THE FUTURE OF
UN HUMAN RIGHTS TREATY
MONITORING

EDITED BY
PHILIP ALSTON AND
JAMES CRAWFORD
CONTENTS

List of Tables, Figure, Appendices  page  viii
Notes on Contributors  ix
Editors’ Preface  xv
Table of Treaties  xvii
Table of Cases  xxiii
List of Abbreviations  xxxii

1. The UN human rights treaty system: A system in crisis?  1
   JAMES CRAWFORD

   A · The UN human rights monitoring system in action

2. Individual claims in a world of massive violations: What role for the Human Rights Committee?  15
   HENRY J. STEINER

3. Decision-taking in the Committee on the Elimination of Racial Discrimination  55
   MICHAEL BANTON

4. The Committee on the Elimination of Discrimination against Women at the crossroads  79
   MARA R. BUSTELO

5. The reporting process under the Convention on the Rights of the Child  113
   GERISON LANSDOWN
## Contents

6. The Committee on Economic, Social and Cultural Rights: Catalyst for change in a system needing reform 129  
   SCOTT LECKIE

7. Country-oriented procedures under the Convention against Torture: Towards a new dynamism 145  
   ROLAND BANK

8. UN human rights reporting procedures: An NGO perspective 175  
   ANDREW CLAPHAM

### B · National influences and responses

9. Making human rights treaty obligations a reality: Working with new actors and partners 201  
   ANNE GALLAGHER

10. Domestic implementation of international human rights treaties: Nordic and Baltic experiences 229  
    MARTIN SCHEININ

11. The domestic impact of international human rights standards: The Japanese experience 245  
    YUJI IWASAWA

    JOHN DUGARD

13. Uses and abuses of the treaty reporting procedure: Hong Kong between two systems 287  
    ANDREW BYRNES

14. The United States and the international human rights treaty system: For export only? 317  
    STEFANIE GRANT

### C · Regional and sectoral comparisons

15. Reporting in the Inter-American system of human rights protection 333  
    ANTÔNIO AUGUSTO CANÇADO TRINDADE
<table>
<thead>
<tr>
<th>Chapter Number</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>16</td>
<td>Lessons from the reporting system of the European Social Charter</td>
<td>347</td>
</tr>
<tr>
<td>17</td>
<td>The role of reporting in international environmental treaties: Lessons for human rights supervision</td>
<td>361</td>
</tr>
<tr>
<td>18</td>
<td>The problem of overlapping among different treaty bodies</td>
<td>383</td>
</tr>
<tr>
<td>19</td>
<td>Bodies of knowledge: A diversity promotion role for the UN High Commissioner for Human Rights</td>
<td>403</td>
</tr>
<tr>
<td>20</td>
<td>Treaty bodies responding to states of emergency: The case of Bosnia and Herzegovina</td>
<td>439</td>
</tr>
<tr>
<td>21</td>
<td>Ensuring effective supervisory procedures: The need for resources</td>
<td>461</td>
</tr>
<tr>
<td>22</td>
<td>Servicing and financing human rights supervision</td>
<td>481</td>
</tr>
<tr>
<td>23</td>
<td>Beyond ‘them’ and ‘us’: Putting treaty body reform into perspective</td>
<td>501</td>
</tr>
</tbody>
</table>

**D · Common challenges for the treaty bodies**

<table>
<thead>
<tr>
<th>Chapter Number</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>18</td>
<td>The problem of overlapping among different treaty bodies</td>
<td>383</td>
</tr>
<tr>
<td>19</td>
<td>Bodies of knowledge: A diversity promotion role for the UN High Commissioner for Human Rights</td>
<td>403</td>
</tr>
<tr>
<td>20</td>
<td>Treaty bodies responding to states of emergency: The case of Bosnia and Herzegovina</td>
<td>439</td>
</tr>
<tr>
<td>21</td>
<td>Ensuring effective supervisory procedures: The need for resources</td>
<td>461</td>
</tr>
</tbody>
</table>

**E · Looking to the future**

<table>
<thead>
<tr>
<th>Chapter Number</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>23</td>
<td>Beyond ‘them’ and ‘us’: Putting treaty body reform into perspective</td>
<td>501</td>
</tr>
</tbody>
</table>

**Index**                                                                                                                                       | 527  |
TABLES

Table 1.1 Participation in UN human rights treaties (as at 1 December 1998) 4
Table 1.2 Overdue reports under UN human rights treaties (as at 1 December 1998) 5

FIGURE

Figure 3.1 The Examination of State Reports by the Committee on the Elimination of Racial Discrimination 70

APPENDICES

Appendix, chapter 5 Thematic Structure of General Guidelines for Reporting on the Convention on the Rights of the Child 127
Appendix, chapter 17 Reporting Obligations in International Environmental Agreements 379
# Table of Treaties

<table>
<thead>
<tr>
<th>Year</th>
<th>Treaty Description</th>
<th>Pages/Articles</th>
</tr>
</thead>
<tbody>
<tr>
<td>1945</td>
<td>United Nations Charter</td>
<td>1, 19, 21, 211, 276, 432, 449</td>
</tr>
<tr>
<td>1945</td>
<td>Statute of the International Court of Justice</td>
<td>414n</td>
</tr>
<tr>
<td>1946</td>
<td>International Convention for the Regulation of Whaling</td>
<td>369n, 375, 379</td>
</tr>
<tr>
<td>1948</td>
<td>Charter of the Organisation of American States</td>
<td>337</td>
</tr>
<tr>
<td>1948</td>
<td>ILO Convention No. 87 on Freedom of Association</td>
<td>251–4, 268</td>
</tr>
<tr>
<td>1948</td>
<td>Universal Declaration of Human Rights</td>
<td>1, 211, 238, 247–9, 251, 267, 280, 283, 383</td>
</tr>
<tr>
<td></td>
<td>article 7</td>
<td>251</td>
</tr>
<tr>
<td></td>
<td>article 14</td>
<td>6, 249</td>
</tr>
<tr>
<td></td>
<td>article 15</td>
<td>249, 385</td>
</tr>
<tr>
<td></td>
<td>article 25(2)</td>
<td>262, 264</td>
</tr>
<tr>
<td>1949</td>
<td>ILO Convention No. 98 in the Right to Organise and Collective Bargaining</td>
<td>251–4</td>
</tr>
<tr>
<td></td>
<td>article 2</td>
<td>283</td>
</tr>
<tr>
<td></td>
<td>article 3</td>
<td>280</td>
</tr>
<tr>
<td></td>
<td>article 6(1)</td>
<td>6n, 233</td>
</tr>
<tr>
<td></td>
<td>article 8</td>
<td>233</td>
</tr>
</tbody>
</table>
### Table of Treaties

