Conclusion

Contours of a Conclusion, into the Sixth UN Treaty System Decade

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1 Introduction

This conclusion cannot possibly do justice to the rich and nuanced material contained in the comprehensive chapters covering the 'impact' of nine core United Nations (UN) human rights treaties, ten UN treaty bodies (UNTBs), and three substantive protocols in divergent contexts over a period of 20 years. We therefore are deliberately modest in our ambitions for this chapter. While we aim to highlight some illustrative examples, and suggest some trends, we take caution not to arrive at expansive overarching and cross-cutting conclusions. Our thoughts and tentative insights are aimed at opening the door to others, to encourage future researchers to delve deeper into and more closely analyse the rich body of evidence contained in the pages of the 20 country study chapters. We draw some comparison between this study's conclusions and those of the first (1999) study (and the 2002 book).[1] Having covered the three decades between the entry into force of the first treaty body in 1969 and 1999 in the first study, this book contains further reflection on the fourth and fifth UNTB decades (2000 to 2019). What is incontrovertible, though, is that the country reports amplify the finding in the previous study that the treaties have had 'an enormous influence'.[2]

2 Reflections on Methodology

As noted in the introduction, there are a number of complexities in measuring impact. These are further highlighted by the chapters in this book.

First, there are different forms of impact, manifesting at different levels. We saw numerous examples where state authorities engage at the UN level (for instance, in Japan, in development of standards) or cooperate with the UNTBs procedurally but then fail to implement the obligations in practice. Even states

1 C Heyns and F Viljoen *The Impact of the United Nations Human Rights Treaties on the Domestic Level* Kluwer Law International 2002 (*Impact* 2002).

2 *Impact* 2002, 5.

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such as Canada, Colombia (in particular in respect of CAT), Finland and Spain, that mostly present reports on time, routinely fail to take measures to implement the UNTB recommendations. Impact may be felt domestically if, for example, the UNTB recommendations align with political priorities (Australia), but this may be 'sporadic and uncoordinated' (Canada). Furthermore, while some states show legislative and institutional changes, violations still occur in practice (Mexico). 'Influence' is an open-ended concept, and its specific meaning under a particular set of circumstances lies on a continuum (such as, in respect of the development of legislation on the minimum wage in Russian Federation, where the UNTBs influence was characterised as a 'contribution', rather than 'concrete influence').

Second, in many instances it is difficult to show the causal link between the UN system and measures taken by the state. At the most basic level, in many countries there is *no effective follow-up process at the national level* or a lack of coordination across government, thereby making it difficult to assess implementation and impact of UNTB recommendations. In other countries, such as Jamaica, changes to domestic law or policy were considered by some to be 'coincidental'. A *range of domestic factors* may enhance or curb the influence of the UN system. In Egypt, for example, it is difficult to dissect mobilisation by civil society and pressure from donors from the effect of the UNTB Concluding Observations. Even if the sequence of events may be compelling, the route of influence may not be conclusive. For example, Canada in 2018 established a Canadian Ombudsperson for Responsible Enterprise, following – in temporal terms but without any explicit reference to the CCPR or HRCttee – the HRCttee's 2015 recommendation to Canada to establish an independent mechanism to investigate allegations of human rights abuses committed by Canada-based resource companies operating abroad.

Domestic action may not always be attributed to a *particular treaty*. Treaties exert influence in tandem with one another, for example, when a domestic court relies on more than one treaty in arriving at a decision.

The UNTBs also may effect change together with other parts of the UN system, including the Universal Periodic Review (UPR) and special procedures. UN special procedures undertook numerous visits to all 20 study countries. All but five of these countries (Egypt, Jamaica, Nepal, the Russian Federation and Senegal) have issued standing invitations, indicating that they are open to visits by all special procedures. Since 2000, between eight and 24 special procedures have visited each of the study countries. This contrasts with the average of around two visits per country by special procedures in the preceding period of 30 years. Indications are that these visits and the work of UNTBs are mutually reinforcing. However, when the contributions of different UNTBs and special

procedures overlap, accurate attribution of influence becomes almost impossible. The influence of the various bodies should rather be viewed as intersecting and cumulative, as exemplified by the visit of the Special Rapporteur on the Rights of Persons with Disabilities to Zambia in 2016 as reinforcing the CRPD Cttee's role in the enactment of the Mental Disabilities Act in 2019.

The relative contribution of the regional human rights systems further complicates the assessment of the role of the UN treaties, as is shown in Senegal with respect to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) recommendations and the building of a new prison. Because of this interplay between the regional and UN systems, it often is difficult to disentangle the impact of the two systems. As the chapter on Estonia highlights, it is not always feasible to differentiate between the impact on policy of the Covenant on Economic, Social and Cultural Rights (CESCR) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), on the one hand, and subject-related European treaties, on the other.

Using Mexico as but one example, the interrelatedness of various human rights regimes is striking. As the issue of violence against women in Ciudad Juarez illustrates, particular and largely similar implementing measures may be required by multiple procedures within the same treaty body,[3] by different treaty bodies,[4] by a UN special procedure,[5] in numerous UPR recommendations,[6] at the regional level in recommendations contained in an

3 In respect of violence against women, through state reporting (CEDAW Cttee, Concluding Comments of the Committee on the Elimination of Discrimination against Women: Mexico, 23 August 2002 (CEDAW/C/MEX/5); Committee on the Elimination of Discrimination against Women, Concluding Comments of the Committee on the Elimination of Discrimination against Women: Mexico, 25 August 2006 (CEDAW/C/MEX/CO/ 6)); and art 8 visit (Committee on the Elimination of Discrimination against Women, Report on Mexico Produced by the Committee on the Elimination of Discrimination against Women under Article 8 of the Optional Protocol to the Convention, and Reply from the Government of Mexico, 27 January 2005 (CEDAW/C/2005/OP.8/ MEXICO)).

4 Committee against Torture, Consideration of Reports Submitted by States Parties under Article 19 of the Convention. Conclusions and Recommendations of the Committee against Torture. Mexico, 6 February 2006 (CAT/C/MEX/CO/4)).

5 Special Rapporteur on Violence against Women, its Causes and Consequences, Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, Yakin Ertürk. Addendum. Mission to Mexico, 13 January 2006 (E/CN.4/2006/61/Add. 4).

6 Human Rights Council, Report of the Working Group on the Universal Periodic Review. Mexico, 3 March 2009 (A/HRC/11/27).

Inter-American Commission of Human Rights (IACHR) report,[7] and even in other regional systems, such as a resolution of the Committee of Ministers of the Council of Europe (CoE).[8] While the extent of overlap and levels of reinforcement may detract from methodological clarity, it highlights the potential cumulative effect of the overlapping systems.

Third, the chapters also indicate that impact is not linear, and the engagement with and influence of the system can 'wax and wane' (Australia), from a 'golden age' to a period of domestic challenges to human rights (Finland). The extent of treaty system influence may depend on the government at the time (Brazil, India, Mexico), as well as interest shown in the system by civil society organisations, as illustrated by the relationship between the government in South Africa and CEDAW. Impact can also vary over the life stages of a treaty. Ratification appears to be an important moment for some countries in which 'compatibility studies' are undertaken prior to or immediately following ratification. For example, such a process resulted in changes to national legislation and policies (Finland and Japan) upon ratification, after which attention waned. For others, however, insufficient ground work was done prior to ratification, which impacted on its ultimate implementation (for instance, Nepal and the Convention on the Rights of Persons with Disabilities (CRPD)). Indeed, it is useful to consider the 'function' that the UN system serves for a particular government, as explored in the chapter on Egypt: At various times, it can be used to display the government's ambition to play a leading role in the international system, or to legitimise its actions in the eyes of the international community. One of the primary reasons why treaty impact differs is the difference in the length of time allowing for potential treaty influence. Some of the countries have only recently ratified certain treaties, or final views were adopted only close to 30 June 2019, the cut-off mark for our study.

3 Impact on Legislation and Policies

The material impact of the UN treaty system can most often be traced to legislative reform and policy measures. As the chapter on India illustrates, treaties that have been ratified by the state, with the exception of the Convention on

7 Inter-American Commission on Human Rights, The Situation of the Rights of Women in Ciudad Juarez, Mexico: The Right to Be Free From Violence and Discrimination, 7 March 2003 (OEA/ Ser.L/V/II.117).

