

INTERNATIONAL HUMAN RIGHTS LAW, STATE RESPONSIBILITY AND THE EFFECTIVENESS OF INTERNATIONAL LEGAL MECHANISMS: A CRITICAL ANALYSIS

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ABSTRACT

This study critically explores the idea of state responsibility within the context of international human rights law and evaluates the efficiency of international legal mechanisms for accountability. It delves into the historical growth of state accountability, and assesses the role of key international organizations, such as the International Court of Justice (ICJ), the International Criminal Court (ICC), and regional human rights organizations, in holding states accountable for human rights breaches. The study focuses on the limitations of international legal systems in holding states accountable for human rights violations, emphasizing the need for deeper institutional reforms and political commitment to improve enforcement. By analyzing recent case studies and judicial decisions, the paper demonstrates both the strengths and limitations of existing legal systems for addressing state violations of international responsibilities. It further explores how individuals have increasingly become direct enforcers of human rights principles as legal frameworks evolve. By highlighting flaws in the current system, this study emphasizes the need for a stronger and universally applicable mechanism for maintaining state accountability in international legal order. The study finishes by asking for enhanced global cooperation, judicial independence, and the establishment of stronger accountability systems to ensure that human rights protections are not undercut by political considerations.

Keywords: Accountability Mechanisms, International Human Rights Law, International Legal Enforcement, Sovereignty Challenges, State Responsibility.

I. INTRODUCTION

International Human Rights Law is an area of law that has been developing rapidly over the last century. Adopting the Universal Declaration of Human Rights (UDHR) in 1948 was a momentous point in the International Human Rights Law. The UDHR stands as a moral foundation influencing international relations across the world. Various international and regional conventions have followed the Declaration resulting in a strong framework, establishing a vast subject of international law protecting the rights of the individuals against numerous state subjects. These treaties also provide a foundation for individuals to assert certain rights and services from the state, as well as to engage in public affairs.

In international law, legal norms are typically codified after customary rules that are evolved through state practices as opposed to any conventional developments. Treaty-based law typically precedes over customary law, which emerges from the acceptance and application of treaty standards. However, there is constant debate on the legality of international law.¹⁷³²

Human rights are the rights of individuals by virtue of being human beings, making them subject to international law. Even then, the central stage is still owned by certain signatory nations. Hence the position of these signatories in the international aspect is multifaceted,

¹⁷³² Taylor & Francis Group, edited by René Provost, *State Responsibility in International Law*, ProQuest Ebook Central, 2002.

including the obligation to respect and protect the human rights of those under their jurisdiction, as guardians of those rights, and as holders of legal rights against violations by other states at the international level. The protection of the rights of all individuals regardless of their origins, their culture, or the societies in which they live strongly depends on international law and the mechanisms implemented by the United Nations.¹⁷³³ Accordingly, the core values of human rights should be premised on appropriate institutional and international legal frameworks. 'Human rights' are a particular type of social practice, founded on a particular conception of 'being human', implemented by particular kinds of mechanisms. They must not be confused with other values and practices such as social justice, natural law, or moral duty.¹⁷³⁴

In this picture, the law of state responsibility plays a crucial role in international law by offering explanations in fragments. The fundamental tenet of State responsibility now widely accepted, states that the state shall bear responsibility for its international wrongdoing.¹⁷³⁵ This doctrine holds governments accountable for violating international agreements, primarily by providing remedies to one state when another commits an egregious violation. This idea is at the heart of state accountability which supports the normative nature of international law even though not all definitions of law demand that a violation be sanctioned. Beyond this broad concept, the law of state accountability seems ambiguous and has given rise to significant theoretical discussions and real-world challenges.

The major goal of this research is to give a complete analysis of state responsibility within the context of international law, with a focus on its application in contemporary conflicts and

the effectiveness of international legal processes. The Paper also seeks to critically value the effectiveness of existing international legal mechanisms such as the International Court of Justice and the International Criminal Court in enforcing state responsibility as well as to identify gaps in the international legal framework that impede effective state accountability enforcement.

