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The effectiveness of UNHCR's supervision

Assessing the UN refugee agency's supervisory task regarding states' compliance with the 1951 Refugee Convention and the 1967 Protocol

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Chapter 2

Effective supervision by international organizations

2.1 Introduction

An effective organization is one that meets its goals as determined by those that created and control the organization.¹ The subject of this study is UNHCR's supervisory task. In order to ascertain the effectiveness of this particular task, the concept of 'supervision' must be defined and understood first. Accordingly, the purpose of this chapter is to get an understanding of what constitutes supervision as executed by an international organization. On the basis of this understanding, the effectiveness of UNHCR's supervisory task will be analysed in the following chapters.² First, an assessment of the meaning of supervision will be made by determining its definition and goal. The most substantive part of this chapter draws a conceptual framework that will elaborate on both the structural and the procedural elements that are a precondition for effective supervision; an analysis that is intellectually borrowed from Shany's study on the effectiveness of international courts and the Human Rights Committee.³

2.2 The goal of supervision

The rise of relations and rules between states, accompanied by a growing interdependency of states, makes a great degree of cooperation both essential and

1 Yuval Shany, *Assessing the Effectiveness of International Courts* (International Courts and Tribunals Series 2014) 31–32.

2 As already mentioned in Chapter 1 of this study, UNHCR is not an international organization. Nevertheless, the general understanding of what constitutes effective supervision in the context of an international organization will be used as an ideal type. In the following chapters, this ideal type will be used to examine the difficulties and possibilities that UNHCR's structure and procedures pose.

3 Shany, *Assessing the Effectiveness of International Courts* (n 1); Yuval Shany, 'The Effectiveness of the Human Rights Committee and the Treaty Body Reform' in Marten Breuer and others (eds), *Der Staat im Recht: Festschrift für Eckart Klein zum 70. Geburtstag* (Duncker & Humblot 2013).

unavoidable.⁴ States need the assurance that other states comply with the treaty obligations they enter into.⁵ While this oversight is often conducted by states themselves⁶, the growing number of rules creates a need for supervision that goes beyond the capacity of individual states.⁷ International organizations are established to facilitate the cooperation between states, which can, amongst others, be done by overseeing the application of and adherence to the growing number of rules.⁸ These organizations are now the most important apparatuses for administering the complex interactions between states: they coordinate international actions, they can issue legally binding and non-legally binding resolutions, and they supervise compliance with international norms.⁹

2.2.1 Compliance

In this study, the goal that international organizations need to meet is the compliance of states with international law through effective supervision.¹⁰ Supervision in this respect is the act of observing behaviour and making certain that this behaviour is in accordance with previously established norms. Supervision by international organizations is the overseeing of states' acts to make sure that these are in compliance with the law that these organizations are

4 Tareq MR Chowdhury, *Legal Framework of International Supervision* (Akademitr 1986) 2.

5 *ibid.*

6 Guido den Dekker, *The Law of Arms Control: International Supervision and Enforcement* (Martinus Nijhoff Publishers 2001) 89–92.

7 Niels M Blokker and A Sam Muller, *Towards More Effective Supervision by International Organizations*, vol 1 (Martinus Nijhoff Publishers 1994) 275–276; Curtis A Bradley and Judith G Kelley, 'The Concept of International Delegation' (2008) 71 *Law and Contemporary Problems* 1, 1.

8 Wolfgang Friedmann, *The Changing Structure of International Law* (Columbia University Press 1974) 60–71. Friedmann calls international organizations 'international corporations': "the legal organisation of the predominant and characteristic feature of post-war international organisation: functional co-operation"; *ibid* 216.

9 Not all international organizations are charged with supervision of international law: this study only relates to those organizations that are mandated specifically by the states that established them to supervise their compliance behaviour with international law.

10 Merle states that the effectiveness of supervision depends on the determination of the goals of the organization. Marcel Merle, 'Le Contrôle Exercé Par Les Organisations Internationales Sur Les Activités Des États Membres' (1959) 5 *Annuaire français de droit international* 411, 430–431. See also Price in a much cited article on organizational effectiveness, who states that 'since effectiveness is defined with respect to the degree of goal-achievement, the definition of goal is crucial'. James L Price, 'The Study of Organizational Effectiveness' (1972) 13 *The Sociological Quarterly* 3, 3.

mandated to supervise.¹¹ Although there are different definitions of the term ‘supervision’ in the international context, most scholars agree on and indeed emphasize the importance of promoting compliance with international rules.¹² Therefore, the goal of international organizations that are charged with supervision is states’ compliance with the international laws that these organizations supervise. It follows that these organizations are effective when they meet this goal, so, when states indeed comply.¹³

Compliance in this context is understood as behaviour that is in conformity with obligations under the law previously entered into.¹⁴ The international legal order lacks, however, one clear and central legal enforcing authority to ensure compliance.¹⁵ Therefore, several theories have been developed in the field of international relations to explain the reasons why states comply with their international obligations. There are *grosso modo* two schools of thought: the normative or intrinsic approach of those who argue that compliance with international norms is based on the (moral) conviction that such is the right thing to do, and the instrumentalist, realist or extrinsic approach of those who argue

11 Volker Türk, ‘UNHCR’s Supervisory Responsibility’ (2002) 14 *Revue Quebécoise de droit international* 135, 139. According to UNHCR, the purpose of its supervision is to promote and ensure compliance with the relevant legal instruments. See UNHCR, ‘UNHCR Public Statement in Relation to Zuheyr Freyeh Halaf v. the Bulgarian State Agency for Refugees Pending before the Court of Justice of the European Union’ (2012) 10.

12 Blokker and Muller (n 7) 280–289; Henry G Schermers and Niels M Blokker, *International Institutional Law: Unity Within Diversity* (6th edn, Martinus Nijhoff Publishers 2018) 913; Merle (n 10) 412–413; Oran R Young, *Compliance & Public Authority: A Theory with International Applications* (Routledge 2013) 5, who defines supervision as ‘[...] any institution or set of institutions (formal or informal) established by a public authority [...] for the purpose of encouraging compliance with one or more behavioral prescriptions of a compliance system’.

13 Schermers and Blokker (n 12) 1020; Chowdhury (n 4) 98–99; see also Ignaz Seidl-Hohenveldern, ‘Failure of Controls in the Sixth International Tin Agreement’ in Niels M Blokker and A Sam Muller (eds), *Towards More Effective Supervision by International Organizations*, vol 1 (Martinus Nijhoff Publishers 1994) 255, stating that the supervision of compliance with international rules is even the *raison d’être* of any international organization.

14 Kal Raustalia and Anne-Marie Slaughter, ‘International Law, International Relations and Compliance’ in Walter Carlsnaes, Matthias Herdegen and Petr Lindseth (eds), *Handbook of International Relations* (SAGE 2002) 539.

15 In addition, international agreements that are in place are usually costly in the short term, which makes non-compliant behaviour more rewarding. Beth A Simmons, ‘Compliance with International Agreements’ (1998) 1 *Annual Review of Political Science* 75, 76; in: Catharina E Koops, ‘Contemplating Compliance. European Compliance Mechanisms in International Perspective’ (2014) 32.

that compliance is based on self-interest.¹⁶ The latter approach derives from rational choice theory, which states that non-compliance could lead to retaliation and escalation as well as damage to a state's reputation¹⁷; the motivation for certain behaviour in this approach is dictated rationally by external stimuli.

The debate on the rationales of states for compliance in international law has been extensively covered elsewhere.¹⁸ A perfunctory comprehension is necessary though to understand the role of international organizations in the supervision of compliance. For that purpose, it is submitted that states are motivated to comply with international law for a variety of reasons, including the legitimacy of the rules (including through a right interpretation)¹⁹ and norm internalization²⁰, reputational concerns²¹, and fear for the consequences of non-compliance, such as sanctions.²² These reasons encompass both the intrinsic and the extrinsic approach theories on compliance. Nonetheless, while motives may vary from state to state and over time, the result, as Louis Henkin famously (although not undisputedly) stated, is that “it is probably the case that almost all nations observe

16 For an explanation of both schools of thought, see Jana von Stein, ‘The Engines of Compliance’ in Jeffrey L Dunoff and Mark A Pollack (eds), *Interdisciplinary Perspectives on International Law and International Relations: The State of the Art* (Cambridge University Press 2003) 478–490; see also Andrew T Guzman, *How International Law Works: A Rational Choice Theory* (Oxford University Press 2008).

17 Jack L Goldsmith and Eric A Posner, *The Limits of International Law* (Oxford University Press 2005) 100–102; but see also Anne-Marie Slaughter, ‘International Law in a World of Liberal States’ (1995) 6 *Eur. j. Int'l L.* 503. Another relevant view is that of Andrew Guzman, who looks at international law as a contract that is based on “the three Rs of compliance: reciprocity, retaliation, and reputation [...]”. Guzman (n 16). According to Guzman, these three Rs all fall under ‘the biggest R’, namely rationalism.

18 For a more comprehensive overview of theories on compliance, see Markus Burgstaller, *Theories of Compliance with International Law* (Brill Academic Publishers 2005).

19 Thomas M Franck, *Fairness in International Law and Institutions* (Oxford University Press 1998). According to Franck, a rule is legitimate when the subjects it addresses believe that it has originated and is applied in conformity with right process. See also von Stein (n 16) 490.

20 Harold Hongju Koh, ‘Transnational Legal Process’ (1996) 75 *Neb. L. Rev.* 181. Koh argues that interaction between states and internalization of international norms in domestic legal systems are crucial for understanding compliance.

21 Robert O Keohane, ‘International Relations and International Law: Two Optics’ (1997) 38 *Harv. Int'l. LJ* 487. Keohane argues, for example, that if promises do not appear to be credible because of a questionable reputation, this may hamper international cooperation.