<table>
<thead>
<tr>
<th>Year</th>
<th>Treaty / Convention</th>
</tr>
</thead>
<tbody>
<tr>
<td>1957</td>
<td>Treaty Establishing the European community (Common Market)</td>
</tr>
<tr>
<td>1958</td>
<td>ILO Convention No. 111 on Discrimination (Occupation and Employment)</td>
</tr>
<tr>
<td>1961</td>
<td>European Social Charter</td>
</tr>
<tr>
<td>1991</td>
<td>Protocol Amending the European Social Charter</td>
</tr>
<tr>
<td>1995</td>
<td>Additional Protocol to the ESC Providing for a System of Collective Complaints</td>
</tr>
<tr>
<td>1966</td>
<td>Convention on the Elimination of All Forms of Racial Discrimination (CERD)</td>
</tr>
<tr>
<td>1966</td>
<td>International Covenant on Civil and Political Rights (ICCPR)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Article</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>article 25</td>
<td>344</td>
</tr>
<tr>
<td>article 35(1)</td>
<td>230n</td>
</tr>
<tr>
<td>article 39(3)</td>
<td>421n</td>
</tr>
<tr>
<td>article 54</td>
<td>27n</td>
</tr>
<tr>
<td>article 57</td>
<td>334n</td>
</tr>
<tr>
<td>1994 Protocol No. 11</td>
<td>3n, 20n, 27n, 29, 35n, 38n, 47, 350n, 421n, 488n</td>
</tr>
<tr>
<td>1957 Treaty Establishing the European community (Common Market)</td>
<td>28n</td>
</tr>
<tr>
<td>1958 ILO Convention No. 111 on Discrimination (Occupation and Employment)</td>
<td>76</td>
</tr>
<tr>
<td>1991 Protocol Amending the European Social Charter</td>
<td>350</td>
</tr>
<tr>
<td>1995 Additional Protocol to the ESC Providing for a System of Collective Complaints</td>
<td>358–9</td>
</tr>
<tr>
<td>1966 Convention on the Elimination of All Forms of Racial Discrimination (CERD)</td>
<td>1, 4, 5, 7, 58, 60, 68–9, 71–2, 74–5, 210, 212, 257, 259, 270–1, 276, 280, 288n, 289n, 290–1, 297–8, 301, 309, 310n, 313, 319, 320, 335n, 383–4, 388, 413, 439n, 447, 450–1, 461n, 473–4, 482</td>
</tr>
<tr>
<td>article 1</td>
<td>78</td>
</tr>
<tr>
<td>article 3</td>
<td>64, 76</td>
</tr>
<tr>
<td>article 4</td>
<td>451, 458</td>
</tr>
<tr>
<td>article 5</td>
<td>64, 209n</td>
</tr>
<tr>
<td>article 7</td>
<td>451, 458</td>
</tr>
<tr>
<td>article 8</td>
<td>412n, 414n</td>
</tr>
<tr>
<td>article 9</td>
<td>2n, 55, 56–60, 63, 65, 66, 217n</td>
</tr>
<tr>
<td>article 14</td>
<td>55–7, 63, 67, 72</td>
</tr>
<tr>
<td>article 15</td>
<td>59</td>
</tr>
<tr>
<td>1966 International Covenant on Civil and Political Rights (ICCPR)</td>
<td>1, 4, 5, 10, 16–20, 23–7, 30–3, 36–43, 45–8, 50–3, 72, 145, 152n, 163, 179–81, 210, 212, 220, 229, 230–1, 238n, 250, 257–9, 260, 264, 267, 270–1, 276–7, 280, 284, 288n, 289n, 292, 296, 302, 310n, 313, 319–20, 322, 327–8, 335n, 383, 397–8, 413, 420, 439n, 441, 456n, 497</td>
</tr>
<tr>
<td>article 1</td>
<td>25</td>
</tr>
<tr>
<td>article 2</td>
<td>24, 178n</td>
</tr>
</tbody>
</table>
Table of Treaties

article 3 397
article 4(2) 35n, 387
article 6 283, 320–2, 442n
article 7 260, 265, 320–2, 442n
article 9 241, 385, 387, 442n
articles 10–15 294, 442n
article 14 6n, 265, 385, 387, 392
article 17 263–4
article 20 442n
article 23 26, 397
article 24 261–2, 263–4, 385, 397
article 25 303n, 385, 395
article 26 58, 239, 260, 263–4, 385, 399
article 27 26, 385
article 28 16, 28, 189n
article 29 412n
article 30(2) 413n
article 31 413n, 414n
article 33 417n
article 34 417n
article 36 461n
article 38 189n
article 40(4) 2n, 21–22, 24, 155, 217n, 323, 349n
article 41 69n, 249n, 463n
1966 Optional Protocol 2n, 3, 10n, 16, 17, 18, 22–4, 27, 29, 30, 32–4, 39–42, 44, 46n, 52, 72, 145, 230, 249n, 259, 270–1, 277, 320, 399, 439n, 462, 482–3, 488–9, 491–2, 517
1990 Optional Protocol 456n
1966 International Covenant on Economic, Social and Cultural Rights (ICESCR) 1, 4, 5, 129, 133–6, 139, 142, 210, 220, 229, 238n, 252, 258, 267, 270–1, 276, 288n, 289n, 291, 295n, 300–1, 310n, 313, 326–7, 335n, 383, 397–8, 411, 420, 439n, 461n, 497, 511
  article 2(2) 264
  article 3 397
  article 9 264
  article 10 308
  article 11 134, 135
### Table of Treaties

<table>
<thead>
<tr>
<th>Year</th>
<th>Treaty Description</th>
<th>Page Numbers</th>
</tr>
</thead>
<tbody>
<tr>
<td>1969</td>
<td>American Convention on Human Rights (6n, 27n, 35n, 276, 278) (cited as Inter-American Convention on Human Rights), (280, 283, 334n, 335–45)</td>
<td>218n</td>
</tr>
<tr>
<td>1969</td>
<td>Vienna Convention on the Law of Treaties (250, 256, 260)</td>
<td></td>
</tr>
<tr>
<td>1971</td>
<td>Convention on Wetlands of International Importance (369–70)</td>
<td></td>
</tr>
<tr>
<td>1972</td>
<td>London (Ocean Dumping) Convention (369, 379)</td>
<td></td>
</tr>
<tr>
<td>1972</td>
<td>World Heritage Convention (379)</td>
<td></td>
</tr>
<tr>
<td>1973</td>
<td>International Convention for the prevention of Pollution from Ships (MARPOL Convention) and its 1978 Protocol (369n, 379)</td>
<td></td>
</tr>
<tr>
<td>1976</td>
<td>Barcelona Convention for the Protection of the Mediterranean Sea Against Pollution (368n)</td>
<td></td>
</tr>
<tr>
<td>1978</td>
<td>Kuwait Regional Convention for Cooperation on the Protection of the Marine Environment from Pollution (368n)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>article 9(2) (397)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>article 16(1)(d) (262, 264, 397)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>article 17 (80, 412n, 414n, 420n, 461n)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>article 18 (80n, 84n)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>article 20 (82, 110)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>article 21 (2n, 80n, 98n, 217n)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>article 22 (80n, 103, 475n)</td>
<td></td>
</tr>
<tr>
<td>1999</td>
<td>Optional Protocol (80–81, 84, 85–6)</td>
<td></td>
</tr>
<tr>
<td>1979</td>
<td>Long-Range Transboundary Air Pollution Convention (364n, 365n, 366n, 370, 380)</td>
<td></td>
</tr>
<tr>
<td>1985</td>
<td>Sulphur Protocol to the Long-Range Transboundary Air Pollution Convention (368, 372n, 380)</td>
<td></td>
</tr>
<tr>
<td>1994</td>
<td>Protocol to the LRTAP on the Reduction of Sulphur Emissions or Their Transboundary Fluxes by At Least 30 per cent (368n, 371)</td>
<td></td>
</tr>
</tbody>
</table>
### Table of Treaties

