ESSAYS

INTERNATIONAL HUMAN RIGHTS REGIMES

Alejandro Anaya Muñoz

• *A matrix for analysis and classification* •

ABSTRACT

In this article Anaya presents the main features of the international human rights regime. The author critically analyses the origin and consequences of its implementation on the behavior of states. The text examines the definition of the concept of an international regime and its application in the area of human rights. The author then presents the specific human rights regimes before offering a critical dialogue with the Donnelly matrix and proposing a modified version that explores both its degrees of institutionality and its historical development from comparative perspective.

KEYWORDS

International regime | Human rights | International relations | Institutionality

In 1945, the Charter of the United Nations (UN) included the promotion of human rights as one of the nascent international organisation's main purposes. One year later, following the mandate established by Article 68 of the UN Charter,[1] the Economic and Social Council (ECOSOC) set up the UN Commission on Human Rights (UNCHR) and, a few years later, in 1948, the General Assembly adopted the Universal Declaration of Human Rights (UDHR).[2] This is how what the field of international relations (IR) calls an "international regime" was born. An international regime is a set of principles, norms, rules and decision-making procedures established by states to guide their behaviour in a particular thematic area.[3] Since then, the international human rights regime has continued to be developed and consolidated as an important component of the global institutional architecture.

In IR,[4] two fundamental questions on international regimes can be posed: what are their causes and what are their consequences? In other words, why did states establish them and what impact have they had on state conduct? The responses to these questions are particularly important in relation to human rights. Over the past seven decades, although an increasingly complex and active regime has been developed in this area, it does not seem to have the "teeth" it needs to significantly influence states' behaviour.[5] In this framework, the question raised in this article is: what are the main characteristics of the international human rights regime and how has it developed over time? To answer it, this article critically revisits and refines the analytical framework proposed by Jack Donnelly thirty years ago, which we will use as the basis of our systematic approach to the analysis of the international human rights regime, namely to determine their level of institutionality.[6]

In the first section, the article defines the concept of international regime and discusses its application to the area of human rights. In section 2, the regime is broken down into a series of specific regimes that are currently in place. Then, in section 3, the article presents a critical analysis of the matrix originally proposed by Jack Donnelly and explains the need to adjust it. In section 4, it uses the modified version of Donnelly's matrix to conduct an exploratory analysis of the historical development of the universal, Inter-American, European and African human rights regimes' degree of institutionality. Finally, the article presents its conclusions and draws light to the significant variations observed in the regimes' levels of institutionality, both from a comparative and a historical perspective.

1 • The concept of international regime and its application to the area of human rights

The "international regime" concept is one of the most important ones in the IR field. It allows us to describe this key element of the international relations in the world today with greater precision. According to the already classical "consensus" definition offered by

Stephen Krasner, an international regime is a type of international institution formed by a set of principles, norms, rules and decision-making procedures adopted and established by states to regulate or guide their interactions in a particular thematic area.[7]

The international human rights regime (or regimes, as we will see shortly) is founded on the principles of dignity, the equal worth of and equal rights for "all members of the human family", without distinction of any kind, such as "race, colour, sex, language or religion", as well as the idea that human rights are inalienable, universal, interdependent and indivisible in nature.[8] From a conceptual perspective, and even moreso from an empirical point of view, these norms and rules seem to blend together. Various articles of the UDHR establishe a wide range of concrete rights held by individuals, which necessarily creates obligations for states. The International Covenant on Civil and Political Rights (ICCPR), for example, stipulates that the States Parties to the covenant commit "to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized" in the covenant and therefore, they are obliged to take the necessary steps to "adopt such laws or other measures as may be necessary to give effect to [them]."[9] Thus, by creating rights and obligations, numerous international human rights instruments establish a wide range of norms.[10] They also prohibit certain types of conduct (such as torture, forced disappearance or arbitrary or extrajudicial executions, for example) and establish different prescriptions for action (such as guaranteeing the existence of effective legal remedies or access to healthcare). In addition to defining the regime's norms, international human rights instruments establish a series of rules. As has already been mentioned, these norms and rules seem to merge or overlap one another. To take this into account, for the sake of conceptual simplicity and greater clarity, we will use the concept of norms in broader terms to refer to both rights and obligations and prohibitions and prescriptions of certain actions (thus including the rules within a broader notion of international norms).