22 Not only legal factors are important for states to comply, but political or economic factors play a decisive role as well. Schermers and Blokker (n 12) 913–914.

almost all principles of international law and almost all of their obligations almost all of the time”.²³

Now, if states have different motives (or changing motives over time) to comply with international law, ideally all of these underlying motives must be triggered by the supervisory body to have the biggest possible impact, *i.e.* be as effective as possible. Preferably, a supervisory body must promote the legitimacy of law, and it must interpret and explain the law.²⁴ This speaks to the intrinsic motives of states, as they will comply with their international obligations when they have a clear understanding of the law.²⁵ A supervisory mechanism must also appeal to the reputation of states, and it must ideally include powers to enforce the rules in the event of non-compliance; two aspects that are important for states that act in accordance with the extrinsic theory on compliance.²⁶ This means that an international organization ideally has various resources at its disposal to trigger each of these motives.

In this study, these resources are divided in three phases or output. First, an interpretation phase, because an international organization must have a clear comprehension of the meaning of the law, and states must know the extent of the legal obligations that bind them.²⁷ Second, a monitoring phase which consists of the collection, processing and assessing of factual information on the implementation and application of treaty obligations by states in order to

23 Louis Henkin, *How Nations Behave* (Council on Foreign Relations 1979) 47. This is probably the most cited statement on compliance in international law. However, there is also criticism: the claim by Henkin is, for example, not supported by empirical evidence, nor is it easy to devise a statistical protocol that would produce evidence. See Abram Chayes and Antonia Handlès Chayes, ‘On Compliance’ in Beth A Simmons and Richard H Steinberg (eds), *International Law and International Relations* (Cambridge University Press 2006) 67.

24 Koops (n 15) 37.

25 As non-compliance by a state may be unintentional or based on informational or communicational issues. *ibid.*

26 Because for these states, their non-compliance is often based on a cost-benefit analysis in which the outcomes of non-compliant behaviour outweigh behaviour that is in conformity with the rules. *ibid.*

27 ‘Whoever applies a rule must first also interpret it [...]’, Schermers and Blokker (n 12) 871; Marjoleine Zieck, ‘Article 35 of the 1951 Convention / Article II of the 1967 Protocol: Co-Operation of the National Authorities with the United Nations = Coopération Des Autorités Nationales Avec Les Nations Unies’ in Andreas Zimmermann (ed), *The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol: a Commentary* (Oxford University Press 2011) 1478, 1495. According to Chowdhury, interpretation of international law is “an ubiquitous feature” of the tasks of international organizations: Chowdhury (n 4) 236.

determine whether they have acted in conformity with the norms.²⁸ This phase results in an evaluation or a public disclosure of the degree to which the states concerned adhere to the relevant international laws, and may affect their reputation. Third, when a situation of non-compliance persists, a response is warranted and even required, given that the goal of supervision is compliance with international law.²⁹ This response is part of the enforcement phase and should induce the state to complying with the law again. These three phases are the tasks that are carried out by the supervisory body. The following section will go deeper into the meaning of each of these tasks.

2.2.2 *The three phases of supervision*

The first phase of supervision is the interpretation of the norms that are the subject of supervision. Interpretation, or rule clarification, may increase a harmonized understanding of the norm and may reduce the risk of non-compliance due to inadvertence or an unclear understanding of the rules.³⁰ In addition, the legitimacy of an international law, which is an important motive for states to comply, benefits from an interpretation that is realized through a ‘right process’³¹: an interpretation method which follows the rules on interpretation of the Vienna Convention on the Law of Treaties³² reflects this right process. This process, as laid down in Articles 31 and 32 of the Vienna Convention, calls for a consideration of the text, context, and object and purpose of a treaty.³³ None of these may be given greater weight than the others: the ordinary meaning of text, context, and object and purpose must be viewed together and in good faith.³⁴ In addition, when the ordinary meaning is not clear, recourse may be had to supplementary means of interpretation (Article 32): the *travaux préparatoires* of the

28 Chowdhury (n 4) 8; Zieck (n 27) 1495.

29 Shany, ‘The Effectiveness of the Human Rights Committee and the Treaty Body Reform’ (n 3).

30 Jonas Tallberg, ‘Paths to Compliance: Enforcement, Management, and the European Union’ (2002) 56 *International Organization* 609, 632; in: Koops (n 15) 46.

31 Koh (n 20) 181.

32 Vienna Convention on the Law of Treaties 1969 (1155 UNTS 331) (adopted 23 May 1969, entry into force 27 January 1980) 1155 [1969 VCLT].

33 *ibid* Arts. 31-32.

34 Richard Gardiner, *Treaty Interpretation* (Oxford University Press 2008) 82. See also Special Rapporteur on the Law of Treaties, Third Report on the Law of Treaties, Int’l L. Comm’n, U.N. Doc. A/CN.4/167 (July 7, 1964), pp. 56-57 (by Sir Humphrey Waldock).

treaty and the circumstances of its conclusion.³⁵ The technique of interpretation that is prescribed in Articles 31 and 32 is thus considerably flexible.³⁶

Interpreting international law through the process as laid down in the Vienna Convention is for states an obligation.³⁷ It is, however, also an obligation for international organizations that are charged with the supervision of these laws, as these organizations are bound by international customary law, such as the norms codified in the Vienna Convention.³⁸ Sometimes this obligation is set out specifically in a treaty that stipulates the tasks of the supervisory body.³⁹ The European Court of Human Rights and the Inter-American Commission and Court have both confirmed that the Vienna Convention is also applicable to and binding on international human rights monitoring bodies.⁴⁰ For international organizations that prescribe states how to act it is also sensible to apply the Vienna Convention, as states themselves are bound by the Vienna Convention. It is,

35 Although the preparatory works of the treaty are only to be used when the interpretation according to Article 31 leaves the meaning ambiguous or obscure, or leads to a result that is manifestly absurd or unreasonable, the travaux may be quite relevant: “If thoroughly studied, it [research of preparatory work] permits the tracing of the development of a clause, in an illuminating chain of continuity, from the first instruction to the delegate or from the first note initiating the correspondence to the final provision as adopted in the treaty”. Hersch Lauterpacht, ‘Some Observations on Preparatory Work in the Interpretation of Treaties’ [1935] *Harvard Law Review* 549, 576. On the other hand, caution is necessary, as “one is always presented with the danger of interpreting a preparatory work instead of interpreting a treaty”: Judge Spender, *Guardianship of Infants*, ICJ Reports (1958) in: Alexander Orakhelashvili, ‘Restrictive Interpretation of Human Rights Treaties in the Recent Jurisprudence of the European Court of Human Rights’ (2003) 14 *European Journal of International Law* 529, n 31.

36 Report of the International Law Commission on the Work of Its 16th Session, U.N. GAOR, 19th Session, Supp. at 200, U.N. Doc. A/CN.4/173 (July 11, 1964), in: Kerstin Mechlem, ‘Treaty Bodies and the Interpretation of Human Rights’ (2009) 42 *Vand. J. Transnat’l L.* 905, n 23.

37 *ibid* 919–929.

38 Chowdhury (n 4) 236. There is also a Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, which was opened for signature in 1986. However, the treaty has not been ratified by the required 35 states yet, so it is not in force yet. See United Nations Treaty Collection for the latest update.

39 See for an explicit mentioning of the interpretation rules, Article 3.2 of the WTO Dispute Settlement Understanding (the Understanding on rules and procedures governing the settlement of disputes), Annex 2 WTO Agreement: “[...] to clarify the existing provisions of those agreements in accordance with customary rules of interpretation of public international law”.

40 See European Court of Human Rights, *Golder v. United Kingdom* (1975); Inter-American Commission on Human Rights, Cases no 9777 and 9718 (Argentina) (1988); Inter-American Court of Human Rights, *Mapiripán Massacre v. Colombia* (2005).

finally, also necessary that international supervisory bodies interpret in accordance with the Vienna Convention because the persuasiveness of their work will increase when they abide by the rules of this Convention.⁴¹ When convincing states to alter their implementation or application of a certain norm, the organization's authoritativeness will benefit from a legal reasoning that is based on an appropriate and accepted method of interpretation. A coherent interpretation following the customary norms as codified in the Vienna Convention is thus beneficial in two ways: it provides the international organization with the requisite authority, and it gives the interpreted rules sufficient legitimacy. Both will promote compliance.⁴²

The purpose of monitoring, the second phase of supervision, is to assess the extent of conformity with the law. This is necessarily conducted through a two-step process: gathering information about the behaviour of states regarding their treaty obligations, and assessing this information in light of the applicable law.⁴³ Gathering information is a weak link in the process, because the state is the principal provider of information regarding the implementation and application of the relevant norms.⁴⁴ Other information providers, such as NGOs and academics, are therefore increasingly important actors.⁴⁵

At some point in the process of monitoring, states are usually invited to comment on or discuss the findings.⁴⁶ Although the procedures for assessment of the information are as numerous as the number of international organizations, as a general rule, these assessments will result in an evaluation of the information found.⁴⁷ This evaluation can be either legally binding or non-legally binding: legally binding decisions are, for example, the decisions made by the Security Council under Chapter VII of the UN Charter. Most international organizations, however, can only issue non-legally binding statements, such as recommendations or observations.⁴⁸

41 Mechlem (n 36) 922.

42 Jutta Brunnée, 'Enforcement Mechanisms in International Law and International Environmental Law' in Ulrich Beyerlin, Peter-Tobias Stoll and Rüdiger Wolfrum (eds), *Ensuring Compliance with Multilateral Environmental Agreements: A Dialogue Between Practitioners and Academia* (Martinus Nijhoff Publishers 2006) 8.

43 Chowdhury (n 4) 181.

44 *ibid.*

45 Steve Charnovitz, 'Two Centuries of Participation: NGOs and International Governance' (1996) 18 *Michigan Journal of International Law* 183, 184–185.

