

An Introduction to the International Protection of Human Rights

A Textbook

Second, revised edition

Edited by

Raija Hanski

and

Markku Suksi

Institute for Human Rights
Åbo Akademi University
Turku / Åbo

Manfred Nowak

6. THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

1. INTRODUCTION

In 1986 the Human Rights Committee decided that the 'breadwinner' requirement in the Dutch Unemployment Benefits Act (married women received support only when they could prove that they were 'breadwinners', whereas this proof was not required of married men) constituted *gender-specific discrimination* in violation of Article 26 of the International Covenant on Civil and Political Rights (CCPR).¹ As a consequence, the Netherlands and other States Parties to the Covenant had to amend a substantial number of social security laws in order to achieve equality for women.

During the time of the former military regime in *Uruguay* the Committee examined a large number of individual complaints it had received on behalf of political prisoners from their relatives living abroad. In most of these cases it established serious violations of the rights to *life, liberty and security* of the person, of the *prohibition of torture* and inhuman prison conditions, of *freedom of expression* and other *political rights and freedoms*. Taken together this case law revealed a consistent pattern of gross and reliably attested violations of human rights and as such contributed more than any other international procedure to the overthrow of the military government in 1985. Moreover, in a decision of July 1994, the Committee held that victims of gross human rights violations such as torture are entitled under Article 2(3)(a) of the Covenant to an *effective remedy* which entails the obligation of the present democratic government to carry out official investigations, to identify the individual perpetrators and to grant compensation to the victims. As a consequence, the Amnesty Law of December 1986 was found to be incompatible with the legal obligations of Uruguay since it 'has contributed to an atmosphere of impunity which may undermine the democratic order and

¹ Communication No. 172/1984, *S. W. M. Broeks v. the Netherlands*, and Communication No. 182/1984, *F. H. Zuñiga-de Vries v. the Netherlands*. Report of the Human Rights Committee, UN General Assembly, Official Records, Forty-second Session, Supplement No. 40 (A/42/40), pp. 139-150 and 160-169.

give rise to further grave human rights violations'.² This decision has had a major impact on the policy of reconciliation and impunity not only in Uruguay but also in many other, notably Latin American, African and Eastern European States in transition to democracy.

Compensation for human rights violations by a former regime was also at issue in a case against the Czech Republic decided in July 1995. The case was based on a complaint by a number of persons who had left the former CSSR for political reasons between 1968 and 1987 and whose property had, therefore, been confiscated by the then Communist government. The Restitution Act of 1991 is not applicable to the applicants, who presently live in Canada and Switzerland, on the ground that the right to restitution and compensation is only granted to Czech citizens who permanently reside in the country. Although the right to property is not protected by the Covenant (as opposed, e.g. to the European Convention for the Protection of Human Rights and Fundamental Freedoms; henceforth European Convention on Human Rights or ECHR), the Committee found that the cumulative conditions of citizenship and permanent residence were unreasonable and, therefore, violated the equal protection of the law under Article 26 of the CCPR.³

With respect to a growing number of complaints submitted by prisoners on death row in *Jamaica* and *Trinidad and Tobago*, the Committee established a consistent line of legal reasoning that, in capital punishment cases, States Parties must observe rigorously all the guarantees for a fair trial and that the imposition of a death sentence upon conclusion of an unfair trial constitutes a violation of the right to life pursuant to Article 6 of the CCPR.⁴ As a consequence, quite a few death sentences were commuted to prison sentences, and some prisoners were released. Moreover, in November 1993 the Committee arrived at the conclusion that execution by gas asphyxiation, as practised, for example, in California, constitutes cruel and inhuman treatment. Consequently, by exposing somebody to the real risk of being executed in such a manner by means of extradition to the United States, Canada, a State Party which had abolished the death penalty, violated Article

² Communication No. 322/1988, *Hugo Rodríguez v. Uruguay*. Report of the Human Rights Committee, Vol. II, UN General Assembly, Official Records, Forty-ninth Session, Supplement No. 40 (A/49/40), pp. 5-11. See also Nowak, 1995a, pp. 395-396.

³ Communication No. 516/1992, *Alina Simunek et al. v. the Czech Republic*. See Human Rights Committee, Final Decisions, UN Doc. CCPR/C/57/1, pp. 99-108; and Nowak, 1995a, p. 391.

⁴ See, e.g. Nowak, 1993b, pp. 13-14 and 17; Nowak, 1995a, pp. 384-385 and 389. See also Communications Nos. 575 and 576/1994, *Lincoln Guerra and Brian Waller v. Trinidad and Tobago*, Human Rights Committee, Final Decisions, UN Doc. CCPR/C/57/1, pp. 195-202; and Human Rights Law Journal, Vol. 16, No. 10-12 (1995), pp. 400-403.

7 of the Covenant.⁵ Since the *United States* has not ratified the First Optional Protocol to the Covenant, no individual complaints can be lodged directly against the US Government. With respect to the US practice of imposing death sentences even on minors, the Committee, however, considered the US reservation to Article 6(5) of the CCPR to be incompatible with the object and purpose of the Covenant and explicitly requested the US Government to withdraw this reservation as well as the reservation concerning the prohibition of torture.⁶

A number of leading members of the former opposition party *Union pour la Démocratie et le Progrès Social* (U.D.P.S.) including the later Prime Minister Etienne Tshisekedi had submitted complaints against the former regime of President Mobutu in *Zaire*. In most cases the Committee found serious violations of the rights to personal liberty, physical integrity, privacy and movement and, in its finding, thus contributed to the international pressure on the Mobutu regime to improve its human rights situation. Similar human rights violations of opposition members have been established with respect to various other African and Latin American countries such as Zambia, Equatorial Guinea, Cameroon, Madagascar, Libya, Surinam, the Dominican Republic, Nicaragua, Ecuador and Colombia.

In a growing number of disappearance cases in *Latin America*, the Committee in principle follows the jurisprudence of the Inter-American Commission and Court of Human Rights by establishing violations of the rights to personal liberty, security and physical integrity as well as of the right to life. In addition, it urged the respective States parties to open proper investigations of disappearance cases, to provide for appropriate compensation, and to bring to justice those responsible.⁷

In March 1994 the general prohibition of male homosexuality in the Australian State of *Tasmania* was found to be in violation of the right to privacy in Article 17 of the Covenant.⁸ With the active support of the Federal

⁵ Communication No. 469/1991, *Charles Chint Ng v. Canada*. Report of the Human Rights Committee, UN General Assembly, Official Records, Forty-ninth Session, Supplement No. 40 (A/49/40), pp. 189-220. See also Nowak, 1995a, pp. 385-387.

