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## PROTECTION OF HUMAN RIGHTS AT THE INTERNATIONAL LEVEL: THE ROLE OF THE HUMAN RIGHTS COMMITTEE

*The United Nations, as a guardian of peace and security in the world, from the moment of its inception, has been involved in promoting and protecting human rights. Although the Universal Declaration of Human Rights was adopted by the General Assembly in 1948, and the process of drafting the International Bill of Human Rights was completed by 1966, the international human rights treaty system has continued to strengthen with the adoption of new instruments and the establishment of UN treaty bodies which fulfill a unique function in the global human rights system. This paper stresses that observed from a historical perspective, the establishment of instruments and bodies whose main purpose was the protection of human rights brought numerous advantages in the international system of human rights protection, but at the same time predicted various challenges when implementing protection on a practical level in certain areas that were of special interest to the international community. Taking into account the facts that the UN Human Rights Committee is an independent expert body that monitors the implementation of the International Covenant on Civil and Political Rights by its States Parties, and that it is known for its impartial, credible, and comprehensive expert presentation of the content of the said Covenant, this paper will discuss the results of the activities of the Committee from the perspective of its functions and the legitimacy of its decisions, as well as of its effectiveness in ensuring the respect, protection, and promotion of human rights at the international level.*

**Keywords:** human rights, promotion and protection of human rights, strengthening of the United Nations human rights treaty bodies, Human Rights Committee.

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## 1. INTRODUCTORY REMARKS

The term “human rights” came into usage after World War II, particularly with the founding of the United Nations in 1945. The term “human rights” replaced the phrase “natural rights” due to the fact that it became a matter of controversy and the later phrase the rights of man was not understood universally to include the rights of women.<sup>1</sup> As stated by Professor Marks, human rights constitute a set of norms governing the treatment of individuals and groups by states and non-state actors on the basis of ethical principles regarding what society considers fundamental to a decent life. He further argues that these norms are incorporated into national and international legal systems, which specify mechanisms and procedures to hold the duty-bearers accountable and provide redress for alleged victims of human rights violations.<sup>2</sup> International human rights law emerged following the Second World War with the creation of the United Nations (hereinafter: UN) and the adoption and ratification of the core human rights treaties.<sup>3</sup> The UN defined human rights as those rights which are inherent in our state of nature and without which we cannot live as human beings.<sup>4</sup> As one of ten human rights treaty bodies comprised of independent experts of recognized competence in human rights, the Human Rights Committee (hereinafter: CCPR) monitors the implementation of the International Covenant on Civil and Political Rights of 1966 (hereinafter: ICCPR) and its optional protocols. This paper will primarily discuss the results of the activities of the CCPR from the perspective of its effectiveness in ensuring the respect, protection, and promotion of human rights at the international level.

## 2. UNITED NATIONS HUMAN RIGHTS SYSTEM

The Charter of the UN (1945) proclaims that one of the purposes of the UN is to promote and encourage respect for human rights and fundamental freedoms for all. This call was first given concrete expression with the promulgation of the Universal Declaration of Human Rights by the UN General Assembly in 1948 (hereinafter: Universal Declaration). Adopted against the background of the horrors of the Second World War, the Universal Declaration was the first attempt by all states to agree, in a single document, on a comprehensive catalogue of the rights of the human person.<sup>5</sup> Broadly speaking, the

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<sup>1</sup> Symonides, J. 2002. *Human Rights, Concepts and Standards*. New Delhi: Rawat Publications. pp. 347-349.

<sup>2</sup> Marks, S. P. 2014. *Human Rights: A Brief Introduction*. Boston: Harvard T.H. Chan School of Public Health, p. 1. Available at: <https://dash.harvard.edu/bitstream/handle/1/23586712/Human%20RightsA%20Brief%20Introduction%2c%202014%20ed.pdf?sequence=1&isAllowed=y> (11. 6. 2023).

<sup>3</sup> Inter-Parliamentary Union and Office of the High Commissioner for Human Rights. 2016. *Human Rights: Handbook for Parliamentarians N° 26*. Geneva: Inter-Parliamentary Union and Office of the High Commissioner for Human Rights, p. 41. Available at: <https://www.ohchr.org/sites/default/files/Documents/Publications/HandbookParliamentarians.pdf> (11. 6. 2023).

<sup>4</sup> Mishra, P. 2000. *Human Rights Global Issues*. Delhi: Kalpaz Publications, p. 4.