46 Chowdhury (n 4) 7–8.

47 *ibid.* 8.

48 According to Klabbers, non-legally binding instruments may be just as effective (or ineffective) as legally binding ones. Jan Klabbers, *An Introduction to International Institutional Law* (Cambridge University Press 2009) 182 and note 16.

Despite the lack of legal force, making these evaluations public can be a forceful tool in itself.⁴⁹ It may even have a deterrent effect: the anticipation of a ‘bad’ evaluation may give cause for reputational concerns and can thus result in compliance with the law even before actual monitoring has taken place. In addition, the threat of possible sanctions when non-compliance continues, makes monitoring also a valuable means for inducing compliance.⁵⁰ Public scrutiny may, in addition, persuade states to change its domestic laws.⁵¹ In the case of the reports of the European Committee for the Prevention of Torture on Turkey, public exposure was actually used as leverage by representatives of the Turkish authorities to end the ill-treatment of detainees in police establishments.⁵² But mostly, states prefer a dialogue with the international organization behind closed doors, so that they will not have to face public ‘naming and shaming’. Whether or not the supervisory body makes its findings public, every assessment benefits from a high quality of both the information gathered and the interpretation of the laws concerned.

The third phase of supervision is enforcement. Enforcement by international organizations is considered ‘chaotic’ due to the horizontal structure of international law: there are no essential coercive mechanisms or institutions above the state level.⁵³ Enforcement is thus necessarily organized in a different manner than in the domestic legal system: enforcement mechanisms are decentralized procedures based on, amongst others, actions of states themselves

49 Chayes and Handles Chayes (n 23) 189.

50 Blokker and Muller (n 7) 283.

51 Whether this strategy is in fact often successful is questionable: in the specific case of human rights treaties, after the assessment of the conformity with the legal rules is made public, some states do indeed start to comply with their treaty obligations, while other states ignore the assessment or even intensify the violations. Emilie M Hafner-Burton, ‘Sticks and Stones: Naming and Shaming the Human Rights Enforcement Problem’ (2008) 62 *International Organization* 689.

52 ‘The CPT felt it necessary, on this occasion, to depart from the “general philosophy” underlying the Convention, according to which, for an effective protection of individuals from torture or other kinds of ill-treatment, more can be obtained by discreet contacts than by public exposure or denunciations. [...] The resort to a public statement must be explained in the light of the conclusions reached by the CPT. Public exposure could probably represent an extra tool in the hands of those sectors of the Turkish public opinion and authorities who really want these practices to come to an end.’ Antonio Tanca, ‘Public Statement on Turkey by the European Committee for the Prevention of Torture, The’ (1993) 4 *Eur. J. Int’l L.* 115, 116.

53 Alexander Thompson, ‘Coercive Enforcement of International Law’ in Jeffrey L Dunoff and Mark A Pollack (eds), *Interdisciplinary Perspectives on International Law and International Relations: The State of the Art* (Cambridge University Press 2013) 504.

(through the law on state responsibility⁵⁴) or through international organizations that have the explicit consent of states to enforce international legal norms.⁵⁵ In addition, this phase only commences when during the monitoring phase it has become clear that the state concerned has not acted, or will not act, in conformity with the applicable laws.⁵⁶

After establishing a situation of non-compliance, a response is warranted. This response can take on a variety of forms, depending on the legal and political mandate of the organization concerned.⁵⁷ Non-complying states are often compelled to act in conformity with international norms through ‘soft enforcement’⁵⁸, such as persuasion, publicity, or debates in a formal setting.⁵⁹ For example, international organizations can encourage states to act (again) in the kind of norm-abiding behaviour that is prescribed by the international rule at hand through “persistent and regular confrontation on the basis of discussion in

54 Draft Articles on Responsibility of States for International Wrongful Acts, in Report of the International Law Commission on the Work of Its Fifty-third Session, UN GAOR, 56th Sess. No. 10, at 43, UN Doc. A/56/10 (2001) (available at <http://www.un.org/law/ilc>). See also David D Caron, ‘The ILC Articles on State Responsibility: The Paradoxical Relationship between Form and Authority’ [2002] *American Journal of International Law* 857, 867; International Law Commission, ‘Draft Articles on Responsibility of States for Internationally Wrongful Acts’ (2001) UN Doc. A/56/10.

55 See for the enforcement of international law by individual states: Thompson (n 53) 502–523.

56 Antonio Cassese, ‘The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment Comes of Age’ in Niels M Blokker and Sam Muller (eds), *Towards More Effective Supervision by International Organizations* (Martinus Nijhoff Publishers 1994) 125.

57 Brunnée (n 42) 6.

58 Jan Klabbers and Asa Wallendahl, *Research Handbook on the Law of International Organizations* (Edward Elgar Publishing 2011) 490. ‘Hard enforcement’ of international law, on the other hand, is much less commonly imposed at the international plane. It is mainly the United Nations Security Council, acting under Chapter VII of the UN Charter. Under these provisions, the SC may impose mandatory sanctions (which is what distinguishes this mechanism from those under ‘soft enforcement’), such as economic sanctions, diplomatic sanctions or military sanctions. Frederic L Kirgis, ‘Enforcing International Law’ (*American Society of International Law - insights*, 22 January 1996) <<https://www.asil.org/insights/volume/1/issue/1/enforcing-international-law>> accessed 1 July 2020.

59 For example, the discussions in the Security Council are such ‘formal setting’ in which non-compliant behaviour from member states is discussed. See, e.g., the discussion on the violence perpetrated against citizens in South Sudan by the authorities: Security Council, 8310th meeting, S/PV.8310 (13 July 2018).

an institutionalised setting”.⁶⁰ These discussions offer both the international organization and other states the possibility to articulate their views on the matter concerned. This type of soft enforcement has the advantage of both normative and realist motives for compliance: when states regard adherence to the norm as ‘the right thing to do’, a discussion with other states may gently guide them towards compliance, whereas a fierce discussion on non-compliance, resulting in naming and shaming, may be persuasive as well.⁶¹ Even if the international organization has no formal legal or political mechanisms to react to the breach, it is still important to recognize that an obligation has been violated, as such a decision may be the basis for legal action on the national plane or for further political or legal pressure by other actors, such as other states, for example through the International Court of Justice.⁶²

2.2.3 *The mandate providers*

How effective an international organization is in implementing the three phases of supervision depends to a great extent on the mandate it was given by those who founded the organization and formulated its goals. Now, before exploring what makes supervision effective, it is first necessary to identify which stakeholders have formulated these goals, as their choices and expectations will inform the analysis.⁶³ International organizations have various stakeholders (*i.e.* actors that affect or are affected by the organizations’ actions and policies), including states, the international community at large, other international (non-) governmental organizations, the general public, and specific target audiences. In Shany’s book on the effectiveness of international courts and his article on the Human Rights Committee, the stakeholder he selected as the principle constituent are the mandate providers.⁶⁴ This is mainly because they have created the organization, can alter its mandate and its goals, and have a particular stake in the work of the organization, as duty bearers under the relevant treaties.⁶⁵ In addition, the

60 Chowdhury (n 4) 259. Again, the discussions taking place in the Security Council meetings are a good example of such institutionalised setting. .

61 von Stein (n 16) 481–482.

62 It is a moot point whether such an official recognition of a breached violation is either part of the monitoring or the enforcement phase. Schermers and Blokker (n 12) 946–947.

63 Yuval Shany, ‘Assessing the Effectiveness of International Courts: A Goal-Based Approach’ (2012) 106 *American Journal of International Law* 225, 31; Shany, ‘The Effectiveness of the Human Rights Committee and the Treaty Body Reform’ (n 3) 5.

64 Shany, ‘Assessing the Effectiveness of International Courts’ (n 63) 32; Shany, ‘The Effectiveness of the Human Rights Committee and the Treaty Body Reform’ (n 3) 5.

65 Shany, ‘The Effectiveness of the Human Rights Committee and the Treaty Body Reform’ (n 3) 5–6.

mandate providers can determine to terminate the activities of the organization in the case of non-effective goal attainment.⁶⁶

States are often (but not always⁶⁷) the mandate providers of an international organization: they have jointly created the organization by way of a treaty, and they continue to control and fund the organization.⁶⁸ The next section will explore the mechanisms that are provided by states in order for the organization⁶⁹ to carry out its supervisory task effectively, after which the procedural elements of effective supervision will be discussed, *i.e.* how the organization can fully realize its supervisory task through procedures of a high quality within this given structure.

2.3 The structural elements of supervision

International organizations do not have an inherent power of supervising state compliance with international law; such power would undermine state sovereignty. A supervisory mechanism must thus be provided for by states themselves (the mandate providers) that is granting international organizations the competence to authoritatively interpret the law, monitor state behaviour, and enforce compliance with the law. Shany, analysing the effectiveness of international courts, has identified seven elements of such a supervisory mechanism.⁷⁰ This study builds on these elements and makes some alterations, based on other literature⁷¹ and a different theoretical framework in which a distinction is made between structural and procedural elements; a distinction that is not made by Shany. The next section identifies four structural elements⁷²: a clear and substantial legal basis for the supervisory task, sufficient resources for the exercise of the supervisory task, legal and financial independence from the member states, and adequate oversight by the mandate providers. Why these four

66 Shany, 'Assessing the Effectiveness of International Courts' (n 63) 32–33.

67 UNHCR's mandate providers are the General Assembly, the UN Economic and Social Council and the Executive Committee of the High Commissioner's Programme, which will be further explained and analysed in Chapter 4.

68 Shany, *Assessing the Effectiveness of International Courts* (n 1) 32. See also Schermers and Blokker (n 12) 40–54. On the other hand, Klabbers opens his textbook on institutional law with a suggestive quote of Mary Shelly's *Frankenstein*: 'You are my creator, but I am your master; obey!' Klabbers, *An Introduction to International Institutional Law* (n 48).