⁶ UN Doc. CCPR/C/79/Add.50.

⁷ See, e.g. Communications No. 540 and 563/1993, *Ana Rosario Calis Laureano v. Peru* and *Nijida Erika Bautista de Arellano v. Colombia*. Report of the Human Rights Committee, Vol. II, UN General Assembly, Official Records, Fifty-first Session, Supplement No. 40 (A/51/40), pp. 108-115, 132-143.

⁸ Communication No. 488/1992, *Nicholas Toonen v. Australia*. Report of the Human Rights Committee, UN General Assembly, Official Records, Forty-ninth Session, Supplement No. 40 (A/49/40), pp. 226-237. See also Nowak, 1995a, pp. 390-391.

Government of *Australia*, which in fact disapproved of the Tasmanian practice, the laws in question have now been repealed.⁹

In the controversial case of *Faurisson v. France* the Committee ruled that criminal sanctions imposed by French courts on a well-known French professor of literature for his denial of the existence of Nazi gas chambers for the extermination of Jews did not violate his freedom of expression under Article 19 of the Covenant. The Committee raised, however, certain doubts as to the compatibility of the French 'Gayssot Act' of 1990 which makes it a criminal offence to contest the existence of the category of crimes against humanity as defined in the Charter of the International Military Tribunal at Nuremberg, on the basis of which Nazi leaders were convicted after the Second World War.¹⁰

In the famous case of the *Lubicon Lake Band v. Canada*, although the Committee dismissed the allegations of a violation of the *right to self-determination* on procedural grounds, it ruled that historical inequities as well as large-scale expropriation of the lands of this Cree Indian band for commercial interests (oil and gas exploration) threatened the way of life and culture of this *indigenous minority* and thereby constituted a violation of Article 27 of the Covenant.¹¹ The Canadian Government offered to set aside 95 square miles of land for a reserve and to pay Can \$ 45 million as compensation for historical inequities. This was considered by the Committee to be an appropriate remedy within the meaning of Article 2 of the CCPR. Due to differences of opinion between the Lubicon Lake Band, the Province and the Federal Government, this remedy remains, however, unimplemented still in 1999.

These few cases were selected to illustrate the *variety of issues arising under the Covenant* and the impact of the case law of the Human Rights Committee on domestic human rights problems. On the other hand, this impact must, of course, not be exaggerated. Many States in which gross and systematic human rights violations occur are not (yet) parties to the Covenant or the First Optional Protocol, and only a minority of States Parties actually make convincing efforts to comply with their obligations under the Covenant and with the legally non-binding decisions of the Committee. In order to assess the actual significance of the Covenant and the achievements of the

⁹ Report of the Human Rights Committee, Vol. I, UN General Assembly, Official Records, Fifty-second Session, Supplement No. 40 (A/52/40), pp. 88-89.

¹⁰ Communication No. 550/1993, *Robert Faurisson v. France*, Report of the Human Rights Committee, Vol. II, UN General Assembly, Official Records, Fifty-second Session, Supplement No. 40 (A/52/40).

¹¹ Communication No. 167/1984, *Bernard Ominayak, Chief of the Lubicon Lake Band v. Canada*, Report of the Human Rights Committee, Vol. II, UN General Assembly, Official Records, Forty-fifth Session, Supplement No. 40 (A/45/40), pp. 1-30.

Committee in a fair, balanced and realistic manner, one has to see it in the overall context of the progress and the difficulties of the international protection of human rights during the 50 years since the adoption of the Universal Declaration of Human Rights.

Together with the Universal Declaration of Human Rights of 10 December 1948 and the International Covenant on Economic, Social and Cultural Rights (CESCR), the International Covenant on Civil and Political Rights and its two Optional Protocols constitute the core of United Nations human rights law commonly referred to as the *International Bill of Human Rights*. This core is supplemented and defined in more detail by a considerable number of special human rights conventions, declarations, bodies of principles, minimum rules, etc. Some provisions of the International Bill of Human Rights, such as the prohibition of slavery and torture, acquired in the meantime the status of customary international law, others are legally binding only on States Parties to the respective treaties.

Originally, the United Nations envisaged only one general human rights treaty to give binding force to the provisions of the Universal Declaration.¹² During the early years of the Cold War, the Western States succeeded, however, in their demand for *two separate Covenants* with different State obligations and different monitoring bodies and procedures.¹³ In their view only the civil and political rights of the so-called 'first generation' were genuine human rights that could be guaranteed immediately and implemented by judicial procedures, whereas the economic, social and cultural rights of the so-called 'second generation' were only considered as 'programmatic rights'. The Socialist States, on the other hand, stressed the interdependence and indivisibility of all human rights and objected strongly to any judicial or quasi-judicial monitoring system. These were only some of the ideological conflicts which delayed the adoption of the Covenants for almost 20 years. After the Commission on Human Rights submitted its drafts in 1954,¹⁴ the Third Committee of the General Assembly still needed 12 years to finalize these drafts. On 16 December 1966, both Covenants were adopted unanimously by 106 States and the First Optional Protocol to the CCPR, which provides for the possibility of individual complaints, by 66 to 2 votes, with 38 abstentions.¹⁵ On 15 December 1989, a second Optional Protocol aimed at the abolition of the death penalty was adopted by 59 to 26 votes,

¹² General Assembly Resolution 421 (V) of 4 December 1950. For the historical background, see UN Doc. A/2929, Bossuyt, 1987; McGoldrick, 1991, p. 3; Nowak, 1980, p. 137; Nowak, 1993a, p. XIX; Pechota, 1981, p. 32.

¹³ General Assembly Resolution 543 (VI) of 5 February 1952.

¹⁴ UN Doc. E/2573, p. 62.