II. ACCOUNTABILITY MECHANISMS AT THE INTERNATIONAL LEVEL

The Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights recognize the right to life, liberty, and security of a person. Investigating this complex issue in its full breadth is, of course, beyond the scope of this discussion. Despite internationalization, human rights principles are primarily implemented at the national level. Given this constraint, numerous UN member nations hold significant political power in international institutions. The Security Council gives permanent members the authority to veto. These two issues of national sovereignty and unique power assigned to five superpowers act as an obstacle to objectively respecting human rights principles.¹⁷³⁶

Primarily, human rights treaties were believed to have their own set of regulations for non-compliance. Initially, States Parties were keen to emphasize that, they could not be subject to any other enforcement procedures than those established by the treaty, even if they signed on to adhere to specific standards of behavior towards the individuals under their jurisdiction. According to this perspective, attempts to depend on the universal principles of state responsibility in the event of a violation were thwarted by the creation of self-contained systems of implementation by human rights treaties.¹⁷³⁷ However, a few regional human

¹⁷³³ James Nickel, 'Human Rights', Stanford Encyclopedia of Philosophy (2019). Available at <https://plato.stanford.edu/entries/rights-human/>

¹⁷³⁴ Damien Short, 'Researching and Studying Human Rights: Interdisciplinary Insight', Chapter 1, in Contemporary Challenges in securing Human Rights, ed. C. Lennox (London: Institute of Commonwealth Studies, 2015), 7–12

¹⁷³⁵ Crawford and Keene, 'Structure of State Responsibility', 181–184

¹⁷³⁶ Bahram Soltani (2024) Human rights in international law, state responsibilities and accountability mechanisms: a case study of Iran, The International Journal of Human Rights, 28:6, 883-911, DOI: 10.1080/13642987.2024.232871

¹⁷³⁷ Arthur M. Weisburd, "The Effect of Treaties and Other Formal International Acts on the Customary Law of Human Rights" (1995/96) 25 Georgia Journal of International and Comparative Law 99, 115–16The

rights accords did establish robust supervisory bodies with judicial authority.¹⁷³⁸

III. STATE RESPONSIBILITY: MEANING AND BASIS

State accountability is a key principle of international law that holds nations liable for violating legal obligations. Its origins can be traced back to the principles of just war and reprisals, in which governments might use war as a last resort to maintain their rights, while unjust conflicts necessitated reparations to the damaged state. Judge Huber eloquently established the notion that every legal wrong must be accompanied by corresponding legal responsibility in the Claims Case for the Spanish Zone of Morocco¹⁷³⁹. He maintained that responsibility is the logical complement to a right: if an international obligation is not satisfied, the responsible state must make amends.

In the Chorzow Factory case¹⁷⁴⁰, the Permanent Court of International Justice (PCIJ) emphasized the importance of compensation for any infringement of an international agreement. This concept is critical to the legitimacy and authority of international law. Without accountability, international obligations would lack enforcement and respect among governments. The structure of international law, which is based on the concepts of sovereignty and state equality, serves as the foundation for state accountability. To establish responsibility, one must demonstrate that a state owed an international commitment to another state, violated that obligation, and caused harm to the afflicted state. While these standards are mostly based on customary international law, the International Law Commission has codified them. While these standards are largely based on customary international law, the International Law Commission (ILC) defined them in the Draft Articles on States'

Responsibility for Internationally Wrongful Acts, adopted in 2001.¹⁷⁴¹ However, the UN General Assembly has yet to determine whether to formalise the Draft Articles into a convention, hence they lack formal legal status beyond their reflection of customary law.

Prior to the ratification of the UDHR, the theory of state sovereignty effectively insulated nations from external inspection of human rights. Human rights issues within a state's borders were seen as part of its sovereignty, and no other state may challenge them. States acted only when their nationals' rights were violated in another state. The early idea of state responsibility was largely concerned with defending the rights of foreign nationals, ensuring that they were treated equally with citizens or in accordance with international minimum standards. States used diplomacy, arbitration, and even armed force to impose this protection. The adoption of the UN Charter changed the dynamic, putting human rights at the centre of international affairs.¹⁷⁴² The later creation of the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) firmly established human rights as a global priority. As a result, states may no longer use sovereignty to escape responsibility for serious human rights crimes. Human rights are today regarded as inherent in all individuals, regardless of nationality, and states are accountable for upholding the rights of both citizens and non-citizens. This chapter delves into the ramifications of these changes in further detail.