<table>
<thead>
<tr>
<th>Year</th>
<th>Treaty Description</th>
<th>Relevant Articles</th>
</tr>
</thead>
<tbody>
<tr>
<td>1984</td>
<td>Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)</td>
<td>4, 5, 71, 145–8, 150, 152n, 153, 155–9, 163, 168, 257–8, 270–1, 276, 288n, 289n, 297, 309, 313, 319–21, 324–7, 335n, 384, 388, 412, 414, 418, 439n, 456n, 461n, 473, 474</td>
</tr>
<tr>
<td>1981</td>
<td></td>
<td>article 1 152, 160, 186, 363n, 386, 415</td>
</tr>
<tr>
<td>1981</td>
<td></td>
<td>article 2 186n</td>
</tr>
<tr>
<td>1981</td>
<td></td>
<td>article 3 146, 151, 152n, 154, 325</td>
</tr>
<tr>
<td>1981</td>
<td></td>
<td>article 5 325</td>
</tr>
<tr>
<td>1981</td>
<td></td>
<td>article 6 160n, 325</td>
</tr>
<tr>
<td>1981</td>
<td></td>
<td>article 7 325</td>
</tr>
<tr>
<td>1981</td>
<td></td>
<td>article 10 152n</td>
</tr>
<tr>
<td>1981</td>
<td></td>
<td>article 12 158n</td>
</tr>
<tr>
<td>1981</td>
<td></td>
<td>article 14 152n</td>
</tr>
<tr>
<td>1981</td>
<td></td>
<td>article 16 157, 186</td>
</tr>
<tr>
<td>1981</td>
<td></td>
<td>article 17 412n, 414n, 418, 420n</td>
</tr>
<tr>
<td>1981</td>
<td></td>
<td>article 18(3) 461n</td>
</tr>
<tr>
<td>1981</td>
<td></td>
<td>article 19 155, 162, 165, 185n, 217n</td>
</tr>
<tr>
<td>1981</td>
<td></td>
<td>article 22 439n</td>
</tr>
<tr>
<td>1981</td>
<td></td>
<td>article 28 166</td>
</tr>
<tr>
<td>1985</td>
<td>Vienna Convention on the Protection of the Ozone Layer</td>
<td>368, 380</td>
</tr>
<tr>
<td>1987</td>
<td>European Convention for the Prevention of Torture</td>
<td>145n</td>
</tr>
<tr>
<td>1989</td>
<td></td>
<td>article 1 152, 160, 186, 363n, 386, 415</td>
</tr>
<tr>
<td>1989</td>
<td></td>
<td>article 2 186n</td>
</tr>
<tr>
<td>1989</td>
<td></td>
<td>article 3 146, 151, 152n, 154, 325</td>
</tr>
<tr>
<td>1989</td>
<td></td>
<td>article 5 325</td>
</tr>
<tr>
<td>1989</td>
<td></td>
<td>article 6 160n, 325</td>
</tr>
<tr>
<td>1989</td>
<td></td>
<td>article 7 325</td>
</tr>
<tr>
<td>1989</td>
<td></td>
<td>article 10 152n</td>
</tr>
<tr>
<td>1989</td>
<td></td>
<td>article 12 158n</td>
</tr>
<tr>
<td>1989</td>
<td></td>
<td>article 14 152n</td>
</tr>
<tr>
<td>1989</td>
<td></td>
<td>article 16 157, 186</td>
</tr>
<tr>
<td>1989</td>
<td></td>
<td>article 17 412n, 414n, 418, 420n</td>
</tr>
<tr>
<td>1989</td>
<td></td>
<td>article 18(3) 461n</td>
</tr>
<tr>
<td>1989</td>
<td></td>
<td>article 19 155, 162, 165, 185n, 217n</td>
</tr>
<tr>
<td>1989</td>
<td></td>
<td>article 22 439n</td>
</tr>
<tr>
<td>1989</td>
<td></td>
<td>article 28 166</td>
</tr>
</tbody>
</table>
Table of Treaties

386–8, 390, 397, 412, 414, 439n, 452, 456n, 461n, 473, 478, 481, 511
article 2 116, 117, 262–4
article 3 116
article 4 116
article 6 116
article 12 116, 120
articles 13–16 126
article 19 117
article 22 116
article 23 117, 126
article 24 116–17
article 27 120
article 28 118, 120
article 31 118
article 32 118
article 41 386
article 42 116
article 43 412n, 414n, 420n, 461n
article 44 116
article 45 2n, 118–19, 217n, 218n, 475n
1990 Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 257–8, 384, 413n, 414n, 436n
1992 UN Framework Convention on Climate Change 368–9n, 370, 371, 373, 374, 376–7, 378, 380
1995 General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton-Paris Agreement) 440, 450–1, 454–7, 460
1996 Revised European Social Charter 347n
1998 Statute of the International Criminal Court 9n, 317n

xxii
TABLE OF CASES

International bodies

HUMAN RIGHTS COMMITTEE

Hartikainen v. Finland, Communication No. 40/1978 230–1, 241
Järvinen v. Finland, Communication No. 295/1988 241–2
Ng v. Canada, UN Doc. CCPR/49/D/469/1991; View of 7 December 1994; 98 ILR p. 479 284
Table of Cases

Torres v. Finland, Communication No. 291/1988 241
Vuolanne v. Finland, Communication No. 265/1987 241, 261n

INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA

Prosecutor v. Tadic, 105 ILR 419 (Appeals Chamber) 6n

Regional bodies

EUROPEAN COMMISSION OF HUMAN RIGHTS


EUROPEAN COURT OF HUMAN RIGHTS

Campbell and Cosans v. United Kingdom, Series A, vol. 48 284
Deweer v. Belgium, Series A, No. 35 230n
Dudgeon Case, Series A, No. 45, 4 EHRR 149 (1981) 45n
Engel and Others v. Netherlands, Series A, vol. 22 280n
Hentrich v. France, Series A, No. 296–A 230n
Norris v. Ireland, Series A, No. 142, 13 EHRR 186 (1989) 45n
Soering v. United Kingdom, Series A, vol. 161 267n, 278, 284, 321
Tyrer v. United Kingdom, Series A, vol. 26 261n, 278, 280, 284
Van Oosterwijk v. Belgium, Series A, No. 40 230n

EUROPEAN COMMITTEE OF SOCIAL RIGHTS (FORMERLY COMMITTEE OF INDEPENDENT EXPERTS)