¹⁵ General Assembly Resolution 2200/A (XXI).

with 48 abstentions.¹⁶ Both Covenants and the First Optional Protocol entered into force in 1976, the inter-State complaints procedure under Article 41 of the CCPR in 1979, and the Second Optional Protocol in 1991. As at January 1999, the CCPR had been ratified by 144 States and the CESCR by 141 States from all regions of the world. Forty-seven States accepted the inter-State complaints system under Article 41 of the CCPR, 95 States the individual complaints system of the First Optional Protocol, and 36 States were bound by the Second Optional Protocol not to re-introduce the death penalty.¹⁷

In October 1997, the Human Rights Committee adopted a general comment on issues relating to the continuity of obligations of States Parties to the Covenant. Referring to the fact that the Covenant does not include a provision on *denunciation* or withdrawal and to the nature of the Covenant constituting, together with the CESCR and the Universal Declaration of Human Rights, the International Bill of Human Rights, the Committee concluded that international law does not permit a State which has ratified or acceded or succeeded to the Covenant to denounce or withdraw from it.¹⁸ In fact, the Government of the Netherlands, which in a first reaction to the Committee's jurisprudence on the Dutch social security cases mentioned at the beginning of this chapter had considered to denounce the Covenant, soon realized that this was impossible. By way of comparison, it is to be noted that Article 12 of the First Optional Protocol to the Covenant explicitly allows for denunciation but includes special arrangements for a transition period. As an expression of dissatisfaction with the Committee's case law on capital punishment cases, *Jamaica and Trinidad and Tobago recently denounced the First Optional Protocol*. Trinidad and Tobago acceded again with a reservation excluding the competence of the Committee to consider communications relating to the imposition of the death penalty but this reservation appears to be clearly incompatible with the object and purpose of the Covenant.

2. SUBSTANTIVE PROVISIONS: AN OVERVIEW

The Covenant is divided into a Preamble and six parts. Parts I to III (Articles 1 to 27) contain all substantive rights as well as some general provisions such as the prohibition of discrimination and misuse, gender equality, a derogations and a savings clause. Parts IV to VI (Articles 28 to 53) contain the international monitoring provisions, some principles of interpretation and

final clauses. The First Optional Protocol contains 14 articles relating to the individual complaints procedure, whereas the 11 articles of the Second Optional Protocol in fact constitute an amendment to the right to life in Article 6 of the CCPR.¹⁹

With the exception of the collective right of peoples to self-determination (Article 1), which is listed in a separate Part I and which according to the case law of the Human Rights Committee is not subject to monitoring by means of individual complaints,²⁰ the Covenant only guarantees individual rights enumerated in Part III: the right to life (Article 6), the prohibition of torture and inhuman prison conditions (Articles 7 and 10), the prohibition of slavery (Article 8), the right to personal liberty and security, including prohibition of detention for debt (Articles 9 and 11), freedom of movement and protection of aliens against arbitrary expulsion (Articles 12 and 13), procedural guarantees in civil and criminal trials including prohibition of retroactive criminal laws (Articles 14 and 15), recognition of legal personality (Article 16), privacy (Article 17), freedom of thought, conscience, religion and belief (Article 18), freedom of opinion, expression and information, including the prohibition of propaganda for war and advocacy of hatred (Articles 19 and 20), freedom of assembly, association and trade unions (Articles 21 and 22), rights of marriage, the family and the child (Articles 23 and 24), political rights (Article 25), equality (Article 26) and rights of persons belonging to minorities (Article 27).

Part III constitutes a fairly comprehensive catalogue of civil and political rights comparable to those in regional treaties such as the European and American Conventions on Human Rights or the African Charter on Human and Peoples' Rights. Compared to the civil and political rights enlisted in the Universal Declaration, the Covenant does not contain the rights to property, nationality and asylum. The European Convention on Human Rights also protects the right to education (which forms, however, part of the CESCR) and prohibits the collective expulsion of aliens. The American Convention on Human Rights also contains a right of reply and correction and a general right to a name.

With the exception of the detailed minimum rights of the accused in a criminal trial in Article 14, the rights of persons deprived of liberty in Articles 9 and 10, as well as the restrictions on the death penalty in Article 6, most rights are formulated in rather general terms. More detailed provisions can, however, be found in special human rights treaties and declarations such as, for example, the UN Conventions against Genocide, Torture, Racial

¹⁹ For an article by article commentary of all substantive and procedural provisions of the Covenant and its Optional Protocols, see Nowak, 1993a, with further references. See also Henkin, 1981; and McClelland, 1991.

²⁰ *Lubicon Lake Band v. Canada*, *supra*, note 11.

¹⁶ General Assembly Resolution 44/128.

¹⁷ Information received from the UN Treaty Collection database (<http://www.un.org/Depts/Treaty>).

¹⁸ General Comment 26(61) of 29 October 1997, UN Doc. CCPR/C/21/Rev.1/Add.8.

Discrimination, Discrimination against Women, the Convention on the Rights of the Child and the Declarations on Religious Intolerance, on Enforced Disappearances or on the Rights of Disabled Persons. In addition, the Human Rights Committee, in applying the Covenant provisions in the complaints and reporting procedures, as well as by adopting general comments in accordance with Article 40(4) of the CCPR, sheds further light on the content and meaning of these rights.

In accordance with the nature of the Covenant as a general and universal human rights treaty most of its rights apply to every human being, and Article 2(1) explicitly prohibits any discrimination in the enjoyment of these rights. Nevertheless, some rights apply only to certain categories of human beings. The rights listed in Article 27, for example, only apply to persons belonging to ethnic, religious or linguistic minorities, the political rights in Article 25 only to citizens, freedom of movement in Article 12 only to persons lawfully within the territory of a State Party, the guarantee of Article 13 only to aliens, the rights to a name and nationality only to children (Article 24), the rights to marry and found a family in Article 23 only to adults ('men and women of marriageable age'), the minimum guarantees of Article 14(2) and (3) only to persons charged with a criminal offence, the minimum guarantees of Articles 9(2) to (5) and 10 only to persons deprived of their liberty, certain restrictions on the death penalty in Article 6(5) only to pregnant women and to persons below 18 years of age, and the right of self-determination in Article 1 only to peoples.

3. OBLIGATIONS OF STATES PARTIES

According to Article 2(1) of the CCPR each State Party undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, without discrimination of any kind. This obligation to respect immediately, *i.e.* from the date of entry into force of the Covenant for the State Party, and ensure all Covenant rights, differs significantly from the corresponding provision of the CESC. Each State Party to this Covenant, pursuant to Article 2(1), only undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the economic, social and cultural rights recognized in the Covenant, including particularly the adoption of legislative measures. This difference reflects the widely-held belief, at least in the time of the Cold War when both Covenants were drafted, that there exists a fundamental difference between human rights of the first and second generation, and that economic, social and cultural rights only imply an obligation to take steps toward their progressive realization.

