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HUMAN RIGHTS ENFORCEMENT UNDER ICCPR: BALANCING STATE SOVEREIGNTY WITH GLOBAL ACCOUNTABILITY

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I. ABSTRACT

*This paper explores how the International Covenant on Civil and Political Rights (ICCPR) balances the tension between state sovereignty and global accountability in enforcing human rights. The Human Rights Committee (HRC), which oversees the Covenant, lacks binding powers and instead relies on state cooperation through periodic reports and individual communications under the First Optional Protocol (OP1). To strengthen accountability, the HRC has expanded its interpretive reach most notably through the “impact test” in General Comment No. 36 (GC 36), which broadens the Covenant’s extraterritorial scope. However, real progress is often limited by a compliance gap, as states resist external scrutiny in the name of constitutional autonomy and self-governance. The paper argues that true enforcement of the ICCPR does not depend on coercive authority but on the persuasive power of HRC findings, which, though not legally binding, can drive domestic legal and policy reform. Drawing on examples like *young v. Australia*², it shows how dialogue-based models between states and international bodies offer a practical path forward. In doing so, it highlights how the pursuit of global human rights protection continues to evolve within the realities of a world still deeply anchored in state sovereignty.*

II. KEYWORDS

ICCPR, Human Rights Committee, State Sovereignty, Global Accountability, and Extraterritorial Jurisdiction.

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² U.N. Doc. CCPR/C/78/D/941/2000 (Aug. 6, 2003)

III. INTRODUCTION

A. CONTEXTUALIZING THE ICCPR IN A GLOBALISED LEGAL ORDER

The International Covenant on Civil and Political Rights (ICCPR), adopted on 16 December 1966 by United Nations General Assembly Resolution 2200A (XXI) and entering into force on 23 March 1976, is a cornerstone of the global human rights system. It enshrines essential civil and political freedoms, including the right to self-determination, and obliges States Parties to respect and ensure these rights within their jurisdiction.

Its enforcement, however, rests on a delicate balance between state sovereignty and global accountability. In a globalized legal order, international law increasingly shapes domestic governance, challenging the traditional notion of absolute state authority. States often assert sovereignty through reservations and interpretative declarations (RUDs) or by rejecting international scrutiny, while global accountability—rooted in *pacta sunt servanda* and Article 2(1) of the ICCPR—demands active state measures to protect human rights.

The Human Rights Committee (HRC), though lacking binding powers, promotes compliance through monitoring, reporting, and individual communications under the First Optional Protocol. Its moral and legal influence exemplifies how global norms can drive domestic reform. Ultimately, the ICCPR embodies the continuing effort to reconcile national autonomy with universal human rights obligations—an enduring quest for justice in a globalizing world.

B. BALANCING PRINCIPLES: SOVEREIGNTY AND ACCOUNTABILITY

State sovereignty gives governments exclusive control over domestic affairs and the right to determine the limits of external influence. Countries often assert sovereignty through reservations, understandings, and declarations to restrict treaty obligations. In contrast, the principle of global accountability derives from the idea that human rights are universal and that, under Article 2(1) of the ICCPR, states must “respect and ensure”

these rights to everyone under their jurisdiction. The challenge arises when international oversight mechanisms intervene in what states consider purely internal matters.

C. RESEARCH QUESTION (RQ)

To what extent does the Human Rights Committee's (HRC) monitoring and quasi-judicial enforcement mechanisms effectively balance the inherent imperatives of State Sovereignty against the growing demand for Global Accountability under the International Covenant on Civil and Political Rights (ICCPR)?

D. RESEARCH OBJECTIVES

This study seeks to:

1. Examine the legal and institutional framework governing enforcement of the International Covenant on Civil and Political Rights (ICCPR).
2. Analyse the extent to which the Human Rights Committee's monitoring and quasi-judicial mechanisms promote global accountability.
3. Evaluate the tension between state sovereignty and international human rights obligations in light of state practice and compliance patterns.
4. Assess whether dialogue-based compliance models provide a viable pathway for reconciling sovereignty with effective human rights enforcement.

E. RESEARCH HYPOTHESES

1. The enforcement effectiveness of the ICCPR depends more on persuasive authority and domestic institutional engagement than on binding legal coercion.
2. Expansive interpretive approaches adopted by the Human Rights Committee, particularly regarding extraterritorial jurisdiction, intensify tensions with state sovereignty.

3. Dialogue-based compliance models offer a structurally balanced mechanism for reconciling sovereignty with global accountability under the ICCPR framework.