International Commission of Jurists v. Portugal, 6 IHRR, 1999, p. 1142 359n
### Table of Cases

**INTER-AMERICAN COURT OF HUMAN RIGHTS**

*Caballero Delgado and Santana v. Colombia*, judgment on reparations of 29 January 1997 337n


*El Amparo* (Venezuela), judgment on reparations of 14 September 1996, Series C, No. 28 337n

*Genie Lacayo v. Nicaragua*, resolution of revision of judgment of 13 September 1997 337n


*Honduran cases*, Series C, No. 46 (1997) 341n

*Loayza Tamayo v. Peru*, judgment on the merits of 17 September 1997 337n

*Maqueda* case (Argentina), Resolution of 15 January 1995, Series C, n. 18, pp. 15–26 340n


**National courts**

**CANADA**

*Public Service Alliance of Canada v. The Queen in Right of Canada*, DLR 4th, 11 (1984), p. 337 (FCTD) 268n


*Re Retail, Whole Sale & Department Store Union & Government of Saskatchewan*, DLR 4th, 19 (1985), p. 609 (Sask. CA) 268n
Table of Cases


DENMARK

UfR 1989 p. 898 and UfR 1985 p. 181 (Supreme Court) 232n

FINLAND

Ruling 1995:7 (Supreme Court) 232n
KHO 1993 A25 (Torres) (Supreme Administrative Court?) 241n
KHO 1993 A 26 (Supreme Administrative Court) 233
KHO 1993 A 29 (Supreme Administrative Court) 233
KHO 1996 No. 1069 (Vuolanne) (Supreme Administrative Court?) 241n

HONG KONG

R. v. Director of Immigration, ex parte Hai Ho-tak, (1994) 4 HKPLR 324 (CA) 307n

ICELAND

Ruling 1992.174 (Icelandic Supreme Court) 232n

JAPAN

18 November 1964, Supreme Court, Keishu, 18, pp. 579, 582 251n
10 September 1966, Tokyo District Court, Rominshu, 17, p. 1042 253n
26 October 1966, Supreme Court Grand Bench, Keishu, 20, p. 901 253n
13 March 1968, Osaka High Court, Hanrei taimuzu, 221, p. 224 248n
2 April 1969, Supreme Court Grand Bench, Keishu, 23, pp. 305, 311 250n, 254n
15 May 1969, Nagoya District Court, Shomu geppo, 15, p. 406 250n
28 July 1970, Nagoya District Court, Shomu geppo, 16, p. 1453 250n
Table of Cases

25 April 1973, Supreme Court Grand Bench, Keishu, 27, p. 547 254n
25 December 1975, Tokyo District Court, Shomu geppo, 22, p. 574 250n
21 May 1976, Supreme Court Grand Bench, Keishu, 30, p. 1178 254n
29 March 1977, Tokyo District Court, Shomu geppo, 23, p. 552 248n
12 July 1977, Tokyo District Court, Shomu geppo, 23, p. 1283 250n
15 December 1978, Nagoya District Court, Hanrei jiho, 920, pp. 219, 222, 232 520n
28 June 1979, Kobe District Court, Shomu geppo, 25, p. 2819 250n
11 June 1982, Morioka District Court, Rodo hanrei, 397, p. 53 256n
25 November 1983, Supreme Court, Shomu geppo, 30, pp. 826, 828 248n
20 November 1985, Tokyo High Court, Rodo hanrei, 466, p. 65 255n
18 July 1986, Osaka High Court, Hanrei taimuzu, 627, pp. 113, 114 248n
14 August 1986, Tokyo High Court, Rodo hanrei, 481, p. 27 255n
10 November 1986, Osaka High Court, Gyoshu, 37, pp. 1263, 1267 248n
26 May 1988, Tokyo High Court, Rodo hanrei, 519, pp. 73, 76, affirmed 255n
2 March 1989, Supreme Court, Shomu geppo, 35, pp. 1754, 1761 248n, 250n
17 April 1990, Supreme Court, Keishu, 44, p. 169 255n
9 November 1992, Osaka District Court, Hanrei jiho, 1470, pp. 106, 119 250n
11 November 1982, Tokyo District Court, Hanrei taimuzu, 490, p. 112 250n
20 November 1985, Tokyo High Court, Rodo hanrei, 466, pp. 65, 78, 79 256n
26 December 1985, Fukuoka District Court, Shomu geppo, 32, pp. 2145, 2179–80 256n
15 November 1988, Tokyo High Court, Rodo hanrei, 532, p. 77 256n
19 April 1990, Tokyo District Court, Hanrei jiho, 1349, p. 3 256n
29 March 1991, Tokyo High Court, Hanrei taimuzu, 764, p. 133 262n
23 May 1991, Tokyo District Court, Hanrei jiho, 1382, p. 3 264n
26 December 1991, Fukuoka High Court, Rodo hanrei, 639, p. 73 256n
24 November 1992, Fukuoka High Court, Rodo hanrei, 620, p. 45 256n
19 January 1993, Oita District Court, Hanrei jiho, 1457, pp. 36, 49 256n

xxvii
Table of Cases

8 April 1993, Supreme Court, *Rodo hanrei*, 639, p. 12 256n
14 April 1993, Sendai High Court, *Shomu geppo*, 40, pp. 930, 966 520n
19 May 1993, Sapporo High Court, *Hanrei jiho*, 1462, pp. 107, 117 250n
23 June 1993, Tokyo High Court, *Kominshu*, 46, p. 43 262n
7 December 1993, Tokyo District Court, *Hanrei jiho*, 1505, pp. 91, 106 250n
28 March 1994, Tokyo District Court, *Hanrei taimuzu*, 903, p. 114 265n
15 July 1994, Tokyo District Court, *Hanrei jiho*, 1505, pp. 46, 53, 55, 38
*Japanese Annual of International Law*, 1995, p. 133 265n
28 October 1994, Osaka High Court, *Hanrei jiho*, 1513, pp. 71, 87, 38
*Japanese Annual of International Law*, 1995, p. 118 259n, 260n
30 November 1994, Tokyo High Court, *Hanrei jiho*, 1512, p. 3 262n
22 March 1995, Tokyo High Court, *Hanrei jiho*, 1529, p. 29 264n
22 May 1995, Tokyo High Court, *Hanrei taimuzu*, 903, p. 112 265n
5 July 1995, Supreme Court Grand Bench, *Hanrei jiho*, 1540, p. 3 262n, 263n
10 August 1995, Tokyo High Court, *Hanrei jiho*, 1546, pp. 3, 14 250n
11 October 1995, Osaka District Court, *Hanrei taimuzu*, 901, pp. 84, 99 265n
15 March 1996, Tokushima District Court, *Hanrei jiho*, 1597, p. 115 250n, 260n
29 May 1996, Tokyo District Court, *Hanrei jiho*, 1577, p. 76 248n
22 November 1996, Tokyo District Court, not yet reported 265n
25 November 1997, Takamatsu High Court, *Hanrei jiho*, 1653, p. 117, 41
*Japanese Annual of International Law*, 1998, p. 87 260n
7 September 1998, Supreme Court, *Hanrei jiho*, 1661, p. 70 260n
21 January 1999, Supreme Court, *Hanrei jiho*, 1675, p. 48 264n