Modern human rights theory and the practice of the Committee on Economic, Social and Cultural Rights prove, however, that this difference is only of a relative nature, and that the CESCR contains various obligations of both conduct and result which clearly may be violated by States Parties.²¹ In accordance with this change of attitude the 1993 Vienna World Conference on Human Rights recommended the adoption of an Optional Protocol to the CESC providing for an individual complaints system.²²

The obligation to respect in Article 2(1) of the CCPR indicates the negative character of civil and political rights.²³ It means that States Parties must refrain from restricting the exercise of these rights where such is not expressly allowed. The concrete substance of this duty of forbearance depends on the formulation of the given right. Some rights, such as the prohibition of torture in Article 7, are absolute, *i.e.* States must refrain from practising torture under all circumstances, even in the event of a national emergency. Other provisions, such as the right to life in Article 6(1) or the protection of privacy in Article 17, only prohibit arbitrary interference. Still other provisions, in particular, the political freedoms in Articles 18, 19, 21 and 22, expressly empower the States Parties to impose certain restrictions.²⁴

The obligation to ensure in Article 2(1) of the CCPR indicates the positive character of civil and political rights. It means, as in the case of economic, social and cultural rights, that States Parties must take positive steps to give effect to the Covenant rights and to enable individuals to enjoy their rights.²⁵ This duty of performance implies the obligation to adopt the necessary legislative and other measures under Article 2(2), to provide an effective remedy to victims of human rights violations pursuant to Article 2(3), and to safeguard certain rights institutionally by way of *procedural guarantees* or the establishment of relevant *legal institutions*. For instance, the right to a fair trial in criminal cases or suits at law ensured by Article 14 requires States Parties to establish a sufficient number of courts and tribunals and to regulate their procedure in a manner that at least fulfils the minimum guarantees set forth therein. Similar procedural and institutional obligations might be derived, for example, from Articles 1, 9, 10, 13, 15, 16, 20, 23, 24, 25,

²¹ See Drzewicki et al., 1994; Hude et al., 1995; and Craven, 'The International Covenant on Economic, Social and Cultural Rights', chapter 7 in this publication.

²² For the progress in drafting such an Optional Protocol, see Coomans and van Hoof, 1995; and Nowak, 1995b. See also Craven, 'The International Covenant on Economic, Social and Cultural Rights', chapter 7 in this publication.

²³ For the following, see Nowak, 1993a, p. 36.

²⁴ See below, section 4.

²⁵ See General Comment 3(13), para. 1. UN Doc. CCPR/C/21/Rev.1, p. 3; UN Doc. HRI/GEN/1/Rev.3, pp. 4-5.

4. DEROGATION AND LIMITATION CLAUSES

As noted above, only very few human rights, such as the prohibition of torture, slavery and retroactive criminal laws, can be considered as absolute. But even in this case, the definition of which acts actually constitute torture or slavery is controversial and might, therefore, leave a certain discretion to States Parties. For example, the European Court of Human Rights considered even comparably mild forms of corporal punishment on the Isle of Man as degrading punishment in violation of Article 3 of the ECHR,²⁸ but it is arguable whether other regional or universal treaty monitoring bodies would apply an equally strict standard in a similar case in, for example, an Islamic or African State.²⁹

Most of the Covenant rights may be subject to reservations, derogations, restrictions and limitations in conformity with the relevant provisions.³⁰ These measures were designed to leave States Parties a fairly broad 'margin of appreciation' in order to adapt universal human rights standards to their respective political, economic, social and cultural circumstances. In other words, these limitation clauses provide a fair balance between the allegedly contradictory aims of universalism and cultural relativism.

In accordance with Article 19(c) of the Vienna Convention on the Law of Treaties, *reservations* made by States at the time of ratification or accession are permissible to the extent that they are compatible with the object and purpose of the Covenant. In practice, roughly half of the States Parties submitted a total of more than 150 reservations and declarations of interpretation on many substantive and procedural provisions in the Covenant and the First Optional Protocol.³¹ No reservation has so far been submitted to the Second Optional Protocol.³²

In November 1994, the Human Rights Committee adopted a highly controversial *general comment* on issues relating to reservations.³³ According to this opinion, provisions that represent customary international law and various other provisions of the Covenant may not be the subject of reserva-

Human Rights Committee, Vol. II, UN General Assembly, Official Records, Forty-ninth Session, Supplement No. 40 (A/49/40), pp. 142-145 and 183-188.

²⁸ *Tyler* case, judgment of 25 April 1978, Publications of the European Court of Human Rights, Series A, No. 26.

²⁹ See also the 'lawful sanctions' clause in Article 1 of the UN Convention against Torture.

³⁰ Kiss, 1981, p. 290; Nowak, 1992.

³¹ UN Doc. CCPR/C/2/Rev.4.

³² See the explicit restriction in Article 2(1) of the Second Optional Protocol.

³³ General Comment 24(52) of 2 November 1994, UN Doc. CCPR/C/21/Rev.1/Add.6, UN Doc. HRI/GEN/1/Rev.3, pp. 42-49. See also Nowak, 1995a, pp. 379-382.

26 and 27. The wording of Article 2(1) indicates, however, that the obligation to ensure the rights by means of positive State action applies to all rights listed in the Covenant. Even a so-called classic negative right as the prohibition of torture contains the positive obligation to take effective steps for the prevention of torture (by means of education, procedural guarantees, etc.) and for the investigation of alleged acts of torture. As has been shown in a case against Uruguay in the introduction, this positive obligation may still apply even to a new government more than ten years after the actual act of torture.

The obligation to ensure also implies a basic *obligation to protect* individuals against certain interferences with their civil and political rights by other private individuals, groups or entities. As in the case of other State obligations, these 'horizontal effects' depend, of course, on the precise wording of the given right. Some provisions, such as the prohibition of slavery in Article 8 or the prohibition of advocacy of racial hatred in Article 20, apply primarily on the horizontal level. In other provisions, the formulation 'right to the protection of the law' (e.g. Articles 6, 17, 23, 24 and 26) indicates a special requirement to take positive measures for the protection of children, the family or the rights to life, privacy and equality. For instance, Uruguay, Colombia and the Dominican Republic have been held responsible for cases of *disappearances* with respect to the right to life without any proof of the involvement of governmental agents.³⁴ In *Delgado Paz v. Colombia*, a case concerning a teacher who fled the country because of death threats, the Human Rights Committee found a violation of Article 9(1) on the ground that the Colombian Government had not taken appropriate measures to protect him and thereby ensure his right to *personal security*.³⁵