<sup>5</sup> As its name suggests, it was not conceived of as a treaty but rather a proclamation of basic rights and fundamental freedoms, bearing the moral force of universal agreement. Its purpose has thus been described as setting “a common standard of achievement for all peoples in all nations”. See: Office of the High Commissioner

Universal Declaration sets down two broad categories of rights and freedoms: civil and political rights, on the one hand, and economic, social, and cultural rights, on the other.<sup>6</sup>

At the time of the adoption of the Universal Declaration, there was already broad agreement that human rights should be translated into legal form as a treaty, which would be directly binding on the States that agreed to be bound by its terms. The ICCPR and the International Covenant on Economic, Social and Cultural Rights (hereinafter: ICESCR) were adopted by the General Assembly in 1966. The two International Covenants on Human Rights form the cornerstone of an extensive series of internationally binding treaties covering a wide variety of issues in the field of human rights. The treaties define human rights and fundamental freedoms and set basic standards that have inspired more than 100 international and regional human rights conventions, declarations, sets of rules, and principles.<sup>7</sup>

Human rights are “the bedrock principles which underpin all societies where there is rule of law and democracy”.<sup>8</sup> Since the end of World War II, the core importance of human rights has been universally acknowledged. Today, against a backdrop of multiple conflicts, humanitarian emergencies, and severe violations of international law, it is all the more essential that policy responses be firmly grounded in human rights, and that states comply with the binding obligations they have contracted when ratifying international human rights treaties.<sup>9</sup> We should always start from the fact that “human rights are inherent to all human beings, and that they define the relationship between individuals and power structures, especially the state”.<sup>10</sup> On the one hand, human rights delimit the power of the state, and on the other hand, they require states to take positive measures to ensure an environment that allows all people to enjoy their human rights.<sup>11</sup> Human rights pertain to all aspects of life - their exercise enables all individuals to shape and determine their own lives in liberty, equality, and respect for human dignity and encompass civil, political, economic, social, and cultural rights, as well as the collective rights of peoples.<sup>12</sup>

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for Human Rights 2005. *Human Rights Civil and Political Rights: The Human Rights Committee*. Fact Sheet No. 15 (Rev.1). Geneva: Office of the High Commissioner for Human Rights, p. 1. Available at: <https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet15rev.1en.pdf> (27. 5. 2023).

<sup>6</sup> *Ibid.*

<sup>7</sup> Office of the High Commissioner for Human Rights. *Human Rights Civil and Political Rights: The Human Rights Committee*. Fact Sheet No. 15 (Rev.1). Geneva: Office of the High Commissioner for Human Rights, p. 1. Available at: <https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet15rev.1en.pdf> (27. 5. 2023).

<sup>8</sup> Inter-Parliamentary Union and Office of the High Commissioner for Human Rights, 2016. *Human Rights: Handbook for Parliamentarians* N° 26. Geneva: Inter-Parliamentary Union and Office of the High Commissioner for Human Rights, p. 8. Available at: <https://www.ohchr.org/sites/default/files/Documents/Publications/HandbookParliamentarians.pdf> (11. 6. 2023).

<sup>9</sup> *Ibid.*, p. 8.

<sup>10</sup> *Ibid.*, p. 19.

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*, p. 20.

## ***2.1. Promoting and protecting human rights in the United Nations System***

Alongside securing peace and security and working to realize development throughout the world, the promotion and protection of all human rights for all people is one of the three pillars of the UN, as it is established in the UN Charter and international human rights law. The UN strives to promote and protect human rights in three basic ways:

- a) The Office of the High Commissioner for Human Rights (hereinafter: OHCHR) is the lead organization within the UN working for human rights promotion and protection. It works closely with UN specialized agencies, funds, and programmes (e.g. World Health Organization, UN Refugee Agency, UNICEF, International Labour Organization, UNESCO, etc.) to maximize the impact of human rights work.<sup>13</sup>
- b) International human rights treaties (covenants and conventions) establish panels of independent experts, or treaty bodies, to regularly and periodically consider countries' implementation of human rights obligations.<sup>14</sup>
- c) Inter-governmental bodies, or assemblies, composed of Member States of the UN are established to discuss human rights issues and situations. The primary inter-governmental body for this purpose is the Human Rights Council which is supported in its work by independent experts called Special Procedures, and a mechanism called the Universal Periodic Review (hereinafter: UPR), among others.<sup>15</sup>

Although the aforementioned three elements of human rights protection within the UN are independent, it should be noted that they complement each other.

## ***2.2. Human rights monitoring mechanisms within the United Nations System: The treaty-based bodies***

The success of UN human rights treaty monitoring mechanisms depends largely on the influence that findings of the relevant monitoring body exert on national legal orders.<sup>16</sup> As stated by Nollkaemper and Van Alebeek, "while the practice of these bodies may influence the interpretation and development of treaties in the international legal order, the main rationale of human rights treaty monitoring mechanisms is that they affect the protection of human rights at the domestic level".<sup>17</sup> As is well-known, the challenges facing the treaty body system have been escalating for decades and there has been no shortage of creative ideas proffered from within and outside the UN itself on

<sup>13</sup> A Practical Guide for Civil Society: Civil Society Space and the United Nations Human Rights System, Geneva: Office of the High Commissioner for Human Rights, p. 5. Available at: [https://www.ohchr.org/sites/default/files/CS\\_space\\_UNHRSsystem\\_Guide\\_0.pdf](https://www.ohchr.org/sites/default/files/CS_space_UNHRSsystem_Guide_0.pdf) (12. 6. 2023).

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*

<sup>16</sup> Heyns, Cf. C. & Viljoen, F. 2002. *The Impact of the United Nations Human Rights Treaties on the Domestic Level*. The Hague: Kluwer Law International, p. 1.

