Monitoring Mechanisms

Monitoring mechanisms are a set of institutions and practices that in the fields of international human rights and humanitarian law address either already committed wrongdoing or aim to prevent future wrongdoing. The ideas behind monitoring mechanisms borrow from criminal law, and have similar aims to realize reconciliation, restitution, reparations, and even deterrence. More broadly, monitoring mechanisms can be seen as aiming to end what is known as “the culture of impunity” towards grave human rights violations.

Monitoring mechanisms can have both states and individuals as their parties, and they can be either permanent or temporary in nature. In the United Nations (UN) context, monitoring mechanisms include expert committees and councils formed of states. An example of expert committees is offered by UN human rights treaty bodies, which monitor how states comply with the obligations that they have undertaken by becoming parties to international human rights covenants (Halme-Tuomisaari 2013). In the absence of an international human rights court operating under the UN with universal jurisdiction, treaty bodies are also the UN’s most authoritative human rights monitoring mechanisms. To date, there are ten UN treaty bodies, including the UN Human Rights Committee founded in 1976, which monitors how states comply with the International Covenant on Civil and Political Rights, and the Committee on Economic, Social and Cultural Rights, founded in 1985, which monitors state compliance with the International Covenant on Economic Social and Cultural Rights.

The treaty bodies are composed of 15–20 selected nationals of state parties to a given covenant and are not the same as courts. In their tasks, members act (or are supposed to act) as autonomous experts representing the viewpoint of a particular covenant and human rights, not the national interests of their host states. UN committees convene regularly, today most often in the Geneva offices of the UN Office for the High Commissioner of Human Rights. Sessions are also sometimes arranged at the UN headquarters in New York. These sessions include elements called “constructive dialogue” with state parties, referring to a formal exchange between the committee and state representatives, as well as informal sessions between committee members and non-governmental organizations (NGOs). Some committees also process individual petitions and issue documents known as “general comments”: these lengthy documents elaborate on the content of individual covenant paragraphs in light of committee case law. The most important element of treaty bodies is their cyclical nature: as is stipulated in their covenant-based mandates, treaty body hearings

are intended to be a recurring and repetitive, instead of an exceptional and unique practice, which jointly form an ongoing rights dialogue, ideally leading towards a gradual and permanent improvement in state and non-state human rights conduct, thus also leading to world improvement.

The Universal Periodic Review (UPR) is another UN monitoring mechanism that operates with a similar repetitive logic. It is a monitoring practice organized by the UN Human Rights Council, an international body composed of the member states of the UN. The UPR was launched in 2006 as the former UN Human Rights Commission was transformed into the current Council, accompanied by the hope that the new body would be rid of its predecessor's adversarial and politicized nature. The operational logic of the UPR is straightforward: each state takes turns in presenting the Council with its report in a highly formalized and organized "ritual" (Charlesworth and Larking 2014; Cowan and Billaud 2017). In its first decade, the UPR has been praised for its universal participation and high visibility, making it the preferred monitoring mechanism for the lobbying of many NGOs. Yet recent developments have posed challenges to the stated aims of the Human Rights Council to form a truly universal monitoring mechanism: echoing broader dynamics of world politics and the return of unilateralism instead of postwar multilateralism, the United States announced its withdrawal from the Council in 2018.

Other monitoring mechanisms include regional human rights expert bodies and diverse international courts, including the International Court of Justice and the International Criminal Court, both of which operate under the UN. Numerous regional mechanisms also exist: these include the European Court of Human Rights, the Inter-American Court of Human Rights, and the African Court on Human Rights and Peoples' Rights. The past few decades have also seen the proliferation of diverse kinds of other monitoring mechanisms of a more interim nature, aimed at addressing grave international humanitarian catastrophes and genocide, including the Commission on Truth and Reconciliation in Yugoslavia, the National Unity and Reconciliation Commission of Rwanda, and the Kosovo Truth and Reconciliation Commission (Kelly 2011; Wilson 2001, 2017).

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Moral Responsibility

Philosophers and theologians from all traditions have long been preoccupied with the issue of doing “the right thing” and apportioning praise or blame accordingly. For example, in the parable of the Good Samaritan, two passers-by ignore the suffering of a bludgeoned stranger but the third stops to assist and protect the stranger because he feels compelled to do so (Boltanski 2007). It is immediately clear to the reader where the moral obligation lies, and that it is connected with our common humanity. Or, to quote George Steiner, “men are accomplices to that which leaves them indifferent” (Steiner 1967: 150). In the context of humanitarian action, this moral imperative often clashes with messy or fast-moving realities on the ground. Thus, in Kantian terms, “ought implies can,” meaning that in a given situation the moral responsibility of the humanitarian is to alleviate suffering when it is realistically possible to do so (Slim, 2015: 179). In real life humanitarian situations, deliberations around the morality of acts of commission or omission are rarely so clear cut. A number of variables make such deliberations more difficult. These include considerations of distance, time, universality, and, of course, politics.

In principle, the quality of mercy is not strained—absolutes cannot be compromised—and distance should not matter, especially today when “anybody can know everything about anything” (Primo Levi in Boltanski 2007: 9). While it is true that more suffering is more visible than in any earlier phase of human history, distance still lengthens the causal chain of moral responsibility in practice, making the determination of the morality or otherwise of acts of omission more difficult (Boltanski 2007; Ginzburg 1994). The knowledge of