69 As far as the organization has been given supervisory tasks. This study focuses thus only on those kind of international organizations.

70 Shany, *Assessing the Effectiveness of International Courts* (n 1) 58–59.

71 See, for example, Cassese (n 56); Schermers and Blokker (n 12); Navanethem Pillay, 'Strengthening the United Nations Human Rights System' (2012) UN Doc. A/66/860.

72 The section that follows will discuss three procedural elements.

elements are chosen, and how they differ from Shany's selection, is explained and justified in the following sections.

2.3.1 *A clear and substantial legal basis*⁷³

The ability of an international organization to effectively attain the goal of supervision, *i.e.* the compliance of states with international law, is decisively influenced by its competences: its legal powers to interpret, monitor and enforce the relevant law. States are the subjects that create, based on their own sovereignty, international organizations by way of treaties.⁷⁴ These treaties contain the competencies of these organizations: its mandate. The presumption is that the clearer and more substantial this mandate is, and thus the legal basis for the supervisory authority of the organization, the more effectively the organization can execute its supervisory task.⁷⁵ Giving an organization a mandate to supervise the compliance behaviour of states is a deliberate act. When states have made this mandate clear and substantial, meaning that it is formulated in unambiguous terms (*i.e.* clear) and broad enough to give the organization meaningful powers to implement the supervisory task (*i.e.* substantial), they have explicitly provided the international organization with the necessary authority and autonomy. Such a mandate makes it harder for states to subsequently set the organization's supervisory output aside and thus contributes to more effective supervision. Moreover, the credibility of states' commitments towards each other is strengthened when they have pledged to submit themselves to external scrutiny through obligations that are precise and that delegate meaningful authority to the international organization, which is important for states that are motivated by normative or intrinsic reasons to comply with international law.⁷⁶

A supervisory mandate that is formulated in a clear manner does not only commit member states⁷⁷ to this mandate, but also gives direction and legitimacy

73 Shany also acknowledges that the scope and nature of the legal powers of both international courts and the Human Rights Committee determine whether either is effective in ascertaining its goals. Shany, *Assessing the Effectiveness of International Courts* (n 1) 58; Shany, 'The Effectiveness of the Human Rights Committee and the Treaty Body Reform' (n 3) 12.

74 Friedmann (n 8) 216.

75 Blokker and Muller (n 7) 5.

76 Kenneth W Abbott and Duncan Snidal, 'Hard and Soft Law in International Governance' (2000) 54 *International organization* 421, 426.

77 As UNHCR was not set up as an international organization, it does not have member states. The relevance of this difference will be explained in Chapter 4.

to the actions of the organization.⁷⁸ The more precise a mandate is formulated, the more restrained an organization will be; such a mandate will leave little room for interpretation by both the organization and the member states.⁷⁹ A vague or unclear mandate, on the other hand, might give the organization more leeway to interpret its tasks in a broader manner than originally envisioned by the states. This could be beneficial for the organization in the short term, but it might result in states protesting against this subtle bending and twisting of the mandate to include powers that states did not envision and do not agree with.⁸⁰ Therefore, if the mandate is not formulated in a clear and precise manner, the organization needs make sure that the manner in which it interprets its mandate is in line with what the mandate providers have in mind for this organization.

The supervisory mandate should not only be clear, but also substantial, meaning that the organization should have a broad array of powers at its disposal for supervising the compliance of states with their international obligations. Power in this sense is understood as the ability to influence behaviour. This ability is manifested in control mechanisms which must address the different motives of states to comply with their international obligations, as has been observed in previous sections of this chapter. Accordingly, an organization should ideally have various means that talk to these motives for executing all three phases of supervision: interpreting the norms, monitoring compliance (including through gathering information) and enforcing the rules. The lack of (some of these)

78 Jean d'Aspremont and Eric De Brabandere, 'The Complementary Faces of Legitimacy in International Law: The Legitimacy of Origin and the Legitimacy of Exercise' (2010) 34 *Fordham Int'l LJ* 190; see also Thomas M Franck, 'Legitimacy in the International System' (1988) 82 *American Journal of International Law* 705, 752. In the next section, on procedural elements, the difference between this 'legitimacy of origin' is juxtaposed against the 'legitimacy of exercise', which in this study is qualified as a procedural element. See 2.4.1.

79 Bradley and Kelley (n 7) 21.

80 A good example of such protesting of states was after the use of *amicus curiae* briefs (of NGOs) in proceedings of the Appellate Body and panels of the Dispute Settlement Body of the World Trade Organization. During the Uruguay Round, proposals for the use of (unsolicited) *amicus curiae* in the WTO dispute settlement mechanism were explicitly rejected. Nevertheless, the panels and the Appellate Body did start to take into consideration several *amicus curiae* in a few proceedings, a process that was subsequently met with wide condemnation from most of the WTO's members. The effect of this strong reaction was immediately apparent: both the panels and the Appellate Body rejected all of the unsolicited *amicus curiae* briefs in their cases. Lance Bartholomeusz, 'The *Amicus Curiae* before International Courts and Tribunals' (2005) 5 *Non-State Actors and International Law* 209, 255, 258–259, 262–264; Debra P Steger, '*Amicus Curiae*: Participant or Friend? The WTO and NAFTA Experience' (Social Science Research Network 2011) SSRN Scholarly Paper ID 1949862 439.

resources will affect the effectiveness of the organization's supervision. For example, an organization that can issue binding judgments or resolutions on state behaviour has a more substantial position than an organization that can only issue non-binding recommendations.

2.3.2 *Sufficient resources*

Supervision of state compliance is a time and money consuming process. It is therefore important that an international organization has sufficient financial, personnel and information resources at its disposal to perform its tasks in an effective manner. This has been widely acknowledged in the literature on effective supervisory mechanisms⁸¹, which is why it has been selected as one of the four structural elements in this study. Shany has also selected 'resources' as a structural element; he divides this element in two parts, one being 'personnel capacity' and the other 'budget, facilities, and other tangible resources'.⁸² There is no specific need to separate these two parts, so in this study, the two are united in one element.

As a case in point, some human rights treaties have a provision stating that the necessary staff and facilities for the effective performance of the functions of that treaties' monitoring body shall be provided for by the UN.⁸³ Such a provision is, however, not a guarantee for success: the human rights treaty bodies do not have sufficient financial resources available to them to support their monitoring work, despite pledges by member states to supply sufficient resources and actual

81 Technical Committee of the International Organization of Security Commissions, 'Principles Regarding Cross-Border Supervisory Cooperation - Final Report' (2010) 3, 13; International Monetary Fund, 'Technical Note - Oversight, Supervision, and Risk Management of Financial Market Infrastructures' (2014) IMF Country Report No. 14/270; Pillay (n 71) 27–29; Shany, 'The Effectiveness of the Human Rights Committee and the Treaty Body Reform' (n 3); Blokker and Muller (n 7) 301, stating that 'a sound financial basis is a *conditio sine qua non* for the effective functioning of any organization'. Philip Alston and James Crawford, *The Future of UN Human Rights Treaty Monitoring* (Cambridge University Press 2000) 461–462; Jasper Krommendijk, *The Domestic Impact and Effectiveness of the Process of State Reporting under UN Human Rights Treaties in the Netherlands, New Zealand and Finland. Paper- Pushing or Policy Prompting?* (Intersentia 2014).

82 Shany, *Assessing the Effectiveness of International Courts* (n 1) 59.

83 See, for example, International Covenant on Civil and Political Rights (adopted 19 December 1966, entry into force 23 March 1976, 999 UNTS 171 [ICCPR]), Art. 36; Convention Against Torture (adopted 10 December 1984, entry into force 26 June 1987, 1465 UNTS 85 [CAT]), Art. 18(3); Convention on the Elimination of Discrimination Against Women (adopted 18 December 1979, entry into force 3 September 1981, 1249 UNTS 13 [CEDAW]), Art. 17(9).

contributions following these pledges.⁸⁴ This lack in funding is one of the causes for the serious backlogs in the work of these bodies, especially with regard to the interpretation and monitoring phase.⁸⁵ A lack of sufficient financial support may thus seriously impede the performance of the supervisory task of an international organization.

In addition, supervision requires a large degree of technical expertise. The effective functioning of an international organization therefore also calls for adequate staff and information resources.⁸⁶ As for staff, the organization must either have ‘in-house’ expertise or have readily access to this expertise, depending on the mode of supervision.⁸⁷ However, if there are no provisions in the constituent document of a monitoring body on adequate staff for the supervisory task, this becomes a procedural element: it is then left to the organization itself to adopt and implement an adequate personnel policy. Regarding information resources, supervisory organizations need to have access to all the relevant information on norm compliance by states, especially for the monitoring phase. Traditionally, organizations are therefore dependent on two methods: (periodic) reports of states about their own conduct, or complaints of states about alleged non-compliance of other states.⁸⁸

Both methods have significant flaws: first, states often do not tend to be very critical about their own conduct, which results in reports that are inaccurate or

84 This has been a problem for more than a decade now. See Alston and Crawford (n 81) 461–479; Amnesty International, ‘United Nations: Proposals to Strengthen the Human Rights Treaty Bodies’ (2003). See for a more recent study on the work of the treaty bodies and the lack of sufficient (financial) resources: Christen Broecker and Michael O’Flaherty, ‘The Outcome of the General Assembly’s Treaty Body Strengthening Process: An Important Milestone on a Longer Journey’ (Universal Rights Group 2014).

85 Alston and Crawford (n 81) 461–479; Third Committee of General Assembly, ‘Human Rights Treaty Bodies Need Resources, Compliance by States to Effectively Fulfil Their Mandates, Briefers Tell Third Committee in Interactive Dialogue’ (2016) GA/SHC/4172 <<https://www.un.org/press/en/2016/gashc4172.doc.htm>> accessed 1 July 2020. ‘[...] the overall backlog of the treaty body system has increased rather than decreased [which is due to] the sharp increase in the number of individual communications, although a few treaty bodies have also registered increases in the backlog of State party reports.’ Secretary General, ‘Status of the Human Rights Treaty Body System - Report of the Secretary-General’ (2016) A/71/118.