IV. THE DECLINING IMPORTANCE OF NATIONALITY

Traditionally, state responsibility was associated with the protection of foreign nationals. When a state infringed the rights of non-nationals, it was considered a violation of the individual's

¹⁷³⁸ For example: the European Convention for the Protection of Human Rights and Fundamental Freedoms ("European Convention of Human Rights", was adopted on 4 November 1950 and entered into force on 3 September 1953.

¹⁷³⁹ Great Britain v. Spain (1924) 2 R.I.A.A. 615.

¹⁷⁴⁰ Factory at Chorzów (Ger. v. Pol.), 1928 P.C.I.J. (ser. A) No. 17 (Sept. 13)

¹⁷⁴¹ Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, [2001] 2 Y.B. Int'l L. Comm'n 31, U.N. Doc. A/56/10.

¹⁷⁴² K. Sachariew 'State Responsibility for Multilateral Treaty Violations: Identifying the "Injured State" and Its Legal Status' (1988) 35 NILR 273–89.

home state's right to assure their treatment in accordance with international standards. In the *Mavrommatis Palestine Concessions case*¹⁷⁴³, the PCIJ confirmed this principle, holding that governments exercise their own rights while safeguarding their citizens from wrongdoing in other countries. Individuals have no direct legal redress against a foreign power under the conventional structure. International law recognised only nations as primary actors, implying that individuals may only benefit indirectly from these safeguards. Other states lacked the legal authority to intercede on behalf of an injured national from another state. The PCIJ emphasised this in the *Panevezys-Saldutiskis Railway case*,¹⁷⁴⁴ which established that only a national state may claim protection for its citizens.

V. THE ROLE OF INDIVIDUALS AS DIRECT BENEFICIARIES AND ENFORCERS IN INTERNATIONAL HUMAN RIGHTS LAW

International Human Rights Law, particularly post-UDHR, has modified this doctrine in two fundamental ways: it increased the individual's place in international law and expanded the number of governments capable of enforcing human rights. Individuals are direct beneficiaries of human rights protections under international law, as stated in the Universal Declaration of Human Rights and later accords. They protect essential rights such as life, liberty, and equality before the law. While certain treaties obligate nations to recognise specific rights, they also compel states to respect the rights of persons within their borders.¹⁷⁴⁵ The Inter-American Court of Human Rights has stated that current human rights accords are intended to protect persons regardless of nationality, rather than simply to ease state-to-state contacts. The advent of tools allowing individuals to petition or file grievances at the international level has strengthened their

position as direct enforcers of their rights under the international legal system.

VI. EXPANSION OF STATE RESPONSIBILITY AND ENFORCEMENT OF HUMAN RIGHTS UNDER ERGA OMNES OBLIGATIONS

Human rights law has also broadened the jurisdiction of states to enforce individual rights. In the *Barcelona Traction case*, the International Court of Justice (ICJ) established the idea of responsibilities erga omnes, or obligations due to the international community as a whole. This means that any state, not simply the one of the individual's nationality, has the authority to enforce fundamental human rights.¹⁷⁴⁶ The Draft Articles on State Responsibility reflect this broader perspective by broadening the definition of an "injured state" to include nations that have experienced a breach of commitments owed to them collectively or as members of the international community. However, they do not completely recognize individuals as direct enforcers of international rights, despite developments in international human rights law supporting this.

VII. THE ROLE OF ACCOUNTABILITY AND THE RULE OF LAW IN COMBATING IMPUNITY AND PREVENTING HUMAN RIGHTS VIOLATIONS

Living with the dignity and safety that comes with knowing that the rule of law is upheld should not be a privilege reserved for a select few – defined by geography, colour, wealth, gender, ethnicity, or any other trait. It should be a reality for everyone, anywhere in the world, and in every state. Combating impunity for the most heinous human rights breaches is a cornerstone of our effort. Accountability fosters a greater sense of justice, both inside and beyond affected societies. It also helps to address the core causes of conflict and repression, so preventing future transgressions. The rule of law and accountability principles serve as the cornerstone for all effective human

¹⁷⁴³ *Mavrommatis Palestine Concessions (Greece v. U.K.)*, 1924 P.C.I.J. (ser. A) No. 2 (Aug. 30).

¹⁷⁴⁴ *Panevezys-Saldutiskis Railway (Est. v. Lith.)*, 1939 P.C.I.J. (ser. A/B) No. 76 (Feb. 28).