Finally, the founding charters of the different international organisations (such as the Charter of the UN or the Charter of the Organization of American States) and the international human rights instruments themselves (such as the American Convention on Human Rights, ACHR, or the ICCPR) establish a range of bodies and procedures[11] to promote the implementation of the regime's norms. Ultimately, the bodies of international human rights regimes "make decisions": through various concrete monitoring and protection mechanisms or procedures, they determine, in an authoritative way, to what extent states are complying with or violating the international norms they have committed to respect.[12]

The explicit use of the concept of "international regime" is useful for descriptive and analytical purposes. It is more precise than the vague notion of "system" (for example, the "Inter-American system" of human rights) that is commonly used in the legal literature or by "practitioners" or other actors directly involved in the promotion and defence of human rights.

2 • International human rights regimes

Until now, we have referred to the "international human rights regime" in the singular. However, in empirical terms, there is a much broader and more diverse reality. Even when their principles do not vary and the norms are in some cases similar, in practice, we can talk about the existence of several human rights regimes. The international instruments containing human rights norms are numerous and very diverse, as are the decision-making and implementing bodies. It is possible and, in fact, necessary to regroup the different norms and decision-making and implementing bodies according to certain criteria related to a particular aspect or affinity. For example, some sets of norms and bodies are explicitly related to broad, yet specific categories of rights (such as civil and political rights on one hand, and economic, social and cultural rights, on the other[13]) or to specific rights (such as the prohibition of torture and forced disappearance). Other sets of norms and bodies can be regrouped according to the specific group of subjects they seek to protect (such as women, children, migrant workers or persons with disabilities).

However, the most common way of disaggregating the complex international human rights regime, or grouping together its components, is according to the international (or intergovernmental) organisations from which they have originated or in which the concrete groups of existing norms and bodies are inserted. Here, we can talk about the UN or the universal regime; the Council of Europe (CoE) or European regime; the OAS or Inter-American regime; or the African Union (AU) or the African regime (see table 1).[14] This classification criteria will be used in this article for two reasons. On one hand, it corresponds to common practice in other fields (such as law) and the world of "practitioners". Secondly, it emphasises the key role international organisations play not only in the promotion and defence of human rights in the world, but also in the regulatory and institutional development of the international system – an issue that is particularly important for IR.[15]

. . .

Table 1 • International human rights regimes[16]

Regime	International organisation to which it is linked	Main international instruments	Main decision-making and implementing bodies
Regime universal	United Nations (UN)	Charter of the UN	Human Rights Council[17]
		Universal Declaration of Human Rights	
		International Convention on the Elimination of All Forms of Racial Discrimination	Committee on the Elimination of Racial Discrimination
		International Covenant on Economic, Social and Cultural Rights	Committee on Economic, Social and Cultural Rights
		International Covenant on Civil and Political Rights	Human Rights Committee
		Convention on the Elimination of All Forms of Discrimination against Women	Committee on the Elimination of Discrimination against Women
		Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	Committee against Torture
		Convention on the Rights of the Child	Committee on the Rights of the Child
		International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	Committee on the Protection of the Rights of Migrant Workers
		Convention on the Rights of Persons with Disabilities	Committee on the Rights of Persons with Disabilities
		International Convention for the Protection of All Persons from Enforced Disappearance	Committee on Enforced Disappearance

Regime	International organisation to which it is linked	Main international instruments	Main decision-making and implementing bodies
Inter-American regime	Organization of American States (OAS)	Charter of the OAS	Inter-American Commission on Human Rights
		Charter of the OAS American Declaration of the Rights and Duties of Man	Inter-American Court of Human Rights
		American Convention on Human Rights	
		Inter-American Convention to Prevent and Punish Torture	
		Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, "Protocol of San Salvador"	
		Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, Convention of Belém do Pará	
		Inter-American Convention on Forced Disappearance of Persons	
		Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities	
European regime	Council of Europe	Statute of the Council of Europe	Committee of Ministers
		European Convention for the Protection of Human Rights and Fundamental Freedoms (and its 14 protocols)	European Court of Human Rights[18]

Regime	International organisation to which it is linked	Main international instruments	Main decision-making and implementing bodies
European regime	Council of Europe	European Social Charter	Committee of Independent Experts and Governmental Committee
		European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment	European Committee for the Prevention of Torture
African regime	African Union	Constitutive Act of the African Union	African Commission on Human and Peoples' Rights
		African Charter on Human and Peoples' Rights	
		Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights	African Court on Human and Peoples' Rights
		Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa	
		African Charter on the Rights and Welfare of the Child	