F. METHODOLOGY

This study employs a Qualitative Approach rooted in Doctrinal Legal Analysis and supported by Case Study Evaluation. This research adopts an exploratory and explanatory approach to examine sovereignty as a form of resistance to human rights enforcement. Using a doctrinal framework, it analyses the ICCPR, the First Optional Protocol, and key HRC General Comments, supported by case studies that illustrate the tension between state sovereignty and international obligations.

G. LITERATURE REVIEW

1. Foundations of International Human Rights Enforcement

International human rights law is fundamentally rooted in state consent to treaties. However, the Human Rights Committee (HRC), tasked with interpreting and overseeing the implementation of the International Covenant on Civil and Political Rights (ICCPR), has often adopted a more dynamic interpretive approach that extends beyond strict state consent. The ICCPR enshrines non-derogable rights including the right to life and the prohibition of torture that remain inviolable even during emergencies or armed conflict. Scholars observe that international law has increasingly “loosened its link to state consent,” generating friction over the HRC’s quasi-judicial authority. Martti Koskenniemi has notably analysed this phenomenon in the context of fragmentation and the constitutionalisation of international law, arguing that expanding interpretive authority often strains the traditional consent-based structure of the international legal order.³ Similarly, Yuval Shany has examined how functional approaches to extraterritorial application under human rights treaties may recalibrate the balance

³ Martti Koskenniemi, *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law* (Report of the Study Group of the International Law Commission, UN Doc A/CN.4/L.682, 2006).

between universality and sovereign control.⁴ The HRC's Views under the Optional Protocol, frequently described as "authoritative determinations," thus acquire enhanced interpretive weight, even though they lack formal binding force. This expansion, however, continues to challenge states that regard the Committee as a supervisory mechanism confined to consensual oversight.

2. The Constitutionalist Critique and the Legitimacy Crisis

The growing influence of international institutions has provoked what is often termed a legitimacy crisis, wherein states resist international authority in the name of democracy and constitutional self-government. The constitutionalist critique maintains that transferring decision-making authorities to international forums risks undermining domestic democratic accountability and constitutional sovereignty.

This concern is reflected in broader debates on the constitutionalisation of international law and the legitimacy of global governance institutions. Koskenniemi's analysis of fragmentation highlights the tension between universal normative aspirations and pluralist constitutional orders, while Shany's scholarship underscores how expanded extraterritorial jurisdiction under the ICCPR may intensify sovereignty-based resistance.⁵ Advocates of subsidiarity therefore contend that primary responsibility for human rights protection must remain with national systems, with international supervision operating as a residual safeguard.

3. The Responsibility to Protect (R2P)

The Responsibility to Protect (R2P) doctrine reinterprets sovereignty as a duty to safeguard populations from mass atrocities such as genocide and war crimes. While R2P embodies an important moral and legal evolution, its practical application remains limited. The doctrine lacks binding enforcement mechanisms, operates within ambiguous thresholds for intervention, and is often shaped by the selective political will

⁴ Yuval Shany, 'Taking Universality Seriously: A Functional Approach to Extraterritoriality in International Human Rights Law' (2013) 7 *Law & Ethics of Human Rights* 47.

⁵ *ibid*, Koskenniemi (n 2).

of powerful states. Consequently, institutions like the United Nations and the International Criminal Court (ICC) continue to face structural constraints, as global power asymmetries and national interests frequently override collective humanitarian imperatives.

H. JURISPRUDENTIAL AND ANALYTICAL FOCUS

The study focuses on the legal relationship between the HRC and State Parties, analysing the Committee's Views notably a landmark Australian case—to assess compliance challenges. It also compares the ICCPR's quasi-judicial structure with the binding mechanisms of regional systems like the European Court of Human Rights (ECHR).

I. Scope and Limitations

The study is limited to the ICCPR's monitoring and enforcement mechanisms. While examples from R2P cases such as Libya, Syria, and Myanmar are referenced to show broader political constraints, the primary focus remains on the Human Rights Committee's authority and implementation challenges.

IV. THE LEGAL ARCHITECTURE OF GLOBAL ACCOUNTABILITY

A. THE HRC: A PERSUASIVE, NOT COERCIVE, ENFORCER

The HRC, composed of 18 independent experts, utilizes mechanisms derived from the Covenant and its Optional Protocol to compel accountability, established under Article 28, the Human Rights Committee supervises implementation through three key mechanisms:

1. Periodic State Reporting (Article 40)

Under Article 40 of the ICCPR, States are required to submit periodic reports outlining the measures they have taken to implement the rights guaranteed by the Covenant. The Human Rights Committee (HRC) examines these reports and provides concluding observations and recommendations. Civil society organizations and NGOs often strengthen this process by submitting "shadow reports," which highlight gaps or

inconsistencies in state submissions and increase public and diplomatic pressure on governments to comply.

