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## Introduction

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We currently witness protests from many national parliaments against decisions and practices by regional human right courts and the UN human rights treaty bodies. This emerging international human rights judiciary (IHRJ) is said to threaten national democratic processes and ‘hollow out’ the scope of domestic, democratic decision-making.

Against this backlash, it is striking that domestic parliaments have a key role in holding state authorities to their international human rights-based obligations. They interpret and apply human rights in the laws they make and when holding the executive to account.<sup>1</sup> Parliaments often fail in these tasks,<sup>2</sup> with implications for the individuals whose rights are infringed – and burdening the IHRJ with cases. If progress is to be made, capacity and awareness must increase amongst parliamentarians at the domestic level. Thus argue international parliamentary bodies, such as the Parliamentary Assembly of the Council of Europe (PACE) and the Inter-Parliamentary Union (IPU). The present book confronts the backlash head on, by examining the human rights role of national parliaments and insisting that the international human rights judiciary may advance the efforts of parliaments.

The book identifies and analyses opportunities and challenges for developing how the IHRJ relates to national parliaments. Taking Europe and the

<sup>1</sup> M. Hunt, ‘Introduction’, in M. Hunt, H. J. Hooper and P. Yowell (eds.), *Parliaments and Human Rights: Redressing the Democratic Deficit* (Oxford: Hart Publishing, 2015), 1, 2.

<sup>2</sup> Hunt, *ibid.*; also D. Feldman, ‘Can and Should Parliament Protect Human Rights?’ *European Public Law*, 10 (2004), 635, 645–651; I. Schwarz, ‘The Work of the Inter-Parliamentary Union’, in M. Hunt, H. J. Hooper and P. Yowell (eds.), *Parliaments and Human Rights: Redressing the Democratic Deficit* (Oxford: Hart Publishing, 2015), 329, 331.

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European Court of Human Rights (ECtHR) as its main focus and drawing on theory, doctrine, and practice from a range of perspectives, the contributing authors reflect on a series of key issues:

- What should be the role of parliaments to realise human rights?
- Which factors influence the effects of the IHRJ on national parliaments' efforts?
- How can the IHRJ adjust its influence on parliamentary process?
- What triggers backlash against the IHRJ from parliaments, and when?
- In an environment of increasing scepticism about supranational rights adjudication, how might greater parliamentary engagement in the interpretation and application of human rights law enhance the effectiveness and democratic legitimacy of the IHRJ?

The rest of this introduction provides the background and analytical framework for the book, through an account of the research problem in relation to ongoing scholarly and policy debates to which the book contributes. An indication of the contents of the individual chapters is also provided.

## 1 Background

The international legal machinery for monitoring human rights complements and supports the national safeguards for human rights.<sup>3</sup> Yet the legitimacy and effectiveness of the IHRJ is increasingly in focus, both from policy and scholarly perspectives.<sup>4</sup> These concerns have several sources.

<sup>3</sup> 'The international human rights judiciary [IHRJ] includes regional bodies such as the European Court of Human Rights (ECtHR), which interprets and adjudicates the European Convention on Human Rights (ECHR) ... [i]t also includes the core treaty bodies set up to monitor states' compliance with such human rights treaties as they have subjected themselves to, including the United Nations Human Rights Committee (HRC) for the International Covenant on Civil and Political Rights', A. Follesdal, 'The Legitimacy Deficits of the Human Rights Judiciary: Elements and Implications of a Normative Theory', *Theoretical Inquiries in Law*, 14 (2013), 339, 340; see also B. Çali. 'The Legitimacy of International Interpretive Authorities for Human Rights Treaties', in A. Follesdal, J. K. Schaffer and G. Ulfstein (eds.), *The Legitimacy of International Human Rights Regimes: Legal, Political and Philosophical Perspectives* (Cambridge: Cambridge University Press, 2014), 141, 148; distinguishing interpretive authorities from political forms of international human rights practice.

<sup>4</sup> See A. Follesdal, J. K. Schaffer and G. Ulfstein (eds.), *The Legitimacy of International Human Rights Regimes* (Cambridge: Cambridge University Press, 2013); H. Keller and G. Ulfstein (eds.), *UN Human Rights Treaty Bodies: Law and Legitimacy* (Cambridge: Cambridge University Press, 2012).