³⁴ Communication No. R.7/30 (1978), *In re: Bleier Lauenhoff and Rosa Valiño de Bleier v. Uruguay*, Report of the Human Rights Committee, UN General Assembly, Official Records, Thirty-seventh Session, Supplement No. 40 (A/37/40), pp. 130-136; Communication No. 107/1981, *Elena Quinteros and M. C. Almeida de Quinteros v. Uruguay*, Report of the Human Rights Committee, UN General Assembly, Thirty-eighth Session, Supplement No. 40 (A/38/40), pp. 216-224; Communication No. 161/1983, *Hernández Rubio v. Colombia*, Report of the Human Rights Committee, UN General Assembly, Forty-third Session, Supplement No. 40 (A/43/40), pp. 190-198; Communication No. 181/1984, *A. and H. Sanjivan Arzulo v. Colombia*, Report of the Human Rights Committee, UN General Assembly, Forty-fifth Session, Supplement No. 40 (A/45/40), pp. 31-37; and Communication No. 449/1991, *Barbieri Mojica v. the Dominican Republic*, Report of the Human Rights Committee, Vol. II, UN General Assembly, Official Records, Forty-ninth Session, Supplement No. 40 (A/49/40), pp. 142-145. See also *supra*, note 7.

³⁵ Communication No. 195/1985, *W. Delgado Paz v. Colombia*, Report of the Human Rights Committee, Vol. II, UN General Assembly, Official Records, Forty-fifth Session, Supplement No. 40 (A/45/40), pp. 43-49. See also, Communication No. 314/1988, *Peter Chikio Bualiya v. Zambia*, Report of the Human Rights Committee, UN General Assembly, Forty-eighth Session, Supplement No. 40 (A/48/40), pp. 52-56; and Communications No. 449/1991, *Barbieri Mojica v. the Dominican Republic*, and No. 468/1991, *Angel N. Oló Bahamonde v. Equatorial Guinea*, Report of the

in Articles 6(1), 9(1) and 17(1) of the CCPR. Other provisions, such as Articles 12(3), 13, 18(3), 19(3), 21 and 22(3), contain so-called *limitation clauses* which authorize restrictions on the condition that they are provided by law, consistent with other Covenant rights, that they serve one of the purposes of interference listed in the respective provision and are necessary for achieving this purpose.³⁸ The decisive criterion for the permissibility of limitations is, therefore, the principle of *proportionality*. As in the case of discrimination, *i.e.* a distinction which is not based on reasonable and objective grounds, the finding of a violation by the Committee thus necessarily implies certain value judgments and often depends on the ability or readiness of the government concerned to submit convincing legal arguments.

5. HUMAN RIGHTS COMMITTEE

Much has been said about the Human Rights Committee without explaining what it is. Similar to the Racial Discrimination Committee and the Committee on the Rights of the Child, it is not a UN organ in the strict sense but a *treaty monitoring body*, *i.e.* it is established by a treaty (Article 28 of the CCPR) with the task of monitoring the compliance of States Parties with their obligations under this treaty.³⁹ It consists of 18 *independent experts* who are elected for a period of four years at biannual meetings of States Parties. Although they are nominated and elected by governments for a relatively short period, most are members in fact enjoy a surprisingly high independence from 'their' governments as compared, for example, to the Sub-Commission on Prevention of Discrimination and Protection of Minorities. They are usually professors of law or judges in their home countries and represent all geopolitical regions and the major legal systems.⁴⁰ In 1997, the Committee adopted a set of 'Guidelines' on the independence of its members.⁴¹

The first elections were held shortly after the entry into force of the Covenant in 1976, and the Committee started its activities in 1977. It usually

³⁸ See, e.g. with respect to Article 12(3), Nowak, 1993a, p. 206.

³⁹ McColdrick, 1991; Nowak, 1993a, p. 506.

⁴⁰ As of January 1999, the Committee consists of the following members: Mr Abdelattah Amor (Tunisia); Mr Nisuke Ando (Japan); Mr Prafullachandra Natwarlal Bhagwati (India); Mr Thomas Buergenthal (United States of America); Mrs Christine Chanet (France); Lord Colville (United Kingdom); Mrs Elizabeth Evatt (Australia); Mrs Pilar Gaitan de Pombo (Colombia); Mr Eckart Klein (Germany); Mr David Kretzmer (Israel); Mr Rajsoomer Lallah (Mauritius); Mrs Cecilia Medina Quiroga (Chile); Mr Fausto Pocar (Italy); Mr Martin Scheinin (Finland); Mr Hipólito Solari Yrigoyen (Argentina); Mr Roman Winiarski (Poland); Mr Maxwell Yalden (Canada); Mr Abdallah Zakaria (Lebanon).

⁴¹ UN Doc. CCPR/C/61/GUI.

tions. Furthermore, the Committee expressed its belief that the respective provisions of the Vienna Convention on the Law of Treaties are inappropriate to address the problem of reservations to human rights treaties on the ground that the principle of inter-State reciprocity has no place. Consequently, the Committee considers itself as the only body entrusted by the Covenant to determine whether a specific reservation is compatible with the object and purpose of the Covenant. If a reservation is considered incompatible, the Committee applies the respective provision to the State Party without the benefit of the reservation. It is not surprising that some States strongly objected to this legal opinion of the Committee.³⁴

In time of *public emergency* which threatens the life of the nation (*e.g.* international armed conflict, civil war, other serious cases of violent internal unrest, natural or human-made disasters), Article 4 of the CCPR authorizes States Parties to take measures derogating from their obligations under the Covenant.³⁵ In order to prevent the misuse of this *derogation clause*, Article 4 imposes a number of conditions and restrictions: The state of emergency must be officially proclaimed, the government shall immediately inform the Secretary-General of the United Nations of the provisions derogated and its reasons for doing so; derogation measures are only permitted to the extent strictly required by the exigencies of the situation, and shall be consistent with other obligations under international law and must not involve discrimination solely on the grounds of race, colour, sex, language, religion or social origin. Finally, Article 4(2) prohibits any derogations from the rights to life, prohibition of torture, slavery, servitude, detention for debt and retroactive criminal laws, as well as the rights to recognition of legal personality and freedom of thought, conscience, religion and belief.