8 Council of Europe-Committee of Ministers, 'Disappearance and Murder of a Great Number of Women and Girls in Mexico'. Parliamentary Assembly Recommendation 1709 (2005).

the Elimination of Racial Discrimination (CERD), as well as those that have been signed, have been used by the legislature in the country. This is seen especially in the case of CAT. CEDAW helped to change attitudes towards women in Egypt, resulting in the criminalisation of sexual harassment in the Penal Code, and the introduction of electoral quotas, thereby increasing the number of women in the House of Representatives. Mexico has implemented the Concluding Observations of the Committee on the Rights of the Child (CRC Cttee) through legal and policy reforms, although these have often not yet been translated into practice, and CRPD has been enforced through federal and state level legislation in Canada.

Other examples of legislative measures influenced by UNTBS are the following:

– criminalisation of torture (Australia, in 2010, as part of reforms required in the CAT Cttee's Concluding Observations issued in 2008);
– prohibition of r*efoulement* (Australia, in 2011, as part of reforms required in the CAT Cttee's Concluding Observations issued in 2008);
– domestic and other forms of violence against women (Mexico adopted the 2007 Law of Access of Women to a Life Free from Violence, relying on CEDAW Cttee recommendations).

The impact of some treaties on policies and policy-related initiatives has been 'substantial', for example, eliminating discrimination towards lesbian, gay, bisexual and transgender (LGBT) persons in Brazil in the areas of education, food and health. Similarly, in Mexico, CERD has had a significant impact on official recognition, through the census and Constitution, of people of African descent. For Canada, in response to the CEDAW Cttee's Concluding Observations, the authorities committed to a national action plan for murdered indigenous women and girls, and there is evidence of impact in developing a strategy around housing and targets to reduce homelessness. CRC influenced and was referred to in Egypt's 2018 Strategic Framework and the National Plan for Childhood and Motherhood in Egypt 2018–2030 (prepared with the support of the United Nations Children's Fund (UNICEF), citing CRC as a basic reference). The adoption by the Russian Federation of the National Strategy for Women 2017–2022 (in response to the Concluding Observation recommendation to ensure 'effective coordination and developing a gender mainstreaming strategy'), and the adoption in 2013 of an action plan for the socio-economic and ethnocultural development of Roma in the Russian Federation for 2013–2014 (in response to the Concluding Observation to adopt a national plan of action that includes special measures for the promotion of access by Roma to economic, social and cultural rights), are examples of the direct impact of the COs.

In many instances, the COs of UNTBs do not display domestic salience. In Jamaica, for example, the CEDAW Cttee's pertinent COs were not raised as part of the legal reform process related to marital rape and abortion; and in Canada, CERD was not referenced in Canada's or Nova Scotia's current anti-racism strategies or Ontario's Anti-Racism Act.

The country studies stress the importance of symbolic impact. In many countries, especially those in transition to becoming 'full democracies' (such as Nepal and Zambia), the treaties provide a 'common framework of reference' and a 'guiding force', respectively, for stakeholders working on the issues, building upon rights that are in the constitution. In these countries, in particular, but in study countries more generally, the reframing role of UN human rights treaties is often emphasised. The CRC and CRPD have most prominently contributed to transforming legal and cultural understandings, approaches and practices. In the wake of these treaties being accorded national prominence, children and persons with disabilities are increasingly being accepted as autonomous subjects and holders (rather than objects) of rights; and are included in public spaces (for example, Egypt).

4 Reliance by National Judiciaries

One measure of treaty impact is the extent and frequency of judicial reference to or reliance placed on treaty provisions and UNTB decisions or soft law standards by national judiciaries. The significance and domestic effect of 'reliance' on treaties or UNTB findings differ greatly depending on whether the domestic court invokes the treaty as a source of remedy within the national system (direct reliance) or relies on the treaty or UNTB output for interpretive guidance (indirect reliance). Since direct reliance has been recorded only in exceptional cases, the focus here falls on indirect reliance.

Some of the chapters provide quantitative data on judicial reliance, mostly by the country's highest court(s). The number of cases in which a treaty is cited becomes only meaningful as an indicator if the number is expressed as a total of the likely or possible cases in which reliance was likely or possible. It is to be expected that the extent of judicial reliance on a group-specific treaty with a narrow thematic focus (CERD, CAT, the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), the Convention for the Protection of All Persons from Enforced Disappearance (CED) and CRPD) would not be comparable to group-specific treaties with a more general thematic scope (CEDAW, CRC) or to general treaties (the Covenant on Civil and Political Rights (CCPR) and CESCR). The data provided

below largely confirms this expectation as far as CCPR and CRC are concerned, but less so in respect of CESCR and CEDAW. Country dynamics are clearly also at play.

Overall, reference to UN treaties by higher courts in the 20 countries has significantly increased in the last two decades, compared to the previous study period. In Finland, for example, the number of references to UN treaties in higher court decisions grew from 17 to 142. We further observe that the instances of reliance on treaties differ markedly from country to country. The assumption that treaty reliance would be greater in respect of more general treaties is to a large extent supported, with particular 'group-specific' treaties receiving more judicial attention than others. Most frequently, CCPR is the most referred to treaty (for instance, Finland, Poland, Spain). However, particular treaties resonate differently with the judiciaries of different countries. CESCR has had judicial salience in a number of countries (Czech Republic, referred to in 91 decisions of Constitutional and Supreme Courts). Overall, CRC is the group-specific treaty most frequently referred to. CEDAW is invoked by female asylum seekers (for instance, in Australia); CAT in cases involving *refoulement* and extradition (in most countries); and CRC for the best interests of the child principle in various contexts (in most countries). CERD seems less used (rarely, Czech Republic, Turkey). The country chapters also confirm that reliance by courts is largely determined by the issues that litigants introduce and legal bases they invoke.

On the one end of the scale are countries in which courts have seldomly or only on rare occasions referred to or relied on treaties (for instance, Australia, Estonia, Jamaica and Japan). Jamaican courts have only placed minimal reliance on UN human rights treaties, with only CCPR recording more than one instance of reliance. The Supreme Court of Estonia made references in a total of 14 cases, with CCPR (6) the highest, followed by CRC (3), CESCR (2), CAT, CERD and CRPD (one each) and CEDAW (0).

Occupying the middle ground, a total of 142 references to UN treaties by Finnish higher courts were recorded over the study period: CCPR (95); CRC (16); CERD (12); CRPD (8); CESCR (7); CAT (3); and CEDAW (1).

At the other end of the scale are Colombia, Canada, Mexico and India, where the numbers are much higher.[9] Over the life of the treaties (covering both the initial and current study periods), the Colombian Constitutional Court made reference to the core treaties in 6 771 cases: CCPR (2 282), CESCR (2 137), CRC

9 Table 2 in the Mexico chapter (ch 11). The number of courts surveyed is a relevant factor in the difference in number of reliance. The Mexican courts canvassed clearly are many more than the single Estonian court canvassed.

(1 025), CEDAW (538), CRPD (321), CERD (216), CAT (168), CMW (51), CED (33). Over the same period, Canadian courts made some 2 870 references to the treaties ratified by Canada: CAT (1 997); CRC (710); CCPR (67); CEDAW (56); CESCR (22); CRPD (16); and CERD (2). The Mexican federal judiciary (National Supreme Court, Collegiate Circuit Courts and Circuit plenums) made a total of 648 mentions to the core treaties over the study period, with CRC the highest (250), followed by CCPR (184), CESCR (92), CRPD (52), CEDAW (47), CED (11), CAT (6), CMW (5) and CERD (1). Indian courts made reference in a total of 995 cases, with CCPR (390), CRC (206), CESCR (188), CEDAW (138), CRPD (50), CERD (13) and CAT (10).