<sup>17</sup> Van Alebeek, R. & Nollkaemper, A. 2012. The legal status of decisions by human rights treaty bodies in national law. In: Keller, H. & Ulfstein (eds.), *UN Human Rights Treaty Bodies: Law and Legitimacy (Studies on Human Rights Conventions)*. Cambridge: Cambridge University Press, p. 356.

how to address them. Part of the arising difficulties stem from the fact that the treaty system is a *de facto* one that was in fact never designed to be a “system” but rather has evolved informally into one over time. This has occurred through the development of ten human rights treaties, each with dedicated treaty bodies mandated to monitor the implementation by States Parties of the obligations assumed by them on ratification.<sup>18</sup> The shared characteristics of these treaty bodies, in terms of their nature, functions, and powers, have led them to gradually become conceptualized as a system, in need of reform as a comprehensive whole. However, it is important to note that steadily increasing, occasionally overlapping, and sometimes contradictory demands were also occasionally placed on States Parties due to the aforementioned shared characteristics of those treaty bodies. It can be said that the establishment of the human rights treaty bodies is one of the greatest achievements in the efforts of the international community to promote and protect human rights. As observed by the OHCHR: “the treaty bodies are custodians of the legal norms established by the human rights treaties”.<sup>19</sup> International human rights law obliges states to respect, implement, and enforce the treaty bodies they have ratified at a national level. Mechanisms and bodies have been established within the UN System to monitor the states’ overall compliance with human rights law. These UN bodies adopt findings, recommendations, and decisions aimed at closing human rights gaps and indicate how states, supported by other stakeholders, can move toward the full enjoyment of human rights.<sup>20</sup>

The UN human rights treaty body system, which combines noble ideals with practical measures to realize them, is “one of the greatest achievements in the history of the global struggle for human rights”.<sup>21</sup> Treaty bodies are at the heart of the international human rights protection system and they can be justifiably seen as “engines that transform universal norms into social justice and individual well-being”.<sup>22</sup> Using a growing set of tools, this system provides authoritative guidance on human rights standards, advises on how treaties apply in specific cases, and informs States Parties of what they must do to ensure that all people enjoy their human rights. The incremental growth of the system over the past few years, with the adoption by states of new human rights instruments and the creation of new treaty bodies for their effective realization, is testimony to their global standing. All States Parties benefit from their work.<sup>23</sup> The human

<sup>18</sup> Egan, S. 2013. Strengthening the United Nations Human Rights Treaty Body System. *Human Rights Law Review*, 13(2), p. 210.

<sup>19</sup> Pillay, N. 2012. *Strengthening the United Nations human rights treaty body system: A report by the United Nations High Commissioner for Human Rights*. Geneva: Office of the High Commissioner for Human Rights, p. 8. Available at: <https://www.refworld.org/pdfid/4fe8291a2.pdf> (29. 9. 2023).

<sup>20</sup> Carazzone, C. & Mazzarelli, S. *United Nations Human Rights Mechanisms, Advocating for Girls’ and Women’s Health and Human Rights*, p. 5. Available at: <https://www.glowm.com/pdf/AWHHR-chapter2.pdf> (29. 9. 2023).

<sup>21</sup> Pillay, N. 2012. *Strengthening the United Nations human rights treaty body system: A report by the United Nations High Commissioner for Human Rights*. Geneva: Office of the High Commissioner for Human Rights, p. 7. Available at: <https://www.refworld.org/pdfid/4fe8291a2.pdf> (29. 9. 2023).

<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid.*

rights treaty bodies are committees of independent human rights experts, nominated and elected by States Parties for a period of four years, renewable to another term of four years. Treaty bodies perform a number of functions in accordance with the provisions of the treaties that established them.<sup>24</sup>

The UN system has two main types of bodies to promote and protect human rights: *Charter Bodies* and *Treaty Bodies*. *Charter Bodies* are established under the UN Charter in order to fulfil the UN's general purpose of promoting human rights. They have broad mandates that cover promoting human rights in all UN Member States.<sup>25</sup> The charter-based bodies include the Human Rights Council, UPR, and the Commission on Human Rights (replaced by the Human Rights Council) and encompass the Special Procedures of the Human Rights Council and the Human Rights Council Complaint Procedure.<sup>26</sup> *Treaty bodies* have responsibility for monitoring and promoting compliance with a particular human rights treaty. As such they are only concerned with States Parties to the respective treaty.<sup>27</sup> There are ten human rights treaty bodies, comprised of independent experts of recognized competence in human rights, which the States Parties nominate and elect for fixed renewable terms of four years. One of them is the CCPR, which monitors the implementation of the ICCPR and its optional protocols.<sup>28</sup>

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<sup>24</sup> Carazzone, C. & Mazzarelli, S., p. 13.

<sup>25</sup> Australian Human Rights Commission 2009. Fact Sheet 8: Promoting and protecting human rights in the UN system. p. 1. Available at: [https://humanrights.gov.au/sites/default/files/content/education/hr\\_explained/download/FS8\\_UN.pdf](https://humanrights.gov.au/sites/default/files/content/education/hr_explained/download/FS8_UN.pdf) (13. 6. 2023).