In practice, more than 20 States Parties have notified of various derogation measures and justified them with internal difficulties, such as ethnic conflicts, terrorism, guerrilla war or social unrest.³⁶ In cases of obvious misuse of the derogation clause, such as in Colombia and by the military dictatorships in Chile and Uruguay, the Committee considered the respective derogation measures as violations of the Covenant.³⁷

In addition to the possibility of reservations and derogation measures, most Covenant provisions explicitly authorize *restrictions and limitations* by States Parties. One technique is the use of the word '*arbitrary*' as, for example,

³⁴ See the observations of the United Kingdom and the United States in Report of the Human Rights Committee, Vol. I, UN General Assembly, Official Records, Fiftieth Session, Supplement No. 40 (A/50/40), pp. 126-134.

³⁵ Nowak, 1993a, p. 72.

³⁶ See UN Doc. CCPR/C/2/Rev.4, pp. 58-112.

³⁷ Nowak, 1993a, pp. 79 and 90.

holds three sessions of three weeks per year, the spring session in New York, the summer and fall sessions at Geneva. Together with preparatory work and meetings of working groups, every Committee member spends roughly one-quarter of his or her time for the Committee, *i.e.* less than members of the European Court of Human Rights but considerably more than members of other UN treaty monitoring bodies.

The Committee adopts its own *rules of procedure* in accordance with Article 39(2) of the CCPR. Although this provision envisages decisions by majority vote, the Committee in practice usually reaches decisions by *consensus*. Only individual cases are sometimes decided by majority with dissenting and concurring opinions appended. With the exception of the consideration of complaints, the meetings of the Committee are usually open to the public and the media. After initial problems caused by members from Socialist States, the Committee has developed a very fruitful cooperation with non-governmental organizations (NGOs). In contrast to the practice of the Committee on Economic, Social and Cultural Rights (which was established by ECOSOC) and the Committee on the Rights of the Child, NGOs are, however, not permitted to officially participate in the Committee's procedures.

The two main tasks of the Committee are the examination of State reports and individual complaints since until now no inter-State complaint has been submitted.

6. REPORTING PROCEDURE

The submission and examination of State reports in accordance with Article 40 is the only *mandatory* monitoring procedure established by the Covenant. All 144 States Parties are under an obligation to submit an initial report within one year of the entry into force of the Covenant and 'thereafter whenever the Committee so requests'. In practice, the Committee established a five years periodic reporting cycle and, in exceptional circumstances, requests supplementary or emergency reports. Despite considerable delays in submitting reports the Committee, up to January 1999, examined altogether 109 initial, 72 second periodic, 45 third periodic, 17 fourth periodic, 14 supplementary and 7 emergency reports. Recently, the Committee abandoned the mechanical five-year reporting interval in favour of a new arrangement under which it decides, as part of its concluding observations on each State report, the deadline for the submission of the next report.

The reporting procedure is the major UN treaty monitoring procedure which, in spite of being criticized as inefficient, serves a number of *useful purposes*. First of all, it forces governments to reflect thoroughly on whether and how the Covenant's rights and obligations are actually implemented in

their domestic legal systems. After all, the implementation of international human rights treaties is and remains a task of national governments, whereas international monitoring procedures can only fulfil limited functions of assistance and control. The way in which governments in fact carry out their reporting duties varies, of course, considerably. There are still governments who deem it sufficient to submit reports of a few pages which do not go beyond the citation of their respective constitutional provisions. A growing number of governments, however, take their reporting obligations more seriously and submit comprehensive reports covering both the legal and *de facto* situation including also certain problems and difficulties of implementation, as requested by Article 40(2) of the CCPR. Some governments even involve NGOs and independent research institutes in the drafting of their reports in order to enhance their accuracy and objectivity. To make the reporting duty easier for States, and to ensure a certain uniform standard, the Committee adopted guidelines regarding the form and contents of initial and periodic reports.⁴² In addition, the United Nations, under its programme of advisory services and technical cooperation, as well as independent human rights institutes, such as the Raoul Wallenberg Institute in Sweden, organize seminars to train government officials in the preparation of reports.

All reports are examined by the Committee in public session, usually in the presence of State representatives. The procedure, although still based on the principle of *constructive dialogue* with governments, has over the years gradually developed into one of critical examination and assessment. Originally, members from Socialist States did not only object to any involvement of NGOs, but also to any evaluation by the Committee or its individual members of the respective State's performance. Legally speaking, this conflict centred on the interpretation of the words 'its reports' in Article 40(4) of the CCPR.⁴³ Today, international and local NGOs openly provide the Committee members with their critical comments on State reports and assessments of the human rights situation in the respective countries; working groups and individual rapporteurs of the Committee thoroughly prepare every examination of State reports, and State representatives often face serious difficulties in answering critical questions referring to failures and shortcomings in the domestic implementation of civil and political rights. Since the mid-eighties it has become common practice for Committee members to submit quasi-concluding personal statements on the human rights situation in the State concerned. As from April 1992, the Committee as a whole adopts by consensus concluding comments on every State report pointing at positive aspects, as well as factors and difficulties impeding the

⁴² See Nowak, 1993a, pp. 558 and 876.

⁴³ *Ibid.*, p. 568.

application of the Covenant. Since then these *country-specific comments* were formulated in an increasingly comprehensive and critical manner including principal subjects of concern, as well as detailed suggestions and recommendations. In April 1994, the Committee finally decided to discontinue its practice of including in its annual reports summaries of its consideration of State reports and now only includes in chapters on each individual country a short introduction and its concluding comments.⁴⁴

In addition to these *country-specific comments*, the Committee from the very beginning issued *general comments* in accordance with Article 40(4) of the CCPR. They are directed at States Parties in their entirety and reflect the views of the Committee on various substantive and procedural provisions of the Covenant. Since these general comments are adopted by consensus, often after extensive discussions within the Committee, they constitute an important and authoritative source of interpretation. Between July 1981 and January 1999, the Committee published a total of 26 general comments on the reporting procedure itself and on most of the rights contained in the Covenant.⁴⁵ Most controversial were General Comment 14(23) of November 1984, in which the Committee expressed its opinion that 'the production, testing, possession, deployment and use of nuclear weapons should be prohibited and recognized as crimes against humanity', and the General Comment 24(52) on issues relating to reservations discussed above.⁴⁶

7. INTER-STATE COMPLAINTS PROCEDURE

The inter-State complaints procedure in Articles 41 and 42 of the CCPR is modelled on similar procedures of the International Labour Organisation (ILO) and under Article 33 of the European Convention on Human Rights, as amended by Protocol No. 11. It was adopted by the General Assembly only after long and highly controversial discussions and was finally watered down to the extent that the procedure hardly deserves to be called a complaints procedure.⁴⁷ In contrast to other, more effective, inter-State complaints procedures the one before the Human Rights Committee is *optional*, the role of the Committee is reduced to seeking a friendly solution,

⁴⁴ Nowak, 1995a, pp. 378-379.

