UN headquarters if many GEABs are created.

Creating a new UN organ for international environmental coordination, for GEABS or otherwise, hearkens back to the longstanding unresolved debate as to whether the UN should create a funded, specialized agency to coordinate international environmental implementation. While there has been support in recent years to create such an organization, its creation would involve the drafting and ratification of a charter, a major constitutional document, by a large number of states outside of any GEAB protocols. Further, and more importantly, there are many fundamental issues that would have to be resolved to create such an agency, including: whether the agency would focus on just global or also local issues; the role of civil society in the organization and in international environmental governance; whether the main focus should be environmental protection or sustainable development; and whether such an agency would be in the best interest of developing

states.[283] GEABs should, and must, be able to be created without the resolution of those difficult issues.

A network of MEA GEABs, centrally organized and ideally sharing resources and staff, would be the best situation. An overarching coordinating structure, that could allow for the inclusion of other MEA GEABs as new agreements enter into force, would be ideal. This structure could allow for each MEA to have its own GEAB, but the most efficient for periodic state reporting, linked procedures, and norm interpretation might require only a few GEABs to be organized along the basis of MEA subject: e.g., land and land-based resource conservation, hazardous materials, atmospheric pollution, marine pollution, marine resource conservation, or even more specific classifications. Like the authority given that is provided to the ITLOS to be able to adjudicate disputes outside of UNCLOS, a GEAB could be given the authority to monitor the implementation of a specific treaty but given the power to monitor state reporting and implementation of other treaties with a similar purpose.

However they are organized, GEABs will need sufficient resources to ensure that they can fully monitor the active implementation of their affiliated treaties. Resources should include funds, staffing, and a dedicated location. As funds for international environmental projects are usually difficult to come by, as UNEP is chronically underfunded and has had its budget reduced over the last decade, novel funding ideas could be sought for GEABs. There should be mechanisms to allow for contributions to be made by the UN, state governments, dedicated environmental trust funds, and even for donations by NGOs and private sector individuals and corporations. As for location, even if the GEABs are coordinated outside of UN auspices there should be an effort to conduct GEAB sessions in Geneva as that is the site of most MEA Secretariats and a wealth of international law experience for staffing.

[283] Frank Biermann, "Reforming Global Environmental Governance: From UNEP Towards a World Environmental Organization," in *Global Environmental Governance: Perspectives on the Current Debate*, eds. Lydia Swart and Estelle Perry (New York: Center for UN Reform Education, 2007), 111.

3. Composition of the GEAB Committees

GEAB composition should mirror the Treaty Body's successful model as closely as possible. Each GEAB would be administered by a committee of around twenty expert members, serving a specified term, from a suitable geographic representation of state parties. Committee members would serve in their own independent capacity and not as agents of their respective governments. Members could either serve on GEABs part-time, as is the case with Treaty Body experts, which would allow for GEABs to pay small, nominal stipends for serving, or GEABs with larger evaluative authority could have members that serve full-time at a much higher cost.

It might be useful for the GEABs to deviate from the Treaty Body model in terms of the expertise of the members. Whereas Treaty Body committee members generally have a background not just in human rights but as professors and practitioners of international law, domestic law, diplomacy, or international relations, GEABs would benefit from having a mix of experts in related but different subjects as global environmental governance is grounded in other disciplines. Having international environmental legal scholars is certainly necessary, especially for interpreting the context of the treaty and for the adjudication of individual complaints, but GEABs might be the most effective in evaluating state implementation and recommending policies with a mix of experts in environmental science, environmental economics, sustainable development, environmental engineers, and scientific specialties for GEABs organized around MEA subject (e.g., zoology, atmospheric science, botany, marine biology, etc.).

GEAB composition would contrast sharply with the make-up MEA COPs and other subsidiary MEA committees. COPs can be composed of dozens of state parties, with representatives serving as government agents of the state. Reducing the size of the body would speed proceedings, remove lengthy political debate, and facilitate consensus building.

B. Functions of the Global Environmental Accountability Bodies

1. Implementation Monitoring: Periodic State Reporting

The most important new feature for the GEABs would the introduction of the Treaty Body model's system of periodic state reporting. The Treaty Body model of state reporting differs significantly from the current state of state performance review under most MEAs, but it was created with similar goals of maximizing the state adoption of treaties, moving states towards full compliance of their treaty obligations, providing assistance to states that may have difficulty in reaching full compliance, and doing so in a mandatory procedure that is constructive, non-confrontational, and which seeks to avoid binding dispute resolution procedures and determinations of liability.

The state reporting process for a GEAB monitoring a particular MEA or a GEAB acting as a monitor for a number of subject-specific MEAs would be the same. The procedures would ideally consist of: the state production of initial and periodic state reports detailing how they have actively implemented the obligations of the MEA or subject; committee analysis of the reports and the development of lists of issues of concern; a constructive dialogue between the committee and a delegation from the state party; the opportunity for NGOs and non-state groups like individuals (and perhaps corporations) to submit briefs to the committee as a corollary to the state's report; the committee's production of concluding observations; and some mechanics for the committee to follow up with the state.