**NAMIBIA**

*Cultura 2000 v. Government of the Republic of Namibia*, 1993 (2) SA p. 12 (Nm) 281n
*Ex Parte Attorney-General, Namibia: In Re Corporal Punishment*, 1991 (3) SA p. 76 (NmSC) 279–80
*Kauesa v. Minister of Home Affairs*, 1995 (1) SA p. 51 (Namibian High Court) 280
*Kauesa v. Minister of Home Affairs*, 1996 (4) SA p. 965 (NmSC) 281n
*Minister of Defence, Namibia v. Mwadinghi*, 1992 (2) SA p. 354 (NmS) 280
*S. v. Tcoeib*, 1993 (1) SA Criminal Law Reports p. 274 (Nm) 281n
Table of Cases

NETHERLANDS


NEW ZEALAND

Wellington District Legal Services Committee v. Tangiora, [1998] 1 NZLR 129 2n

NORWAY

Rt 1994 (Supreme Court) 235

SOUTH AFRICA

African National Congress (Border Branch) v. Chairman, Council of State of the Republic of Ciskei, 1992 (4) SA p. 434 (Ck) 282n, 283
Azanian People’s Organization (AZAPO) and others v. President of the Republic of South Africa and others, 1996 (4) SA p. 671 (CC) 285
Azanian People’s Organization (AZAPO) and others v. Truth and Reconciliation Commission and others, 1996 (4) SA p. 562 (C) 285n
Bernstein v. Bester, 1996 (2) SA p. 751 (CC) 284n
Bongopi v. Chairman of the Council of State, Ciskei, 1992 (3) SA p. 250 (Ck) 282n
Ex parte Chairperson of the Constitutional Assembly; In re Certification of the Amended Text of the Constitution of the Republic of South Africa 1996, 1997 (2) SA 97 (Constitutional Court) 273n
De Klerk v. Du Plessis, 1995 (2) SA p. 40 (T) 283n
Ferreira and others v. Powell NO and others, 1996(1) SA p.984 (CC) 284
Table of Cases

Gardner v. Whitaker, 1995 (2) SA p. 672 (E) 283n
In re Gauteng School Education Bill 1995, 1996 (3) SA p. 165 (CC) 284
Government of the Republic of South Africa v. ‘Sunday Times’ Newspaper,
1995 (2) SA p. 221 (T) 283n
Inter-Science Research and Development Services (Pty.) Ltd v. Republica
Popular de Mocambique, 1980 (2) SA p. 111 (T) 275n
Kaffraria Property Co (Pty) Ltd v. Government of the Republic of Zambia,
1980 (2) SA p. 709 (E) 275n
(Ck) 282n
Ntenteni v. Chairman, Ciskei Council of State, 1993 (4) SA p. 546 (Ck)
282n
Nyamakazi v. President of Bophuthatswana, 1992 (4) SA p. 540 (B) 282n
S. v. Adams; S. v. Werner, 1981 (1) SA p. 187 (A) 276n, 281n
S. v. Daniels, 1991 (2) SA Criminal Law Reports p. 403 282n
S. v. Davids; S. v. Dladla, 1989 (4) SA p. 172 (N) 281n
S. v. H., 1995 (1) SA p. 120 (C) 283n
S. v. Khanyile, 1988 (3) SA p. 795 (N) 281n
S. v. Makwanyane, 1995 (3) SA p. 391 (Constitutional Court) 274n, 283,
284
S. v. Mthwana, 1989 (4) SA p. 361 (N) 281n
S. v. Rens, 1996 (1) SA p. 1218 (CC) 284n
S. v. Rudman, 1989 (3) SA p. 368 (ECD) 281n
S. v. Staggie, 1990 (1) SA Criminal Law Reports p. 669 (C) 282n
S. v. Werner, 1980 (2) SA p. 313 (W) at p. 328 276n, 281n
S. v. Williams, 1995 (3) SA p. 632 (CC) 284
S. v. Williams and Five Similar Cases, 1994 (4) SA p. 126 (C) 283n
Shabalala v. Attorney General, Transvaal; Gumede v. Attorney General,
Transvaal, 1995 (1) SA p. 608 (T) 283n
South Atlantic Islands Development Corporation Ltd v. Buchan, 1971 (1) SA
p. 234 (C) at p. 238 275n
Yates v. University of Bophuthatswana, 1994 (3) SA p. 815 (B) 282n

SWEDEN

Case No. 4642–1989 (Supreme Court) 237n
courts) 232n
### Table of Cases

**UK**

*R. v. Cleveland County Council*, *The Times*, 25 August 1992 76n

**USA**

*Breard v. Greene*, (Supreme Court) 523 U.S. 371 (1988) 318

**ZIMBABWE**

*In Re Munhumespo*, 1995 (1) SA p. 551 (ZS) at p. 557 279n
*Nyambirai v. Social Security Authority*, 1996 (1) SA p. 639 (ZSC) 279n
*Rattigan v. Chief Immigration Officer, Zimbabwe*, 1995 (2) SA p. 182 (ZSC) 279n
*Retrofit (Put) Ltd v. Posts and Telecommunications Corporation*, 1996 (1) SA p. 847 (ZSC) 279n
*S. v. A Juvenile*, 1990 (4) SA p. 151 (Supreme Court) 278
*S. v. Ncube*, 1988 (2) SA p. 702 (Supreme Court) 278
*Woods v. Minister of Justice, Legal and Parliamentary Affairs* (1995 (1) SA p. 703 (ZSC)) 279n
THE UN HUMAN RIGHTS TREATY SYSTEM:
A SYSTEM IN CRISIS?

JAMES CRAWFORD*

A. The evolution of the United Nations treaty system

In 1945, almost for the first time, the United Nations Charter announced the idea of human rights as real rights at the universal level. That required the development of substantive human rights standards, a process commenced with the Universal Declaration of Human Rights in 1948 and substantially extended through the two International Covenants in 1966, the Racial Discrimination Convention in the same year, and a large number of other instruments, general or specific in scope. All this has been in addition to the development of human rights standards and structures at regional level.

The articulation of new universal standards and new treaties has not ceased (although norm fatigue and avoiding the most obvious forms of duplication must, presumably, mean that it will become progressively more selective). But the need for their implementation remains, as much for the older standards and treaties as for the newer. Here the approach adopted at the universal level in 1966 had the following features:

(1) the establishment of specialist bodies charged with the oversight of treaty performance, each concerned with a specific treaty;
(2) regular reporting obligations for states parties, on the assumption that the examination of reports would lead to a dialogue between each state and the relevant treaty body, and to progressive improvements in compliance, associated with limited reliance on state-to-state or individual complaints procedures;

* My thanks to James Heenan for his very helpful research assistance in the preparation of this chapter.