2. Individual Communications (First Optional Protocol)

States that ratify the First Optional Protocol to the ICCPR accept the HRC's competence to receive and consider complaints from individuals who claim that their Covenant rights (Articles 6–27) have been violated. This mechanism offers individuals a direct, though limited, avenue for redress at the international level, serving as an important supplement to domestic remedies.

3. General Comments

Through General Comments, the HRC issues authoritative interpretations of Covenant provisions. While not formally binding, these interpretations influence international and domestic jurisprudence and shape the understanding of state obligations. This interpretive power allows the Committee to evolve norms dynamically, but it can also provoke sovereignty-related backlash from states

While these tools promote dialogue and transparency, their legal effect depends entirely on state cooperation, revealing the limits of global enforcement in a sovereignty-based system.

B. EXPANDING JURISDICTION: FROM EFFECTIVE CONTROL TO IMPACT

1. General Comment No. 31 (2004)

GC 31 reaffirmed that a state's obligations extend beyond its territory if its agents exercise "power or effective control" over individuals abroad. The principle was exemplified in *Lopez Burgos v Uruguay*⁶, where Uruguay was held responsible for extraterritorial abduction.

⁶ *Lopez Burgos v. Uruguay*, Communication No. 52/1979, U.N. Doc. CCPR/C/13/D/52/1979 (July 29, 1981).

2. General Comment No. 36 (2018) and the “Impact Test”

GC 36 introduced a broader test in paragraph 63, linking jurisdiction to direct and reasonably foreseeable impact on rights, particularly the right to life (Article 6). As clarified therein, jurisdiction may extend to people located outside any territory effectively controlled by the State where their right to life is nonetheless impacted by its military or other activities in a direct and reasonably foreseeable manner. Under this standard, even absent physical presence, state conduct abroad may trigger responsibility under the Covenant.

This “impact test” marks a shift from control-based to consequence-based accountability, allowing scrutiny of targeted killings, drone strikes, or cross-border corporate complicity. Yet its vagueness invites critique states fear it opens limitless jurisdictional claims, undermining territorial sovereignty and legal certainty.

C. SOVEREIGNTY AND RESISTANCE TO NON-BINDING HRC VIEWS

The key structural limitation that allows states to resist international oversight lies in the non-binding nature of the Human Rights Committee’s (HRC) decisions.

1. Authoritative Determination vs. Binding Judgment

The HRC describes its Views under the Optional Protocol as “authoritative determinations” of the ICCPR’s meaning. However, unlike judicial rulings, these Views do not carry binding legal force. This distinction marks a crucial difference from regional systems such as the European Court of Human Rights (ECHR), whose judgments are legally enforceable on State Parties. The HRC’s reliance on persuasion and moral authority, rather than enforceability, often limits the impact of its findings.

2. Mechanisms of Non-Cooperation

States frequently use this lack of binding power to manage the political cost of compliance. Some issue Reservations, Understandings, and Declarations (RUDs) to narrow the scope of their treaty obligations, while others simply delay reports or disengage from dialogue with the Committee. Such acts of passive resistance reflect how

states exercise their sovereignty to maintain control over implementation. In practice, this form of non-cooperation underscores a deeper tension between international accountability and national autonomy.

V. DECISION ANALYSIS: ICCPR AND GLOBAL ACCOUNTABILITY

A. CASE STUDY: YOUNG V AUSTRALIA (COMMUNICATION NO.941/2000)

The case of Edward Young v. Australia illustrates how the ICCPR enforcement framework functions amid sovereign resistance, and how domestic institutions can help close the gap between international findings and national implementation.

1. Facts and HRC Findings

Mr. Edward Young, who had been in a same-sex relationship with a war veteran for 38 years, was denied a veteran's dependent pension under Australia's Veterans' Entitlement Act, which limited eligibility to opposite-sex couples. In 2003, the Human Rights Committee (HRC) found that this denial amounted to discrimination based on "other status" specifically sexual orientation and therefore violated Article 26 of the ICCPR. The Committee called upon Australia to provide an effective remedy and to take measures to prevent similar violations in the future.