The initial and periodic reports for a GEAB might not be, initially, much of a difference than the self-reporting documents filed under MEA national performance review (although some MEAs do not currently require annual or periodic performance reviews). As international environmental treaties tend to regulate actions by non-state actors (individuals, corporations, etc.), the state report should include information on private actor compliance and private action that is state-permitted

and state-regulated (the latter is already provided under national performance review for CITES, Basel Convention, and the Montreal Protocol).[284]

It is after the receipt of the periodic state report where GEAB procedures would be very different than under most MEA national performance review. Most MEA national performance review does not provide for much third-party verification or scrutiny of state self-reporting under national performance review. All GEABs, independent from COPs, would analyze all periodic state reports; under most MEAs, the COP or a subsidiary body must be alerted to alleged non-compliance—if even provided for in the treaty—by another state party, the Secretariat, or the state in non-compliance in an act of self-reporting.

Under existing MEA NCP procedures a state can seemingly exist in two positions: in compliance, or not in compliance. A state's compliance status can determine eligibility for incentivizing assistance or penalties like the loss of treaty privileges. The Treaty Body model does not view a state's compliance in binary manner; GEABs would urge not just that states are de jure in compliance with MEAs, but that states undertake *better* compliance through more active implementation.

Environmental and political situations are not static, nor usually are domestic budgets for environmental enforcement and policy implementation. The constructive dialogue before a GEAB committee would ensure that all reporting states would have a critical eye turned towards their implementing policies, especially as previous effectiveness may not be assumed with changing contemporary environmental or political situations. Discussions would be frank and earnest, committee members respectful, helpful, and non-confrontational, and concluding observations non-binding. States would get a platform to explain and detail their successful implementation policies, and also hear from independent experts about how their policies could be strengthened, implemented more effectively, and expanded. Ideally, GEABs would have mechanisms to inquire

[284] Rose, *Compliance Mechanisms*, 108.

as to how a state was complying with its concluding observations. However, concluding observations are intended to be soft law and non-binding, so adding follow-up procedures that appear too robust may not be politically palatable for many states.

GEAB committee sessions would be public, unless perhaps discussing matters in certain exceptional circumstances. Most societies are unaware about how their states report on MEA implementation in national performance review as that information is rarely (and honestly) disseminated. In contrast, GEAB committee meetings would be public and open for media or interested parties to attend. GEAB sessions would generate transcripts, reports, and concluding observations that would be publicly available. These new documents could bring about a dialogue on the domestic level that could serve catalyst for greater MEA implementation.

2. Interpretation of Treaty Norms: General Comments

GEABs would serve as quasi-judicial bodies that would be able to interpret the broad, vague substantive articles in their underlying MEAs to assist states in complying with their MEA obligations by issuing general comments. These general comments would help to create a common understanding of treaty provisions, and would continue the vital development of international environmental jurisprudence.

Many international human rights concepts emerged right after World War II, but binding multinational agreements containing those ideas did not emerge until the ICCPR and ICESCR some twenty years later, after much international debate over their meaning. Non-binding declarations paved the way for the binding treaties. Regional regimes emerged espousing very similar sets of ideas. Human rights concepts have been scrutinized and interpreted by courts and other bodies at the international, regional, and domestic level over the next few decades, and many of those concepts rose above their treaties to become customary norms of international law, rights that are recognized and followed by states because of widespread state acceptance as law.

Concepts of international environmental law have taken similar routes to develop into norms of customary international law: non-binding declarations, subsequent binding treaties, and later interpretation by a few courts and arbitration panels at various levels. International environmental law emerged a few decades after human rights, and for all the momentum towards environmental protection over the past thirty years there is still much to do to crystallize norms. MEAs emerged largely without bodies that interpreted the treaties extensively, and such a proliferation of treaties on various subjects emerged on the multinational, regional, and bilateral levels—on e.g., freshwater waterbodies, transboundary pollution, international waterbodies and fisheries, water pollution, wildlife conservation—that concepts became fractured, state adoption and acceptance was not widespread, and it is only recently that concepts are considered elevating to the status of norms of customary international law. Even the courts and bodies that decided issues that touched on human rights concerns did not often provide detailed consideration, application, or interpretation of environmental norms.[285]

Other disciplines of international law may be able to point to a winnowed set of norms as set out by treaties, or an extensive jurisprudence through the ICJ and other legal fora. With international environmental law, there have been few bodies at the international level that have been able to interpret treaty norms or adjudicate disputes on the merits of an underlying environmental issue. As discussed above in Section V.C.2, only the ICJ, WTO's dispute resolution process, and the ITLOS have decided cases concerning environmental issues. The few cases deciding environmental issues in those three fora have amounted to a very scant jurisprudence of international environmental law and minimal interpretation of the meanings of MEA provisions. GEAB general comments would provide another opportunity to interpret the often vague and hortatory international environmental treaty norms, and expand jurisprudence.

[285] Stephens, *International Courts*, 320.