¹⁷⁴⁵ JHH Weiler, A Cassese, and M Spinedi (eds) *International Crimes of State* (de Gruyter Berlin 1989).

¹⁷⁴⁶ CJ Tams *Enforcing Obligations erga omnes in International Law* (CUP Cambridge 2005).

rights advocacy and protection. Only through accountability can human rights violations and atrocities be addressed. Only the rule of law, together with human-rights-based legislation and policymaking, can effectively prevent human rights violations and abuses. Applying a preventive lens is critical to locating responsibility within the larger goals outlined in the United Nations Charter.¹⁷⁴⁷ To fully realize accountability's preventative potential, victims and affected communities must receive justice, have their present and future needs met, have their harms and grievances acknowledged and redressed.

It is found that addressing victims' needs and complaints is critical, and often required, for them to engage in the search for justice and truth. They must be able to contribute to preventive work as equal and recognized agents, rather than just as victims or survivors. Accountability restores victims' dignity and recognizes their rights. To broaden responsibility as a crucial weapon for prevention, victims and affected communities must be empowered to take their proper place in society, from which they will be able to hold those in power accountable in the future. Only then can seek accountability, both retroactive and prospective, effectively break the cycle of impunity and abuse. This necessitates a more concerted effort from all of us to advocate for, design, and support complementary local, national, and international accountability mechanisms that speak to affected populations and contribute to their sense of justice and dignity. To be effective, accountability mechanisms, particularly international accountability mechanisms, must empower the communities they aspire to serve, provide perspective, and contribute to solution development.

Outbreaks of violence, conflict, and mass atrocity are frequently caused and exacerbated by prejudice, economic inequality, social

exclusion, marginalisation, and failures to protect socioeconomic rights. All of these issues are worsened by a lack or inaccessibility of solutions. Several truth commissions established to address the legacies of large human rights violations discovered that victims of civil and political rights breaches were typically from marginalised populations who had experienced socioeconomic inequality prior to the outbreak of violence.¹⁷⁴⁸ The underlying breaches of economic, social, and cultural rights are frequently highlighted as the core causes of the conflict.

In other words, accountability is a larger tool for identifying and exposing the underlying structural and systemic drivers of significant human rights violations, as well as the impunity that often accompany them. Accountability contributes to dismantling the web of structures and networks that facilitated the violations in the first place. These fundamental causes of impunity cycles are usually fuelled by established and pernicious discriminatory practices, as well as broader abuses of economic, social, and cultural rights. Simply put, impunity stems from long-standing political and economic power structures, which are the result of conscious, deliberate decisions.

Tackling these issues requires more than just guts and the willingness to commit for the long haul. It also needs political, financial, and other assistance from the international community. Determining a proper long-term response plan requires a thorough grasp of the dynamics of impunity in each individual environment. We are readily enticed to focus on some seemingly promising scenarios for a short period of time before shifting our attention as issues emerge or hurdles develop.¹⁷⁴⁹ However, we have learnt from experience that it is critical to protect and lock in hard-won successes during the process of State reform, rather than just shifting to another, seemingly easier or more promising

¹⁷⁴⁷ A Orakhelashvili Peremptory Norms in International Law (OUP Oxford 2006).

¹⁷⁴⁸ J Crawford, The ILC's Articles on State Responsibility: Introduction, Text and Commentaries (CUP Cambridge 2002)

¹⁷⁴⁹ J Crawford and S Olleson 'The Continuing Debate on a UN Convention on State Responsibility' (2005) 54 ICLQ 959–71

subject. Such long-term vision and dedication demonstrate consistency in action and a commitment to the values and ideals that underpin the United Nations.

VIII. THE POLITICAL AND LEGISLATIVE DIFFICULTIES IN IMPLICATING STATE RESPONSIBILITIES ON STATES

Assigning accountability to non-state entities poses several legal and political obstacles. The extent of a state's control over non-state institutions is frequently hard to demonstrate, particularly when such actions take place in secret. Furthermore, nations may purposefully retain informal relationships in order to evade accountability, and the relationship between a state and a non-state actor is not always clear-cut. There are many intricate legal and political obstacles to overcome when enforcing state accountability under international law. The International Law Commission's (ILC) Draft Articles on the Responsibility of States for Internationally Wrongful Acts have codified state responsibility in great detail, yet there are still issues with its actual enforcement. States have political challenges that may obstruct accountability in addition to navigating a legal system devoid of centralized enforcement procedures.