3 • The Donnelly matrix

In the mid-1980s, shortly after Stephen Krasner's concept of international regime became popular, Jack Donnelly used it to describe and analyse the set of international human rights norms and bodies that had emerged and been developing since the notion of human rights was included in the UN Charter. By doing so, not only was

Donnelly the first internationalist to apply the concept of international regime to the area of human rights, but also the first to propose a concrete analytical tool for describing and systematically classifying the existing international human rights regimes. He developed a matrix with two axes (see table 2). The vertical axis of his matrix is based on the level of legal enforceability of the regime's international norms: a) national standards (or absence of international norms); b) international guidelines; c) international standards with national exemptions, and d) international norms without exemptions.[19] The horizontal axis of the matrix presents a scale that reflects the functions attributed to the bodies of the regime, or, in other words, the varying levels of power delegated to them by states: a) national decisions (or the absence of international bodies); b) promotion; c) information exchange; d) policy coordination; e) monitoring of conduct, and f) adoption and enforcement of decisions. The two dimensions combine to form a matrix made up of different cells that denote the degree of international institutionality (or of "legalisation"),[20] which go from the inexistence of an international regime (bottom left-hand square) to that of being highly institutionalised, in which the regime's norms are binding for all states and the international bodies have the capacity to make decisions and impose or force actors to comply with them (upper right-hand square). Using the horizontal axis as a basis (degrees of delegation), Donnelly proposed ideal types of international human rights regimes: declaratory, promotional, implementation and enforcement.

Table 2 • Donnelly matrix:
Levels of institutionality and typology of international human rights regimes

	National decisions	Promotion	Information exchange	Policy coordination	International monitoring	International decisions
International norms						
International standards (with exceptions						
International guidelines						
National standards						
	Declaratory regime	Promotional regime	Promotional/ Implementation Regime	Implementation regime	Implementation/ Enforcement regime	Enforcement regime

Source: Jack Donnelly, 1986, p. 603.

In practice, international human rights regimes have different levels of institutionality and they have all evolved over time. Donnelly's matrix can be very useful for tracing and describing variations among regimes and over time. However, it does not appear to adequately reflect the functions assigned to the bodies of the international human rights regimes. The tasks of information exchange and policy coordination between states are not prominent in international human rights bodies, which are not based on the principle of reciprocity between states. In this article, we propose to adapt Donnelly's matrix, particularly by introducing changes to the categories of the horizontal axis. These alterations are based on a descriptive analysis that explains the main functions of the bodies of the international human rights regimes.

In general terms, the main tasks that have been assigned or delegated to these bodies are those of promoting, monitoring and protecting human rights. The UN Human Rights Council (HRC), for example, has the explicit task of "promoting universal respect for the protection of all human rights"; for which, among other things, it will "[p]romote human rights education and learning".[21] As for the Inter-American Commission on Human Rights (IACHR), the OAS gave it the mandate to "promote the observance and defence of human rights".[22]

The different bodies of the international human rights regime also carry out monitoring work: they systematically monitor states' efforts to implement the norms of the regime in question. For instance, the IACHR "[o]bserves the general situation of human rights in Member States and publishes...reports on the situation in a given Member State" or "[c]onducts *in loco* visits to countries to conduct an in-depth analysis of the general situation and/or to investigate a specific situation."[23]

In general terms, the bodies monitor these efforts and, based on the results of their assessments, determine the extent to which states are complying with the regime's norms. The outcome of this exercise is generally the elaboration of a series of concrete recommendations that are not, however, binding for the states.

Some of the bodies of the international human rights regime also carry out functions related to the protection of human rights. This involves not only the adoption of preventative measures, but also the establishment of an institutional machinery to ensure "enforceability" – that is, for the pursuit of truth, justice and reparation.[24] The European, Inter-American and African human rights courts, the IACHR and the UN treaty bodies have the authority or the competence to receive and process complaints, denunciations or communications on concrete cases of human rights violations committed by specific states and to decide on the merits of the case.[25] Thus, in a jurisdictional scheme (in the case of the courts) or a quasi-jurisdictional one (the case of other fora), the international human rights bodies explore the case under examination to determine if the state has or has not violated human rights and adopt a series of "reparation measures". These measures must be implemented by the state responsible for the violation. Therefore,

international human rights bodies not only monitor, but also protect human rights by providing a framework for the pursuit of truth, justice and reparation. The decisions adopted in this framework, however, may or may not be binding. Only the actual judicial bodies – the European Court of Human Rights, the Inter-American Court of Human Rights and the African Court on Human and Peoples' Rights – can adopt sentences that are legally binding for states. The other bodies – such as the IACHR and the UN treaty bodies – only make recommendations, which are not binding.[26]