The IHRJ institutions are overburdened, they are said to go too far with interpretations of the law, and their decisions are often ineffectual at the domestic level.<sup>5</sup> The ongoing high-level reform debates, including those concerning the European Court of Human Rights,<sup>6</sup> the Inter-American Human Rights System<sup>7</sup> and the UN human rights treaty bodies,<sup>8</sup> have revealed several perspectives on what should be done across the various international regimes. One common theme is how to enhance human rights protections at the domestic level.<sup>9</sup>

Domestic branches of government should be more effective protectors and promoters of international human rights. The international human rights frameworks will thereby reduce their democratic deficit, and fewer cases will require international treatment. Insofar as national authorities work harder to protect and realise human rights, less intensive scrutiny may be needed by the IHRJ, which itself can prompt more national action. To mobilise domestic ‘compliance constituencies’ – supporters and partners – is also crucial for the outputs of the IHRJ to be effective.<sup>10</sup>

<sup>5</sup> See D. C. Baluarte and C. M. De Vos, *From Judgment to Justice: Implementing International and Regional Human Rights Decisions* (New York: Open Society Justice Initiative – Open Society Foundations, 2010), 22, 34, 94.

<sup>6</sup> See, e.g., the series of high-level meetings on the future of the European Court of Human Rights, leading to outcome documents, such as the Brighton Declaration, 19–20 April, 2012; Council of Europe, *Reforming the European Convention on Human Rights: Interlaken, Izmir, Brighton and Beyond* (2014); also Brussels Declaration, ‘Implementation of the European Convention on Human Rights, Our Shared Responsibility’, 27 March 2015.

<sup>7</sup> See, e.g., *Report of the Special Working Group to Reflect on the Workings of the Inter-American Commission on Human Rights with a View to Strengthening the Inter-American Human Rights System for Consideration by the Permanent Council*, 11 December 2011.

<sup>8</sup> See, e.g., *Inter-Governmental Process of the General Assembly on Strengthening and Enhancing the Effective Functioning of the Human Rights Treaty Body System, Report on the Inter-Governmental Process of the General Assembly on Strengthening and Enhancing the Effective Functioning of the Human Rights Treaty Body System*, 11 September 2012; see also Office of the United Nations High Commissioner for Human Rights, *Strengthening the United Nations Human Rights Treaty Body System: A Report by the United Nations High Commissioner for Human Rights, Navanethem Pillay*, 26 June 2012, A/66/860.

<sup>9</sup> E. M. Hafner-Burton, *Making Human Rights a Reality* (Princeton: Princeton University Press, 2013), 186: ‘[T]he international legal system is clogged by the very governments that international human rights law most needs to hold accountable.’ ‘Instead of expansion, what is needed is an investment in building more legitimacy, which will come by concentrating resources on ways to boost compliance with existing laws.’

<sup>10</sup> See K. J. Alter, *The New Terrain of International Law (Courts, Politics, Rights)* (Cambridge: Cambridge University Press, 2014), 53–54; C. Hillebrecht, *Domestic Politics and International Human Rights Tribunals: The Problem of Compliance* (Cambridge: Cambridge University Press, 2014); C. M. De Vos, *From Rights to Remedies: Structures and Strategies for Implementing International Human Rights*

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In the scholarly literature concerned with the legitimacy and effectiveness of the international human rights judiciary, four noticeable strands of enquiry are as follows. One strand is theoretical in focus, asking questions such as how should we understand the key analytical concepts?<sup>11</sup> Another strand is doctrinal, focusing on the details of how the institutions have undertaken their judicial function.<sup>12</sup> A third strand is concerned with matters of implementation, addressing how national authorities use the outputs of international institutions.<sup>13</sup> A fourth strand deals with judicial behaviour, probing how considerations of legitimacy and effectiveness relate to the way in which the judicial function is undertaken.<sup>14</sup> As yet, little research within any of these strands has focussed specifically on the role of parliaments.<sup>15</sup> There is, though, a growing interest in and need for further research on this theme.