The lack of an official, centralized enforcement mechanism in international law is one of the main legal obstacles. Enforcement of verdicts is primarily dependent on the state's willingness to comply, even if nations can be held accountable for violations of international responsibilities through institutions like the International Court of Justice (ICJ), international arbitration, or other courts. There isn't a comparable international court system or police force that can push governments to take action. Economic sanctions, reputational issues, or diplomatic pressure are frequently used as means of enforcing compliance, although they might not be sufficient to persuade a strong state to alter its actions. The ICJ's and other international courts' jurisdiction is not recognized by all states, which makes it further harder for decisions made by the system to be

enforced. Even in cases when a state has conceded jurisdiction, the protracted, costly, and intricate legal process may discourage states from pursuing claims of accountability.¹⁷⁵⁰

Although state sovereignty is a cornerstone of international law, it also presents a major obstacle to states' ability to carry out their obligations. States frequently use the non-intervention principle to evade being held accountable for their actions by the outside world. This is especially true in situations when there have been violations of human rights, as a state may claim that attempts by other parties to hold it responsible violate its sovereignty. Many states are reluctant to allow outsiders to examine their internal policies, and they may even reject international proposals or verdicts if they believe they violate their sovereignty. Power dynamics influence international relations, and because of their geopolitical clout, powerful states can frequently avoid accountability. As seen by the instances in which states impose economic sanctions on violators while maintaining strategic relationships with them, powerful states may, for example, utilize their economic and political might to evade or postpone accountability. Furthermore, powerful nations have the ability to reject or weaken international measures passed by bodies like the United Nations Security Council, so protecting themselves and their allies from negative political or legal repercussions.¹⁷⁵¹ Assigning liability to a state legally can sometimes be a difficult task. International law states that the state is not always responsible for the acts of non-state actors, such as companies or rebel groups. It can be challenging to prove that the state had "effective control" over these actors, which is the legal bar for attribution. If a state gives these groups financial or logistical support without taking direct control over their activities, it may avoid accountability.

¹⁷⁵⁰ C. Annacker 'Part Two of the International Law Commission's Draft Articles on State Responsibility' (1994) 37 GYIL 206–53.

¹⁷⁵¹ JI Charney 'Third State Remedies in International Law' (1989) 10 MichJIntL 57–101

Furthermore, difficulties like state-sponsored hacks make attribution even more difficult in the digital age. It is a complicated process that frequently requires insufficient information to determine which state is accountable for cybercrimes or interference with foreign governance, making legal accountability challenging.¹⁷⁵²

CONCLUSION

A fundamental component of the contemporary international legal system is the relationship between state accountability and international human rights legislation, while its actual implementation is still difficult. Although international legal procedures have developed to redress human rights crimes and hold states accountable, structural, political, and legal limitations sometimes restrict their efficacy.

International law is based on the notion of state responsibility, which holds nations liable for violating their duties, especially when those violations result from violations of human rights. There are now legal avenues for resolving these crimes thanks to organizations like the International Court of Justice and legal frameworks like the Draft Articles on State Responsibility by the International Law Commission. These methods do, however, have important drawbacks. The incapacity of international institutions to guarantee compliance is weakened by the lack of centralized enforcement mechanisms, political power dynamics, and state sovereignty concerns.

Furthermore, layers of complexity are added by the dynamic nature of international law, particularly in light of its expanding significance for human rights duties and its expansion to non-state actors. Responsibility allocation is still a murky legal subject, particularly when non-state actors or indirect state engagement are involved. Selective enforcement, when political allegiances and power imbalances affect which states are held accountable and which are

sheltered, exacerbates the problems. International legal processes, which provide forums for redress and normative norms, have been crucial in furthering the protection of human rights, notwithstanding these challenges. Reforms that tackle enforcement gaps and guarantee more uniformity in the implementation of state responsibilities are necessary to improve their efficacy. For the international legal order to fulfill its promise of justice and human rights for all, it will be necessary to overcome obstacles and build strong mechanisms of accountability, political will, and international cooperation.

¹⁷⁵² UN ILC Special Rapporteur M Bennouna, 'Preliminary Report on Diplomatic Protection' (4 February 1998) UN Doc A/CN.4/484



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