<sup>26</sup> Živanović, M. 2016. *Brief Overview: Compilation of the Recommendations of the UN Human Rights Mechanisms and Their Implementation in Bosnia and Herzegovina*. United Nations, p. 11. Available at: [https://bosniaherzegovina.un.org/sites/default/files/2019-11/UN\\_comp\\_EN\\_BiH.pdf](https://bosniaherzegovina.un.org/sites/default/files/2019-11/UN_comp_EN_BiH.pdf) (14. 6. 2023).

<sup>27</sup> Australian Human Rights Commission 2009. Fact Sheet 8: Promoting and protecting human rights in the UN system. p. 1. Available at: [https://humanrights.gov.au/sites/default/files/content/education/hr\\_explained/download/FS8\\_UN.pdf](https://humanrights.gov.au/sites/default/files/content/education/hr_explained/download/FS8_UN.pdf) (13. 6. 2023).

<sup>28</sup> The remaining nine treaty bodies are as follows: The Committee on Economic, Social and Cultural Rights (CESCR), which monitors implementation of the International Covenant on Economic, Social and Cultural Rights (1966); the Committee on the Elimination of Racial Discrimination (CERD), which monitors implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (1965); the Committee on the Elimination of Discrimination against Women (CEDAW), which monitors implementation of the Convention on the Elimination of All Forms of Discrimination against Women (1979) and its optional protocol (1999); the Committee against Torture (CAT), which monitors implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (1984); the Committee on the Rights of the Child (CRC), which monitors implementation of the Convention on the Rights of the Child (1989) and its optional protocols (2000); the Committee on Migrant Workers (CMW), which monitors implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990); the Committee on the Rights of Persons with Disabilities (CRPD), which monitors implementation of the International Convention on the Rights of Persons with Disabilities (2006); Overview: Treaty-Bodies, the Special Procedures of the Human Rights Council and the Universal Periodic Review the Committee on Enforced Disappearances (CED), which monitors implementation of the International Convention for the Protection of All Persons from Enforced Disappearance (2006), and the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), which was established pursuant to the Optional Protocol to the Convention against Torture (OPCAT) (2002) and visits places of detention in order to prevent torture and other cruel, inhuman or degrading treatment or punishment. See: Živanović, M., pp. 9-10.)

### 2.2.1. The Functions of Treaty Bodies

The basic function of the treaty bodies is to monitor the implementation of human rights instruments.<sup>29</sup> The treaty bodies perform a number of functions in accordance with the provisions of the treaties that established them. These include consideration of periodic reports by States Parties, consideration of individual complaints and conducting country inquiries as well as the adoption of general comments on the interpretation of treaty provisions and the organization of thematic discussions related to the treaties. A country assumes the legal obligation to implement the rights recognized under a specific treaty once it has ratified that treaty. Therefore, it has the duty to take the necessary steps to ensure that everyone in the state is able to enjoy the rights set out in the treaty. Along with the obligation to implement the substantive provisions of a treaty a State Party also has the responsibility to submit periodic reports to the relevant treaty body on how the respective rights are being implemented.<sup>30</sup> Treaty Bodies consider reports from States Parties on their compliance with the treaty and some treaty bodies can receive individual complaints of treaty body violations. When it comes to *reporting obligations and monitoring*, treaty bodies consider periodic reports from States Parties about the measures they have adopted to carry out their obligations under each treaty. When treaty bodies assess reports from States Parties they may also consider information contained in 'shadow reports'. Shadow reports are those submitted to the treaty bodies by nongovernmental organizations (hereinafter: NGOs) and national human rights institutions (rather than the government). After considering the reports, treaty bodies make recommendations (often called Concluding Comments or Recommendations) about how the State Party can improve its compliance with its treaty obligations.<sup>31</sup> When it comes to *individual complaints* some treaty bodies have additional powers to receive and consider complaints from individuals who allege they are the victims of human rights violations by the state. The CCPR is one of the bodies with the power to hear individual complaints.

## 3. HUMAN RIGHTS COMMITTEE – A TREATY BODY WITH THE ROLE OF MONITORING THE IMPLEMENTATION OF THE ICCPR AND ITS OPTIONAL PROTOCOLS

The CCPR was established under Part IV of the ICCPR in order to monitor the implementation of the various rights by the Member States. The ICCPR was adopted by UN General Assembly on 16 December 1966 and entered into force on 23 March 1976, three months

<sup>29</sup> Karimova, T., Giacca, G. & Casey-Maslen, S. 2013. *United Nations Human Rights Mechanisms and the Right to Education in Insecurity and Armed Conflict*. Geneva and Doha: Geneva Academy of International Humanitarian Law and Human Rights/ Protect Education in Insecurity and Conflict, p. 27. Available at: <https://www.geneva-academy.ch/joomlatools-files/docman-files/Protection%20of%20Education%20in%20Armed%20Conflict.pdf> (17. 6. 2023).

<sup>30</sup> Živanović, M., p. 10.