*Decisions* (New York: Open Society Justice Initiative – Open Society Foundations, 2013); D. Anagnostou and A. Mungiu-Pippidi, *Why Do States Implement Differently the European Court of Human Rights Judgments? The Case Law on Civil Liberties and the Rights of Minorities* (JURISTRAS Project, 2009), 23.

- <sup>11</sup> B. Çali, *The Authority of International Law: Obedience, Respect, and Rebuttal* (Oxford: Oxford University Press, 2015); A. Von Bogandy and I. Venzke, *In Whose Name? A Public Law Theory of International Adjudication* (Oxford: Oxford University Press, 2014); Y. Shany, *Assessing the Effectiveness of International Courts* (Oxford: Oxford University Press, 2014).
- <sup>12</sup> See M. Saul, 'The European Court of Human Rights' Margin of Appreciation and the Processes of National Parliaments', *Human Rights Law Review*, 15 (2015), 745–774; K. Dzehtsiarou, *European Consensus and the Legitimacy of the European Court of Human Rights* (Cambridge: Cambridge University Press, 2015); A. Legg, *The Margin of Appreciation in International Human Rights Law: Deference and Proportionality* (Oxford: Oxford University Press, 2012).
- <sup>13</sup> R. Murray and D. Long, *The Implementation of the Findings of the African Commission on Human and Peoples' Rights* (Cambridge: Cambridge University Press, 2015); Hillebrecht, *Domestic Politics*; D. Anagnostou, 'Politics, Courts and Society in the National Implementation and Practice of European Court of Human Rights Case Law', in D. Anagnostou (ed.), *The European Court of Human Rights: Implementing Strasbourg's Judgments on Domestic Policy* (Edinburgh: Edinburgh University Press, 2013), 211.
- <sup>14</sup> F. de Londras and K. Dzehtsiarou, 'Managing Judicial Innovation in the European Court of Human Rights', *Human Rights Law Review*, 15 (2015), 523; S. Dothan, *Reputation and Judicial Tactics: A Theory of National and International Courts* (Cambridge: Cambridge University Press, 2014); E. Voeten, 'The Impartiality of International Judges: Evidence from the European Court of Human Rights', *American Political Science Review*, 102 (2008), 417.
- <sup>15</sup> This volume uses the term *national parliament* in a broad sense, along the lines of the representatives at the Second World Conference of Speakers of Parliaments in September 2005 who declared by consensus: 'Parliament embodies democracy. Parliament is the central institution through which the will of the people is expressed, laws are passed and government is held to account'. Second World Conference of Speakers of Parliaments, United Nations Headquarters, New York, 7–9 September 2005; for a more refined definition of *parliament*, see A. Kreppel, 'Typologies and Classifications', in S. Martin,

The most salient legitimacy challenges encountered in the global governance of human rights have recently been addressed in a volume edited by Andreas Follesdal, Johan Karlsson Schaffer and Geir Ulfstein.<sup>16</sup> The contributors generally agree that the IHRJ institutions are of a particular nature and thereby should not be held to account for the exercise of authority on the same basis as institutions of governance at the domestic level.<sup>17</sup> Still, the democratic critique of the international human rights judiciary remains a central consideration. This is especially evident in contributions explaining how the relevant legitimacy standard includes but is more complex than just considerations of democracy<sup>18</sup> and in studies which address the challenges raised by democracy critique head on.<sup>19</sup> Theorising on the legitimacy of the IHRJ draws attention to the importance of further study of the role of parliaments, as the key democratic body within a state, in relation to human rights. Studies on this theme are starting to emerge, but the picture they depict is far from glowing.

Murray Hunt, Hayley J. Hooper and Paul Yowell's edited volume addresses a range of key issues for understanding the position of parliaments in the human rights system.<sup>20</sup> Many of the contributions are concerned with the legislative review role of parliaments in relation to rights, covering different jurisdictions, different areas of practice and

T. Saalfeld and Kaare W. Strøm (eds.), *Oxford Handbook of Legislative Studies* (Oxford: Oxford University Press, 2014), 82, 83–84.