2. The Implementation Challenge and Domestic Response

Australia initially defended its position by emphasizing the non-binding character of the HRC's Views, invoking its sovereign discretion. However, the Committee's findings acted as a catalyst for domestic debate and reform. Civil society organizations, advocacy groups, and legal commentators invoked the HRC's reasoning to question the compatibility of national laws with international human rights standards.

This process gave rise to what became known as the "Dialogue Model" of compliance. Sustained advocacy and institutional engagement following the Committee's Views contributed to significant legislative reform. In November 2008, the Australian Parliament enacted the *Same-Sex Relationships (Equal Treatment in Commonwealth Law General Law Reform) Act 2008* and the *Same-Sex Relationships (Equal Treatment in*

Commonwealth Laws Superannuation) Act 2008, amending approximately 70 Commonwealth statutes to eliminate discrimination against same-sex couples, including provisions affecting veterans' entitlements. These reforms addressed the broader legislative framework criticised in *Young v. Australia*.

However, despite systemic reform, Mr. Young's individual claim remained unresolved, as the Department of Veterans' Affairs subsequently contested whether his partner's death qualified as "war-caused" under the statutory criteria a factual issue distinct from the discrimination finding under Article 26. This development underscores the structural limits of even successful HRC interventions: while normative clarification may prompt legislative change, individual remedies may still be constrained by domestic administrative determinations.

Under the dialogue model, therefore, the HRC's findings do not override domestic law but instead initiate an institutional conversation between the executive, judiciary, and legislature. Parliament retains ultimate sovereignty, yet international human rights reasoning becomes embedded within domestic reform processes, reflecting a calibrated balance between accountability and constitutional autonomy.

B. POLITICAL LIMITATIONS: THE R2P CASES

The experience of the Responsibility to Protect (R2P) doctrine demonstrates that even where legal norms evolve, political will remains the decisive variable in enforcement. In 2011, the United Nations Security Council adopted Resolution 1973, authorising "all necessary measures" to protect civilians in Libya amid mass atrocities committed by the Gaddafi regime. The NATO-led intervention was justified expressly on R2P grounds and initially succeeded in preventing an imminent assault on civilian populations in Benghazi. However, the perceived expansion of the mandate toward regime changes generated significant backlash, particularly among Russia and China, who viewed the intervention as exceeding civilian-protection objectives.

By contrast, in Syria, despite extensive documentation of chemical weapons use, large-

scale war crimes, and mass civilian casualties, repeated attempts to secure robust Security Council action were blocked by vetoes. The absence of comparable enforcement measures in Syria illustrates the structural limits of R2P where geopolitical alignments constrain collective action.

The juxtaposition of Libya and Syria thus substantiates the claim of selective enforcement: humanitarian intervention was authorised where political consensus existed, but paralysed where major power interests diverged. These contrasting outcomes underscore that sovereignty remains politically operative, even where normative commitments to atrocity prevention are formally recognised.

Case	Violation Context	Sovereignty Challenge	Outcome (Global Accountability)
Libya (2011)	Mass atrocities by Gaddafi regime.	R2P was invoked by UN Security Council.	Intervention successfully in preventing immediate catastrophes, but perceived overreach into regime changes eroded trust in R2P, complicating future humanitarian interventions.
Syria (2011-Present)	Chemical weapons use, war crimes, and mass civilian deaths	Geopolitical interests asserted via Russia and China's veto	International Paralysis. Sovereignty claims

Case	Violation Context	Sovereignty Challenge	Outcome (Global Accountability)
	(>306,000).	power in the UN Security Council.	and structural barriers effectively blocked concerted action, leading to catastrophic human loss.
Myanmar (2017)	Systematic persecution of Rohingya (genocide/crimes against humanity).	Government invoked sovereignty, refusing to cooperate with international mechanisms, including the ICC.	Accountability Elusive. Demonstrates the inherent problem of enforcing norms when a non-cooperative state rejects external scrutiny.

These case studies reveal that the enforcement of human rights continues to be uneven and shaped by political interests. They highlight how global institutions often struggle to act consistently when confronted with powerful assertions of state sovereignty and the realities of geopolitical influence.

VI. THE HUMAN ARCHITECTURE OF ACCOUNTABILITY: NHRIS AND CIVIL SOCIETY AS DOMESTIC AGENTS

The effectiveness of the International Covenant on Civil and Political Rights (ICCPR) enforcement framework is ultimately a function of domestic political will, a factor often leveraged by non-state actors. The enforcement mechanism, therefore, is not solely a

vertical dialogue between the Human Rights Committee (HRC) and the State Party, but a multi-layered process driven horizontally by National Human Rights Institutions (NHRIs) and Civil Society Organizations (CSOs). These actors transform the persuasive authority of the HRC into tangible political and legal pressure, effectively becoming the domestic custodians of global accountability.