In light of this, a modified matrix for analysing the level of institutionality of international human rights regimes is proposed in table 3 below. In particular, on the horizontal axis, which corresponds to the degree of delegation to the bodies of international regimes, the columns related to the functions of information exchange and policy coordination have been eliminated. As for the other functions, in addition to monitoring, we have added protection through non-binding decisions (or "weak" protection) and protection through binding decisions (or "strong" protection). These changes modify the typology of international regimes derived from the horizontal axis of the matrix, which now has the following categories: declaratory, promotional, monitoring, weak protection, strong protection and enforcement regimes (see table 3).

4 • Levels of institutionality of existing international human rights regimes

What "type" of international regime are the international human rights regimes that are in place today?[27] What is their level of institutionality? Have they evolved over time? In this section, we seek to answer these questions by applying the modified version of the Donnelly matrix to the universal, Inter-American, European and African regimes.

In 1948, there was a total absence of an international human rights regime (see table 3).[28] The establishment of the UNCHR and the adoption of the UDHR gave birth to the universal regime. It was, at first, an incipient declaratory and promotional regime based solely on international guidelines (the UDHR) and international bodies with limited powers to promote human rights (UR1 in table 3). Then, with the adoption of the American Declaration of the Rights and Duties of Man (ADRD), the Inter-American regime was created as a declaratory regime based solely on international guidelines, which still lacked an international body to delegate functions to (IAR1 in table 3).[29] A very short time later, the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) came into effect in 1953 and the European Commission of Human Rights (EHR Commission) and especially the European Court of Human Rights (ECtHR) were established, thereby creating a strong protection regime in Western Europe. It was based on international norms (ECHR), and not international guidelines, and equipped with a body that has the power to make binding decisions. Back then, the regime's limits were found in the binding nature of its norms, as the signing and

ratification of the ECHR was not obligatory for all CoE member states (ER1 in table 3). In sum, one decade after World War II, the universal and Inter-American regimes were still at an early stage of development, as they were merely declaratory and promotional regimes. The European regime, on the other hand, was clearly more advanced: set up as a strong protection regime, it has had a high level of institutionality since the beginning.

The universal regime began to develop further in the late 1960s and especially in the early 1970s, when the UNCHR decided to get involved and monitor human rights violations in certain countries.[30] At first, this component of the universal regime was based on international standards without exceptions: in other words, the legal basis for the establishment and the operations of the UNCHR was the UN Charter and, therefore, in principle, it could carry out its monitoring tasks in all of the organisation's member states. In practice, however, the Commission's actions soon became strongly politicised, as it performed its monitoring work selectively while often applying double standards. These problems seriously affected its legitimacy, which eventually led to its elimination and the establishment of the HRC. Its levels of institutionality, then, were greater "in theory" than in practice, as the UNCHR adopted exceptions while implementing international norms and performing its monitoring tasks. This is why it is more accurate to situate this component and moment of the universal regime at the level of international standards with exceptions in the vertical axis of the classification matrix (UR2 in table 3).

With the entry into force of the International Convention on the Elimination of All Forms of Racial Discrimination in 1969 and especially the ICCPR and the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1976, the universal regime continued to develop and gain strength through the adoption of a wide range of specific human rights treaties and the creation of their respective implementing bodies (see table 1). Treaty bodies such as the Human Rights Committee or the Committee on Economic, Social and Cultural Rights (in charge of monitoring the implementation of the ICCPR and the ICESCR, respectively) began to receive and review regular reports from states in the late 1970s. However, it was only in the early 1990s that they began to elaborate truly critical "concluding observations reports", which, in practice, is an important monitoring task (UR3a in table 3). Moreover, some of the treaty bodies were given the task of receiving and examining reports on concrete human rights violations. The first rulings on this kind of report were made by the Human Rights Committee at the end of the 1970s (UR3b in table 3). The component of the universal regime based on treaty bodies, though, has been based on international standards with exceptions, as both the signing and ratification of the treaties and the recognition of the competence of the treaty bodies to receive reports of concrete cases is voluntary for UN member states. In any case, towards the end of the 1970s, with the implementation of the treaty bodies, a monitoring and weak protection regime emerged and was developed (UR3a and UR3b in table 3), thereby complementing the component of the regime based on the CHR. Thus, not only did the universal human rights regime grow in "size", but it also developed significantly by increasing its level of institutionality.