<sup>31</sup> Australian Human Rights Commission 2009. Fact Sheet 8: Promoting and protecting human rights in the UN system. p. 2. Available at: [https://humanrights.gov.au/sites/default/files/content/education/hr\\_explained/download/FS8\\_UN.pdf](https://humanrights.gov.au/sites/default/files/content/education/hr_explained/download/FS8_UN.pdf) (19. 6. 2023).

after the required 35 instruments of ratification had been deposited.<sup>32</sup> The *Optional Protocol* entered into force at the same time as the ICCPR. The *Second Optional Protocol* to the ICCPR, which aims at the abolition of the death penalty, was adopted on 15 December 1989 and entered into force on 11 July 1991.<sup>33</sup> The ICCPR basically concerns two types of rights: those pertaining to the physical integrity of the person, such as execution, torture, and enslavement, and those pertaining to legal proceedings, to the legal status of persons and to "intellectual" rights, such as the right to hold and communicate one's ideas and beliefs.<sup>34</sup>

The CCPR is the body of independent experts that monitors implementation of the ICCPR by its States Parties. The CCPR's work promotes the enjoyment of civil and political rights, resulting in numerous changes in law, policy and practice. As such, it has improved the lives of individuals in all parts of the world. It continues to strive to ensure all the civil and political rights guaranteed by the ICCPR can be enjoyed in full and without discrimination, by all people.<sup>35</sup>

### **3.1. Work and the membership of the Human Rights Committee**

The CCPR is the body of 18 independent experts that monitors the implementation of the ICCPR<sup>36</sup> by its States Parties. All States Parties are obliged to submit regular reports to the CCPR on how civil and political rights are being implemented. States must report initially one year after acceding to the ICCPR and then whenever the CCPR requests. In accordance with the Predictable Review Cycle, the CCPR requests the submission of the report based on an eight-year calendar. The CCPR examines each report and addresses its concerns and recommendations to the State Party in the form of 'concluding observations'.<sup>37</sup>

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<sup>32</sup> Article 49 para. 2 of the ICCPR: "The present Covenant shall enter into force three months after the date of the deposit with the Secretary - General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession". See: United Nations. 1967. *International Covenant on Civil and Political Rights*. Available at: [https://treaties.un.org/doc/treaties/1976/03/19760323%2006-17%20am/ch\\_iv\\_04.pdf](https://treaties.un.org/doc/treaties/1976/03/19760323%2006-17%20am/ch_iv_04.pdf) (19. 6. 2023).

<sup>33</sup> The International Covenant on Civil and Political Rights, whose entry into force gave birth to the Human Rights Committee, guarantees a comprehensive catalogue of civil and political rights. The other United Nations treaty bodies have more limited jurisdiction, dealing as they do with racial discrimination, rights of children or women, and torture. See more in: Buergenthal, T. 2001. The U.N. Human Rights Committee. *Max Planck Yearbook of United Nations Law*, 5(1), pp. 343-344.

<sup>34</sup> The first category is concrete and substantive: when these rights are violated, individuals suffer concrete, physical harm; and there are no formal procedures which can legitimize these acts. The second category is quite different. For those rights concerned with the form of judicial and political proceedings, as long as there is due process and free elections, the outcome by definition cannot constitute a violation of one's rights. Those rights concerning speech, press and religious expression involve abstract entities – ideas, beliefs, information and the exchange or dissemination of these. For more details see: Gordon, J. 1998. The Concept of Human Rights: The History and Meaning of its Politicization. *Brooklyn Journal of International Law*, 23(3), p. 707.

<sup>35</sup> The Human Rights Committee. *United Nations Human Rights Treaty Bodies*. Available at: <https://www.ohchr.org/en/treaty-bodies/ccpr> (19. 6. 2023).

<sup>36</sup> See more in: Buergenthal, T. 2001. The U.N. Human Rights Committee. *Max Planck Yearbook of United Nations Law*, 5(1), p. 342.

<sup>37</sup> The Human Rights Committee. *United Nations Human Rights Treaty Bodies. Introduction to the Committee*. Available at: <https://www.ohchr.org/en/treaty-bodies/ccpr> (23. 6. 2023).

In addition, Article 41 of the ICCPR provides for the CCPR to consider inter-state complaints. The *Optional Protocol* to the ICCPR gives the CCPR competence to examine individual complaints regarding alleged violations of the ICCPR by States Parties to the Protocol. The Second Optional Protocol to the ICCPR relates to the abolition of the death penalty by states who have accepted the Protocol.<sup>38</sup> The CCPR also publishes its interpretation of the content of human rights provisions, known as general comments, on thematic issues or its methods of work. The CCPR meets in Geneva and normally holds three sessions per year.<sup>39</sup> More precisely, the CCPR meets three times a year, twice at the UN headquarters in Geneva, and once at the main headquarters in New York City. Each meeting lasts for three weeks. Working Groups of the CCPR, which perform various functions, convene for one week prior to each main meeting. Therefore, the CCPR operates on a part time rather than on a full-time basis.<sup>40</sup>

As stated by Shikhelman, the CCPR is “the most universal international institution which individuals can access in order to receive remedies for violations of their human rights”.<sup>41</sup> Byrnes argued that the individual communications system in the CCPR serves three purposes: (1) providing an effective and timely remedy to a person whose right has been violated; (2) bringing law and practice changes in the state against which the petition was brought; (3) providing guidance to other State Parties on the meanings and guarantees in the treaties, as well as the measures needed to implement them.<sup>42</sup>

If a State Party to the ICCPR ratifies the First Optional Protocol (hereinafter: First OP), it means that it will permit individuals to submit complaints of violations of the ICCPR by that state to the CCPR.<sup>43</sup> The First OP to the ICCPR grants individuals the right to bring individual communications against Member States to the CCPR.<sup>44</sup> The First OP itself in the Preamble states that the individual communications mechanism was established in order to “achieve the purposes of the ICCPR [...] and the implementation of its provisions.”<sup>45</sup> No additional purpose for the individual communications mechanism was mentioned in the First OP.