A. NHRIS: INSTITUTIONALIZING THE DIALOGUE

Operating under the internationally recognized Paris Principles, NHRIs serve as the indispensable institutional bridge, mediating between international human rights norms and national legislative reality. Their quasi-governmental status grants them unique leverage in the dialogue model. NHRIs engage in normative translation, utilizing the HRC's General Comments as authoritative benchmarks to evaluate the compliance of national laws and policies. They move beyond mere monitoring to actively advise the executive and legislature on aligning domestic law with HRC findings. By providing an internal, credible voice, NHRIs make it politically harder for governments to simply dismiss the HRC's recommendations as external interference, compelling a reasoned response. Furthermore, in the Article 40 reporting process, NHRIs contribute independent "shadow reports", ensuring the Committee receives an unbiased assessment of the compliance gap and sustaining the pressure for structural reform.

B. CIVIL SOCIETY: MOBILIZING LAW AND PUBLIC CONSCIENCE

Civil Society Organizations encompassing NGOs, legal clinics, and advocacy groups are the dynamic engine that fuels the ICCPR's legal impact from the grassroots up. While HRC Views are non-binding, CSOs strategically introduce the Committee's reasoning into domestic court proceedings. They argue that the judiciary, as a guardian of the Constitution, must accord the HRC's expert interpretation significant persuasive weight. This technique effectively incorporates international jurisprudence into national case law, forcing the judiciary into the compliance dialogue. Additionally, CSOs specialize in translating esoteric legal findings into public campaigns, thereby raising the reputational cost of sovereign defiance both domestically and internationally. This moral and political

pressure often succeeds where legal coercion fails, compelling the state to act to restore public trust. Ultimately, NHRIs and CSOs are the vectors of internalization for the ICCPR, ensuring that the HRC's findings become immediate and actionable political and legal realities within the sovereign territory.

VII. CONCLUSION

The analysis demonstrates that the balance is neither coercive nor hierarchical, but dialogic and persuasive. While the Human Rights Committee has expanded accountability through interpretive developments such as the “impact test” in General Comment No. 36 its authority ultimately depends on state cooperation, rendering enforcement indirect yet normatively influential.

The balance between state sovereignty and global accountability under the ICCPR therefore rests delicately on the persuasive authority of the Committee. The enduring sovereignty firewall, reflected in the non-binding nature of its Views and strategic assertions of constitutional autonomy, ensures that compliance remains uneven but not inconsequential.

In practice, ICCPR enforcement functions less as a system of judicial command and more as a legal-political catalyst. The HRC’s findings, though not legally binding, often generate domestic political and moral pressure, prompting states to reconsider or reform their laws. This dynamic is clearly illustrated in *Young v. Australia*, where the HRC’s interpretation sparked internal debate and inspired the development of the “Dialogue Model,” blending respect for sovereignty with an ongoing commitment to human rights scrutiny.

VIII. SUGGESTIONS AND RECOMMENDATIONS

For this balance to evolve into a more effective system of global accountability, future reforms must target both the institutional limitations of Strengthen Follow-Up Procedures: The HRC should enhance the transparency and public visibility of its follow-up procedures on Views. Increased civil society engagement can maintain political

pressure on non-compliant states. the HRC and the political barriers that continue to shield states from meaningful compliance.

1. **Strengthen Follow-Up Procedures:** The HRC could make its follow-up process more transparent and accessible to the public, ensuring that its findings do not fade into bureaucratic obscurity. By actively involving civil society and encouraging public scrutiny, the Committee can sustain political momentum and hold states accountable when they fail to act on its recommendations.
2. **Adopt Codified Dialogue Models:** States should be encouraged to embed the dialogue model within their own legal systems through national Human Rights Charters or Acts. This approach would formally integrate HRC interpretations into domestic decision-making, ensuring that international human rights standards are consistently reviewed while allowing parliaments to retain their ultimate sovereign authority.
3. **Address Geopolitical Paralysis:** The international community must work toward greater consistency in responding to human rights violations, ensuring that decisions are driven by principle rather than politics. This requires rethinking the use of veto power in the UN Security Council, particularly in cases of mass atrocities, and reinforcing the independence and capacity of international courts so that accountability is not undermined by political influence.

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