As mentioned earlier, the UN Commission on Human Rights was substituted by the Human Rights Council in 2006. The new global human rights body retained the monitoring powers of its predecessor, but diversified the mechanisms at its disposal by designing and implementing an innovative tool: its Universal Periodic Review (UPR). Through this new monitoring mechanism, the HRC conducts a public exercise (based on "constructive dialogue") of evaluating the human rights situation in all UN member states. Thus, the establishment of the HRC and the implementation of the UPRs, in particular, helped develop the universal regime's levels of institutionality further, as in practice, they were based on international standards without exceptions (UR4 in table 3). Table 3 shows how the international human rights regime of the UN has come a long way between the time of its inception in 1946 and today.

Table 3 • The modified matrix: levels of institutionality and typology of international human rights regimes

Duty/ Delegation	National decisions	Promotion	Monitoring	Protection (international, non-binding decisions)	Protection (international binding decisions	Enforcement / Mandatory compliance with international decisions
International norms (with no exceptions)			UR4 (from 2006 on) IAR3 (from 1965-1967 on)	IAR3 (from 1965-1967 on)	ER2(from 1994-1998 on)	
International standards (with exceptions)			UR2 and UR3a (from the 1990s on) AfR1 (from 1986 on)	UR3b (from the 1970s on) AfR1 (from 1986 on)	ER1 (1953/ 1959 to 1994) IAR4 (from 1979 on) AfR2 (from 2004 on)	
International guidelines	IAR1 (1948)	UR1 (1946/1948 to the early 1970s)	IAR2 (from 1959 to1965-1967)			
National standards	Absence of a regime (Prior to 1946)					
	Declaratory regime	Promotional regime	Monitoring regime	Weak protection regime	Strong protection regime	Enforcement regime

Source: Elaborated by the author.

The Inter-American regime began to evolve in 1959 with the establishment of the IACHR. Since then, with the investigations it carried out on the human rights

situation in the region, the regime evolved from a promotional to a monitoring regime, but one that was based solely on international guidelines (IAR2 in table 3). A short time later, a series of reforms to the OAS's regulatory and institutional framework enhanced the regime's institutionality. In 1965, the IACHR's statute was reformed to grant it a protection mandate, giving it the power to receive and examine individual complaints on concrete cases of (certain) human rights violations committed by any OAS member. Then, in 1967, the Buenos Aires Protocol altered the Charter of the OAS to officially include the IACHR in the list of the organisation's main bodies and officialise its mandate to monitor and protect human rights. This strengthened the Inter-American human rights regime significantly, as it acquired a protection mandate (weak, as it issues only non-binding recommendations) and began to be based on an international norm without exceptions (one that applies to all OAS members): the regional organisation's charter (IAR3 in table 3). The next step in the institutional development of the Inter-American human rights regime was the adoption in 1969 and the entry into force in 1978 of the American Convention on Human Rights (ACHR). The ACHR established the Inter-American Court of Human Rights, which became operational only one year later, in 1979. Thus, the creation of the Inter-American Court converted the Inter-American regime into a strong protection regime (that is, one with the capacity to make decisions that are binding for states). It is, however, based on international norms with exceptions, as the ratification of the ACHR and the recognition of the Inter-American Court's jurisdiction are voluntary for OAS member states (IAR4 in table 3).

The African human rights regime emerged from within the Organisation of African Unity (OAU, which is now the African Union, AU) in the 1980s. The African Charter on Human and Peoples' Rights (ACHPR) came into effect in 1986 and the African Commission on Human and Peoples' Rights was established one year later. The AHPR Commission received a clear mandate to monitor human rights, as it was given the task of conducting investigations into situations of massive human rights violations and the elaboration of reports and recommendations based on the results. It was also to analyse regular reports from the states and receive complaints on concrete cases of human rights violations. Therefore, a monitoring and weak protection regime arose in Africa (the resolutions of the AHPR Commission on concrete cases are not binding), which is based on international norms with exceptions (the ACHPR)(AfR1 in table 3). More recently, in 2004, the First Protocol to the ACHPR came into effect, which established the AHPR Court and gave it the power to adopt binding decisions on concrete cases. This moved the African regime towards a strong protection regime, but one that is based on international norms with exceptions, as both the ratification of the ACHPR and the recognition of the AHPR Court are optional for AU member states (AfR2 in table 3).