Although originally the intention of the States Parties might not have been to provide individuals with a remedy which is enforceable on the national level, the CCPR itself had

<sup>38</sup> *Ibid.*

<sup>39</sup> *Ibid.*

<sup>40</sup> Joseph, S., Mitchell, K. & Gyorki, L. 2006. *Seeking Remedies for Torture Victims: A Handbook on the Individual Complaints Procedures of the UN Treaty Bodies*. Geneva: World Organization Against Torture, p. 37.

<sup>41</sup> Shikhelman, V. 2017. *Access to Justice in the United Nations Human Rights Committee. Jean Monnet Working Paper 1/17*. New York: New York University School of Law, p. 16.

<sup>42</sup> See more: Byrnes, A. 2000. An Effective Complaint Procedure in the Context of International Human Rights. In: Bayefsky, A. F. (ed.). *UN Human Rights Treaty System in the 21<sup>st</sup> Century*. The Hague: Kluwer Law International.

<sup>43</sup> Joseph, S., Mitchell, K. & Gyorki, L. 2006. *Seeking Remedies for Torture Victims: A Handbook on the Individual Complaints Procedures of the UN Treaty Bodies*. Geneva: World Organization Against Torture, p. 39.

<sup>44</sup> United Nations. 1976. *Optional Protocol to the International Covenant on Civil and Political Rights*, articles 1 and 2.

<sup>45</sup> See: Preamble of the *Optional Protocol to the International Covenant on Civil and Political Rights*.

been active in promoting its decisions under the First OP as binding upon the States Parties, and not only as mere recommendations. In General Comment 33, the CCPR promoted its view that the decisions under the First OP should be implemented by Member States, and that the remedy for a specific violation is an important part of the implementation.<sup>46</sup> For instance, the CCPR points out that Article 2 (3) of the ICCPR grants a remedy for a violation of a right protected by the ICCPR, and constantly refers to this paragraph in its decisions in individual communications. Moreover, in 1997 the CCPR has appointed a special rapporteur for the “follow-up of views, who monitors the compliance of states with decisions under the First OP, and the compliance of states is also reported in the annual report of the CCPR to the General Assembly. Finally, the CCPR also established a procedure to request interim measures “to avoid irreparable damage to the victim of the alleged violation.”<sup>47</sup>

Given that no country’s record of protecting and promoting civil and political rights is perfect and free from criticism, the CCPR’s task is to encourage each State Party: a) to maintain in place those laws, policies and practices that enhance the enjoyment of these rights; b) to withdraw or suitably amend those measures that are destructive or corrosive of ICCPR’s rights; c) to take appropriate positive action when a State Party has failed to act to promote and protect these rights; and d) to consider appropriately the effects in terms of the ICCPR on new laws, policies and practices that a State Party proposes to introduce in order to ensure that it does not regress in giving practical effect to ICCPR’s rights.<sup>48</sup> One of the great strengths of the CCPR is the moral authority it derives from the fact that its membership represents all parts of the world. Instead of representing a single geographical or national perspective, the CCPR speaks with a global voice. The CCPR’s work has a real effect in promoting the enjoyment of civil and political rights in many countries, even though the cause-and-effect relationship is at times difficult to identify. There are numerous instances of an individual complaint leading to positive results for the individual concerned, be it in the form of a payment of compensation, a commutation of a death sentence, a retrial, an investigation into particular events, or a number of other remedies, in the State Party concerned. Over the years, the CCPR’s work has resulted in many changes of law, policy and practice, both at the general national level and in the context of individual cases.<sup>49</sup>

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<sup>46</sup> See: Shikhelman, V. 2017. *Access to Justice in the United Nations Human Rights Committee. Jean Monnet Working Paper 1/17*. New York: New York University School of Law, p. 17.

See also: Human Rights Committee. 2008. *General Comment No. 33: Obligations of States parties under the Optional Protocol to the International Covenant on Civil and Political Rights*, Ninety-fourth session Geneva, 13-31 October.

<sup>47</sup> Shikhelman, V. 2017. *Access to Justice in the United Nations Human Rights Committee. Jean Monnet Working Paper 1/17*. New York: New York University School of Law. p. 17.

<sup>48</sup> United Nations Human Rights Treaty Bodies. *The Human Rights Committee: Introduction to the Committee*. Available at: <https://www.ohchr.org/en/treaty-bodies/ccpr> (25. 6. 2023).