<sup>16</sup> Follesdal, Karlsson Schaffer and Ulfstein, *The Legitimacy of International Human Rights Regimes*.

<sup>17</sup> See especially K. Hessler, 'Equality, Human Rights, and Political Legitimacy', in A. Follesdal, J. Karlsson Schaffer and G. Ulfstein (eds.), *The Legitimacy of International Human Rights Regimes: Legal, Political and Philosophical Perspectives* (Cambridge: Cambridge University Press, 2014), 117.

<sup>18</sup> J. Karlsson Schaffer, 'Legitimacy, Global Governance and Human Rights Institutions: Inverting the Puzzle', in A. Follesdal, J. Karlsson Schaffer and G. Ulfstein (eds.), *The Legitimacy of International Human Rights Regimes: Legal, Political and Philosophical Perspectives* (Cambridge: Cambridge University Press, 2014), 212.

<sup>19</sup> R. Bellamy, 'The Democratic Legitimacy of International Human Rights Conventions: Political Constitutionalism and The Hirst Case', in A. Follesdal, J. Karlsson Schaffer and G. Ulfstein (eds.), *The Legitimacy of International Human Rights Regimes: Legal, Political and Philosophical Perspectives* (Cambridge: Cambridge University Press, 2014), 243; A. Follesdal, 'Much Ado about Nothing? International Judicial Review of Human Rights in Well-Functioning Democracies', in A. Follesdal, J. Karlsson Schaffer and G. Ulfstein (eds.), *The Legitimacy of International Human Rights Regimes: Legal, Political and Philosophical Perspectives* (Cambridge: Cambridge University Press, 2014), 272.

<sup>20</sup> M. Hunt, H. J. Hooper and P. Yowell, *Parliaments and Human Rights: Redressing the Democratic Deficit* (Oxford: Hart Publishing, 2015).

different perspectives. A common theme that links these contributions is an interest in knowing more about the following. How is it that concerns about the democratic deficit of institutional arrangements for the protection of human rights appear to be growing, whilst, at the same time, there is a growing recognition that there is a shared responsibility across all branches of government for the protection of human rights? The conclusion is that parliaments are not fulfilling their human rights role, and this increases the need for further study of the ways in which the practice of parliaments in the human rights field can be enhanced.<sup>21</sup> The prospects of improvement depend on diagnosing the causes.

In this respect, Janet Hiebert and James Kelly's study of the way in which recent institutional innovations in the UK and New Zealand have impacted on the role played by parliament in the protection of rights is important.<sup>22</sup> Their focus is on the effects of the introduction of weak judicial review, which is a reference to the limited nature of the remedial powers,<sup>23</sup> and a ministerial obligation to report to parliament on the consistency of a bill with rights. They find little evidence that there has been a significant strengthening of the pressure placed on government or in the number of reasoned deliberations as a result of the aforementioned innovations.<sup>24</sup> This is attributed to two key considerations, the continued power imbalance between the executive and the parliament and the

<sup>21</sup> In this respect, it is important to note the initiative led by Murray Hunt to develop a set of best practice principles of general application, 'Draft Principles and Guidelines on the Protection and Realisation of the Rule of Law and Human Rights', in M. Hunt, H. Hooper and P. Yowell (eds.), *Parliaments and Human Rights: Redressing the Democratic Deficit* (Oxford: Hart Publishing, 2015), 485–495 (Appendix) section I A. A key focus of the principles is on the establishment and operation of a standing human rights committee as a means to inform parliament about human rights. The principles remain the subject of ongoing work and were debated at a high-level workshop on parliaments at Westminster (September 2015), which included representatives from the Venice Commission, the Commonwealth Secretariat and the Westminster Foundation for Democracy, amongst others. This workshop supported the view that the principles will be strengthened to the extent that an extensive research program underpins their development; see also K. Roberts Lyer and P. Webb, 'Effective Parliamentary Oversight of Human Rights' (in this volume).

<sup>22</sup> J. Hiebert and J. Kelly, *Parliamentary Bills of Rights: The Experiences of New Zealand and the United Kingdom* (Cambridge: Cambridge University Press, 2015).