As suggested early, the international human rights regime with the densest and the highest level of institutionality is the European regime. Since 1994, a resolution of the Parliamentary Assembly of the Council of Europe explicitly stated that all CoE members

must be part of the ECHR.[31] This strengthened the strong protection regime that has been in place in Europe for decades even further by basing it on international norms without exceptions (RE2 in table 3). This places the European regime in the uppermost right-hand corner of the matrix that it is possible to reach, which represents the highest level of institutionality that a regime can possibly attain in reality, as one should not expect international human rights bodies to acquire the power to impose their decisions by force (at least not in the foreseeable future).

5 • Conclusions

In this article, the international regime concept, which is characteristic of the field of IR, was used to analyse the dense international institutional architecture that has been developed around human rights. We demonstrated its utility and precision. More importantly, we took up again an analytical-descriptive tool proposed by Jack Donnelly over thirty years ago, which has been largely underutilised in the IR literature (and surely of other disciplines) on human rights. Based on an empirical analysis of the functions delegated to international human rights bodies, we adjusted the matrix, and the typology of international regimes that it generates, to enhance its precision and, therefore, its usefulness as an analytical-descriptive tool.

By applying the modified matrix to the main international human rights regimes in existence today, the article shows that there are clear variations in the regimes' levels of institutionality, both from one regime to another and over time. In regards to the latter, the matrix gives visibility to the significant evolution of the international human rights regimes throughout history and to their current level of institutionality.

This conclusion inevitably raises a question of an explanatory nature: has the increase in the levels of institutionality led to similar increases in the levels of compliance with the regime's norms? In other words, does a higher level of institutionality mean better prospects in relation to human rights in practice? Existing literature strongly suggests that it does not. As it is well known, despite the institutional development of international human rights regimes and their formal acceptance by the majority of states, the aggregate indicators on the respect (or rather, the violation) of human rights have changed little over time.[32] The analysis presented in the previous sections illustrates that the international human rights regimes do not have the power to enforce compliance with its norms or the decisions of its bodies. In other words, it does not "have the teeth it needs". Is this the best response to the paradox of the lack of compliance mentioned a few lines earlier? Or are there other transnational mechanisms – such as pressure from activists, economic or trade conditionalities, or imposition by force by the powerful nations – or national ones – such as litigation and social mobilisation – that could improve the effectiveness of the regime? These are questions that clearly go beyond the scope of this article and therefore, will have to be answered by research projects in the future.

NOTES

1 • "Charter of the United Nations", United Nations, October 24, 1945, accessed June 19, 2017, http://www.un.org/en/charter-united-nations/index.html. United Nations Conference on International Organization, San Francisco, California, United States.

2 • "Universal Declaration of Human Rights", United Nations, December 10, 1948, accessed June 19, 2017, http://www.un.org/es/universal-declaration-human-rights/. Through General Assembly Resolution 217 A (III).

3 • Stephen Krasner, "Structural Causes and Regime Consequences: Regimes as Intervening Variables", in *International Regimes,* ed. Stephen D. Krasner (Ithaca: Cornell University Press, 1983): 1-21.

4 • International Relations (capitalised) understood as the academic field that studies the phenomenon of international relations (not capitalised). Chris Brown, *Understanding International Relations* (London: MacMillan Press, 1997): 3.

5 • Emilie Hafner-Burton, *Making Human Rights a Reality* (Princeton: Princeton University Press, 2013).

6 • Jack Donnelly, "International Human Rights: A Regime Analysis", *International Organization* 40, no. 3 (1986): 599-642. Hasenclever, Mayer and Rittberger note that international regimes have varying degrees of institutionalism, which they understand as "the view that (international) institutions matter". The degree of institutionalism depends on how effective and resilient the international regimes are; in other words, the extent to which they achieve certain objectives or fulfil certain functions, and the degree to which they succeed in remaining in force and robust when faced with exogenous challenges, respectively. Andreas Hasenclever, Peter Mayer, and Volker Rittberger, *Theories of International Regimes* (Cambridge: Cambridge University Press, 1997): 2. The notion of "institutionality" used in this article – understood as the degree or extent to which international institutions are based on binding international norms and have bodies to which the power to make and enforce decisions has been delegated – is clearly different from the "institutionalism" concept proposed by Hasenclever and his co-authors.