Going beyond mere numbers, many of the chapters show that treaties (such as CRPD) have steered domestic courts towards particular interpretations and solutions.[10] The Japanese judiciary, in the context of discrimination for those born out of wedlock, have made clear reference to CCPR and CRC. Similarly, CERD's definition of discrimination was crucial in the development of affirmative action programmes by Brazil's Federal Supreme Court (STF), and the Convention is visible in the decisions of higher courts in the country. The extent and depth of interpretive reliance has markedly increased since the International Law Association in its 2004 report concluded that the 'number of cases in which a treaty body finding is a significant factor in influencing the outcome of a decision is a small minority of the cases'.[11] The Colombian Constitutional Court, in Ruling C-376/10 in 2010 for example accepted that CESCR should prevail over the letter of the Constitution as it provided a more generous protection to the right of education, and held that primary education in public schools has to be free of charge, despite the contrary position set out in article 67 of the Constitution.

It is not only the meaningful reliance, but also the eventual enforcement of any relevant decision that matter. For example, it is one thing that the Polish Constitutional Tribunal found domestic law imposing double penalties in relation to social insurance payments to be incompatible with CCPR; it is another that these provisions were subsequently removed from the statute books. In Poland, CEDAW was relied upon to ensure greater equality between men and women of retirement age. CAT has been influential in the outcome

10 See eg the *Habeas Corpus* case, in which the Brazilian STF had to decide on alternatives to preventive custody of imprisoned women who are guardians of persons with disabilities, and the South African Constitutional Court's reliance on CRPD in *De Vos NO* to declare provisions of the Criminal Procedure Act unconstitutional.

11 Final Report on the Impact of Findings of the United Nations Human Rights Treaty Bodies para 179 <https://docs.escr-net.org/usr_doc/ILABerlinConference2004Report.pdf> accessed 30 November 2022.

of expulsion cases (for instance, in Poland, Czech Republic). The influence of UN treaties on domestic courts may vary from issue to issue. While the Czech Constitutional Court rejected the HRCttee's case law in respect of restitution of property, in 32 cases it relied on CCPR to annul lower court decisions, most frequently based on fair trial rights.

The reference to and reliance on treaty body jurisprudence and soft law standards are much less frequent than reliance on the treaties themselves. Although the Colombian Constitutional Court has made considerable reference to UNTBs, with 2 130 mentions in its case law over the life of the treaty system, this figure is much smaller than the number of corresponding mentions of the treaties themselves (6 771). In Mexico, the same cohort of courts, mentioned above, which made 2 870 references to treaties, made only 51 'mentions' to the treaty bodies. Some of the reasons are that treaty body decisions are given less visibility, even in official state resources (Estonia). Another reason for the greater reliance being placed on UN treaties than treaty bodies is that domestic courts mostly invoke or 'mention' treaties rather than use them as the basis for close interpretation based on extensive argumentation (Estonia, Mexico). Domestic courts in Europe and Latin America place greater reliance on the decisions of regional courts, compared to treaty body decisions, as they are considered more accessible and effective (based on their binding nature) (Estonia, Mexico). Generally, the most extensive reliance is on the HRCttee. However, the CESCR Cttee is by far the most cited UNTB by the Colombian Constitutional Court, most likely because it provides guidance, especially in its General Comments and increasingly in findings based on OP-CESCR, which the European and Inter-American Courts of Human Rights (ECHR and IACtHR), on which the Court usually most frequently relies, do not.

The role of individual judges can be crucial, if they have a good knowledge of the international system, as the role of individual judges such as Kirby J and Bell J (in the Australian High Court and Victoria Court of Appeal, respectively) and the *Mwansa* case in Zambia illustrate.

It should be kept in mind that this 'impact' relates to the highest or higher courts. There has been little recorded impact beyond these courts, with little change to the practices of lower court judges (for instance, Mexico).

Only in the rarest of cases do national courts directly 'apply' UN treaties, in the sense of finding violations of the treaty provisions in respect of disputes before them. Mostly, in dualist states, courts have held that they lack the competence to adjudicate disputes alleging violations of UN treaties because these treaties did not form part of (or 'were not incorporated into') domestic law (Australia). In monist states, where this possibility exists in principle, courts have chosen a similar path because they considered the relevant treaty

provisions as not self-executing or not directly applicable (provisions of CERD and CRPD in Czech Republic; CESCR in Poland).

5 Domestic Effect Given to Findings in Communications

While there has over the last two decades been a significant increase in the number of submitted and finalised communications, they remain small in number, relative to the universe of potential cases at the national level that could benefit from international recourse, and compared to the sheer volume of cases before at least one regional body, the European Court of Human Rights (ECtHR). Only a modest number is being finalised yearly, due in part to the modest number of submitted complaints, and to inadequate secretarial resources at treaty body level to expeditiously deal with incoming cases. The extent of justice provided to individual complainants should therefore not be the most prominent measure of treaty body impact.

Implementation by states of the remedial recommendations in findings has been erratic and inadequate. Writing in 1994, McGoldrick concluded that compliance by states with the HRCttee's views has been 'disappointing'.[12] In the previous study, the impact of this mechanism has also been part of 'very limited demonstrable impact' of the UN treaty bodies. In 2009, the HRCttee reported that only around 30 per cent of follow-up replies display a willingness to implement on the part of states.[13]

Best practice examples of impact derived from communications among the study countries are limited, and mostly relate to individual measures. In the period under study, some very specific instances of implementation in individual cases have been recorded.

The more far reaching impact of the treaty bodies' individual complaints mandate lies in the general measures identified to ensure non-repetition.[14] An example of individual measures being adopted, but general measures neglected, is the case *Pimentel v Brazil*.[15] Alyne da Silva Pimentel, the author's

12 D McGoldrick, *The Human Rights Committee: Its Role in the Development of the International Covenant on Civil and Political Rights* (Oxford Clarendon Press 1994) 202.

13 Human Rights Committee Report of the HRC, 1 January 2009, UN Doc.A/64/40 Vol Suppl No 40 paras 230–236.

14 In response to the HRCttee's finding in *Gómez Vázquez v Spain*, adopted in 2000, Spain in 2005 reconstructed its system of criminal appeals/cassation.

15 CEDAW, *Pimentel v Brazil*, Communication 17/2008, UN doc, CEDAW/C/49/D/17/2008, 10 August 2011 (emphasis added).

daughter, was killed by her father during an unsupervised visit, despite prior warning signs that he posed a threat to her and her mother. The CEDAW Cttee found a violation of the right to life and health under articles 2 and 12 of CEDAW. Brazil implemented its obligation to provide 'appropriate reparation' through an amicable settlement of some US $55 000, as well as symbolic reparation in the form of a certificate recognising governmental responsibility handed to the mother during a solemn public ceremony. However, there is much less clarity about the implementation of the recommendations aimed at non-repetition. The only indications of a broader effect are that some federal states in Brazil adopted laws (at state and municipal levels) to protect the maternity and reproductive rights subsequent to the CEDAW finding, but these measures are not explicitly linked to the decision.

Non-implementation by states found in violation is the order of the day, often on the basis of disagreement about the finding on the merits. States not infrequently take issue or reject the UNTB's views on the merits also during the follow-up stage. In respect of the numerous findings that its legislation dealing with restitution of property confiscated from the Communist government was discriminatory, the Czech Republic, for example, indicated that it did not share the HRCttee's legal opinion regarding the discriminatory nature of the restitution condition of citizenship. It therefore opted to rely on the case law of the Constitutional Court – which contradicts the HRCttee's views – to resolve such matters. The following response during the follow-up procedure by Australia is a further telling example:

> As Australia does not agree with the Committee's view that a violation of article 9(1) of the Covenant has occurred, *it does not accept the Committee's view* that Australia is obliged to take steps to prevent similar violations in the future.[16]

Also illustrative is Canada's response to a follow-up request, ending with this rather abrupt statement: 'the State party concludes that it *will not take any further measures to give effect* to the Committee's views'.[17]

A more pervasive and promising change over the last two decades has been the adoption, at the domestic level, of various mechanisms or procedures to facilitate implementation of remedial recommendations. These include

16 HRCttee, Follow-Up Progress Report on Individual Communications, CCPR/C/119/3 (30 May 2017) in respect of Communication 2005/2010, *Hicks v Australia* (emphasis added).