⁴⁵ For the texts of the General Comments, see UN Doc. HRI/CEN/1/Rev.3, pp. 2-54; and CCPR/C/21/Rev.1/Add.8/Rev.1. See also Nowak, 1993a, p. 847.

⁴⁶ See *supra*, section 4.

⁴⁷ In fact, the Covenant uses the term 'communication' rather than 'complaint'. For a detailed description of the procedure in comparison to other inter-State complaints procedures in the light of the *travaux préparatoires*, see Nowak, 1993a, p. 538.

and if its good offices fail, an *ad hoc Conciliation Commission* may be appointed only with the prior consent of the States Parties concerned, and this Commission again is only empowered to express its views on the possibilities of an amicable solution which may even be legally rejected by the States Parties. In other words, the whole procedure is nothing more than a *pure mediation or conciliation procedure* without any possibility of a final decision on the relevant human rights issues in the event that the efforts to reach conciliation fail. It is, therefore, not surprising that only 47 of the 144 States Parties have made the optional declaration required by Article 41 and that none of these States has actually resorted to this procedure.

8. INDIVIDUAL COMPLAINTS PROCEDURE

Although the individual complaints procedure was even more controversial during the drafting of the Covenant than the inter-State complaints procedure and resulted in the compromise to refer it to a separate Optional Protocol, this procedure, thanks to the quasi-judicial practice of the Human Rights Committee, emerged as the *most effective human rights complaints system at the universal level*.⁴⁸ As of January 1999, 95 of the 144 States Parties to the Covenant, including most of the former Communist States of Europe as well as an increasing number of Latin American and African States, were Parties to the First Optional Protocol and thereby submit themselves to the jurisdiction of the Human Rights Committee in cases of alleged individual human rights violations. In practice, a total of 844 individual communications relating to 59 States have so far been dealt with by the Committee of which 248 were declared inadmissible and 308 were decided on their merits by so-called final views under Article 5(4) of the Optional Protocol. In 236 cases a violation of one or more Covenant rights by the States Parties concerned, above all by Uruguay and Jamaica, has been established.⁴⁹

The procedure is modelled on the one applied under the European Convention on Human Rights. It is also divided into an admissibility stage and a stage in which an examination on the merits of the case occurs. Since the Committee is the only body involved the duration of the average procedure is, however, considerably shorter than that before the European

⁴⁸ Although the First Optional Protocol uses the term 'communication' it is justified to speak of a quasi-judicial complaints system. See McGoldrick, 1991, p. 120; and Nowak, 1993a, p. 647, with further references. For a chronological survey of all major decisions on individual complaints, see Nowak, 1980; 1981; 1982; 1984; 1986; 1990; 1993b; 1995a.

⁴⁹ Information received from the Office of the UN High Commissioner for Human Rights in Geneva. See also, Nowak, 1995a, pp. 382-383, and the references to some outstanding cases, *supra*, section I.

Commission and Court of Human Rights prior the merger of these two organs.

In contrast to Article 34 of the European Convention on Human Rights as amended by Protocol No. 11, only individuals, i.e. not groups, NGOs or other legal entities, may submit a communication to the Committee under Articles 1 and 2 of the Optional Protocol. As a consequence, the collective right of peoples to self-determination cannot be subject to this procedure.⁵⁰ The *admissibility requirements* in Articles 2, 3 and 5 of the Optional Protocol are less strict than those under the European Convention on Human Rights which means in practice that the chances of applicants to pass the admissibility stage are significantly higher before the Committee. Communications must not be anonymous, abusive or incompatible with the provisions of the Covenant *ratione temporis, personae, loci or materiae*. There is no time limit but the applicant must first exhaust all available domestic remedies. The simultaneous submission to different complaints procedures is excluded by Article 5(2) of the Optional Protocol, but in contrast to Article 35(2)(b) of the ECHR, an applicant may first go to Strasbourg and afterwards to Geneva (not vice versa). However, many Member States of the Council of Europe followed a recommendation of the Committee of Ministers by submitting a reservation which excludes the possibility of two consecutive international complaints procedures.⁵¹ Although the First Optional Protocol does not contain an explicit authorization similar to Article 35(3) of the ECHR to declare 'manifestly illfounded' communications inadmissible, the Committee developed the requirement that allegations must be sufficiently substantiated to be admissible.⁵²

Under Article 4 of the Optional Protocol communications which have been declared admissible are brought to the attention of the government concerned for its observations on the merits. The entire procedure is *confidential* and based only on *written information* made available by both parties. This explicit restriction in Article 5(1) of the Optional Protocol excludes, for example, oral hearings, the examination of witnesses, or fact-finding on the spot, and often leads to serious problems in establishing the facts. In the absence of adequate replies by the respective government, the Committee often found a violation by basing its decision exclusively on the well-founded allegations of the applicant.⁵³

Although not legally binding the Committee's decisions on the merits of the case ('*final views*' in accordance with Article 5(4) of the Optional Protocol)

⁵⁰ Communication No. 167/1984, *Lubicon Lake Band v. Canada*, *supra*, note 11.

⁵¹ See, Nowak, 1993a, p. 700.

⁵² *Ibid.*, p. 666.

⁵³ *Ibid.*, p. 691.

are structured like court judgments, usually well-reasoned and published in full in the Committee's annual reports. Individual members may add their dissenting or concurring opinions to the final views. If the Committee finds one or more violations of the Covenant, it requests the government concerned to provide the victim with an appropriate remedy such as release from detention, adequate compensation and/or the necessary measures to prevent similar violations in the future. In view of the fact that many governments did not comply with these requests and recommendations, the Committee, in July 1990, appointed a *Special Rapporteur for the Follow-Up of Views* with the task of monitoring States' compliance with its views. Nevertheless, the lack of legally binding effects and of any sanctions against non-cooperative governments remain the most serious shortcomings of the individual complaints procedure.