1 See UN Charter, articles 1, 55.
the absence of decision-making powers of a judicial or quasi-judicial character vested in the treaty bodies.2

This was in contrast with the regional systems in Europe and the Americas, in which:

(1) the development of regional standards relied much more on the adoption of protocols to a single basic treaty, with the corollary that only a single institution or set of institutions remained involved;
(2) there was much more emphasis on individual complaints procedures as the basic supervisory tool, with the possibility of state-to-state complaints but little or no reliance on periodic reporting;
(3) the supervisory bodies dealing with such complaints had judicial or at least quasi-judicial powers: they could make decisions and even award compensation.

These contrasts were the result of deliberate decisions, and there were reasons – for the most part, good reasons – for them. But as time has gone

2 The language of the relevant provisions is not that of judicial determination. For example, Convention on the Elimination of All Forms of Racial Discrimination (CERD), article 9 (2) states that the Committee ‘may make suggestions and general recommendations’ based on state reports received. See also International Covenant on Civil and Political Rights (ICCPR), article 40 (4); Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), article 21 (1); Convention against Torture (CAT), article 20 (4) (authorising the Committee to make ‘comments and suggestions’ to states parties regarding well-founded allegations of systematic torture); Convention on the Rights of the Child (CRC), article 45 (d). Even under the Optional Protocol to the ICCPR, article 5 (3), the Human Rights Committee shall simply ‘forward its views’ to the state party and individual concerned. In Wellington District Legal Services Committee v. Tangiora [1998] 1 NZLR 129, the New Zealand Court of Appeal held that the Human Rights Committee is not ‘[a]ny administrative tribunal or judicial authority’ within the meaning of the Legal Services Act 1991 since (a) it is not called a court (cf. the International Court of Justice (ICJ)) or a tribunal (cf. the UN Administrative Tribunal); (b) the process set out in the Optional Protocol is exiguous and not that expected of a judicial body or tribunal; and (c) the wording of the Protocol is not the language of a binding obligation, as is the case with other bodies set up to resolve disputes of an international character. See generally D. McGoldrick, The Human Rights Committee. Its Role in the Development of the International Covenant on Civil and Political Rights (Oxford: Clarendon Press, 1994), paras. 2.21–2.22. As to the nature of the Committee on Economic, Social and Cultural Rights, established by Economic and Social Committee (ECOSOC) Res. 1985/17 subsequent to the adoption of the International Covenant on Economic, Social and Cultural Rights (ICESCR) itself, see M. C. R. Craven, The International Covenant on Economic, Social and Cultural Rights. A Perspective on its Development (Oxford: Clarendon Press, 1995), pp. 56–7.
on the contrasts have grown even sharper. At the regional level, we have seen the consolidation of institutions, with increasing emphasis on their judicial or quasi-judicial character; at the universal level, there has been a proliferation of bodies, and a certain decline, or at the least a failure to develop, complaints procedures as distinct from reporting. Despite a relative decrease in the resources available at the universal level, the proliferation of instances has continued, with a host of special procedures and personnel dealing with particular problems, thematic or geographic, as well as the establishment in 1994 of a United Nations High Commissioner of Human Rights (UNHCHR). At the regional level, by contrast, the original institutions have largely retained their central roles, and the problems of coordination and avoiding duplication are far less.

No doubt the contrast can be overdrawn, and it is not a simple case of regional success stories set against universal decay. As the chapters which follow show, the United Nations human rights treaty system has its own record of successes. It must also be stressed how rapidly the UN human rights treaty body system has developed, in parallel with the treaties themselves. The first such body, the Committee of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), first met in January 1970. By 1991 there were six treaty bodies; a seventh, the Migrant Workers’ Committee, is envisaged. Participation in the treaties themselves has grown exponentially, as Table 1 shows.

During this period the treaty bodies have developed and consolidated methods of considering reports, have pioneered and developed the institution of general comments, have developed forms of coordination with each other and (to a lesser extent) with other human rights institutions, especially UN High Commissioner for Human Rights (UNHCHR), have increasingly involved non-governmental organisations in their work, and generally have sought to keep up with a greatly increased workload. If the system is in difficulty, this is to a large degree a product of its success in attracting the participation and involvement of states and of other bodies. But the fact remains that the system is in difficulty, a difficulty characterised by some as crisis.

---

THE FUTURE OF UN HUMAN RIGHTS TREATY MONITORING

Table 1.1 Participation in UN human rights treaties
(as at 1 December 1998)

<table>
<thead>
<tr>
<th>Treaty</th>
<th>Date of adoption</th>
<th>Time to enter into force (number of parties required)</th>
<th>Time to reach 100 parties</th>
<th>Present number of parties</th>
</tr>
</thead>
<tbody>
<tr>
<td>CERD</td>
<td>21 Dec 1965</td>
<td>3 yr 1 m (27)</td>
<td>12 yr 10 m</td>
<td>151</td>
</tr>
<tr>
<td>ICESCR</td>
<td>16 Dec 1966</td>
<td>9 yr 1 m (35)</td>
<td>14 yr 10 m</td>
<td>138</td>
</tr>
<tr>
<td>ICCPR</td>
<td>16 Dec 1966</td>
<td>9 yr 3 m (35)</td>
<td>15 yr 1 m</td>
<td>140</td>
</tr>
<tr>
<td>Optional Protocol</td>
<td>16 Dec 1966</td>
<td>9 yr 3 m (10)</td>
<td></td>
<td>92</td>
</tr>
<tr>
<td>CEDAW</td>
<td>18 Dec 1979</td>
<td>1 yr 9 m (20)</td>
<td>10 yr 7 m</td>
<td>162</td>
</tr>
<tr>
<td>CAT</td>
<td>10 Dec 1984</td>
<td>2 yr 6 m (20)</td>
<td>11 yr 6 m</td>
<td>110</td>
</tr>
<tr>
<td>CRC</td>
<td>20 Nov 1989</td>
<td>11 m (20)</td>
<td>2 yr 1 m</td>
<td>191</td>
</tr>
</tbody>
</table>


B. Symptoms of success: Crises of the treaty system

Details will be provided in the chapters which follow, but the following summary gives some indication of the character of these difficulties and of their extent.

1. Corrosive effects of the backlog in state reporting

The first and most obvious issue is the huge backlog in state reports due under the various treaties. The progressive deterioration can be seen from Table 2.

There is, however, no provision which enables delinquent states to be censured, other than by committees noting the delays in their annual reports, and by repeated and so far ineffectual calls on the part of the General Assembly.

2. Delays in processing reports and communications

A second symptom is the delays presently experienced within the committees, whether it takes the form of delay between the date of submission of a
The UN human rights treaty system: A system in crisis?