3. The Right to Petition Treaty Violations: Complaints

MEA compliance measures by and large do not have mechanisms for the adjudication of complaints by individuals alleging damaging state violations, although individuals would likely be able to pursue remedies or reparations at the domestic level. Some MEAs do provide for states to report the non-compliance of other state parties, and may provide for negotiation, conciliation, or voluntary or compulsory binding arbitration for state party non-compliance that caused transboundary damages. Aggrieved states already have the option of bringing international environmental violations to international tribunals, but that is a little-used option as states prefer to settle such matters at the diplomatic level. While it may not be politically expedient, or necessary, for GEABs to be given an inter-state complaint procedure, GEAB committees should be given the authority to adjudicate optional individual complaints.

Measures to enact optional GEAB individual complaint adjudication could be accomplished in the same manner taken by recent treaty bodies. In the protocol or constitutive document creating the GEAB, there could be a provision allowing state parties to make a declaration stating that they recognize the GEAB committee's authority to receive and adjudicate individual complaints submitted by their own citizens alleging damages from state treaty violations. This would allow states to opt in to the individual complaint procedure. To respect state sovereignty, it would not be advisable for GEAB individual complaint procedures to accept complaints from non-citizens, or perhaps only from non-citizens who suffered from MEA non-compliance while physically in the allegedly violating state.

As with the Treaty Bodies, GEAB committees can adjudicate the proceedings based on documents submitted by the individual complainant and the state. The actual adjudication can be done by the GEAB committee or a subsidiary adjudication committee if MEA committees are constituted as more diverse with a large representation of non-legal professionals and academics. Complaints could be accepted after complainants have exhausted domestic remedies. The final

determination could include the issuance of remedies, although the remedies would likely be non-binding.

Allowing an individual complaint procedure could enable individuals to seek adjudication of concerns after domestic remedies have failed. Unless MEA rights can fall under the few intersecting human rights in international or regional human rights documents, individuals have little opportunity to pursue remedies or damages at the international level for environmental harms suffered.

In addition, providing for the GEAB or a subsidiary body to adjudicate individual complaints would offer another opportunity for the interpretation of MEA provisions. This would further international environmental jurisprudence, and could help bring about the formation of shared understandings and norms of customary international law international environmental law.

4. Expanded Role for NGOs

Currently, the role of NGOs in most MEA compliance is uneven. NGOs provide a crucial role in obtaining accurate environmental data across the globe and in litigating environmental cases in domestic courts that increase state implementation, but NGOs by and large do not play a central role in the compliance procedures in many MEAs. In only a few can NGOs serve a role in third party verification or monitoring in national performance review or in triggering non-compliance response procedures. Instituting the Treaty Body model in international environmental governance could potentially allow the role of NGOs to expand in many aspects.

GEABs could engage NGOs to submit or present implementation reports during the periodic reporting process, and committees could allow for procedures to mandate that NGO reports are considered when analyzing a state's report. If an optional individual complaint procedure is enacted, NGOs could also file, or assist in the filing, of a complaint on behalf of an individual victim of state party non-compliance who may not be able to file the complaint themselves. If a

GEAB or an overarching GEAB coordinating body enacted novel funding schemes, an NGO may be able to contribute directly to GEAB operating budgets as long as there are no conditions or conflicts of interest. Also, as environmental NGOs are a source for diverse environmental policy and scientific experts, they could contribute members—in their independent capacity—to serve on expanded, diverse GEAB committees.

VIII. Conclusions

As with all treaties aimed towards advancing rights, concepts, and practices throughout the world, the UN human rights treaties and multinational environmental agreements have as their main goal the adoption and active domestic implementation of the rights contained therein. Without the benefits of binding measures that feature deterrent repercussions for non-compliance, treaty regimes in international human rights law and international environmental law must seek out ways to urge implementation and enforcement.[286]

The creation of global environmental accountability bodies, modeled after the UN human rights treaty body model, and organized in a coordinated, widespread, and systematic fashion, would bring out long-term intended benefits to their respective MEAs and generally to the development of international environmental law. If enacted, GEABs would offer new treaty monitoring procedures with soft law measures that respect state sovereignty and expand the role of NGOs, and also provide two different functions that would interpret treaty provisions to contribute to the underdeveloped corpus of international environmental jurisprudence and norm-making.

The advantage of GEABs offers focused monitoring of treaty compliance and state implementation through a state reporting procedure that is centered on the analysis of mandatory periodic state reports by an independent, expert committee and a constructive, public, non-adversarial dialogue between the reporting state and the committee. States would be able to tout

[286] Opsahl, "The Human Rights Committee," 371.

their implementation successes, and the committee would summarize their impressions and expectations in a non-binding set of concluding observations, and the report and the concluding observations would available publicly and could be used as the catalyst for domestic or international pressure on the state to adjust their policies. GEABs would promote increased awareness of treaty obligations, increased compliance, and through the dialogue with the expert committee an increased understanding of policies that would work.