<sup>23</sup> See A. Sathanapally, *Beyond Disagreement: Open Remedies in Human Rights Adjudication* (Oxford: Oxford University Press, 2012), 12.

<sup>24</sup> See further J. King, 'Parliament's Role Following Declarations of Incompatibility under the Human Rights Act', in M. Hunt, H. J. Hooper and P. Yowell (eds.), *Parliaments and Human Rights: Redressing the Democratic Deficit* (Oxford: Hart Publishing, 2015), 165, 174–182; A. L. Young, 'Is Dialogue Working under the Human Rights Act 1998', *Public Law* (2011), 773, 782–785, although see also 786; Sathanapally, *Beyond Disagreement*, 185.

dynamics of the parliamentary context. Hiebert and Kelly's book emerged from and speaks most directly to the debate surrounding how to best ensure protection of rights in the Westminster-based parliamentary system, where there is no bill of rights tradition.<sup>25</sup> Causes for the underperformance of parliaments on rights issues might vary in states with different types of constitutional arrangements.<sup>26</sup>

Understanding of the dynamics of parliamentary performance on rights across jurisdictions is aided by Alice Donald and Philip Leach's study of how parliaments have undertaken their role in the implementation of judgments from the ECtHR.<sup>27</sup> Donald and Leach focus on how adverse judgments of the ECtHR have been implemented in the Ukraine, Romania, the UK, Germany and the Netherlands. They confirm the potential of parliaments as key compliance partners that can help to secure (or undermine) the effectiveness of the IHRJ. They also reveal significant variation in the existence and strength of the infrastructure and processes available for parliamentarians across Europe to undertake their human rights role. With regard to improving the capacity of parliamentarians, they note a 'growing appetite among some parliamentarians (and parliamentary advisers)' for developments including 'the establishment of human rights committees or sub-committees, initiatives to ensure more reliable and systematic information sharing by the executive, and attention to the means by which implementation is coordinated at the domestic level.'<sup>28</sup>

The present volume argues that calls to enhance human rights practice at the domestic level should focus on developing the connections between the international human rights judiciary and national parliaments.<sup>29</sup> In studying the connections between national parliaments and the international human

<sup>25</sup> See also S. Gardbaum, *The New Commonwealth Model of Constitutionalism. Theory and Practice* (Cambridge University Press, 2013); A. Kavanagh, 'A Hard Look at the Last Word', *Oxford Journal of Legal Studies*, 35 (2015), 825.

<sup>26</sup> See C. Evans and S. Evans, 'Evaluating the Human Rights Performance of Legislatures', *Human Rights Law Review* 6 (2006), 545, 553; also Y. Lupu, 'Legislative Veto Players and the Effects of International Human Rights Agreements', *American Journal of Political Science* (2015), 1, 14; for an account of variation in constitutional arrangements in Europe, see M. de Visser, *Constitutional Review in Europe: A Comparative Analysis* (Oxford: Hart Publishing, 2014).

<sup>27</sup> A. Donald and P. Leach, *Parliaments and the European Court of Human Rights* (Oxford: Oxford University Press, 2016).

<sup>28</sup> Donald and Leach, *Parliaments and the European Court of Human Rights*, 308.

<sup>29</sup> See also Donald and Leach, *Parliaments and the European Court of Human Rights* 313; M. Hunt, 'Enhancing Parliaments' Role in the Protection and Realisation of Human Rights', in M. Hunt, H. J. Hooper and P. Yowell (eds.), *Parliaments and Human Rights: Redressing the Democratic Deficit* (Oxford: Hart Publishing, 2015), 469, 470, 476 and 482.

rights judiciary, we combine theoretical, doctrinal and empirical work as a basis for recommendations for strategic behaviour.<sup>30</sup>

## 2 Research Problem

Domestic parliaments interpret and apply human rights in the laws they help to make and when holding the executive to account.<sup>31</sup> They should enjoy such authority in the sphere of human rights due to their democratic – participatory, representative and deliberative – qualities.<sup>32</sup> Yet parliaments seldom exploit the international human rights system through active interaction.<sup>33</sup> The explanations include parliamentarians' lack of capacity, awareness and interest in human rights. The executive branch may also be at fault if it does not make available information, time for debate, opportunities for consultations on human rights issues or the chance to vote on matters pertaining to the international human rights system.<sup>34</sup>