<sup>49</sup> In a direct sense, therefore, the CCPR’s discharge of the monitoring functions entrusted to it under the Covenant has improved the lives of individuals in countries in all parts of the world. It is in this spirit that the Committee will continue to make its work relevant and applicable to all States parties, and to strive for the enjoyment of all civil and political rights guaranteed by the Covenant, in full and without discrimination, by

When it comes to the membership, the CCPR as stated above is composed of 18 independent experts, who are persons of high moral character and recognized competence in the field of human rights.<sup>50</sup> New members of the CCPR are elected by secret ballot by the States Parties from a list of nominees, with due consideration being given to equitable geographical distribution, relevant legal experience and balanced gender representation.<sup>51</sup>

The important question that should be asked in the context of this research is: *May states restrict human rights?* Most human rights are not absolute and therefore are subject to certain restrictions, including through reservations, derogations and limitations. Further, the principle of progressive realization of rights means that the particular circumstances and capacity of each state must be taken into account in assessing whether that state has violated its human rights obligations. As such, while the core content of human rights is universal and some obligations have immediate effect, states enjoy a margin of discretion in implementing their obligations to respect, protect and fulfil human rights.<sup>52</sup> Many obligations to respect human rights are subject to so-called limitation clauses. For instance, the exercise of political freedoms, such as freedom of expression, assembly and association, carries with it duties and responsibilities and may, therefore, be subject to certain formalities, conditions, restrictions and penalties in the interests of national security, territorial integrity or public safety, the prevention of disorder or crime, the protection of public health or morals, or the protection of the reputation or rights and freedoms of others. If people misuse their freedom of speech and freedom to participate in a demonstration, to incite racial or religious hatred, to promote war propaganda or to encourage others to commit crimes, governments have an obligation to interfere with the exercise of these freedoms in order to protect the human rights of others.<sup>53</sup> It is also important to have in mind the possibility of derogation during a state of emergency. In exceptional circumstances,

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all people United Nations Human Rights Treaty Bodies. *The Human Rights Committee: Introduction to the Committee*. Available at: <https://www.ohchr.org/en/treaty-bodies/ccpr> (25. 6. 2023).

<sup>50</sup> Members are elected for a term of four years by state parties in accordance with articles 28 to 39 of the Covenant. Members serve in their personal capacity and may be re-elected if nominated. Regularly scheduled elections are held to replace members of the Committee when their terms expire. By-elections are held in extraordinary Meetings of States parties to fill a casual vacancy arising from the resignation or death of a member of the Human Rights Committee. The International Covenant on Civil and Political Rights is unique amongst the human rights treaties in providing for elections to be organized to fill casual vacancies in United Nations Human Rights Treaty Bodies. Available at: *The Human Rights Committee: Membership*. Available at: <https://www.ohchr.org/en/treaty-bodies/ccpr/membership> (25. 6. 2023).

<sup>51</sup> United Nations Human Rights Treaty Bodies. *The Human Rights Committee: Meetings of the States parties & elections*. Available at: <https://www.ohchr.org/en/treaty-bodies/ccpr/meetings-states-parties-elections> (26. 6. 2023).

<sup>52</sup> Inter-Parliamentary Union and Office of the High Commissioner for Human Rights. 2016. *Human Rights: Handbook for Parliamentarians* N° 26. Geneva: Inter-Parliamentary Union and Office of the High Commissioner for Human Rights, p. 41. Available at: <https://www.ohchr.org/sites/default/files/Documents/Publications/HandbookParliamentarians.pdf> (11. 6. 2023).

<sup>53</sup> Any interference, restriction or penalty must, however, be carried out in accordance with domestic law and must be necessary for achieving the respective aims and national interests in a democratic society.

including armed conflict, rioting, natural disasters or other public emergencies that threaten the life of a nation, governments may take measures derogating from their human rights obligations, provided that the following conditions are met. It is the task of international human rights bodies to assess on a case-by-case basis whether a particular form of interference serves a legitimate purpose, is based on a valid and foreseeable domestic law, and is proportionate to the legitimate purpose.<sup>54</sup> The ICCPR sets out in considerable detail the obligations incumbent on Contracting Parties and emphasises that the rights detailed are to be enjoyed by all without discrimination. The exercise of a right may only be restricted in very limited circumstances such as times of recognised state emergency. Any such restraint must be provided by law and be necessary for a legitimate purpose, and certain rights may not be suspended in any circumstances – the so-called non-derogable rights. Such rights are those protected by Articles 6, 7, 8 (i) and (ii), 11, 15, 16 and 18. Contracting Parties are obliged to fulfil the ICCPR immediately on ratification.<sup>55</sup> In addition to the above, the General comment No. 29 (2001) of the CCPR on derogations during a state of emergency should certainly be mentioned. The CCPR, as the supervisory body of ICCPR, may issue general comments to assist States Parties in the interpretation of ICCPR provisions. In its General Comment No. 29 on states of emergency, the CCPR stressed that the list of non-derogable rights contained in Article 4 (2) of the ICCPR is not necessarily exhaustive. Certain rights or elements of rights not listed in Article 4(2) of the ICCPR, such as the right of all persons deprived of their liberty to be treated with humanity and respect for the inherent dignity of the human person, or the prohibition of propaganda for war and advocacy of hatred, cannot be made subject to lawful derogation. The CCPR also took the view that procedural safeguards, including judicial guarantees, may never be made subject to measures that would circumvent the protection of non-derogable rights. Moreover, it held that “the principles of legality and the rule of law require that fundamental requirements of fair trial must be respected during a state of emergency”.<sup>56</sup>

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States must in any case demonstrate the necessity of applying such limitations, and take only those measures which are proportionate to the pursuance of the legitimate aims. See: *Ibid*, p. 4.