Also, GEABs would serve in a quasi-judicial capacity as the adjudicator of complaints alleging state non-compliance by individuals and through the promulgation of general comments. There are very limited options for individuals to participate in international environmental machinery or to assist with MEA compliance procedures, and states could opt in to accept the GEAB's jurisdiction to hear and adjudication individual complaints. GEABs would be empowered to write general comments to assist states in understanding MEA provisions and procedures and being in a better position to fulfill and actively implement their treaty obligations. Both the adjudication of the individual complaints and the production of the general comments would require GEABs to interpret treaty provisions. With little interpretation and elaboration on the meanings of environmental norms and the slow progression of norms of customary international law in courts at the international level, GEAB interpretations would serve an invaluable role in advancing international environmental jurisprudence. As their understandings would be a standard by which subsequent state interpretations would be judged, those GEAB interpretations would help consolidate international understanding and subsequent state action in compliance and ultimately assist in the development of norms of customary international environmental law.

The human rights treaty body model was constructed in a manner to facilitate reform as global situations change, and it has been able to introduce successful new innovative responsibilities in the decades of their operation. GEABs would also be constructed to provide for that same level of flexibility, if state parties or any potential coordinating structure wished to modify or expand

their functions and powers. While the treaty bodies each monitored a single treaty, GEABs could be set up with a monitoring jurisdiction of also one MEA, or they could monitor a group of subject-specific MEAs. The GEABs would respect and respond to state sovereignty without undermining it or deterring compliance through the prospects of binding penalties.

Naturally, an assessment of whether the GEABs would be effective and benefit international environmental governance must include a discussion of the model's feasibility of being adopted. While other proposals to reform or organize the decentralized and splintered MEA system have failed due to the inability of states to solve divisive, political issues, the creation of GEABs would not require solutions to those problems. Questions of funding, staffing, and session locations can be solved creatively. Drafting MEA protocols and having them enter into force to provide for the actual constitution of GEABs would be a large challenge, but it could be achieved without universal state consensus, and other states would accede once the GEABs began work and met with success.

The three largest challenges to the creation of GEABs, of international hesitancy, sovereignty, and the state's right to develop, are significant but can be overcome. The adoption of the GEAB model must overcome the hesitation by large states to commit to international environmental endeavors. While the GEAB model would be new to international environmental governance, the treaty body model should be familiar to all states as all are parties to at least a number of the UN international human rights treaties and participate in their treaty body reporting obligations. States have already proved comfortable with this model, and many have decades of experience in reporting and successfully implementing their treaty obligations. Modifications to tailor the GEAB model for particular MEAs can be negotiated, much like the way the Human Rights Committee and subsequent treaty bodies were negotiated.

Issues of sovereignty continue to remain a challenge for MEAs governance, as with international human rights. The evolution of how international environmental law treats sovereignty has begun to move much like the resolved debate in human rights. No longer is the

manner in which a state treats the land and resources within its borders purely a domestic concern, and as the norms progress the methods of monitoring in GEABs will become less politically unpalatable. Norms have been accepted that show that a state does not have an unlimited, unchecked right to do as it pleases on its land; it must refrain from polluting in a way that causes transboundary harm. This notion of a tempered sovereignty is espoused in Principle 21 of the Stockholm Declaration: that while a state has a right to exploit its resources as it sees fit, it must refrain from taking actions that harm the environment of other states. Also, states must not take or allow the sale of particular species considered endangered under Annex X in CITES; they must seek cooperation with states that share resources like waterbodies and watercourses when developing on or taking or allowing actions that affect those shared resources.

Lastly, the GEAB model will not constrain the overarching goal of allowing a state's development; what may be affected are the policies adopted by the states when developing. In human rights, norms work in harmony: you cannot allow for the right to equality under the law, a fair trial, and procedural safeguards if you afford those rights to members of one race or group. Similarly, in international environmental law, sustainable development is moving towards status as a norm of customary international law. With such a development, it will be able to distinguish policies that promote development in an unsustainable or harmful way from those that provide sustainable development. Practices continue to evolve, and technologies continue to emerge and become more affordable, and yet Agenda 21 was able to articulate nearly two decades ago quite a number of best practices that continue to be pertinent and effective today.

The GEAB model would not be a wholly experimental reform measure founded on theory. Its underlying premise, based the UN human rights treaty bodies, has been operating for decades with the voluntary participation of the world community. As long as the difficult but not disqualifying challenges to creation can be solved, the adoption of global environmental

accountability bodies can be a powerful tool to monitor MEA compliance and promote active implementation of treaty obligations and to advance international environmental norms.

BIBLIOGRAPHY

Academic Books and Journal Articles

Acevedo, Mariana T. "The Intersection of Human Rights and Environmental Protection in the European Court of Human Rights." *New York University Environmental Law Journal* 8, no. 2 (2000): 454.

Alston, Philip. "The Historical Origins of the Concept of 'General Comments' in Human Rights Law." In *The International Legal System in Quest of Equity and Universality: Liber Amiocorum Abi-Saab*, edited by Laurence Boisson de Chazournes and Vera Gowlland-Debbas. The Hague: Kluwer Law International, 2001.

Alvarez, Jose. *International Organizations as Law-Makers*. Oxford: Oxford University Press, 2005.

Arambulo, Kitty. *Strengthening the Supervision of the International Covenant on Economic, Social and Cultural Rights*. Antwerpen: Intersentia, 1999.