The PACE and the IPU organise capacity-building workshops and advise on the importance and nature of the human rights role of parliaments.<sup>35</sup> The members of these bodies are simultaneously parliamentarians at the national and international levels, so they are well positioned to develop standards and ensure their implementation.<sup>36</sup> These bodies have limited resources,<sup>37</sup> and can only facilitate rather than determine how domestic parliaments should implement human

<sup>30</sup> For similar approaches on related themes see J. Christoffersen and M. R. Madsen (eds.), *The European Court of Human Rights between Law and Politics* (Oxford: Oxford University Press, 2011); Keller and Ulfstein, *UN Human Rights Treaty Bodies*.

<sup>31</sup> See Hunt, 'Introduction', 2.

<sup>32</sup> See S. Hersowitz, 'Legitimacy, Democracy, and Razian Authority', *Legal Theory*, 9 (2003), 201, 213; J. Waldron, 'Refining the Question about Judges' Moral Capacity', *International Journal of Constitutional Law*, 7 (2009), 69, 79–81; R. Bellamy, *Political Constitutionalism* (Cambridge: Cambridge University Press, 2007), 2010; J. Steiner, *The Foundations of Deliberative Democracy: Empirical Research and Normative Implications* (Cambridge: Cambridge University Press, 2012), 36.

<sup>33</sup> Schwarz, 'The Work of the Inter-Parliamentary Union'.

<sup>34</sup> Schwarz, 'The Work of the Inter-Parliamentary Union'; Hunt, 'Enhancing Parliaments' Role', 570; Donald and Leach, *Parliaments and the European Court of Human Rights*, 306–307.

<sup>35</sup> See, e.g., PACE Resolution 1823 (2011); also A. Drzemczewski and J. Lowis, 'The Work of the Parliamentary Assembly of the Council of Europe', in M. Hunt, H. J. Hooper and P. Yowell (eds.), *Parliaments and Human Rights: Redressing the Democratic Deficit* (Oxford: Hart Publishing, 2015), 309; Schwarz, 'The Work of the Inter-Parliamentary Union', 329.

<sup>36</sup> Drzemczewski and Lowis, 'The Work of the Parliamentary Assembly', 326.

<sup>37</sup> See Schwarz, 'The Work of the Inter-Parliamentary Union', 334.



rights norms.<sup>38</sup> Other means to enhance domestic parliaments' efforts merit exploration for three key reasons.

Firstly, such measures may enhance the legitimacy and effectiveness of the IHRJ. Enhancing parliamentary engagement with rights issues can improve legislation and reduce the caseload of the international institutions and put appropriate pressure on the executive to defer to the international institutions. All these benefits are secured by the democratically authorised parliaments, thus reducing an alleged democratic deficit of the IHRJ.

Secondly, this focus elaborates how the IHRJ can adjust its practices to bolster domestic parliaments' engagement with rights-based issues. The ECtHR is the only institution of the IHRJ that has explicitly focused on the quality of parliamentary process when determining the margin of appreciation it affords a state.<sup>39</sup> Thus in the case of *Animal Defenders International v UK*, the ECtHR praised the 'exceptional examination by parliamentary bodies of the cultural, political and legal aspects of the prohibition' on political advertising in the UK and therefore deferred to the UK's judiciary which found no infringement of the Convention.<sup>40</sup> National parliaments may thus be enticed to be more thorough in return for greater deference from the Court.<sup>41</sup> Other possible modalities for influence, available to the ECtHR and similar international institutions, examined in this volume include the level of precision in the interpretation of rights, the direction in which the meaning of rights and derogation clauses are developed and the level of detail in specifications on remedies.

The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) Committee is another IHRJ institution that has taken a particular interest in its relationship with national parliaments.

<sup>38</sup> P. Leach, 'The Parliamentary Assembly of the Council of Europe', in S. Schmahl & M. Breuer (eds.), *The Council of Europe: Its Law and Policies* (Oxford: Oxford University Press, forthcoming 2016), 52 (draft on file).