17 CCPR/C/127/3; Follow-Up Progress Report on Individual Communications (8 July 2021) in respect of Communication 2348/2014, *Toussaint* (19 July 2018) (emphasis added).

administrative, legislative and constitutional processes. A striking example of legislation enacted to deal with this issue is the Czech Republic's 2011 Act on the Cooperation in the Proceedings before International Courts and Other International Supervisory Bodies, which requires the competent bodies to immediately take all necessary individual and general measures intended to halt and prevent any violation of CCPR or any other international treaty. Some legislation, such as the Polish 1997 Code of Criminal Procedure, allows the decisions of UN TBs to be a ground for automatic reopening of criminal proceedings. Colombia's Law 288 of 5 July 1996, which enables awards of compensation made by UNTBs to be enforced in domestic law, has not had much practical application.

Domestic courts may also play an important role in giving domestic effect to UNTB findings, especially when national legislation is ambiguous or restrictive. In Spain, the relevant legislation (article 5*bis* of Organic Act of the Judiciary) provides that the Spanish Supreme Court may review and set aside a domestic judicial decision on the basis that it contradicts the ECHR.[18] In *Ángela González Carreño v Ministry of Justice,*[19] a judgment of 2018, the Spanish Supreme Court found that the state had an obligation to comply with the views emanating from CEDAW and its Optional Protocol (OP-CEDAW). The Court accepted that, in a literal interpretation, article 5*bis* does not apply to decisions by UN treaty bodies. However, adopting a purposive approach, the Court declared that the state had the obligation to comply with the views emanating from CEDAW and its OP, since it voluntarily acknowledged the competence of the CEDAW Cttee to examine individual complaints, and fully participated in a legal procedure conducted by this Committee.[20] This judicial revolution can be explained with reference to the broader constitutional context, and particularly articles 10(2) and 96 of the Constitution. However, these provisions – which are contained

18 Organic Law on the Judiciary 6/1985, amended in 2015 (by Law 7/2015), to include art 5*bis*: 'An appeal for review can be lodged before the Supreme Court against a final judicial ruling, in accordance with the procedural regulations of each judicial sphere, where the European Court of Human Rights has affirmed that the ruling in question violates any of the rights enshrined in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, providing that the violation, in view of its nature and gravity, gives rise to effects that persist and cannot be eradicated by any other means, apart from such review'.

19 <http://www.poderjudicial.es/search/openDocument/14eef2e1ad3680ea/20180723> accessed 1 September 2023; see also CEDAW/C/58/D/47/2012 of 16 July 2014.

20 The Court also noted that CEDAW was part of the Spanish legal system, as set up in art 96 ('validly concluded international treaties, once officially published in Spain, shall be part of the internal legal system') and art 10(2) of the Constitution (constitutional rights must be interpreted in conformity with international treaties).

in many 'monist' constitutions – may be necessary but are not sufficient to explain this remarkable judicial outcome. It remains to be seen how far reaching this decision will be in practice, and if judiciaries in states with similar legislation (such as Estonia), would follow suit.

6 Impact by Country

Against the background of expanding norms, the unsurprising conclusion is that the impact of the UNTB system has increased significantly over the last 20 years. Its impact has increased in all the study countries. However, impact remains variable, differing according to country, and along the relevant time frame. Still, two countries stand out as having seen a pronounced difference in the level of impact over the last two decades. One of these, Nepal, was not part of the initial study. The other, Mexico, is a Group of Latin America and Caribbean Countries (GRULAC) country in which ground-breaking political changes have occurred.

The initial study concluded that the UNTB system has had a 'very limited impact' in Mexico.[21] 'Lack of political will' and 'reluctance by the government to allow international supervision of its human rights record' were identified as the primary reasons. The radically different conclusion of the follow-up study (namely, that the UNTB system plays a key role in political and juridical dynamics pertaining to human rights in the country) underscores the pertinent role of the political context as a predictor of UNTB impact. In the early 2000s Mexico experienced an important political transition from a one-party regime to a more competitive multi-party political system. Importantly, the political transition was anchored constitutionally, in the form of an amendment to article 1 of the 1917 Constitution, which was introduced in 2011. It provides that everyone enjoys the human rights recognised in international treaties to which the Mexican state is a party, and that human rights norms will be interpreted in conformity to the Mexican Constitution and relevant international treaties.

The government of President Vicente Fox (2000 to 2006) brought about a paradigmatic shift in Mexico's human rights foreign policy. This shift is evidenced by the establishment of a permanent representative of the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Mexico City; an 'open and standing' invitation being issued to UN special procedures; the acceptance in 2002 of the individual communications procedures under

21 *Impact*, 2002 444.

four of the UN treaty bodies; and the fact that Mexico is also the only country among the 20 to have become a party to all nine core treaties. Not only the executive and legislature, but also the judiciary have been very open to UN treaties, as reflected in the graph in the country chapter (chapter 11) depicting the sharp increase, between 2000 and 2019, in the number of decisions by Mexico's federal judiciary that mention UN human rights treaties. However, it should also be noted that under the presidency of Enrique Peña Nieto (2012–2018), the Mexican government has become less tolerant of international criticism.

7 Impact by Treaty

Across countries and even within one country, the impact of the different treaties often differs markedly. The length of time that a treaty has been in force does not necessarily guarantee greater impact. Although the influence of CCPR has in most countries expanded and been enhanced over time, the same is not observed for CERD, the oldest of the nine core treaties. There are many examples indicating that the various treaties may each be approached differently by the state. As is shown in Canada, the authorities may 'cherry-pick' to which recommendations they will respond. Different parts of the treaty system may experience different levels of impact in the same state, as shown particularly in the chapters on India (where only CRC has significantly influenced policy), Japan and South Africa. The particular impact of two treaties adopted in the last two decades – OP-CAT, adopted in 2002 and CRPD, adopted in 2006 – is highlighted below. While the influence of CRPD has been mostly normative, that of OP-CAT has predominantly been at the level of processes and procedures. The fact that both these treaties are at the vanguard of rooting international supervision in national institutional processes underscores the important role of empowered domestic constituencies in serving as a bridge between UN treaties and rights holders in state parties to these treaties.

7.1 *CRPD*

Despite these variables, one treaty, CRPD, in our view also stands out in terms of its consistent impact across the 20 study countries. CRPD, the first of the treaties adopted in the new century, is foregrounded as a treaty that has achieved great salience across all the study countries. Its consistently significant influence on legislation is shown in the Table below.

The adoption of these laws is an example of direct material impact. In most instances, there is a discernible domestic influence of the CRPD derived from the chronological sequence, explicit recognition in documentary form, and

TABLE 21.1 Legislation implementing CRPD in 20 study countries

Country	Year CRPD ratified	National law adopted	Further evidence
Australia	2008	– 2009 amendments to the Disability Discrimination Act 1992 (Cth)	National Disability Insurance Scheme established (2013)
Brazil	2008	– Law No 13,146 of 6 July 2015, on the Inclusion of Persons with Disabilities	first treaty with supra-constitutional status (Legislative Decree No 186 of 9 July 2008)
Canada	2010	– 2019 Accessible Canada Act	The Preamble to the Act explicitly references the treaty as adding 'to the existing rights and protections for people with disabilities'.
Colombia	2011	– Law 1618, adopted in 2013, to implement CRPD – Law 1996, adopted in 2019, protecting the autonomy and legal capacity of persons with disabilities	new social paradigm on disability, such as 'reasonable accommodation', 'universal design' introduced Law 1996 (art 2) must be construed and applied in conformity with CRPD.
Czech Republic	2009	– Anti-Discrimination Act – amendment of Building Act – National Plan for the Promotion of Equal Opportunities for Persons with Disabilities (2015-2020)	Each ministry has to assess priorities in line with the National Plan.
Egypt	2008	– Law 10 on Persons with Disability of 2 February 2018 – Law 11 of 5 March 2019 establishing the National Council for Persons with Disabilities – Law 2733 of 2018 which set out the ground for the implementation of Law 10 (executive bylaw)	

TABLE 21.1 Legislation implementing CRPD in 20 study countries (*cont.*)

Country	Year CRPD ratified	National law adopted	Further evidence
Estonia	2012	– enshrined in several articles of the 2014 Constitution – Law 10 on Persons with Disability of 2 February 2018 – Law 11 of 5 March 2019 establishing the National Council for Persons with Disabilities – Law 2733 of 2018 facilitating the implementation of Law 10	The Law on Persons with Disability, divided into eight parts, closely echoes CRPD. structure; and its objective makes specific reference to CRPD.
Finland	2016	– amendments to the Act of Special Care for Persons with Intellectual Disabilities, the Non-Discrimination Act, and the Municipality of Residence Act and the Social Welfare Act were especially considered necessary prior to ratifying the treaty	referred to at least in 51 government Bills considered by Parliament. In that period, the references to CRPD or the CRPD Cttee may be found at least in 25 documents of the parliamentary committees.
India	2007	– Rights of Persons with Disabilities Act, 2016	Preamble states that it is enacted to give effect to CRPD. Mental Healthcare Act, 2016 states that it is enacted to 'align and harmonise the existing laws with CRPD'.
Jamaica	2007	– 2014 Disabilities Act	Parliamentary debates indicate CRPD influence.