Table 1.2 Overdue reports under UN human rights treaties
(as at 1 December 1998)\textsuperscript{4}

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>CERD</td>
<td>119</td>
<td>151</td>
<td></td>
<td>65</td>
<td>124</td>
<td></td>
<td>390</td>
<td></td>
</tr>
<tr>
<td>ICESCR</td>
<td>115</td>
<td>138</td>
<td></td>
<td>64</td>
<td>97</td>
<td></td>
<td>134</td>
<td></td>
</tr>
<tr>
<td>ICCPR</td>
<td>132</td>
<td>140</td>
<td></td>
<td>112</td>
<td>97</td>
<td></td>
<td>145</td>
<td></td>
</tr>
<tr>
<td>CEDAW</td>
<td>118</td>
<td>162</td>
<td></td>
<td>78</td>
<td>134</td>
<td></td>
<td>245</td>
<td></td>
</tr>
<tr>
<td>CAT</td>
<td>71</td>
<td>110</td>
<td></td>
<td>36</td>
<td>72</td>
<td></td>
<td>105</td>
<td></td>
</tr>
<tr>
<td>CRC</td>
<td>126</td>
<td>191</td>
<td></td>
<td>59</td>
<td>124</td>
<td></td>
<td>141</td>
<td></td>
</tr>
</tbody>
</table>

\textsuperscript{4} Adapted from Alston, Final Report (E/CN.4/1997/74) 14.

report and the date of its consideration, or (in the case of the committees which deal with individual petitions or communications) delay between their submission and their consideration by the committee.

In confronting these delays the committees are in a dilemma: they must give sufficient attention to individual reports and communications, whatever their source, while at the same time the number of states parties and of communications has increased and is increasing. Some committees (e.g. CERD) simply increase the number of reports considered at a session, but beyond a certain point this strategy will break down; moreover state representatives who have travelled to the meeting of a committee to discuss a report are entitled to a degree of attention: a system based on ‘constructive dialogue’ has to allow time for that dialogue even if the state is generally in compliance with the treaty. The underlying fact is that none of the committees has received any sustained increase to its regular meeting time, and no such increases can be expected. Moreover it is difficult to make use of intersessional time, because committee members are not paid for intersessional work (even if their other commitments left them time to do it); moreover problems of communication and lack of internet access for many members make intersessional work difficult and cumbersome.

It needs to be stressed that these unacceptable delays are occurring at a time when many reports are overdue. If all states were to report on time,
the delays in dealing both with reports and individual communications would become extreme: it is not too much to say that the system, established to oversee state compliance, depends for its continued functioning on a high level of state default. As to individual complaints procedures, the delays are even less excusable. Arguably the reason the Human Rights Committee is not itself in breach of the spirit of article 14 of its own Covenant through the delay in dealing with communications is, precisely, its non-judicial character.  

3. RESOURCE CONSTRAINTS

One possible solution to such problems is, quite simply, a substantial increase in the resources available. If the principle of state reporting and periodic review is right, as has been repeatedly asserted, then the first step must surely be to allow to all the committees the time, resources and staff to deal efficiently with the backlog, at the same time examining on the basis of other available materials the record of compliance in states whose reports are seriously overdue. But no informed observer believes that any substantial injection of resources for the system as a whole is likely. Recent limited improvements experienced by the Committee of the Convention on the Rights of the Child (CRC) are so far the exception rather than the norm. This alone raises serious questions of sustainability.

Resource constraints, identified in the chapters which follow, have a number of different features.

---

5 Alston estimated that as at 1996, somewhere between seven and twenty-four years, approximately, would be required to review all state reports overdue, if they were to be submitted forthwith: ibid., p. 17. The only exception was the CRC (four years), which only commenced operations in 1991 and thus had less time to develop a backlog. By December 1998, however, 141 state reports were overdue in respect of the CRC.

6 In Prosecutor v. Tadic, 105 ILR 419, the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia held that the ‘due process’ requirements laid down in ICCPR, article 14 (1), European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), article 6 (1) and American Convention on Human Rights (ACHR), article 8 (1) do not apply to proceedings conducted before an international tribunal (at para. 42). Notwithstanding this, the Chamber concluded that such a tribunal ‘must provide all the guarantees of fairness, justice and even-handedness, in full conformity with internationally recognized human rights instruments’ (at para. 45). Note, however, that the requirement that any hearing take place ‘within a reasonable time’, embodied in both ECHR, article 6 (1) and ACHR, article 8 (1), does not form part of ICCPR, article 14 (1).
The UN human rights treaty system: A system in crisis?

Secretariat/personnel constraints

Committee secretariats are understaffed and underpowered. A handful of people (less than the number of support staff in a standard department in a medium-sized university) has to staff the six committees. The number is hardly more than twice the number of persons in the secretariat of the European Social Charter. This acute staff shortage is exacerbated by such factors as the over-specialisation of staff (each person only works for a single treaty body), leading to gaps in expertise available to the system as a whole (e.g. the lack of Russian-speaking lawyers despite the growing number of communications in that language). Recruitment of short-term interns does not resolve the problem.

Other financial constraints

In certain cases acute lack of funds has led to the cancellation of sessions (e.g. CERD). More generally there are complaints at restrictions on documentation, constraints arising from the lack of or delays in translation, the absence of funds for field visits to member states (cf. CERD’s missions), for cooperation between treaty bodies (e.g. joint or thematic working groups), or for attendance of members at other committees’ sessions.

Limited technology

The United Nations cannot provide access to internet or email for committee members, although this is by far the cheapest and most efficient way to develop texts and generally to consult outside of sessions. The UNHCHR website is a good, though overdue, first step, but by no means all UN human rights material is available electronically. Better use of databases would help redress the problem of lack of a corporate memory within committees.

4. Procedural issues

There are no doubt inherent problems with a system for human rights protection based essentially on self-criticism and good faith. The system
encourages states to view compliance only in the context of a rather sporadic reporting procedure, with a lack of follow-up mechanisms for both periodic reports and communications. On the other hand a more selective approach by committees, focusing only on serious breaches which are suspected or have come to notice, would give rise to complaints of selectivity: there is, as Scott Leckie notes, a continuing concern not to alienate states parties whose cooperation is assumed and is necessary for the idea of constructive dialogue to work.11 To some extent these constraints are inbuilt, but the contrast drawn by Daniel Bodansky with the environmental bodies (e.g. under the Climate Change Convention), with their use of state visits, ad hoc teams, wide dissemination of views etc., suggests that improvements can nonetheless be made.12

5. PROBLEMS OF COMMUNICATIONS PROCEDURES

Henry Steiner’s review of the Human Rights Committee’s communications procedure shows the problems inherent in ‘mandatory jurisdiction’. There is no correlation between the general level of complaints (or for that matter their complete absence) and the state of human rights compliance in a given country. For example the ‘death row’ phenomenon is highlighted in one country, or one region, but not in others where it may be just as prevalent. To avoid the Committee becoming a ‘fourth instance’, some discretionary element may need to be introduced at the stage of admissibility (such as most final appellate courts exercise within national systems). But the tendency is the other way; the Committee normally telescopes admissibility and merits, and it is reticent to develop criteria for admissibility which would inevitably reduce the focus on the individual and – except in clear cases of individual injustice – would tend to focus on systemic considerations. But the communications procedures are themselves so occasional, overall and for most countries, as to raise questions about their underlying rationale. As Steiner points out, over the twenty years from 1977 to 1997, the Committee had issued views in only about 260 cases, and its capacity to process communications is estimated at around thirty communications per year. If every state party to the Optional Protocol were to generate only one communication per year, the backlog would soon

11 See Leckie, infra, chapter 6. See also O’Flaherty, infra, chapter 20.
12 See Bodansky, infra, chapter 17.
become intolerable. A more differentiated and selective approach to communications seems necessary.