<sup>39</sup> See, though, A. Legg, *The Margin of Appreciation in International Human Rights Law: Deference and Proportionality* (Oxford: Oxford University Press, 2012), 85 and 98 reading certain practice at the IACtHR and the UN Human Rights Committee as employing a similar approach.

<sup>40</sup> *Animal Defenders International v United Kingdom*, Appl. No. 48876/08, 22 April 2013, para. 114.

<sup>41</sup> See M. Saul, 'The ECtHR's Margin of Appreciation', 773; A. Kavanagh, 'Proportionality and Parliamentary Debates: Exploring Some Forbidden Territory', *Oxford Journal of Legal Studies*, 34 (2014), 443, 466; J. Gerards, 'Pluralism, Deference and the Margin of Appreciation Doctrine', *European Law Journal*, 17 (2011), 80, 118.

It has developed a practice to highlight the importance of parliaments in the field of human rights.<sup>42</sup> This is through a prominent paragraph in all of its Concluding Observations on state reports calling for a role for parliaments in implementation of its recommendations.<sup>43</sup> As national parliaments can be subject to review by multiple IHRJ institutions, it is important, in elaborating how modalities of influence might be developed, to take account of how the practices within one IHRJ institution relate and might be incorporated into the practices of others.<sup>44</sup>

A third reason for a fuller study of this topic is the challenges that arise.

Some concern the better site for determination of human rights violations.<sup>45</sup> Sceptical views highlight the nature of parliaments as diffuse bodies, driven by political interests,<sup>46</sup> with resource, time and expertise constraints.<sup>47</sup> Parliaments will be biased in favour of their own states.<sup>48</sup> Yet the IHRJ might try to alleviate these difficulties by prompting executives to make information and time available for parliamentary processes or urging parliamentarians to engage in reasoned debate.

Other challenges stem from the different nature of parliaments and human rights bodies. IHRJ institutions are judicial and quasi-judicial bodies staffed with international experts, mandated to monitor the

<sup>42</sup> UN Committee on the Elimination of Discrimination Against Women, 2010 Statement on the National Parliaments and the Convention on the Elimination of All Forms of Discrimination against Women

<sup>43</sup> See, e.g., UK, CRC/C/OPSC/GBR/CO/1, 8 July 2014, para. 44.

<sup>44</sup> See the call for human rights implementation bodies to operate in an integrated rather than fragmented manner, E. Brems, 'Should Pluriform Human Rights Bodies Become One? Exploring the Benefits of Human Rights Integration', *European Journal of Human Rights* (2014), 447–470, 467: 'what is expected is that each human rights implementation body shapes its specific function in a manner that shows awareness of its being part of a project that transcends that particular body.'

<sup>45</sup> G. C. M. Webber, 'The Unfulfilled Potential of the Court and Legislature Dialogue', *Canadian Journal of Political Science*, 42 (2009), 443, 444; M. Langford, 'Why Judicial Review?', *Oslo Law Review*, 1 (2015), 36, 55.

<sup>46</sup> R. Dworkin, 'The Moral Reading and the Majoritarian Premise', in H. Koh and R. C. Slye (eds.), *Deliberative Democracy and Human Rights* (1999), 81, 109; J. Kis, 'Constitutional Precommitment Revisited', *Journal of Social Philosophy*, 40 (2009), 570, 573, 589; K. Roach, 'The Varied Roles of Courts and Legislatures in Rights Protection', in M. Hunt, H. J. Hooper and P. Yowell (eds.), *Parliament and Human Rights: Redressing the Democratic Deficit* (Oxford: Hart Publishing, 2015), 405, 410, 413.

<sup>47</sup> See C. Evans and S. Evans, 'Legislative Scrutiny Committees and Parliamentary Conceptions of Human Rights', *Public Law* (2006), 785, 786; D. Feldman, 'Parliamentary Scrutiny of Legislation and Human Rights', *Public Law* (2002), 323, 327–328; Hiebert and Kelly, 'Parliamentary Bills of Rights', 410.

<sup>48</sup> A. Buchanan, *Justice, Legitimacy, and Self-Determination* (Oxford: Oxford University Press, 2003), 235.