86 Commission on Human Rights, E/CN.4/RES/2002/85 Effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights para 5; Alston and Crawford (n 81) 461.

87 When the organization supervises the compliance of states with their international obligations continuously, it should have in-house experts. Organizations that periodically review the compliance of states are more cost-efficient when they recruit experts on a less permanent basis.

88 Blokker and Muller (n 7) 281; Schermers and Blokker (n 12) 918–923.

that soft-peddle conduct that is not in accordance with international obligations. And second, for strategic reasons, states are often hesitant to criticize other states.⁸⁹ A good example is the reluctance of states to make use of the inter-state complaint procedure, such as the one before the European Court of Human Rights (ECHR) and the human rights treaty bodies.⁹⁰ Therefore, international organizations should preferably have independent means to access information about states' compliance.⁹¹ For example, the individual complaint mechanism of the ECHR has been responsible for an expansive amount of jurisprudence.⁹² Such individual complaints are an important means for international organizations to gain access to information, but member states must always first grant organizations the possibility to receive such complaints.⁹³

Increasingly, international organizations have been given the opportunity to monitor states' compliance themselves as well, expanding the two more traditional methods of monitoring with a third more independent one. A good example are the country visits that are the core work of the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).⁹⁴ The CPT is not dependent on reports or invites of states; it has the right to visit any place within the 41 states that have ratified the European Torture Convention that it deems necessary for the fulfilment of its tasks.⁹⁵ The CPT is also not dependent on testimonies from NGOs or other stakeholders. This results in its reports being regarded as having a high standard; reports that cannot easily be dismissed by the states whose detention facilities the

89 Blokker and Muller (n 7) 281–285.

90 Kevin Boyle, 'European Experience: The European Convention on Human Rights, The' (2009) 40 *Victoria University of Wellington Law Review* 167, 169. There has been 24 cases lodged by states before the ECHR through the inter-state application procedure, 13 of which were 'follow-up' applications between the same states. See <https://www.echr.coe.int/Documents/InterState_applications_ENG.pdf> assessed 1 July 2020. The inter-state compliant procedures before the human rights treaty bodies have, however, never been used.

91 These independent means are sometimes referred to as 'direct supervision': "[...] the method of direct supervision by the organization has proved to be useful to enable organizations to supervise rule compliance by states more effectively." Blokker and Muller (n 7) 288; Schermers and Blokker (n 12) 923–939.

92 Boyle (n 90) 169.

93 Schermers and Blokker (n 12) 939–946.

94 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment [European Torture Convention] 1987 (ETS 126) Arts. 1-2.

95 Rodney Morgan and Malcolm Evans, *Combating Torture in Europe: The Work and Standards of the European Committee for the Prevention of Torture (CPT)* (Council of Europe 2001) 47.

CPT has inspected.⁹⁶ Country visits are also a possibility under the human rights monitoring bodies, where special rapporteurs can perform fact-finding missions on topics related to their mandate.⁹⁷ These missions do need to be approved through a formal invitation by the state in question though, so access remains an issue.⁹⁸

2.3.3 Independence

International organizations are dependent on the states that created them. This dependency does not stop after the coming into existence of the organizations that are charged with supervision: for the supervision of international law, cooperation with states remains necessary. However, in order to perform their task of supervising norm compliance effectively, international organizations are in need of as much independence as possible.⁹⁹ Independence in this study is defined as the authority to act with a certain degree of autonomy and neutrality, both financially and legally.¹⁰⁰ Such independence is required to maintain the integrity of the role of supervisor.¹⁰¹ Undermining the independence of an international organization will reduce its effectiveness in achieving its goals.¹⁰² Independence is both a structural and procedural element. Independence as a structural element refers to the extent to which safeguards are set up by the mandate providers to ensure independence, whereas independence as a procedural element refers to one of the means to ensure accountability (for example, by working with civil servants that do not hold political functions in a member state). This latter form of independence will be discussed in the next section.

96 *ibid* 47,166.

97 Alston and Crawford (n 81) 145 et seqq.

98 As of September 2019, 171 member states of the United Nations have been visited by one or more special rapporteurs. A total of 16 states have received a request from a special rapporteur to be visited, but have not (yet) accepted this request. These countries include Djibouti, Eritrea, and Nauru. See <<https://www.ohchr.org/EN/HRBodies/SP/Pages/Statenotyetvisited.aspx>> assessed 1 July 2020.

99 This is different for organizations that have other functions. For example, IOM is designed to mainly provide services to states (on humane and orderly migration), without having any supervisory powers. As such, it does not need as much independence as an organization that is supervising compliant behaviour. Jan Klabbers, 'On the Market for Migration: The Curious Functionalism of the International Organization for Migration' (Law and Justice Across Borders, University of Amsterdam, Amsterdam, 4 December 2017).

100 Kenneth W Abbott and Duncan Snidal, 'Why States Act through Formal International Organizations' (1998) 42 *Journal of conflict resolution* 3, 5.

101 Blokker and Muller (n 7) 281.

102 Abbott and Snidal (n 100) 16.

Most safeguards are of a budgetary nature. For example, states can influence the actions or direction of an international organization when they provide so-called ‘earmarked contributions’: conditionalities attached to voluntary contributions.¹⁰³ Earmarking leads to less flexible budgets and can create an imbalance in overall funding, with some activities - which are less critical of states’ behaviour - to be generously funded while other activities, such as the supervisory task, may experience funding shortfalls.¹⁰⁴ Many UN agencies, such as OCHA, UNICEF, UNHCR, FAO, WHO and UNDP, suffer from such conditionalities, which might even undermine collective decision-making and the governance of the organizations.¹⁰⁵

States can also more easily control an international organization when resources are provided on a voluntary basis and, as a result, can be withheld. Withholding of funding or other resources, such as personnel, may be used by a state to put pressure on an organization for performing its task in a certain manner. Other disadvantages of voluntary or earmarked contributions are the ‘disuniting effect’ on the organization¹⁰⁶, the dependence on wealthy states and the instability of these contributions.¹⁰⁷ Therefore, financial independence is more secure when dues are mandatory and predetermined, or when an organization has independent sources of funding. Mandatory dues also make it easier to penalize a member state for not providing the necessary funds; for example, members of the United Nations may lose their right to vote in the General Assembly when they are lagging behind in their contribution.¹⁰⁸ Nevertheless, such rules are not a guarantee for financial independence. A prime example of a

103 Muhammed Yussuf, Juan Luis Larrabure and Cihan Terzi, ‘Voluntary Contributions in United Nations System Organizations. Impact on Programme Delivery and Resource Mobilization Strategies’ (Joint Inspection Unit 2007) JIU/REP/2007/1 iii.

104 *ibid* 13. Earmarked contributions have other disadvantages as well, such as fragmentation in programme delivery and relatively high administrative costs. *ibid* 16–17.

105 Yussuf, Larrabure and Terzi (n 103) 13; Vera Z Eichenauer and Bernhard Reinsberg, ‘What Determines Earmarked Funding to International Development Organizations? Evidence from the New Multi-Bi Aid Data’ (2017) 12 *The Review of International Organizations* 171; Erin R Graham, ‘Follow the Money: How Trends in Financing Are Changing Governance at International Organizations’ (2017) 8 *Global Policy* 15. See also Klabbers, who mentioned that in some organizations, earmarked voluntary contributions are used for bilateral projects, with these organization functioning as ‘clearing houses’. Klabbers, ‘On the Market for Migration: The Curious Functionalism of the International Organization for Migration’ (n 99).

106 ‘Disuniting’ effect indicates that there is not one common responsibility for activities. Schermers and Blokker (n 12) 692.

107 Mancur Olson, ‘Increasing the Incentives for International Cooperation’ (1971) 25 *International Organization* 866, 868–871.

108 UN Charter, Art. 19.

state which was in arrears but remained influential nonetheless is the United States, which withheld its financial dues to the United Nations in the 1990s because it considered the organization to be “inefficient, wasteful and often contrary to American interests”.¹⁰⁹

Another safeguard for international organization is its legal independence, referring to the fact that states create an international organization on the basis of an international agreement, establishing an organization with a separate legal personality.¹¹⁰ The fact that international organizations are separate legal persons from their constituencies was first expressed by the ICJ in 1949.¹¹¹ An international agreement obliges states to accept that the organization can perform acts that traditionally were only performed by states, giving it authority and autonomy to act independently.¹¹²

Independent organs are also a safeguard to make sure that organizations can act more independently from its member states. According to Schermers and Blokker, one of the three elements that defines an international organization is the requirement of having at least one organ with ‘a will of its own’.¹¹³ Secretariats in particular have become central organs in all international organizations - the manner in which they can act speaks volumes on the extent of their independency.¹¹⁴ Although initially secretariats have been established to perform merely administrative task, their functions have increased to include those that require more discretionary powers, such as proposing the budget, representing

109 The US continued to make us of its voting powers though, both in the General Assembly and in the Security Council. Richard Bernstein, ‘Why Does the United States Refuse to Pay Its U.N. Bill?’ *The New York Times* (7 August 1988); Bradley and Kelley (n 7) 24.

110 Schermers and Blokker (n 12) 41–42. See also the jurisprudence of the International Court of Justice, which delivered in 1949 its Reparations opinion, in which it recognized the separate legal personality of the United Nations. With this decision, the Court had, for the first time, acknowledged that there are legal entities on the international plane besides states. The Court established that international legal personality depends on the *raison d’être* and the *modus operandi* of the organization, and indeed the United Nations met these requirements. *Reparations for Injuries Suffered in the Service of the United Nations* [1949] International Court of Justice 174 (advisory opinion).