Banton, Michael. "Decision-Taking in the Committee on the Elimination of Racial Discrimination." In *The Future of UN Human Rights Treaty Monitoring*, edited by Philip Alston and James Crawford. Cambridge, Cambridge University Press: 2000.

Bayefsky, Anne. *The UN Human Rights Treaty System: Universality at the Crossroads*. The Hague: Kluwer Law International, 2001.

Biermann, Frank. "Reforming Global Environmental Governance: From UNEP Towards a World Environmental Organization." In *Global Environmental Governance: Perspectives on the Current Debate*, edited by Lydia Swart and Estelle Perry. New York: Center for UN Reform Education, 2007.

Bodansky, Daniel. "The Role of Reporting in International Environmental Treaties: Lessons for Human Rights Supervision." In *The Future of UN Human Rights Treaty Monitoring*, edited by Philip Alston and James Crawford. Cambridge, Cambridge University Press: 2000.

Bossuyt, Marc J. *Guide to the "Travaux Préparatoires" of the International Covenant on Civil and Political Rights*. Dordrecht: Martin Nijhoff, 1987.

Bothe, Michael. "Ensuring Compliance with Multilateral Environmental Agreements – Systems of Inspection and External Monitoring." In *Ensuring Compliance with Multinational Environmental Agreements: A Dialogue Between Practitioners and Academia*, edited by Ulrich Beyerlin, Peter Tobias-Stoll, and Rüdiger Wolfrum. Danvers, MA: Brill Academic Publishers, 2006.

Buergenthal, Thomas. "The Evolving International Human Rights System." American Society for International Law, 100:4 (2006), 785.

Buergenthal, Thomas. "The Human Rights Committee." *Max Planck Yearbook of United Nations Law* 5 (2001).

Burhenne, Wolfgang E. "The Role of NGOs." In *Sustainable Development and International Law*, edited by Winfried Lang. London: Graham & Trotman, 1995.

Bustelo, Mara R. "The Committee on the Elimination of Discrimination Against Women at the Crossroads." In *The Future of UN Human Rights Treaty Monitoring*, edited by Philip Alston and James Crawford. Cambridge, Cambridge University Press: 2000.

Chambers, W. Bradnee and Jessica F. Green. "Introduction: Towards an Effective Framework for Sustainable Development." In *Reforming International Environmental Governance*, edited by W. Bradnee Chambers and Jessica F. Green. New York: United Nations University Press, 2005.

Charnovitz, Steve. “A World Environmental Organization.” In *Reforming International Environmental Governance*, edited by W. Bradnee Chambers and Jessica F. Green, 93-123. New York: United Nations University Press.

Connor, Colette. “Recent Development: The United States’ Second and Third Period Report to the United States Human Rights Committee.” *Harvard International Law Journal* 49, no. 2 (Summer 2008): 515.

Conte, Alex and Richard Burchill. “Introduction.” In *Defining Civil and Political Rights: the Jurisprudence of the United Nations Human Rights Committee*, edited by Alex Conte and Richard Burchill. Burlington, VT: Ashgate, 2009.

Cordonier Segger, Marie Claire and Ashfaq Khalfan. *Sustainable Development Law: Principles, Practices and Prospects*. Oxford: Oxford University Press, 2004.

Crawford, James. “The UN Human Rights Treaty System: A System in Crisis?” In *The Future of UN Human Rights Treaty Monitoring*, edited by Philip Alston and James Crawford. Cambridge, Cambridge University Press: 2000.

DeSombre, Elizabeth R. *Global Environmental Institutions*. New York: Routledge, 2006.

Humphrey, John P. *Human Rights & the United Nations: A Great Adventure*. Dobbs Ferry, Transnational Publishers: 1984.

Hunter, David, James Salzman, and Durwood Zaelke, eds. *International Environmental Law and Policy*, 3rd ed. New York: Foundation Press, 2007.

International Service for Human Rights. *Simple Guide to the UN Treaty Bodies*. Geneva, ISHR: 2010.

Jhabvala, Farrokh. “The Practice of the Covenant’s Human Rights Committee, 1976-82: Review of State Party Reports. *Human Rights Quarterly* 6 (1984).

Kedzia, Zdzislaw. “United Nations Mechanisms to Promote and Protect Human Rights.” In *Human Rights: International Protection, Monitoring, Enforcement*, edited by Janusz Symonides, 3-91. Burlington, VT: Ashgate, 2003.

Lindblom, Anna-Karin. *Non-Governmental Organizations in International Law*. Cambridge: Cambridge University Press, 2005.

McGoldrick, Dominic. *The Human Rights Committee: Its Role in the Development of the International Covenant on Civil and Political Rights*. New York: Oxford University Press, 1991.

Oberleitner, Gerd. *Global Human Rights Institutions: Between Remedy and Ritual*. Cambridge: Polity Press, 2007.

Oberthür, Sebastien. “Clustering of Multilateral Environmental Agreements: Potentials and Limitations.” In *Reforming International Environmental Governance*, edited by W. Bradnee Chambers and Jessica F. Green, 40-65. New York: United Nations University Press, 2005.