TABLE 21.1 Legislation implementing CRPD in 20 study countries (*cont.*)

Country	Year CRPD ratified	National law adopted	Further evidence
Japan	2014	– revision of Basic Act for Persons with Disabilities (2011), Services and Supports for Persons with Disabilities Act (2012) – enactment of 2013 Act for Eliminating Discrimination against Persons with Disabilities	definition of 'persons with disabilities' changed to include social model; reasonable accommodation introduced
Mexico	2007	– 2011 General Law on the Inclusion of Persons with Disabilities	CRPD mentioned several times in General Law; repeatedly cited in draft Bills preceding its adoption
Nepal	2010	– 2017 Disability Rights Act, repealing the previous Disabled Persons Welfare Act 1982	2017 Act serves as adherence to its general obligation under CRPD, not recognised in 1982
Poland	2012	– amendments to electoral law and broadcasting law, introducing adjustments for persons with disabilities	without referencing CRPD in either the law or the explanatory reports
Russian Federation	2012	– Federal law No. 419-FL–amendments to 25 legislative Acts with a view to incorporate the Convention	aligned with CRPD
Senegal	2010	– Social Orientation Act on the Promotion and Protection of the Rights of Persons with Disabilities (Social Framework Act)	definition of 'disability' in Social Framework Act is extracted from CRPD

TABLE 21.1 Legislation implementing CRPD in 20 study countries (*cont.*)

Country	Year CRPD ratified	National law adopted	Further evidence
		– Decree No 2012 implementing the Social Framework Act (No 2010–15) of 6 July 2010 on the promotion and protection of the rights of persons with disabilities Decree No 2010–99 of 27 January 2010 on the Construction Code, of which articles R 18 to R 20 deal with measures for the physical accessibility to buildings by people with disabilities	
South Africa	2007	– White Paper on the Rights of Persons with Disabilities – South African Law Reform Commission (SALRC) project on domestication of CRPD (2018 –)	explicit mention of CRPD
Spain	2007	– Act 26 of 2011, on normative adaptation to CRPD to ensure appropriate harmonisation with Legislative Royal Decree 1/2013 – General Act on the Rights of Persons with Disabilities	42 laws, 75 Royal Decrees and 14 Ministerial Orders consolidated into General Act
Turkey	2009	– 2010 constitutional amendment (allowing 'special measures') – Pre-existing 2005 Turkish Disability Act underwent comprehensive amendment in 2014.	no mention in Act; no mention in debate
Zambia	2010	– Persons with Disabilities Act 2012 – Mental Health Act 2019	explicit mention of aim to domesticate CRPD in Preamble of both statutes

explicit recognition acknowledged and recorded during interviews. The role of the CRPD in steering the increasing replacement of the welfare and medical approaches to disability with a human rights model exemplifies its symbolic impact. In most countries, CRPD is closely associated with a paradigm shift from medical to social models of disability and the adjustment of institutions in order to guarantee individual autonomy, inclusion and non-discrimination of persons with disabilities. In a number of countries, CPRD has influenced terminology (for instance, the replacement of 'mentally-handicapped person' with 'person with disability' in Nepal). In Estonia there has been a dramatic change in the way in which disability was regarded in Soviet times compared to how it is now viewed. CRPD is also often more frequently cited than expected by the judiciary (as exemplified in Mexico, and in Brazil, where the STF referred more frequently only to CCPR).

The following factors appear to us to be relevant to the relative pronounced influence and impact of CRPD in the study countries:

Political context and the willingness of political elites based on popular support: The extent of willingness among political elites is reflected in the near-universal ratification of this treaty (184 state parties). The subject matter of disability does not provoke deep-seated political sensitivities. Different to the two other treaties that entered into force in the twenty-first century (CMW, dealing with migrant workers, and CED, dealing with enforced disappearances), the thematic of disability is more commonplace and generalised. It touches many people personally either directly or through their family members, and is cross-cutting in that it affects society as a whole: Disability intersects with all genders, races, ages and persons of all social or economic status.

Active civil society involvement: The drafting of CRPD was characterised by the most meaningful involvement by civil society of all treaties. Civil society organisations work to advance the rights of persons with disabilities in all 20 countries. In terms of the number and intensity of their activities, disabled persons' organisations (DPOs) and civil society organisations have been a very active segment of civil society. They have advocated the ratification of CRPD and have subsequently continued to push for the treaty's full implementation. As is the case with CRC and CEDAW, coalitions of civil society organisations to initiate various activities have been formed in particular around state reporting. Some pertinent examples are unprecedented civil society interest in reporting (Poland, Turkey); the Council of Canadians with Disabilities, which produced very thorough yet accessible articles, guidebooks and other materials on various aspects of CRPD to assist with shadow reports and informing the general public (Canada); and 170 civil society organisations supported a

campaign by the national human rights institution for ratification of OP-CRPD (Poland).

National (*as opposed to international*) *monitoring*: This is a treaty-specific factor. CPRD sets out an elaborate system of national monitoring.[22] It operates at three levels: a focal point serving as a coordination mechanism within the executive; a monitoring mechanism from one or more state entities that are compliant with the Paris Principles; and monitoring by non-governmental organisations (NGOs) and, particularly, organisations of persons with disabilities.[23] Establishing an intra-governmental focal point has the potential to smoothen out inter-governmental blockages. The visibility, domestic stature and legitimacy of CRPD has been enhanced by the designation of national human rights institutions as national independent monitoring mechanisms, and by the active and constructive role many of these have played.

CRPD as a transformative instrument: Another treaty-specific factor is the transformative nature of the treaty itself. It does not merely catalogue a series of rights, but it postulates the possibility of a paradigm shift, a movement from 'darkness into light',[24] based on a human rights – as opposed to a welfare and medical – approach to disability, with persons with disabilities viewed as subjects or rights and not as objects of social protection (Australia (Supreme Court of Victoria)). Its transformative potential is most acute where cultural dispositions are mitigated against the self-determination of persons with disabilities (for instance, Nepal, India).

CRPD is a detailed and content-specific treaty: In respect of the Russian Federation, it was reported that treaties that are subject-specific treaties may have a greater impact because of the specificity and detail with which they deal with a particular thematic area, compared to the generalised and often unhelpful way in which general treaties such as CCPR and CESCR deal with issues due to the breadth of the scope of their mandates. This insight is applicable particularly to CRPD.

22 CRPD, art 33.

23 See also LFA Gatjens, 'Analysis of Article 33 of the UN Convention: The Critical Importance of National Implementation and Monitoring' (2011) 8 Sur: Revista Internacional de Direitos Humanos 1; Sébastien Lorion, 'A Model for National Human Rights Systems? New Governance and the Convention on the Rights of Persons with Disabilities' (2019) 37 Nordic Journal of Human Rights 234.

24 Rosemary Kayess and Phillip French, 'Out of Darkness into Light? Introducing the Convention on the Rights of Persons with Disabilities' (2008) 8 Human Rights Law Review 1–34.