111 *Reparations for Injuries Suffered in the Service of the United Nations* (n 110).

112 Schermers and Blokker (n 12) 1026–1027; Michael Barnett and Martha Finnemore, *Rules for the World: International Organizations in Global Politics* (Cornell University Press 2004) 22.

113 Schermers and Blokker (n 12) 49–50.

114 CF Amerasinghe, *Principles of the Institutional Law of International Organizations* (Cambridge University Press 2005) 154–159; Jan Klabbbers, ‘Unity, Diversity, Accountability: The Ambivalent Concept of International Organisation’ (2013) 14 *Melbourne Journal of International Law* 149, 156.

the organization and making referrals to other (policy-making) organs of the organization.¹¹⁵

2.3.4 Adequate oversight

When an international organization has been created and is carrying out its task of supervising states' compliance, there also need to be internal mechanisms for guaranteeing that it is carrying out this task in the manner as was envisioned by its mandate providers. Supervisory organizations need to be supervised themselves as well. Some scholars label overseeing the compliance of an international organization with its mandated tasks as 'internal supervision'¹¹⁶: *quis custodiet ipsos custodios?*¹¹⁷ The effectiveness of the supervisory task is affected by the manner in which this oversight mechanism functions: the institutional checks and balances and the way in which states can formally - *i.e.* not financially - give direction to the organization regarding its supervisory tasks. Evidently, a clear legal mandate contributes to the adequacy of this oversight: when the goal of the organization is phrased in very general or even contradictory terms, it becomes more difficult for states to oversee the application of these provisions in a consistent manner.¹¹⁸

Adequate oversight is not mentioned by Shany as a structural element of either international courts or the HRC. This element is, nevertheless, selected as part of the conceptual framework because the growing independence and expertise of international organizations has led to a decline in control by the mandate providers of these organizations.¹¹⁹ Since international organizations are (usually) created by states from which they derive their mandate, these mandate providers should have a say in the manner in which these organizations execute their mandate. In addition, the mandate providers should be able to intervene when the organization oversteps the boundaries of its authority as granted by the

115 Amerasinghe (n 114) 155–156.

116 Schermers and Blokker (n 12) 912–913; Blokker and Muller (n 7) 303–309.

117 Who supervises the supervisors?

118 Blokker and Muller (n 7) 305 and note 82, mentioning the contradiction in the UN Charter between the protection of human rights on the one hand and the principle of territorial integrity on the other hand.

119 Schermers and Blokker (n 12) 1263–1267. See also Klabbers, who points out that retaining control on organizations such as WPF and UNHCR - both established by international organizations themselves - may be difficult as they operate largely independently. Klabbers, 'Unity, Diversity, Accountability' (n 114) 157. But see Krisch and Kingsbury, who point out that 'effective review of the rules and decisions these bodies make' is essential. Nico Krisch and Benedict Kingsbury, 'Introduction: Global Governance and Global Administrative Law in the International Legal Order' (2006) 17 *European Journal of International Law* 1, 4–5.

mandate providers; *i.e.* when the organization transgresses its powers.¹²⁰ Oversight mechanisms can, however, conflict with the independence of the organization when oversight results in influencing the autonomy and neutrality of the organization¹²¹; as such, oversight must be formally secured, for example in the constituent document of the organization. In addition, internal oversight must be transparent for all states as well as other (external) actors; otherwise, powerful states can exert too much influence.¹²²

2.4 The procedural elements of supervision

The methodological choice in determining the three elements mentioned above has been done by identifying which elements in the literature on effectiveness of international organizations are mentioned as a starting point for comprehending how supervisory procedures can affect goal attainment.¹²³

There are three elements that, according to Shany, are structural, but which are, upon closer examination, procedural aspects of supervision because they are dependent on the quality of the effort put in place by the organization itself. These three elements (usage potential, reputation and relations with other institutions¹²⁴) are not used as such as they are rather opaque or difficult to ascertain as such (such as ‘reputation’), but they are used nevertheless as much as possible by incorporating them in the procedural elements of this study. ‘Usage potential’ (the extent to which the organization is used for the purpose as intended by the mandate providers) is part of operationality, ‘reputation’ is determined by the organization’s political independence, impartiality, and legitimacy, and ‘relations with other institutions’ in this study is defined as ‘participation’ of and ‘access’ to stakeholders, as the relevant relations of an organization go beyond other institutions; they also include NGOs and individuals. In addition, Shany also mentions three procedural elements (procedural justice, interpersonal justice, and

120 Bradley and Kelley (n 7) 3; d’Aspremont and De Brabandere (n 78) 217–218.

121 Abbott and Snidal (n 100) 5.

122 *ibid* 7.

123 Shany, *Assessing the Effectiveness of International Courts* (n 1) 61; see also Katie O’Byrne, ‘Is There a Need for Better Supervision of the Refugee Convention?’ (2013) 26 *Journal of Refugee Studies* 330. In his study on the effectiveness of international courts, Shany determines his three procedural elements or indicators by referring to two social science articles on evaluating the quality of the judicial process. Some of the elements he mentions, such as transparency, participation and consistency, are also relevant for the examination of the effectiveness of international organizations.

124 Shany, *Assessing the Effectiveness of International Courts* (n 1) 59.

informational justice¹²⁵), but these are very specific for the judicial process and can therefore be disregarded. For reasons not mentioned, he does not refer to procedural elements in his study of the Human Rights Committee.

2.4.1 Legitimacy

The legitimacy of domestic governments is a central topic in political theory: how can a government have authority over its subjects when men are free and rational individuals?¹²⁶ On the international plane, legitimacy is even more problematic, as the sovereignty of states is a key principle in international law and international relations: so how can international organizations have authority over sovereign states? Generally, this question is answered by ascertaining that states have voluntarily - on the basis of their sovereignty - given these international organizations authority.¹²⁷ The legitimacy of an organization is thus defined as the acceptance and recognition of its authority by those who are the subject of its supervision.¹²⁸ In the normative or intrinsic approach to explain why states comply with their international obligations, this legitimacy is an important factor.¹²⁹

Legitimacy is first and foremost derived from a legal document that attributes supervisory power to the international organization (legitimacy of origin), but it is also derived from the manner in which the international organization exercises

125 *ibid* 60–61. But some (of the many) criteria that Shany uses for determining the three categories are also applicable for this study, such as transparency, accountability and independence (which are elements of accountability in this study) and consistency (an element of legitimacy in this study).

126 Daniel Bodansky, 'The Legitimacy of International Governance: A Coming Challenge for International Environmental Law?' (1999) 93 *American Journal of International Law* 596, 596.

127 d'Aspremont and De Brabandere (n 78) 216; Franck, *Fairness in International Law and Institutions* (n 19) 27.

128 Max Weber, *The Theory of Social and Economic Organization* (Talcott Parsons ed, Free Press 1964) 382; Barnett and Finnemore (n 112) 29. Barnett and Finnemore have defined authority as 'the ability of one actor to use institutional and discursive resources to induce deference from others'. *ibid* 5. See also Claire A Cutler, Virginia Haufler and Tony Porter, 'The Contours and Significance of Private Authority in International Affairs' in Claire A Cutler, Virginia Haufler and Tony Porter (eds), *Private authority and international affairs* (State University of New York Press 1999) 334, who state that authority is the acceptance of dictates based on the belief of the rightness of that authority, in: ; Ingo Venzke, *How Interpretation Makes International Law: On Semantic Change and Normative Twists* (Oxford University Press 2012) Chapter 3, n 47. Thomas M Franck, *The Power of Legitimacy among Nations* (Oxford University Press, USA 1990) 3.

129 von Stein (n 16) 490.

its tasks (legitimacy of exercise).¹³⁰ The first source of legitimacy is a structural element, discussed in the section above (a clear and substantial legal basis). Legitimacy of exercise refers to three main procedural factors that contribute to the acceptance by states of an organization's supervisory authority: its conformity with its mandate, its expertise of its staff, and the consistency of its decisions.¹³¹ It is submitted that an adequate incorporation of these factors is a precondition for effective supervision.

First, because an international organization derives its supervisory authority from the legal powers that have been granted to it by its member states, the organization needs to ensure that it executes this authority in accordance with its mandate.¹³² Only the fact that sovereign states have decided to hand over certain powers, articulated in the institution's constituent document, justifies the exertion of authority over these states by the institution.¹³³ In addition, it also needs to carry out the directions given by its mandate providers with regard to the exercise of its supervisory mandate. As stated above, the manner in which the oversight mechanisms are set up is a structural element, but the instructions that are a result of these oversight mechanisms need to be implemented as well. This is a procedural element of effective supervision. States must have the assurance that the organization is responsive to their directions; but only to direction on which all member states agree (*i.e.* to avoid having one or some states giving unilateral directions that infringe on the independence of the organization). When such directions are ignored, the acceptance of the authority of the organization will likely diminish and the legitimacy of its exercise will be affected.

International organizations need to allocate their resources in such a manner that they not only have access to an adequate number of staff members for carrying out the supervisory task, but also that this staff has the requisite expertise.¹³⁴ Interpretations and directions coming from well-informed staff increases the (perceived) authority of an international organization, and thus its legitimacy.¹³⁵ The appointment of experts for the exercise of the supervisory task

130 d'Aspremont and De Brabandere (n 78).

131 *ibid* 215; HH Gerth and C Wright Mills, *From Max Weber: Essays in Sociology* (Oxford University Press 1946) 214; Franck, *Fairness in International Law and Institutions* (n 19) 712.

132 d'Aspremont and De Brabandere (n 78) 215; Schermers and Blokker (n 12) 800.

133 Franck, *Fairness in International Law and Institutions* (n 19) 219–221; Klabbers, *An Introduction to International Institutional Law* (n 48) 221–226.