O’Flaherty, Michael, and Claire O’Brien. “Reform of UN Human Rights Treaty Monitoring Bodies: A Critique of the Concept Paper on the High Commissioner’s Proposal for a Unified Standing Treaty Body.” *Human Rights Law Review* 7 (2007).

Opsahl, Torkel. “The Human Rights Committee.” In *The United Nations and Human Rights: A Critical Appraisal*, edited by Philip Alston, 369-443. Oxford: Clarendon Press, 1992.

Ratcliff, Blake. “Copenhagen: Dim Prospects for Stronger Enforcement Mechanisms.” *IDEAS Journal: International Development, Environment and Sustainability* 6 (Fall 2009). Center for International Environment and Resource Policy. http://fletcher.tufts.edu/ierp/ideas/pdfs/issue6/Ratcliff.pdf.

Schwelb, Egon. “The International Convention on the Elimination of All Forms of Racial Discrimination.” *International & Comparative Law Quarterly* 15 (1966): 1032.

Schmidt, Markus G. "Individual Human Rights Complaints Procedures Based on United Nations Treaties and the Need for Reform." *British Institute of International and Comparative Law* 41, no. 3 (July, 1992).

Seabrook Hull, E. W. and Albert W. Koers. *Introduction to a Convention on the International Environment Protection Agency*. Law of the Sea Institute, University of Rhode Island. Occasional Paper No. 12. Kingston, RI: Law of the Sea Institute, 1971.

Shelton, Dinah. *Remedies in International Human Rights Law*. Oxford: Oxford University Press, 2000.

Steiner, Henry J. "Individual Claims in a World of Massive Violations: What Role for the Human Rights Committee?" In *The Future of UN Human Rights Treaty Monitoring*, edited by Philip Alston and James Crawford. Cambridge: Cambridge University Press, 2000.

Steiner, Henry J., Philip Alston, and Ryan Goodman. *International Human Rights in Context: Law, Politics, Morals*, 3rd ed. Oxford: Oxford University Press, 2008.

Stephens, Tim. *International Courts and Environmental Protection*. Cambridge: Cambridge University Press, 2009.

Tistounet, Eric. "The Problem of Overlapping Among Different Treaty Bodies." In *The Future of UN Human Rights Treaty Monitoring*, edited by Philip Alston and James Crawford. Cambridge, Cambridge University Press: 2000.

Treves, Tullio and others, eds. *Non-Compliance Procedures and Mechanisms and the Effectiveness of International Environmental Agreements.* The Hague: T.M.C. Asser Press, 2009.

Trinidade, António Cançado. "The European Human Rights Convention: Protocol No. 11, Entry into Force and First Year of Application." Paper presented at the "Inter-American System of Human Rights Protection at the Eve of the 21st Century" seminar in San Jose, Costa Rica, November 23-24, 1999. http://www.gddc.pt/actividade-editorial/pdfs-publicacoes/7980-a.pdf, 224.

Turner, Stephen J. *A Substantive Environmental Right: An Examination of the Legal Obligations of Decision-Makers toward the Environment*. Alphen aan den Rijn, Netherlands: Kluwer Law International, 2009.

World Commission on Environment and Development. *Our Common Future*. Oxford: Oxford University Press, 1987.

International Treaties and Declarations

"Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ('Protocol of San Salvador')." November 17, 1988. *O.A.S.T.S. No. 69*.

"The African Charter on Human and Peoples' Rights." June 17, 1981. *1520 United Nations Treaty System 217, 245*.

"Agenda 21." *Report of the United Nations Conference on Environment and Development*. 1992. A/CONF.151/26/Rev.1 (Vol. 1). http://www.un.org/esa/dsd/agenda21/index.shtml.

"American Convention on Human Rights." November 21, 1969. *O.A.S.T.S. No. 36*, *1144 United Nations Treaty System 143*.

"Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment." December 10, 1984. *1465 U.N.T.S. 85*.

"Convention Between the United States and Other Powers Providing for the Preservation and Protection of Fur Seals." July 7, 1911. *United States Statutes at Large* 37:1542.

"Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters," June 25, 1998, *2161 United Nations Treaty Service 450*, http://www.unece.org/env/pp/documents/cep43e.pdf, Art. 15.

"Convention on Wetlands of International Importance especially as Waterfowl Habitat." February 2, 1971. *996 United Nations Treaty Service 245*. http://www.ramsar.org/cda/en/ramsar-documents-texts-convention-on/main/ramsar/1-31-38%5E20671_4000_0__.

"Declaration of the United Nations Conference on the Human Environment." June 16, 1972. A/Conf.48/14/Rev. 1. http://www.unep.org/Documents.multilingual/Default.asp?DocumentID=97&ArticleID=1503.

"European Convention for the Protection of Human Rights and Fundamental Freedoms." November 4, 1959. *213 United Nations Treaty Series 221*.

"First Optional Protocol to the International Covenant on Civil and Political Rights." December 16, 1966. *999 U.N.T.S. 171*.

"International Convention for the Protection of All Persons from Enforced Disappearance." December 20, 2006. United Nations General Assembly Resolution A/61/177.