7 • Krasner defines principles as "beliefs of fact, causation and rectitude"; norms as "standards of behaviour defined in terms of rights and obligations"; and rules as "specific prescriptions or proscriptions for action"; and decision-making procedures as "prevailing practices for making and implementing collective choice". Krasner, 1983, 2; see also Hasenclever, Mayer and Rittberger, 1997, 8-22; cf. Donnelly, 1986, 599-605.

8 • "Universal Declaration of Human Rights,"1948, preamble; "Vienna Declaration and Programme of Action," World Conference on Human Rights, Vienna, Austria, preamble, art. 1.5, June 25, 1993, accessed June 19, 2017, http://www.ohchr.org/Documents/Events/OHCHR20/VDPA_booklet_Spanish.pdf.

9 • "International Covenant on Civil and Political Rights", High Commissioner for Human Rights, Resolution 2200 A (XXI), art. 2, December 16, 1966, came into effect on March 23, 1976, accessed June 19, 2017, http://www.ohchr.org/SP/ProfessionalInterest/Pages/CCPR.aspx. Serrano and Vázquez affirm that the states' "general obligations" in relation to human rights are the obligation to respect, protect, guarantee and promote human rights. Sandra Serrano and Luis Daniel Vázquez, *Los Derechos en Acción. Obligaciones y Principios de Derechos Humanos* (Mexico: FLACSO Mexico, 2013): 58-82.

10 • Mainly binding treaties and declarations. For the different types of international human rights instruments and the differences in the degree to which they are binding or in the level of binding force they imply. See Daniel O'Donnel, *Derecho Internacional de los Derechos Humanos: Normativa, Jurisprudencia y Doctrina de los Sistemas Universal e Interamericano*, 2nd edition (Mexico: OACNUDH y

TSJDF, 2012): 51-72.

11 • For the sake of analytical clarity and simplicity in relation to terms, the article will henceforth use only the term "body/bodies" to refer to the procedures (mainly the "special procedures" of the UN Human Rights Council, as well as the numerous special rapporteurships, working groups and similar entities). For a complete and up-to-date list, see "Special Procedures of the Human Rights Council", OHCHR, September 27, 2016, accessed June 19, 2017 http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx.

12 • The said decisions are only binding for states in the case of the jurisdictional bodies, such as the European Court of Human Rights, the Inter-American Court of Human Rights or the African Court on Human and Peoples' Rights. For the other bodies of the international regime, their decisions are only recommendations. See Daniel O'Donnell, 2012.

13 • This classification, however, goes against the principle of indivisibility.

14 • Of the existing regimes, the universal, European, Inter-American and African human rights regimes have the highest level of institutionality. More recent attempts have been made to develop an architecture of human rights norms and bodies in other regional spaces, such as in the Middle East and Southeast Asia, or even in cultural "spaces", such as the Islamic world. See "Terms of Reference of ASEAN Intergovernmental Commission on Human Rights," ASEAN, July 20, 2009, accessed June 19, 2017, http://hrlibrary.umn.edu/research/Philippines/Terms%20of%20Reference%20for%20the%20ASEAN%20Inter-Governmental%20CHR.pdf; "Statute of the OIC Independent Permanent Human Rights Commission," Organization of the Islamic Cooperation, OIC/IPCHR/2010/Statute, June 30, 2011, accessed June 19, 2017, https://goo.gl/tYmCsc.

15 • Obviously, not all IR theorists would agree with this affirmation on the importance or the relevance of the institutionality of the international system and, more concretely, in the thematic area of human rights. For more on this debate, see Hasenclever, Mayer and Rittberger, 1997, and Alejandro Anaya Muñoz, *Derechos Humanos en y Desde las Relaciones Internacionales* (Mexico: CIDE, 2014): 21-35.

16 • Anaya Muñoz, 2014, 66-67.

17 • Formerly, the Commission on Human Rights.

18 • Formerly the European Commission of Human Rights.