6. COMPOSITION OF COMMITTEES

Many members of the treaty bodies have given dedicated, and largely unre-numerated, service. But the electoral process (like most such processes within the UN) is haphazard and takes limited account of qualifications. Vote trading between unrelated UN bodies is so common as to be unremarked. This is of course part of a broader problem. UN electoral processes are no doubt irreducibly political, but there has been no effort to distinguish between the political properly so-called and the purely venal. Some form of scrutiny of candidates for minimum qualifications could bring great dividends in terms of the quality of membership, but there is for the time being no prospect that the electorate of state party representatives will adopt such a step.\footnote{One of the difficulties is that major reform is extremely difficult to achieve, and tinkering is unlikely to help. Still, there are steps in the right direction in other bodies, which may provide precedents in terms of any long-term restructuring. For example, the new electoral process for judges of the European Court of Human Rights requires governments to nominate several candidates who are then subject to a form of scrutiny; cf. also the prohibition of re-election of judges, under the Rome Statute of the International Criminal Court, 17 July 1998 (A/CONF.183/9) article 36 (9) (a) (which, if extended to the treaty bodies, would require longer and staggered terms of office).} There may, however, be room for non-governmental organisations (NGOs) to have some informal input into the electoral process, something presently lacking.

7. PROBLEMS WITH RECENT OR PROPOSED REFORMS

Some of the reforms that have been adopted, or that are proposed, carry their own costs, as Markus Schmidt demonstrates in his analysis of the disadvantages of Plans of Action.\footnote{See Schmidt, infra, chapter 22.} In addition to being quite costly to implement (the budget for the CRC plan is about $1.25 million annually), they rely on voluntary contributions from states parties. If these are not pledged or paid in time, the plan may have to be reduced in scope, shortened or simply abandoned. More fundamentally, they shift the emphasis from financing of treaty body activities through the regular UN budget to financing from outside, and could thereby open the door to influence-peddling.
8. Limited Political Support from States

The underlying problem is no doubt the limited will of the states parties to improve the system. There is a view that inclusion of more states parties is to be preferred to the integrity of the treaty, and this manifests itself in the lack of reaction by many states to questionable reservations, to overdue or inadequate reports and even to failures of compliance.\textsuperscript{15} For those dedicated to the application of universal human rights standards the position can appear a depressing and even dispiriting one. As against this, however, certain comments should be made.

First of all, the ‘system’ (the committees and their secretariats, the member states) is capable of responding strongly on occasion. For example, when North Korea purported to withdraw from the International Covenant on Civil and Political Rights (ICCPR), the position taken by the United Nations as depositary, by the Human Rights Committee (HRC) itself, and by member states was that it could not validly do so,\textsuperscript{16} and it continues to be treated as a member \textit{malgré lui}.\textsuperscript{17} The response by many states, at least in Europe, to the United States reservation with respect to the imposition of the death penalty on juveniles was also strong and consistent.\textsuperscript{18}

Secondly, the attitude of member state governments is almost bound to be different from that of the committees, with their specific mandate to encourage compliance with their own treaty. Governments confronted with a wide range of problems and having only limited (possibly contracting) resources are likely to respond routinely and in a lower key to what are seen as routine requirements of an established system. They are certainly not

\textsuperscript{15} See e.g. Banton, \textit{infra}, chapter 3.

\textsuperscript{16} In response to an attempted withdrawal by the Democratic People’s Republic of Korea from the ICCPR, the Secretary-General ruled that ‘a withdrawal from the Covenant would not appear possible unless all States Parties to the Covenant agree with such a withdrawal’: C.N.467.1997.TREATIES-10, 12 November 1997. The Human Rights Committee (HRC) agreed (HRC, General Comment 26 (61), adopted by the Committee at its 1631st meeting, 8 December 1997), as did a number of governments.

\textsuperscript{17} The position under the Optional Protocol is of course different: article 14 specifically allows withdrawal and this option has been taken up recently by Barbados and by Trinidad and Tobago in response to the many death penalty communications brought against them. See N. Schiffrin, ‘Jamaica Withdraws the Right of Individual Petition Under the International Covenant on Civil and Political Rights’, 92 \textit{AJIL}, 1998, p. 563.

\textsuperscript{18} See the objections lodged by Belgium (5 October 1993), Denmark (1 October 1993), Finland (28 September 1993), France (4 October 1993), Germany (29 September 1993), Italy (5 October 1993), Netherlands (28 September 1993), Norway (4 October 1993), Portugal (5 October 1993), Spain (5 October 1993) and Sweden (18 June 1993).
inclined to encourage more rigorous scrutiny of their own human rights record, and problems in other countries tend only to obtrude on specific occasions, usually involving major incidents, trials or crises. The burden of day-to-day scrutiny is thus left to the committees. But the fact remains that the committees are attempting valiantly to square a vicious circle resulting from the proliferation of instruments, a huge increase in participation and static resources. Member state apathy at this situation is, certainly, a problem, whatever excuses or explanations may be offered.

C. The structure of this volume

Against this background, the chapters in this volume are organised in the following way. In Section A, the work of each of the six existing committees is reviewed by a knowledgeable observer or participant, as is the crucial work of NGOs in relation to the committees. The human rights treaty system acts, however, not for itself but in order to promote and monitor developments in the national systems parties to the treaties. Thus, the uneven, but by no means negligible, effect of the treaty system on national law and practice is reviewed in Section B. In a volume of this size, this review can only be highly selective, but the cases chosen (the Nordic states, Japan, South Africa, Hong Kong and the United States) range quite widely: from countries with strong institutions or traditions of human rights to countries struggling to establish them; from countries open, or at least opening, to international human rights influence to countries resolutely closed or closing. The particularity of this experience is in each case notable, resulting from particular historical circumstances and social and political developments, in contrast to the universality of values the treaty bodies claim to represent and foster.

Section C presents, for the purposes of illustration as well as contrast, the experience of state reporting under three distinct systems, two regional (the Inter-American System and the European Social Charter), one functional (under global environmental treaties).

Against this background of the treaty bodies in action, of a sample of the legal and social systems with which they interact, and of some other treaty systems from which they might learn, Section D surveys some of the common problems they are experiencing. Again it has been necessary to be selective: the themes chosen are those of duplication, diversity, focus, and the need for and the provision of resources. Of particular importance here
is the question of focus. Are the treaty bodies to be seen as having a general mandate to deal with situations arising within the field of ‘their’ treaty, or are they better seen as specialist agencies performing a particular function of supervision in the context of a specific system of reporting? The experience of the treaty bodies confronted with widespread violations in Bosnia and Herzegovina raises that question in an acute form.

Finally, in the concluding Section E a comparison is undertaken of the approach generally shared by the contributors to this volume with an alternative approach which attributes relatively little importance to the universality of the system and instead advocates restricting participation in the treaty regime to those states which are deemed to be democratic.