9. CONCLUSIONS

In 1996 we celebrated the thirtieth birthday of the Covenant on Civil and Political Rights and the twentieth anniversary of its coming into force. Although it constitutes a compromise between the then prevailing Western and Socialist concepts of human rights, it is still a surprisingly *modern document*. Apart from the rights to property and asylum, no important contemporary civil and political right is missing. Most provisions including the derogation and limitation clauses are formulated in a way that strikes a fair balance between the aims of universal application on the one hand, and cultural relativism on the other. More than two-thirds of the present 185 Member States of the United Nations are already Parties to the Covenant which proves that, notwithstanding major differences among contemporary legal, political, economic and cultural systems, the Covenant provides an *excellent framework for a truly universal acceptance* of the human rights of the so-called first generation.

Less satisfactory is the monitoring system established by the Covenant and its First Optional Protocol. Thanks to its independent, active and innovative membership, the Human Rights Committee developed the reporting and individual complaints procedures far beyond the narrow limits of their legal framework. Nevertheless, the shortcomings of these procedures are obvious. Apart from its moral and political authority, the Committee lacks any power to force or only induce governments to submit their reports on time, to cooperate in a proper manner and to comply with its recommendations resulting from the examination of State reports or with its final views relating to individual communications. These decisions are neither legally binding nor politically enforceable. The inter-State complaints procedure, which is

primarily designed to respond to gross and systematic human rights violations, provides even fewer possibilities for effective action.

Under the European Convention on Human Rights the *judicial functions* of establishing the facts and handing down legally binding decisions and judgments are strictly separated from the *political supervision of their execution* which is entrusted to the major political body, the Committee of Ministers.⁵⁴ Although not perfect, this division of labour has in principle functioned fairly well and was, therefore, upheld and strengthened with the establishment, on 1 November 1998, of a single European Court of Human Rights in accordance with Protocol No. 11. Article 45 of the CCPR and Article 6 of the Optional Protocol which oblige the Human Rights Committee to submit annual reports on its activities through the Economic and Social Council to the General Assembly of the United Nations, are based on a similar philosophy. In practice, both political bodies failed, however, to give force to the country-specific recommendations and views of the Committee.

Much has been said, in the context of the new international order following the Cold War, about the decisive move from the mere protection to an effective enforcement of human rights, and a comprehensive policy to prevent violations of human rights. Like country-specific and thematic rapporteurs and working groups of the Commission on Human Rights, the Committee as the most important treaty monitoring body made a significant contribution to the development of universal human rights standards and their supervision by international experts. Now it is up to the competent political bodies to ensure that governments in fact comply with the decisions and recommendations of the relevant expert bodies and adopt appropriate measures for the domestic implementation of their obligations under the Covenant and other international human rights treaties.

⁵⁴ Article 46 of the ECHR, as amended by Protocol No. 11.

BIBLIOGRAPHY

- Bossuyt, Marc J., *Guide to the 'Traavaux Préparatoires' of the International Covenant on Civil and Political Rights*. Dordrecht: Martinus Nijhoff Publishers, 1987.
- Coomans, Fons, and Fried van Hoof, 'The Right to Complain about Economic, Social and Cultural Rights', *SIM Special No. 18*. Utrecht: Netherlands Institute of Human Rights, 1995.
- Dziewicki, Krzysztof, Catarina Krause and Allan Rosas (eds.), *Social Rights as Human Rights: A European Challenge*. Turku: Åbo Akademi University, Institute for Human Rights, 1994.
- Eide, Asbjørn, Catarina Krause and Allan Rosas (eds.), *Economic, Social and Cultural Rights: A Textbook*. Dordrecht: Martinus Nijhoff Publishers, 1995.
- Henkin, Louis (ed.), *The International Bill of Rights: The Covenant on Civil and Political Rights*. New York: Columbia University Press, 1981.
- Kiss, A. C., 'Permissible Limitations on Rights', pp. 290-310, in L. Henkin (ed.), *The International Bill of Rights: The Covenant on Civil and Political Rights*. New York: Columbia University Press, 1981.
- McGoldrick, Dominic, *The Human Rights Committee: Its Role in the Development of the International Covenant on Civil and Political Rights*. Oxford: Clarendon Press, 1991.
- Nowak, Manfred, 'The Effectiveness of the International Covenant on Civil and Political Rights: Stocktaking after the First Eleven Sessions of the UN Human Rights Committee', *Human Rights Law Journal*, Vol. 1 (1980), pp. 136-170.
- Nowak, Manfred, 'UN Human Rights Committee: Survey of Decisions', *Human Rights Law Journal*, Vol. 2 (1981), pp. 168-172; Vol. 3 (1982), pp. 207-220; Vol. 5 (1984), pp. 199-219; Vol. 7 (1986), pp. 287-307; Vol. 11 (1990), pp. 139-156.
- Nowak, Manfred, 'Limitations on Human Rights in a Democratic Society', pp. 111-126, in E. A. Alkema, T. L. Bellekom, A. Z. Drzemczewski and J. C. C. Shokkenbroek (eds.), *The Domestic Implementation of the European Convention of Human Rights in Eastern and Western Europe: All-European Human Rights Yearbook*, Vol. 2 (1992). Kehl: Engel Publishers, 1992.
- Nowak, Manfred, *U.N. Covenant on Civil and Political Rights: CCPR Commentary*. Kehl: Engel Publishers, 1993. (Nowak 1993a).
- Nowak, Manfred, 'The Activities of the UN Human Rights Committee: Developments from 1 August 1989 through 31 July 1992', *Human Rights Law Journal*, Vol. 14 (1993), pp. 9-19. (Nowak 1993b).
- Nowak, Manfred, 'The Activities of the UN Human Rights Committee: Developments from 1 August 1992 to 31 July 1995', *Human Rights Law Journal*, Vol. 16, No. 10-12 (1995), pp. 377-397. (Nowak 1995a).

- Nowak, Manfred, 'The Need for an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights', *The Review of the International Commission of Jurists*, No. 55 (1995), pp. 153-165. (Nowak 1995b).
- Pappas, Christoph, *Das Individualbeschwerdverfahren des Fakultätsprotokolls zum Internationalen Pakt über bürgerliche und politische Rechte*. Bern: Stämpfli, 1996.
- Pechota, V., 'The Development of the Covenant on Civil and Political Rights', pp. 32-71, in L. Henkin (ed.), *The International Bill of Rights: The Covenant on Civil and Political Rights*. New York: Columbia University Press, 1981.
- de Zayas, Alfred, 'The United Nations and the Guarantees of a Fair Trial in the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment', pp. 669-696, in David Weissbrodt and Rüdiger Wolfrum (eds.), *The Right to a Fair Trial*. Berlin: Springer, 1997.