"International Convention for the Regulation of Whaling." December 2, 1946. *161 U.N.T.S. 72*.

"International Convention on the Elimination of All Forms of Discrimination Against Women." December 18, 1979. *1249 U.N.T.S. 13*.

"International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families." December 18, 1990. *2220 U.N.T.S. 93*.

"International Covenant on Civil and Political Rights." December 16, 1966. *999 U.N.T.S. 171*.

"International Covenant on Economic, Social and Cultural Rights." December 16, 1966. *993 U.N.T.S. 3*.

"International Treaty on Plant Genetic Resources for Food and Agriculture." United Nations Food and Agriculture Organization. November 3, 2001. ftp://ftp.fao.org/docrep/fao/011/i0510e/i0510e.pdf.

"Johannesburg Declaration on Sustainable Development." September 4, 2002. A/CONF.199/20.

"Kyoto Protocol to the United Nations Framework Convention on Climate Change." December 11, 1997. FCCC/CP/1997/7/Add.1. http://unfccc.int/resource/docs/convkp/kpeng.pdf.

"Marrakesh Agreement Establishing the World Trade Organization." General Agreements on Tariffs and Trade 1994. April 15, 1994. *1867 United Nations Treaty Series 187*.

"Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation, and Sustainable Development of All Types of Forests." *Report of the United Nations Conference on Environment and Development*. 1992. A/CONF.151/26/Rev.1 (Vol. 3). http://www.un.org/documents/ga/conf151/aconf15126-3annex3.htm.

"Optional Protocol to the Convention on the Elimination of Discrimination Against Women." October 6, 1999. A/RES/54/4.

"Protocol 11 to the European Convention for the Protection of Human Rights and Fundamental Freedoms." May 11, 1994. *2061 U.N.T.S. 7*.

"Rio Declaration on Environment and Development." *Report of the United Nations Conference on Environment and Development*. June 14, 1992. A/CONF.151/26 (Vol. I). http://www.un-documents.net/rio-dec.htm.

"Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade." September 11, 1998. ftp://ftp.fao.org/docrep/fao/011/i0510e/i0510e.pdf.

"United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks." December 10, 1982. *2167 U.N.T.S. 3*. http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N95/274/67/PDF/N9527467.pdf?OpenElement.

"United Nations Charter." June 26, 1945. *United States Statutes at Large* 59:1031, *1 U.N.T.S. 16*.

"United Nations Convention on the Law of the Sea. December 10, 1982. *1833 United Nations Treaty Service 3, 397*.

"Universal Declaration of Human Rights." December 10, 1948. G.A. Res. 1386 (XIV).

Documents, Resolutions, and Internet Sites from the UN and other International Organizations

CESCR, "General Comment No. 14," August 11, 2000, E/C.12/2000/4.

CESCR, "General Comment No. 15," January 20, 2003, E/C.12/2002/11.

Fifth Inter-Committee Meeting of the Human Rights Treaty Bodies. *Harmonized Guidelines on Reporting Under the International Human Rights Treaties, Including Guidelines on a Common Core Document and Treaty-Specific Documents*. May 10, 2006. HRI/MC/2006/3.

Human Rights Committee. Eighty-Seventh Session. "Summary Record of the 2380th Meeting." July 18, 2006. CCPR/C/SR.2380.

Human Rights Committee. *Focused Reports Based on Replies to Lists of Issues Prior to Reporting (LOIPR): Implementation of the new optional reporting procedure (LOIPR Procedure)*. September 29, 2010. CCPR/C/99/4.

Human Rights Committee. *Guidelines for the Treaty-Specific Document to the Submitted by States Under Article 40 of the International Covenant on Civil and Political Rights*. October 4, 2010. CCPR/C/2009/1.

Human Rights Committee. "Recommendations for Enhancing the Effectiveness of the United Nations Activities and Mechanisms: Follow-Up Views Adopted Under the Optional Protocol to the International Covenant on Civil and Political Rights." World Conference on Human Rights. June 9, 1993. A/CONF.157/TBB/3.

Human Rights Committee. "Rules of Procedure of the Human Rights Committee." January 13, 2011. CCPR/C/3/Rev.9, 15-17, http://www2.ohchr.org/english/bodies/hrc/docs/CCPR-C3-Rev9.doc.

International Tribunal for the Law of the Sea. "Proceedings and Cases – List of Cases." January 12, 2011. http://www.itlos.org/start2_en.html.

International Tribunal for the Law of the Sea. "Proceedings and Cases – Competence." October 27, 2010. http://www.itlos.org/start2_en.html.

"Ministerial Declaration." World Trade Organization. November 14, 2001. WT/MIN(01)DEC/1 (2002). http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm.

Office of the United Nations High Commissioner for Human Rights. "CEDAW – Optional Protocol, Status of Registered Cases." October 1, 2010. http://www2.ohchr.org/english/law/docs/CEDAWOPSURVEY10.xls.

Office of the United Nations High Commissioner for Human Rights. "Committee on the Elimination of Discrimination Against Women – General Recommendations." http://www2.ohchr.org/english/bodies/cedaw/comments.htm.