Country-specific factors: Some factors relevant to impact are specific to a particular country: its constitutional status (CRPD is the first treaty to acquire supra-constitutional status in Brazil, in line with the 2005 Constitutional Amendment 45, which gives international human rights treaties that have been approved in two rounds by three-fifths of the members of each House of Congress the status of constitutional amendments); and connection to participation in the CRPD drafting process and the role as one of the leading forces in the campaign for, and eventual development of CRPD (South Africa). European Union (EU) member states are bolstered by the fact that the EU has also, as an intergovernmental organisation, formally adhered to CRPD. In the case of the Russian Federation, a uniquely special procedure for the preparation of reports and for the adoption of action plans to implement Concluding Observations was introduced. Hosting the Paralympic Games in 2006 is reported to be an impetus for the ratification of CRPD and the adoption of measures for its implementation by the Russian Federation.

CRPD as a complement to regional human rights law: It has been pointed out that there are significant gaps between the 'lived realities' of a majority of person with disabilities in many countries of the Global South (such as Egypt, India, Nepal, Senegal and Zambia) especially in underserved rural communities, on the one hand, and the rhetorical promises of CRPD, on the other.[25] A recognition of this disjuncture at least in part motivated the drafting and adoption of an African counterweight to CRPD, the 2018 Protocol to the African Charter on the Rights of Persons with Disabilities in Africa (African Disability Rights Protocol). It requires 15 state parties to secure its entry into force. While 50 African UN member states have become party to CRPD, only five African states have as yet ratified the African treaty.[26] A further region-specific treaty, the Inter-American Convention on the Elimination of all Forms of Discrimination against Persons with Disabilities (Inter-American Disability Convention), was adopted by the Organization of American States in 2001, but it too seems to have little salience (with the exception of, perhaps, Mexico). Although it is in force, very few states have subsequent to the adoption of CRPD in 2008 become party to the Inter-American Disability Convention. This discrepancy in adherence to UN and autochthonous treaties should be further interrogated: Does it reflect a crude cost-benefit analysis by political elites,

25 Helen Meekosha and Karen Soldatic, 'Human Rights and the Global South: The Case of Disability' (2011) 32 Third World Quarterly 1383–1397.

26 <https://au.int/en/treaties/protocol-african-charter-human-and-peoples-rights-rights-persons-disabilities-africa> accessed 31 March 2023; ratified by Angola, Burundi, Kenya, Mali, Rwanda.

or skewed agenda setting by civil society? In other regions, such as Europe, the absence of a parallel regional treaty contributed to enhancing the impact of CRPD.

7.2 *OP-CAT*

OP-CAT spearheaded the idea that implementation of international standards needs to be grounded in national mechanisms. In addition to the standard approach of UN treaties, to create a treaty body to monitor implementation (in this case, the Subcommittee on Prevention of Torture (SPT)) the innovation provided by OP-CAT was the requirement that states also establish, designate or maintain a 'national preventive mechanism (NPM)', a single entity or a combination of independent bodies that have the mandate to prevent torture and ill-treatment through visits and other means.

For European states, such as Estonia, which already were party to the European Convention for Prevention of Torture, the ratification of OP-CAT may have had significant impact because of the work of its national preventive mechanism, but may have made little difference in terms of the international monitoring. Indeed, this has enabled states such as the Russian Federation to argue that engagement with the European committee is sufficient, given the overlap with the mandate of the SPT.

Beyond this, however, one can see the impact of OP-CAT in a number of ways.

Strengthening existing bodies: The extent to which OP-CAT has contributed to the strengthening of existing bodies is variable. For some state parties to OP-CAT it may be business as usual for those existing bodies that visit and monitor places of detention, providing no additional resources or legislative framework in light of OP-CAT requirements (Australia), or not ring-fencing a budget or staff to enable an ombudsperson institution to develop its national preventive mechanism role (as in Spain). Although existing bodies may have been adapted after OP-CAT ratification, they may still lack full compliance with OP-CAT criteria (Brazil). However, in other countries OP-CAT has led to an extension of the body's mandate (for instance, Czech Republic's Ombudsman) and resulted in the body itself, having taken on the national preventive mechanism mantle, to then adapt its own methodologies and approach, for example broadening the type of place of detention to be visited in line with the breadth of article 4 of OP-CAT (for instance, the Chancellor of Justice in Estonia now visits care homes). The ability of the SPT to address recommendations not only to the states but also the national preventive mechanism itself, can be a powerful tool to engage with the mechanism. Visits to countries prior to the official designation of a national preventive mechanism have also been very

influential, as in Senegal, in developing a national preventive mechanism that complies with OP-CAT criteria.

Cross-pollination of other treaty body recommendations: Being creatures of both domestic and international law, national preventive mechanisms have drawn upon recommendations from other treaty bodies, not only the SPT, to corroborate their own findings or raise awareness of their existence. Therefore, as the National Detention Centre Observatory (ONLPL) in Senegal did with respect to recommendations of the HRCttee, such approaches can contribute to the implementation of those findings. Moreover, after visits to Mexico, the SPT reiterated Concluding Observations of CAT, albeit with questionable success in terms of their ultimate implementation. Furthermore, there is evidence in some countries of increased visibility of CAT after the ratification of OP-CAT and designation of a national preventive mechanism. For instance, in Finland, the Parliamentary Ombudsman's reference to OP-CAT, an increase in frequency of its visits, and drawing attention to violations led to an increase in prominence of CAT at some, if not all, levels. A similar impact can be found in Poland. In contrast, some national preventive mechanisms, such as the Human Rights and Equality Institution in Turkey, do not appear to have made full use of the opportunity to cite CAT in their own decisions. The SPT itself is able to identify, on its visits to states, incidents of torture and ill-treatment, which have led to changes in policy (as in Brazil after a visit by the SPT in 2015) and legislation (for instance, to Spain's Criminal Code after its visit in 2017).

Judicial activism: One influence of OP-CAT has been on the judiciary in some jurisdictions where they have used OP-CAT to bolster and strengthen the mandate and funding of existing bodies (for example, with respect to remuneration of the national preventive mechanism in Brazil; and the independence of the Judicial Inspectorate for Correctional Services (JICS) in South Africa). Furthermore, the judiciary has embedded the status of the national preventive mechanism in the domestic legal framework by, as in Estonia, holding that the findings of not only the SPT but also the national preventive mechanism can be relied upon by the national courts.

8 Domestic Factors that Explain Impact

8.1 *Domestic Politics, Context and History*

Depending on the historical context and current political contestations or priorities, some treaties are taken more seriously than others. One factor that plays a prominent role is whether the UNTB recommendations and standards align with national politics: As is seen in Zambia and Jamaica, the government

may be more willing to contradict the UN treaty bodies on issues that have particular sensitivity, such as the death penalty or the rights of LGBT persons. Conversely, those treaties that deal with topics that are considered less controversial, such as monitoring detention and children's rights in Estonia and Turkey, generally have greater salience. UN treaty impact is also influenced by the presence or lack of national political or social consensus. National consensus or a 'general consensus in society' often is more likely around the rights of women, children and persons with disabilities, allowing CEDAW, CRC and CRPD generally to have more impact than other treaties. In the Russian Federation, on the other hand, treaty body impact has been minimised by the lack of societal consensus among state officials, civil society and citizens on issues such as the regulation of the activities of NGOs acting as 'foreign agents'; the protection of rights of LGBT persons; and domestic violence.

Historical context, such as colonial history, can influence the extent to which the treaty is seen as significant in the political discourse of the country (for instance, CERD in Zambia). In South Africa, a lingering and widespread perception is that, since CERD was adopted as a response to apartheid, its relevance has subsequently diminished. The influence of a treaty may be affected if it is 'weaponised' for political purposes, exemplified by the use of CCPR by the Barotse National Council in its efforts to secede from the Zambian state.

Different governments, as is seen in Brazil, Colombia and Mexico, will display varying degrees of willingness to be open to international scrutiny and engagement.

Finally, in some jurisdictions, religion and customs will also play a part, the chapter on Senegal providing a fascinating insight into the role of religious groups towards the state.

8.2 *Domestic Actors*

Numerous chapters indicate that domestic actors play a key role in ensuring the impact of UN treaty bodies. A lack of coordination among government bodies is raised as one issue that explains in part the failure of Canada to fully implement UNTB recommendations. Where there is greater clarity on who is leading on submissions or cooperating with particular UN treaty bodies, for example, as there now is in South Africa, this appears to have had some influence on state reporting and implementation of Concluding Observations and views. Indeed, putting some structure or mechanism in place to facilitate coordination, as in the Czech Republic, can be a sign of government commitment to the UNTB system. However, even when such structures or processes do exist, they may deal only with decisions from, say, the ECtHR (as Spain's Organic Act of the Judiciary enables victims of violations before the European Court to file

a review before the Supreme Court for reparation) and not with the UN treaty bodies at all, or only with some (as in Finland).

