

Summary

Particular Aspects Concerning International Procedures for the Protection of Human Rights

1. The protection of human rights through international control mechanisms is a *legitimate objective* of the international community. The overall aim of such control must be to secure state compliance with human rights obligations. Among these obligations we may count the implementation of human rights norms in the municipal legal order, the effective guarantee of human rights and, in principle, state responsibility for human rights violations that occur. Alongside domestic protection measures, international control mechanisms are only of secondary or subsidiary importance. The principal purpose must be to create internal structures conducive to human rights.
2. International control mechanisms are only in part concerned with violations of human rights. However, for such cases that bear with them state responsibility, the *erga omnes* nature of human rights obligations is significant. As long as community interests are not effectively pursued through a centralised process, every state (or every state party to a human rights instrument) has a legal interest in compliance with human rights norms by any other state (party). Generally, the existing control mechanisms do not guarantee this (with the notable exception of some regional mechanisms). These mechanisms are not normally *self-contained regimes*, thus allowing, in principle, resort to the general law of state responsibility for the sake of human rights protection. This is, of course, only a last resort; centralised enforcement is certainly to be preferred.
3. Internationally, both on the regional as well as the global level, there are a number of control mechanisms, which can be treated in three groups, namely:
 - a) routine reviews of individual states,
 - b) review of specific situations in individual states,
 - c) complaints procedures.

In dealing with these procedures, the following aspects must be taken into account:

- how states may become subject to a particular mechanism (membership in an organisation or treaty system, special submission, etc.)
- the nature of control organs (judicial, quasi-judicial, political),
- inquisitorial or conciliatory nature of the procedure,
- the access to proceedings, and
- the follow-up on determinations of any kind.

4. *Routine reviews of states* (by way of periodic country reports) through independent expert bodies is the mildest and most common form of control. At present, it primarily has to overcome *practical* limitations. There are indications that the ideologically motivated reluctance of some "treaty bodies" to make findings on the basis of state reports and discussions has now become a thing of the past.
5. *Reviews of specific situations in individual states* (esp. under ECOSOC resolutions 1235/XLII and 1503/XLVIII) are directed against *gross and systematic violations* of human rights. These reviews may be either confidential or public, and make use, *inter alia*, of the institutions of country and thematic rapporteurs who perform investigation and mediation functions. The effect of political pressure exerted through these procedures should not be underrated ("mobilization of shame"). Experience with them is rather mixed, however; quicker and more effective action is certainly called for.
6. *Complaints procedures* can be found mainly in the area of special human rights treaties, the ILO and in regional systems. They reveal great differences in their operation. On the whole, it can be said that the (relatively rare) *state complaints* primarily address *patterns of conduct* contrary to human rights. Since the complainant state is under no obligation to show a material interest of its own, state complaints illustrate best the *erga omnes (partes)* nature of human rights duties. Political concerns and a diplomatic approach are quite common in procedures of such kind.
7. In *individual complaints procedures*, individuals mostly appear on an equal footing with states before an independent (judicial or quasi-judicial) body. A material condition of any such complaint is that the complainant claims to have himself suffered an injury; *actiones populares* are almost always excluded. However, in the area of economic, social and cultural rights *class actions* are not uncommon. Such proceedings are normally directed towards determining whether a state has committed a human rights violation or not.
8. There are considerable differences in the legal effect of such findings, which may range from a final judgement by a court to a non-binding opinion or "view" of a committee. A condemnation, e.g., by the European Court of Human Rights may already impose an international law obligation on a state to amend its domestic law. Reservation must be made, however, as to the direct applicability or self-executing force of such judgements in domestic law (*qua* international law).
9. The real driving force behind the international control mechanisms are frequently the *NGOs*. They supply the reporting procedures with invaluable information, often trigger, through concerted action, situational reviews on certain states and maintain their momentum; they also back

individual complaints, financially or otherwise, and quite frequently act as *amici curiae*.

10. The parallel existence of different control mechanisms and their distinct aims and methods do not conflict, but rather they complement each other. Within each group, difficulties may arise (overburdening by too many, and sometimes overlapping, reporting duties; competing complaints procedures), but these can be resolved by practical measures and legal adjustments. The latter applies in particular to the relationship between global and regional complaints procedures – a relationship which is otherwise complementary and marked by cross-semination of ideas.
11. The aim of this work was to highlight *existing* international control mechanisms, without entering the today omnipresent debate on reforming these. However, reforms are urgently called for to make the existing mechanisms, each of which fulfils its function, more effective and objective and less politically vulnerable. The greatest need is to fortify the instruments to combat gross and systematic violations of human rights. That such violations often go without consequences for the perpetrators casts a shadow on the system of international control in its entirety.