Office of the United Nations High Commissioner for Human Rights. "Committee on the Rights of Persons with Disabilities." http://www.ohchr.org/EN/HRBodies/CRPD/Pages/CRPDIndex.aspx.

Office of the United Nations High Commissioner for Human Rights. "Enhancing the Human Rights Treaty Body System: Harmonized Guidelines for Reporting to the Treaty Bodies." http://www2.ohchr.org/english/bodies/treaty/CCD.htm

Office of the United Nations High Commissioner on Human Rights. "Human Rights Bodies – Complaints Procedures." http://www2.ohchr.org/english/bodies/petitions/index.htm.

Office of the United Nations High Commissioner for Human Rights. "Human Rights Bodies – General Comments." http://www2.ohchr.org/english/bodies/treaty/comments.htm.

Office of the United Nations High Commissioner of Human Rights. "Human Rights Committee – General Comments." http://www2.ohchr.org/english/bodies/hrc/comments.htm.

Office of the United Nations High Commissioner for Human Rights. "Human Rights Committee – Working Methods." http://www2.ohchr.org/english/bodies/hrc/workingmethods.htm.

Office of the United Nations High Commissioner for Human Rights. "Human Rights Treaty Bodies." http://www2.ohchr.org/english/bodies/treaty/index.htm.

Office of the United Nations High Commissioner for Human Rights. "Optional Protocol to the Convention Against Torture (OPCAT): Subcommittee on Prevention of Torture." http://www2.ohchr.org/english/bodies/cat/opcat/index.htm.

Office of the United Nations High Commissioner for Human Rights. "Overview of the Working Methods of the Human Rights Committee." http://www2.ohchr.org/english/bodies/hrc/workingmethods.htm#a4.

Office of the United Nations High Commissioner for Human Rights. "Statistical Survey of Individual Complaints dealt with by the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights." April 9, 2008. http://www2.ohchr.org/english/bodies/hrc/stat2.htm.

Office of the United Nations High Commissioner for Human Rights. "Status of Communications Dealt With By CAT Under Art. 22 Procedure." November 30, 2010. http://www2.ohchr.org/english/bodies/cat/docs/CATSURVEY45.xls.

Office of the United Nations High Commissioner for Human Rights. "Status of Communications Dealt With By CERD Under Art. 14 Procedure." July 22, 2010. http://www2.ohchr.org/english/bodies/cerd/docs/CERDSURVEYArt14.xls.

Office of the United Nations High Commissioner for Human Rights. "The United Nations Human Rights Treaty System." http://www2.ohchr.org/english/bodies/treaty/docs/TBs_Sep2009.ppt.

Office of the United Nations High Commissioner for Human Rights. "UN Subcommittee on Prevention of Torture Concludes Twelfth Session, Announces Programme of Work in the Filed for 2011." November 19, 2010. http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10548&LangID=E.

Rose, Gregory. *Compliance Mechanisms Under Selected Multilateral Environmental Agreements*. United Nations Environment Program. Nairobi: UNEP, 2007.

UN Economic and Social Council. Official Records. Supplement 1. *Resolutions and Decisions of the Economic and Social Council*. 1985. E/1985/85.

UN General Assembly. Forty-fourth Session. *Effective Implementation of International Instruments on Human Rights, Including Reporting Obligations Under International Instruments on Human Rights*. Initial Report of the Secretary-General's Independent Expert, Philip Alston. November 8, 1989. A/44/668.

UN General Assembly Resolution 60/251. *Human Rights Council*. A/RES/60/251. March 15, 2006.

UN General Assembly. Tenth Session. Official Records. *Annotations on the text of the draft International Covenants on Human Rights*. 1955. A/2929.

UN Human Rights Council. "Human Rights Council Complaint Procedure." http://www2.ohchr.org/english/bodies/chr/complaints.htm.

United Nations Environment Program. *Manual on Compliance with and Enforcement of Multilateral Environmental Agreements*. Nairobi: UNEP, 2006.

United Nations Office of the General Secretary. "Compilation of General Comments and General Recommendation Adopted by Human Rights Treaty Bodies." Human Rights Committee introduction to comments made on May 19, 1989. HRI/GEN/1/Rev.7.

United Nations Treaty Collections. "Chapter IV: Human Rights." http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en.

World Trade Organization. "Environment: Regular Work: Items on the CTE's Work Programme." http://www.wto.org/english/tratop_e/envir_e/cte00_e.htm.

Judicial Decisions and Statutes

Lopez Ostra v. Spain. 303 Eur. Ct. H.R. (1994).

"Migratory Bird Treaty Act of 1918." July 3, 1918. *United States Statutes at Large* 40:755.

Request for an Examination of the Situation in Accordance with Paragraph 63 of the Court's Judgment of 20 December 1974 in the Nuclear Tests (New Zealand v. France) case, 288 ICJ Rep. (1995).

"Statute of the International Court of Justice," *United States Statutes at Large* 59:1031, June 26, 1945, Art. 36.2.

United States – Import Prohibition of Certain Shrimp and Shrimp Products, WTO Appellate Body, November 6, 1998, WT/DS58.