In addition, the experiences of Jamaica and Zambia suggest that the existence of UN agencies in the country may also play a role. Civil society's choice to prioritise certain treaties over others (for example, CRPD and CRC in Zambia) and with which ministry responsibility lies, are also relevant factors in some jurisdictions. For example, it is pointed out that apart from women, children and CPRD, all other treaties fall within the Ministry of Foreign Affairs, which tends not to have ownership over the reporting process in the same way as a specific ministry. Relatedly, the existence of state agencies with a mandate in respect of a particular treaty may also result in greater impact, as can be seen in Jamaica with CEDAW, CRC and CRPD.

National courts, particularly Supreme or Constitutional Courts, have shown particular influence in some of the studies, prompting debate on how to ensure constructive dialogue between the state authorities and UNTBS, as the courts consider the compatibility of constitutions with international obligations (for instance, Russian Federation). The chapters also provide examples of domestic courts using the treaty provisions and other international human rights principles on a regular basis (for instance, India) and going further to uphold rights of individuals (Zambia) including through references in *amicus* submissions (for example, South Africa and the use of CRC Concluding Observations with respect to parents' chastisement of children). Developing practices that enable them to enforce the views of UN treaty bodies is another approach (for instance, in Spain, where the Supreme Court held that Spain had an obligation to comply with views of the CEDAW Cttee) such that remedies can be provided to victims of violations found by the UN treaty bodies. Conversely, however, a judiciary that is unaware of the international system can slow the rate of change and degree of impact.

This study also provides evidence for the role that civil society organisations play in keeping a treaty alive at the national level (Japan, or CERD in Brazil) or for advocacy (such as in India and South Africa) influencing different actors in a state to take action. Conversely, where civil society is weaker, as in Senegal, there may be fewer submissions to the UNTBS.

The chapters also show that statutory or constitutional bodies such as ombudspersons or national human rights institutions can also influence impact. The use of CRC in influencing domestic legislation change by the Chancellor of Justice in Estonia is one such example.

8.3 *Nature and Extent of Protection Available under Domestic Legal System*

Monist systems do not guarantee impact. The direct applicability of treaties in some jurisdictions does not always, it would seem from examples in this book, guarantee impact. As the chapters on the Czech Republic, the Russian Federation, Senegal and Turkey illustrate, the practical application of this approach indicate that even though, in theory, an individual victim can base their case at the domestic level on international treaty provisions, in practice they will tend to employ national legislation, this being that with which the state authorities are most familiar. The perceived strength offered by the national Constitutions of Egypt, Japan and South Africa, for example, can be a disincentive to look to international standards, including UN treaties. The existence of more detailed or promises of more responsive provisions under national law also explains reliance on national law. In South Africa, for example, the availability of national laws and policies on the elimination of racial discrimination and affirmative actions (in the form of the Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA)), which speaks more specifically to the South African reality, has resulted in more reliance on national laws than on CERD.

9 International-Level Factors Play a Part in Explaining Impact

9.1 *Geopolitics*

Geopolitical factors often frame the horizon of possibilities of domestic impact. A decline in funding in a number of industries due to the Western sanctions, for example, constrained the Russian Federation's ability to give effect to CESCR.

9.2 *Membership of Treaty Bodies*

The commitment and presence of nationals as members of UN treaty bodies can influence the level of awareness among domestic actors, for example in Poland, and among the judiciary in Senegal, and assist in the development of national jurisprudence. In other countries, such as Egypt, however, a relatively high number of members on UN treaty bodies has not resulted in the submission of more or up-to-date reports, a deeper engagement with UN treaty obligations, or acceptance of any optional complaints mechanisms.

9.3 *Criticism of Treaty Bodies*

There are a number of criticisms levelled at the UN treaty bodies' credibility as an explanation for why the UN instruments or treaty body findings have not had an impact. Some chapters, including those on Finland and the Russian Federation, highlight examples of government officials arguing that the UN treaty bodies display a 'lack of nuance' in appreciating the domestic context. Several chapters, such as those on Estonia and Jamaica, indicate concerns that Concluding Observations and other findings of the UN treaty bodies are not accurate or are not thought through. With respect to CAT in the Czech Republic, it has been argued that particular UN treaty bodies have overstepped their mandate. In a similar vein, as one Australian official put it, 'mission creep', going beyond the scope of the treaty, weakens their credibility. These criticisms have also arisen through questioning, as the judiciary have done in Jamaica, whether a UNTB, as quasi-judicial and not judicial body, has the authority to interpret the relevant treaty.

9.4 *Legally Binding Nature of the Treaty Bodies' Findings*

There are numerous examples of state authorities foregrounding the argument that treaty body views and Concluding Observations are not legally binding (for instance, Australia, Canada, Jamaica, Russian Federation, Senegal and Spain). This can have a number of consequences. First, it is perceived as an option for the state to choose to implement, but only if the issue is considered to be in line with national policies (Australia) and the right to choose how such recommendations are to be dealt with (Russian Federation). In addition, it can prompt reluctance from civil society, for example in Spain, to submit cases to the UNTBs. Conversely, the chapter on Egypt notes that the government finds it 'relatively easy' to comply with soft law commitments pertaining to economic, social and cultural rights as they align with the 'Arab social contract', under which the government undertakes to provide social services to the people 'in return for their political acquiescence'.

9.5 *Regional Human Rights Systems Deepen and Detract from Impact of UN Treaties*

Several chapters raise the inter-relationship between the UN and regional systems, and the influence this has on the impact of the UN treaties. These are chapters dealing with countries that are members of the African Union (AU) (Egypt, Senegal, South Africa, Zambia), the CoE (Czech Republic, Estonia, Finland, Poland, Russian Federation,[27] Spain, Turkey) and the Organization of

27 The Russian Federation's membership of the CoE ended after the cut-off date for this study (30 June 2019). The CoE expelled the Russian Federation on 16 March 2022, causing

American States (OAS) (Brazil, Canada, Colombia, Jamaica, Mexico). This issue is evidently of less relevance in regions where no developed regional human rights system exists (Australia, India, Japan, Nepal).

In the first two decades of the new millennium, the three regional human rights systems have more firmly established themselves. On the one hand, the impact of UN treaties is often deepened by regional systems but, on the other, it could be that UN treaties are largely eclipsed by them. Attention to the regional system can result in limited reference to UN treaties, by the judiciary (in Estonia), government (Russian Federation), civil society or the legislature (Brazil, Finland and Mexico), and a preference among CSOs to submit complaints to regional bodies such as IACHR (Colombia). National judiciaries in Latin America and Europe routinely place more reliance on regional than UN precedents. The Brazilian judiciary, for example, is more likely to place reliance on specific Inter-American treaties, such as the Inter-American Convention on Forced Disappearance of Persons, than on CED. The regional system can be perceived, as the European system is in Turkey, as offering more financial opportunities, training and knowledge of particular issues. In Senegal, there is a preference for the geographical accessibility of the sub-regional Economic Community of West African States (ECOWAS) Court of Justice over the UN – and the regional – system.

The UN system is then considered supplementary to the regional. If the recommendations from the UNTBs dovetail with those from the regional system, this may result in effective implementation and impact of the former, as an example with respect to racial discrimination in the Czech Republic illustrates. A clear example of a mutually-supportive relationship between the UNTB system and the CoE system is the recommendation in the CEDAW Cttee's view in Communication 100/2916 that the Russian Federation should sign and ratify the CoE Convention on Preventing and Combating Violence against Women and Domestic Violence.