19 • In relation to international human rights law instruments, international guidelines are the declarations, principles, minimum rules, guidelines and other instruments that are not contractual in nature (*"soft law"*). These instruments differ from the treaties, covenants, conventions and protocols that do have a contractual nature (*"hard law"*). See O'Donnell, 2012, 56.

20 • Approximately 15 years after Donnelly developed the matrix, Kenneth Abbot, Robert O. Keohane, Andrew Moravcsik, Anne-Marie Slaughter and Duncan Snidal developed the concept of "legalisation" in detail, thereby offering a very useful tool for systematically exploring the formal features of international regimes in general. The "legalisation" of an international regime is measured on the basis of three dimensions: obligation, precision and delegation. Kenneth Abbott *et al.*, "The Concept of Legalization", *International Organization* 54, no. 3 (2000): 401-19. The more an international regime's norms are binding and precise and its bodies have greater powers to implement norms and make authoritative decisions, the greater its legalisation.

21 • "Resolution 60/251," UN General Assembly, A/RES/60/251, April 3, 2006, §2, 5ª, accessed June 19, 2017, http://www2.ohchr.org/spanish/bodies/hrcouncil/docs/A.RES.60.251._Sp.pdf. Emphasis added.

22 • "Charter of the Organization of American States", OAS, April 30, 1948, accessed June 19, 2017, http://www.oas.org/dil/esp/afrodescendientes_manual_formacion_lideres_anexos.pdf. It came into effect on December 13, 1951, Ninth International Conference of American States, Bogotá, Colombia, art. 106.

23 • "Mandate and Functions of the Commission",

OAS, August 24, 2016, accessed June 19, 2017, http://www.oas.org/en/iachr/mandate/functions.asp.

24 • Serrano and Vázquez, 2013, 64-71.

25 • The treaty bodies are a series of committees of experts established for each of the ten main human rights treaties or optional protocols adopted at the UN. Anaya Muñoz, 2014, 74-78.

26 • Taken from Anaya Muñoz, 2014, 68-90.

27 • A different way of approaching this question is proposed by Hasenclever and his co-authors, who defend different approaches to conceptualising international regimes or different ontological perspectives on them: the behavioural, cognitive and formal approaches. The behavioural one understands international regimes as a series of *practices* related to a group of rules or specific conventions. The cognitive approach, for its part, puts emphasis on intersubjective *meanings* and common *understandings*. Finally, the formalistic approach insists on verifying the *formal existence* of explicit norms agreed upon by states. Hasenclever, Mayer and Rittberger, 1997, 14-7.

28 • The description of the historical evolution of the different international human rights regimes and their functions were taken from Anaya Muñoz, 2014, 68-90.

29 • It has been argued that over time, the UDHR and the ADRDM (or at least some of their articles) have been converted into international custom and therefore, they have acquired the status of binding norms. For simplicity sake, and especially due to the difficulties involved in identifying the precise moment in time when these changes occurred, this transformation has not been explicitly reflected or incorporated into the analysis that follows.

30 • In the first two decades of its existence, in the middle of the Cold War, the Commission on HR explicitly decided not to get involved in the monitoring of the human rights situation in certain countries (and therefore to not assume critical positions in this respect). Anaya Muñoz, 2014, 68-70.

31 • "Resolution 1031 (1994)", Parliamentary Assembly of the Council of Europe, April 14, 1994, accessed June 19, 2017, http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?FileID=16442&lang=EN. In 1998, by adopting Protocol No. 11 to the ECHR, CoE members opted for eliminating the EHR Commission and strengthening the EHR Court by making it a permanent body.

32 • Beth Simmons, *Mobilizing for Human Rights. International Law in Domestic Politics*, (Cambridge and New York: Cambridge University Press, 2000); Todd Landman, *Protecting Human Rights. A Comparative Study* (Washington, DC: Georgetown University Press, 2005); Hafner-Burton, 2013.

ALEJANDRO ANAYA MUÑOZ – *Mexico*
Alejandro Anaya holds a PhD in Political Science from the University of Essex, England. He is a professor and researcher of the International Studies Division of the Centre for Economic Research and Teaching (CIDE according to its Spanish acronmym). He is also a collaborator at the Drug Policy Programme Incubator (IPPD according to its Spanish acronmym).

email: *aanayaibero@gmail.com*

Received in October 2017.
Original in Spanish. Translated by Karen Lang.