134 In order to be able to hire such staff members, international organizations also need to have adequate resources - a structural element that was discussed in 2.3.2.

135 Already in 1922 developed Max Weber the idea that a staff of highly skilled technocrats is important for a bureaucracy to have authority and legitimacy. Gerth and Wright Mills (n 131) 214; see also Theodor Meron, 'Norm Making and Supervision in International

has two principal advantages: first, other than government representatives, experts are generally not constrained by political wishes of certain member states; and second, experts can give the supervisory process prestige on the basis of their proficiency.¹³⁶

The third factor of legitimacy is consistency: the reliability and uniformity of successive results or events.¹³⁷ For international organizations, consistency is important as a means to avoid arbitrariness, which would undermine the support for and thus the effectiveness of the supervisory task. Furthermore, although organizations must have flexibility to some extent when they implement their supervisory mandate, it is necessary to have some degree of consistency, because an inconsistent interpretation of the norms may lead to non-uniform application of these norms.¹³⁸ In addition to a consistent outcome, the processes that lead to this outcome must be consistent as well. The monitoring mechanisms to assess

Human Rights: Reflections on Institutional Order' (1982) 74 *American Journal of International Law* 754, 764; Barnett and Finnemore (n 112) 25–26; Ingo Venzke, 'International Bureaucracies from a Political Science Perspective—Agency, Authority and International Institutional Law' in Armin von Bogdandy and others (eds), *The Exercise of Public Authority by International Institutions: Advancing International Institutional Law* (Springer 2009) 83.

¹³⁶ These two reasons were important arguments when it was decided that the supervision of the implementation of the International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entry into force 3 January 1976, 933 UNTS 3) needed a critical, non-political committee of experts instead of government representatives. Schermers and Blokker (n 12) 226.

¹³⁷ Franck, *Fairness in International Law and Institutions* (n 19) 712; see also Saul Takahashi, 'Recourse to Human Rights Treaty Bodies for Monitoring of the Refugee Convention' (2002) 20 *Neth. Q. Hum. Rts.* 53, 56.

¹³⁸ An important doctrine that is used by domestic courts to give effect to international law is the principle of consistent interpretation. This principle requires that courts interpret 'national law in conformity with a rule of international law, with a view of ensuring that rule is given effect'. Although this principle refers to the implementation of a certain international rule in the domestic legal sphere, it does indicate that international law needs to be interpreted consistently (by domestic courts, but analogously also by international monitoring bodies) in order for this rule to be effective. Gerrit Betlem and Andre Nollkaemper, 'Giving Effect to Public International Law and European Community Law before Domestic Courts A Comparative Analysis of the Practice of Consistent Interpretation' (2003) 14 *European Journal of International Law* 569, 570–571; see also Osamu Arakaki, 'Non-State Actors and UNHCR's Supervisory Role in International Relations' in James C Simeon (ed), *The UNHCR and the Supervision of International Refugee Law* (Cambridge University Press 2013) 291; Committee on the Accountability of International Relations, 'Final Report of the Berlin Conference' (International Law Association 2004) 7; Isabelle Van Damme, 'Treaty Interpretation by the WTO Appellate Body' (2010) 21 *European Journal of International Law* 605, 625, 628.

the conformity of states' conduct with the international norms must thus be applied uniformly, based on recognized norms and standards.¹³⁹ The importance of consistency is evidenced by the fact that this factor of legitimacy is sometimes explicitly referred to in human rights treaties that establish supervisory tasks.¹⁴⁰

2.4.2 Accountability

Legitimacy is closely connected to the accountability of an international organization. Whereas legitimacy is the recognition of the authority of an international organization, accountability is the duty of that organization to justify the manner in which this authority is exercised.¹⁴¹ At the national level, accountability is tested through elections, but on the international plane accountability needs to be asserted by other means. These means must ensure that states have the ability to hold the international organization to certain standards and to ascertain that these standards are met.¹⁴² In this study, it is submitted that the three most important means of accountability are independence, participation, and transparency, as will be explained in the paragraphs below.

First, independence was discussed as a structural element for effective supervision: financial influencing of the international organization by states should be curbed and international organizations should have a separate legal personality. Independence is also a procedural element: international organizations can be held accountable to perform their task without any political interference of member states, *i.e.* those who are the subject of the supervision.¹⁴³

139 Gudmundur Alfredsson and others (eds), *International Human Rights Monitoring Mechanisms: Essays in Honour of Jakob Th. Möller*, vol 35 (Martinus Nijhoff Publishers 2009) 580; see also Walter Kälin, 'Supervising the 1951 Convention Relating to the Status of Refugees: Article 35 and Beyond' in Erika Feller, Volker Türk and Frances Nicholson (eds), *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection* (Cambridge University Press 2003) 652.

140 Art. 28(2) of the Convention for the Protection of All Persons from Enforced Disappearance (adopted 20 December 2006, entry into force 23 December 2010, 2716 UNTS 3) states that the Committee on Enforced Disappearances needs to consult with other treaty bodies "with a view to ensuring the consistency of their respective observations and recommendations".

141 Ruth W Grant and Robert O Keohane, 'Accountability and Abuses of Power in World Politics' (2005) 99 *American political science review* 29, 29–30.

142 *ibid.*

143 See also Buchanan and Keohane, who state that an institution's ability to perform adequately is dependent on whether those who are the subjects of the rules regard these rules as binding, and whether the functioning of the institution is not interfered with by these addresses. Allen Buchanan and Robert O Keohane, 'The Legitimacy of Global Governance Institutions' (2006) 20 *Ethics & international affairs* 405, 408.

Otherwise, the organization may be perceived as politicized, only adhering to the interests of certain states.¹⁴⁴ Independence and impartiality are closely related: international organizations should be able to act independently from the states, but should also be impartial in performing its supervisory task *vis-à-vis* states. The degree of accountability of the supervision is contingent on the level of actual as well as perceived independence and impartiality.¹⁴⁵ Therefore, the organization should, in the exercise of its supervisory task, not employ or engage persons who are in some way performing political functions in a member state, or who are holding positions that are not reconcilable with the tasks of that organization, as these persons might be (perceived as) favouring the interests of the states they represent.¹⁴⁶

Second, participation of states in the supervisory process is also a feature of accountability.¹⁴⁷ This participation may take on the form of cooperation or involvement with the tasks of the organization, which is sometimes even considered an obligation on the part of the member states.¹⁴⁸ Correspondingly, the international organization must facilitate this cooperation. Adequate cooperation is also in the best interest of the organization, as the outcome of the supervisory process (for example, the need for an adjustment of national laws) requires states' action.¹⁴⁹ States should, for example, be able to have a dialogue with the organization to express their views, although it is important to ascertain that such communications do not lead to a political interference with the supervisory task.¹⁵⁰ States who are affected by a decision of the organization in either the monitoring or the enforcement phase need to be especially involved.

States are, however, not the only entities with which an international organization may be involved: NGOs, civil society organizations, academic institutions, corporate actors, and even individuals are stakeholders that may be participants in the functioning of an international organization. For example, when the international organization supervises states' compliance with human

144 Abbott and Snidal (n 100) 18.

145 Pillay (n 71) 77; see also Leanne MacMillan and Lars Olsson, 'Rights and Accountability' (2001) 10 *Forced Migration Review*.

146 UN Doc. A/52/507, Report of Eighth Meeting of the Chairpersons (21 October 1997) in: Amnesty International (n 84) 13.

147 Monica Blagescu, Lucy de Las Casas and Robert Lloyd, 'Pathways to Accountability - The GAP Framework' (One World Trust 2008) 32–33.

148 See, for example, Art. 2(2) of the UN Charter, which prescribes that 'all members [...] shall fulfil in good faith the obligations assumed by them in accordance with the present Charter'. Schermers and Blokker (n 12) 130–133.

149 *ibid* 51.

150 Eva Hüpkens, Marc Quintyn and Michael W Taylor, 'Accountability Arrangements for Financial Sector Regulators' (2009) 39 *Economic Issues* 1, 3.

rights obligations, individuals who are affected by these rights should have some way of communicating with the organization. In addition, NGOs and academic institutions often have specific expert knowledge that may be useful to the organization.¹⁵¹ However, full participation of these actors is not a guarantee for increased accountability, because NGOs are not elected to fulfil a certain objective nor are they accountable to the general public.¹⁵² Nevertheless, participation of NGOs in the supervisory processes can be quite helpful, especially in the obtaining of information.

The third means of increasing the accountability of an international organization is by being as transparent and public as possible.¹⁵³ This means “the provision of accessible and timely information to stakeholders and the opening up of organizational procedures, structures and processes to their assessment”.¹⁵⁴ Transparency is mainly an auxiliary element for other elements of effective supervision, but it has also value in its own right as “public exposure [might] be more effective in encouraging states to improve their performance”.¹⁵⁵ The same is true for international organizations. Public oversight has already been mentioned as one of the structural elements, and transparency increases the chance of this oversight to be successful. Transparency will also enhance the integrity of the organization and its staff, reducing the opportunity for corruption.¹⁵⁶ In addition, the organization must be able to explain how it has reached a particular decision, which requires at least that all documents leading to that decision must be available to the member states and the reasons for deciding in a certain manner must be made public.¹⁵⁷ Transparency is furthermore not only a means to comprehend the actions of the organization; it can also limit political pressure by member states and increase public scrutiny. If transparency is accurately incorporated within the supervisory process, it will

151 Schermers and Blokker (n 12) 149–159; MacMillan and Olsson (n 145).

152 Kenneth Anderson, ‘What NGO Accountability Means: And Does Not Mean’ (2009) 103 *American Journal of International Law* 170, 170–178; in: d’Aspremont and De Brabandere (n 78) n 134.