In other instances, the possibility of forum shopping may give rise to a sense of competition. In the Czech Republic, the study reports, victims of torture are more likely to file a complaint with the ECtHR than to submit an individual communication under CAT. Also, deciding on differentiation between non-citizens and Czech citizens in the legislation dealing with restitution of property, the Czech Constitutional Court relied on analogous cases decided

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it to cease being a party to the ECHR on 16 September 2022. However, the ECtHR still deals with applications submitted against Russia alleging ECHR violations occurring until 16 September 2022, and the Committee of Ministers continues to supervise the execution of judgments and friendly settlements.

by the European Commission on Human Rights to substantiate a conclusion contradicting the HRCttee's finding.[28]

Of the three regional systems, the African features less as a factor that either enhances or limits the impact of the UNTB system. Although an African-specific children's rights treaty, the African Charter on the Rights and Welfare of the Child (African Children's Charter), is in place, African states appear to pay more heed to their obligations under CRC than under the African treaty. It has been suggested that the actively supportive role of UNICEF in advancing CRC (in Africa as elsewhere) provides an explanation for the prioritisation of CRC (eg South Africa). As the African system grows into maturity, the weight of reliance and influence may shift to the regional system.

10 Decentralisation

The shift from standard setting to norm implementation has been mirrored by a turn away from a dominant focus on the national level (by states, academics and UNTBs)[29] to much greater appreciation for the important role in treaty implementation of more decentralised units within states, especially those with a federalist constitutional structure. Particularly the fifth treaty body decade (2010–2019) has seen a marked increase in awareness and understanding of the crucial role of decentralised units (sub-national units such as provinces and states in federal states, and local government structures within unitary states).[30] There is much greater acknowledgment that, while the state party's federal government remains the primary duty bearer throughout the territory, implementation depends on legislative and other administrative practices at the state, provincial, regional or municipal level. Emerging also is the need for data that is disaggregated by decentralised units to avoid masking

28 *Šimůnek v Czech Republic* and *Adam v Czech Republic*.

29 See eg CRPD Cttee expressing concern about the harmonisation of national legislation with CRPD at the sub-national level in Mexico.

30 See eg Roberta Ruggiero, 'Ombudspersons for Children in Selected Decentralised European States: Implementing the CRC in Belgium, Spain and the United Kingdom' (2013) 18 Interdisciplinary Journal of Family Studies 65; Conrad Mugoya Bosire, 'Local Government and Human Rights: Building Institutional Links for the Effective Protection and Realisation of Human Rights in Africa' (2011) 11 African Human Rights Law Journal 147–170; Judith Wyttenbach, 'Systemic and Structural Factors Relating to Quality and Equality of Human Rights Implementation in Federal States: A Critical Assessment of the Practice of Human Rights Treaty Bodies' (2018) 7 International Human Rights Law Review 43–81.

the disproportionate vulnerability of particular groups in regionals that lack autonomy.

The study countries include a number of federal states. Australia, Brazil, Canada, India, the Russian Federation and Mexico have strong federalist features, while other states (such as Colombia, South Africa and Spain) have less developed 'spheres' of decentralised government in place. A shared feature among these states is an increase in measures to establish decentralised bodies with a mandate to oversee human rights. In India, for example, state-level human rights commissions have been established in 25 out of 26 states. In Brazil, decentralised bodies created for monitoring and guiding the gender questions have a significant impact, with a fledgling system of Municipal Councils for the Rights of the Child (CMDCAs) being put in place at the municipality level, and State Councils for the Rights of the Child (CEDCAs) created in all states. The South African National Plan of Action for Children (NPAC) (2012–2017) underlined the role that local municipalities have to play in the realisation of children's rights. However, despite these examples, the influence of international law remains limited at the sub-national level, leaving important harmonisation challenges to be overcome in the future.[31] Judiciaries at the local level, being further away from the harmonising and centralising pull of the centre, tend to be less aligned to international jurisprudential trends.

11 Conclusion

We acknowledge that the study is part of a process. Given our cut-off mark of 30 June 2019, it is already outdated. It is part of a broader community of work-in-progress,[32] and of an ongoing conversation between scholars.[33] Taking the long view, spanning five decades, the study confirms that the UNTB system is 'one of the greatest achievements' of the international community's efforts to promote and protect human rights.[34] With the UPR gaining much interest and domestic resonance, the results of this study should be correlated and

31 For example, across the 32 federal states in Mexico.

32 For example, on the UPR, see eg UPR Info, 'Beyond Promises: The Impact of the UPR on the Ground' (2014) <https://www.graduateinstitute.ch/sites/internet/files/2020-11/2014_beyond_promises.pdf> accessed 21 September 2023 and Rhona Smith, '"To See Themselves as Others see Them": The Five Permanent Members of the Security Council and the Human Rights Council's Universal Periodic Review' (2013) 35 Human Rights Quarterly 1-32.

33 See eg Audrey L Comstock, *Committed to Rights: UN Human Rights Treaties and Legal Paths for Commitment and Compliance* (Cambridge University Press 2021).

34 Navanethem Pillay, 'Strengthening the United Nations human rights treaty body system: A report by the United Nations High Commissioner for Human Rights', June 2012.

compared with information and findings on national implementation of UPR recommendations.[35] The same applies to the influence of regional human rights systems.[36] A more holistic view of 'impact' of the various layers of human rights systems departs from the insight that what matters in the end is the effect of international human rights law on the lives of individuals within each of the UN member states, irrespective of the source of the applicable law.

Independent and state actors with a mandate to monitor and implement UN treaties have come a long way since our initial study. With its requirement not only that there be internationals supervision under the SPT, but also that states establish national mechanisms, OP-CAT planted the seed for other UN instruments, such as the CRPD, to consider that implementation of treaty obligations may necessitate not just a supranational but also a national system of monitoring and supervision. The proliferation of independent bodies such as NPMs under OP-CAT and article 33(2) mechanisms under the CRPD, in addition to recommendations by UNTBs that states create similar independent entities to monitor the implementation of other treaties, is a significant contribution of the UN system in the last two decades. In parallel, the recommendations made by Navi Pillay in her 2012 report that states should establish 'standing national reporting and coordination mechanisms' were based on the need to strengthen national capacity to implement treaties and also that they would 'considerably strengthen the building of expertise and institutional memory on human rights within the State machinery'.[37] With their increasing number, development of expertise, and expansions of their respective roles, the relationship between these national-level actors has become increasingly complex.[38]

35 See eg Nadia Bernaz, 'Reforming the UN Human Rights Protection Procedures: A Legal Perspective on the Establishment of the Universal Periodic Review Mechanism' in Kevin Boyle (ed), *New Institutions for Human Rights Protection* (Oxford University Press 2009) 75–92.

36 See eg Brice Dickson, *International Human Rights Monitoring Mechanisms: A Study of Their Impact in the UK* (Edward Elgar 2022), who considers the joint impact of monitoring under UN and European mechanisms on human rights protection in the UK.

37 Strengthening the United Nations human rights treaty body system. A report by the United Nations High Commissioner for Human Rights, Navanethem Pillay, June 2012, para 4.5.4.

38 OHCHR, 'Regional consultations on experiences and good practices relating to the establishment and development of national mechanisms for implementation, reporting and follow-up. Report of the Office of the United Nations High Commissioner for Human Rights', UN Doc A/HRC/50/64, 2022, para 52.

While the various chapters reveal many shortcomings in domestic implementation and in the workings of the UNTB system, the overriding impression is positive. Insight from the country studies may also be helpful in the ongoing treaty 'strengthening' process. The study confirms the utility of some of the changes that have been introduced, in particular the simplified reporting procedure, but also highlights the need for greater alignment in the practices and procedures of the various UNTBs; for concise, focused, concrete, prioritised, contextualised and implementable COs; for a fixed, comprehensive and transparent state reporting calendar; and for more reviews in member States or regions.[39]

In many ways, the first three decades in the life of the UN human rights system constituted a period of optimism: from the belief in a fledgling system in the 1970s and 1980s, to the golden era of possibilities in the 1990s following the fall of the Berlin Wall. Notwithstanding the erosive influence of the 'war on terror' and the global financial crisis of the 2000s and the rise in right-wing populism in the 2010s, the studies unequivocally conclude that the last 20 years have witnessed a significant increase in the relevance and impact of the UN treaty system in the world. The details of each of the country studies have much to offer towards the improvement in domestic impact of the UN human rights system, the growth of the human rights movement, and the discourse on the future effectiveness of international human rights law.

39 See also A/75/601, Report on the process of the consideration of the state of the United Nations human rights treaty body system, 17 November 2020.