153 Blagescu, de Las Casas and Lloyd (n 147) 30–31. Kant indeed asserted that “[a]ll actions that affect the rights of other men are wrong if their maxim is not consistent with publicity”. Quotation taken from Steve Charnovitz, ‘Transparency and Participation in the World Trade Organization’ (2003) 56 *Rutgers L. Rev.* 927, 2–3.

154 Blagescu, de Las Casas and Lloyd (n 147) 25.

155 Takahashi (n 137) 55.

156 Donato Masciandaro and International Monetary Fund, *Designing Financial Supervision Institutions: Independence, Accountability and Governance* (E Elgar 2007) 18–19; Richard Collins and Nigel D White, *International Organizations and the Idea of Autonomy: Institutional Independence in the International Legal Order* (Routledge 2011) 3.

157 Committee on the Accountability of International Relations (n 138) 9.

strengthen the effectiveness of the supervision because it will put the organization in a position to achieve its objectives regardless of the views or interests of its member states.¹⁵⁸ Without sufficient transparency, the organization will be vulnerable to manipulation of its supervisory processes, which impacts on its accountability.¹⁵⁹

2.4.3 Operationality

The last procedural element for evaluating the quality of the supervisory effort is the actual functioning of the organization: does the organization have sufficient access to reliable and meaningful information, is the organization proficient in assessing this information in a timely fashion, and does the organization have adequate capacity to effectively supervise the conformity of states' conduct with international norms?

First, an international organization is dependent on access to information about states' compliance with international obligations.¹⁶⁰ For most international organizations, the only manner in which information will reach them is through some mechanism that requires the cooperation of their member states. This mechanism is a structural element, discussed in the previous section on sufficient resources. However, these mechanisms do not always provide sufficient information, so international organizations are often severely hampered in their supply of information. However, some organizations work together with NGOs, corporate actors, academic institutions, individuals or other intergovernmental agencies in the collection of information, or they have independent means of gathering information.¹⁶¹

Second, the three stages of the supervisory process must be passed through in a timely manner. However, many international organizations struggle with the duration between receiving the required information to analyse states' compliance and issuing a statement about the behaviour of these states. Especially the human rights treaty bodies experience considerable delays in the processing of the reports of and communications with states.¹⁶² When too much time elapses between the moment of non-compliance conduct and the organization's statement about that conduct, the effectiveness of that statement is weakened. On the other hand, the organization must also give sufficient consideration to the

158 Masciandaro and Fund (n 156) 7.

159 Ronald B Mitchell, 'Sources of Transparency: Information Systems in International Regimes' (1998) 42 *International Studies Quarterly* 109.

160 Alan E Boyle, 'Saving the World-Implementation and Enforcement of International Environmental Law through International Institutions' (1991) 3 *J. Env'tl. L.* 229, 236; Blokker and Muller (n 7) 281.

161 Mitchell (n 159) 116.

162 Alston and Crawford (n 81) 4-6.

information it receives; states are entitled to thorough consideration of the information they provided.¹⁶³ Operationality is thus influenced both by punctuality and by the capacity to be punctual.

Sufficient resources - both finances and human capital - are a precondition for effective supervision. The third element of operationality, capacity, refers to the manner in which these resources are used: are they directed to the supervisory task of the organization or do they flow - intentionally or not - to other tasks which are deemed more important by either the international organization or its member states? Monitoring mechanisms must be set up and resourced in such way that they are allowed to be operational and properly working.¹⁶⁴ A lack of capacity is often caused by too much workload. For example, the growing number of states that need to be supervised or the length in the reports being drafted on states' compliance can both give rise to capacity problems.¹⁶⁵ In addition, multiple reporting procedures of different international organizations are not only counterproductive, they are also a constraint on both the budget and the staff of these organizations.¹⁶⁶

2.5 A framework for effective supervision

The question that needs to be answered in this thesis is how UNHCR's supervisory mandate and its supervisory activities regarding the 1951 Convention should be assessed in terms of effectiveness. Assessing this effectiveness necessitates a clear understanding of what is meant with effective supervision. This chapter has described what supervision means in the context of an international organization, explicated that states' compliance with international obligations is the goal of supervision, and formulated a conceptual framework through which this goal and thus the effectiveness of supervision can be assessed. The framework is divided in two features: structural elements that refer to the manner in which the mandate providers have set up the supervisory task of an international organization, and procedural elements that pertain to the manner

163 *ibid* 4.

164 Kälin even goes so far as to claim that when these mechanisms are not able to achieve their goals, they should be avoided all together. Kälin (n 139) 352.

165 Pillay (n 71) 23–24, 94.

166 Alston and Crawford (n 81) 466–467. Pillay describes capacity mainly as a problem that is felt by member states: the preparation of reports by national governments on their compliance requires a great deal of (resources and) capacity. Capacity gaps will develop when there is considerable time between the drafting of such reports and the response by the supervisory organization, because often the civil servants who drafted the reports will no longer be available. Pillay (n 71) 25.

in which the organization carries out its supervisory task within this structure. Diagram 2 shows this completed framework.

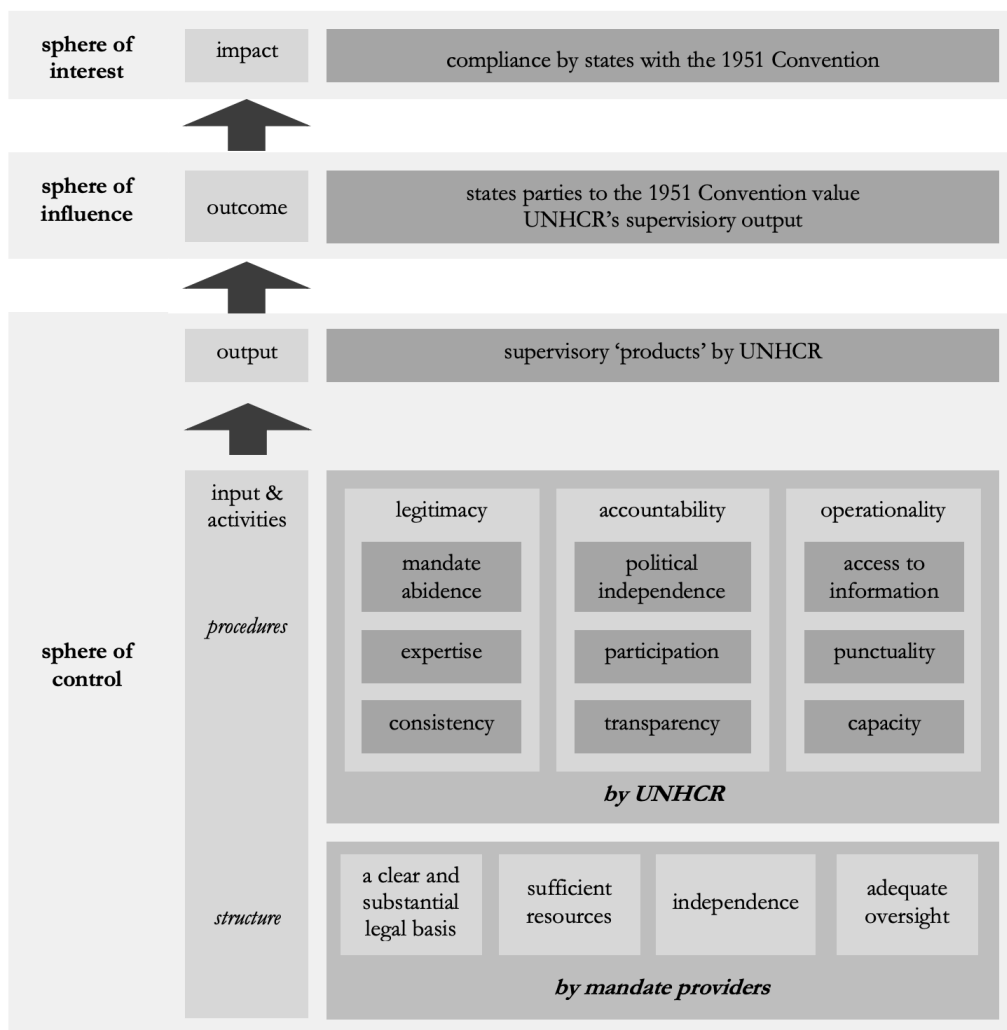


Diagram 2 - Theory of Change, complete framework

It leads to the conclusion that if UNHCR has been set up with as adequate as possible structures and implemented procedures of a high quality, resulting in a high standard of supervisory output, it is more likely that states value this output and, ultimately, act in compliance with the 1951 Convention. As mentioned in Chapter 1, having perfect structures and procedures is not a guarantee for compliance behaviour, as this ultimate goal is not within the 'sphere of control'

of UNHCR.¹⁶⁷ There are also other factors that have an influence on whether states act in accordance with their obligations or not.¹⁶⁸ In addition, the examples of international organizations mentioned in this chapter indicate that there are no organizations that qualify as perfectly effective regarding their supervisory task, neither in the manner in which they are set up nor in the manner in which they execute this task. This is not problematic, because the framework as formulated in this chapter describes the ‘ideal’ situation against which effective supervision can be evaluated. The use of the word ‘ideal’ does not imply that this model is the best or only one, which already becomes clear from the fact that *e.g.* Shany has used different models for examining the effectiveness of other international bodies. The analysis of UNHCR’s supervisory mandate and output against this ‘ideal’ framework will show which parts of the agency’s structure and procedures are successful and which are inadequate, and thus where reforms are needed.

167 See §1.2.

168 As George Okoth-Obbo said: ‘Many governments truly seek to abide by their obligations in refugee law [...] to serve people in terms of protection, assistance and solutions. [...] However, most governments also have other interests which might not coincide with those objectives.’ IRIN, FULL INTERVIEW In Conversation With: George Okoth-Obbo, Head of Operations at the UN Refugee Agency (2018) <<https://www.youtube.com/watch?v=5ivRpdimrlo>> accessed 1 July 2020.