<sup>54</sup> Inter-Parliamentary Union and Office of the High Commissioner for Human Rights. 2016. *Human Rights: Handbook for Parliamentarians* N° 26. Geneva: Inter-Parliamentary Union and Office of the High Commissioner for Human Rights, p. 41. Available at: <https://www.ohchr.org/sites/default/files/Documents/Publications/HandbookParliamentarians.pdf> (11. 6. 2023).

<sup>55</sup> Steinerte, E. & Wallace, R. M. M. 2009. *United Nations protection of human rights. Section A: Mechanisms for human rights protection by United Nations bodies*. London: University of London Press, p. 11. Available at: <https://www.london.ac.uk/sites/default/files/uploads/study-guide-postgraduate-laws-un-protection-human-rights.pdf> (27. 6. 2023).

<sup>56</sup> Inter-Parliamentary Union and Office of the High Commissioner for Human Rights. 2016. *Human Rights: Handbook for Parliamentarians* N° 26. Geneva: Inter-Parliamentary Union and Office of the High Commissioner for Human Rights, p. 41. Available at: <https://www.ohchr.org/sites/default/files/Documents/Publications/HandbookParliamentarians.pdf> (11. 6. 2023).

## 4. CONCLUSION

As stated by Shikhelman “the ICCPR is probably the most famous (and one of the most ratified) human rights treaties, and the CCPR itself is the most high-profile UN treaty body”.<sup>57</sup> That is one of the reasons why the activities of the CCPR are the subject of this research. Even the CCPR is only one of the treaty bodies, the fact that it deals with the whole range of civil and political rights, gives us the important conclusion - it plays a prominent role in the field of international human rights monitoring.

The CCPR as the treaty body responsible for overseeing the implementation of the ICCPR is of special interest to researchers since it is a high profile and internationally acclaimed quasi-judicial body that can accept individual communications against 115 states.<sup>58</sup> It seems that because of its prestige and relative independence, through the individual communications system the CCPR can potentially help raising awareness to human rights problems, develop important jurisprudence on many subjects, and provide individuals with needed remedies. This is especially true for people from regions that do not have an effective and accessible regional human rights system - mainly Asia, Africa and some former communist countries.<sup>59</sup> The results of the research once again have brought into focus the fact that treaties and conventions on human rights are living instruments, because we can follow their development through the jurisprudence of courts and expert bodies that are responsible for monitoring the implementation of international and regional instruments on human rights, which provide very dynamic interpretations of international human rights norms, adapting their provisions to current circumstances.<sup>60</sup> In addition, the CCPR and the other treaty bodies face significant backlogs in their work, and have been forced to reduce the average time allocated to the review of each country report - endangering thereby the quality of their output.<sup>61</sup> States

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<sup>57</sup> Shikhelman, V., p. 20.

<sup>58</sup> *Ibid.*, p. 455.

<sup>59</sup> *Ibid.*, p. 20.

<sup>60</sup> For instance, the CCPR has found that the right to security of the person, guaranteed in article 9 of International Covenant on Civil and Political Rights (ICCPR) along with the right to liberty, was not intended to be narrowed down to mere formal loss of liberty: in a landmark decision (case of Delgado Páez v. Colombia, 195/1985), the Committee ruled that States may not ignore threats to the personal security of non-detained persons within their jurisdictions and are obliged to take reasonable and appropriate measures to protect them. Inter-Parliamentary Union and Office of the High Commissioner for Human Rights. 2016. *Human Rights: Handbook for Parliamentarians* N° 26. Geneva: Inter-Parliamentary Union and Office of the High Commissioner for Human Rights, p. 45. Available at: <https://www.ohchr.org/sites/default/files/Documents/Publications/HandbookParliamentarians.pdf> (11. 6. 2023).

<sup>61</sup> As stated by Shany, the tension between the widely perceived quality of the HRC’s work, on the one hand, and the serious difficulties the Committee encounters in adequately performing its tasks, on the other hand, complicates attempts to assess its overall record of achievement. Put differently, it is difficult to ascertain whether the HRC is, on the whole, an effective body. In any event, whether the HRC is considered more or less effective, one may still discuss the merits or demerits of specific proposals aimed at improving its effectiveness. See: Shany, Y. 2013. The Effectiveness of the Human Rights Committee and the Treaty Body Reform. *International Law Forum of the Hebrew University of Jerusalem Law Faculty*, 13(2). Available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2223298](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2223298) (29. 9. 2023).

reports to the CCPR and to other treaty bodies create a system of international accountability for human rights practices of states. As already stated, this is probably the most impressive part of the system, even if it is difficult to pin-point the concrete effect it has on state practice and compliance with international norms.<sup>62</sup>

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<sup>62</sup> The very fact that states, including the large powers and players in the international arena, USA, Russia, India, Brazil, UK, France, Germany and Japan, to name a few, send representatives to defend and explain their human rights legislation, practice and policies before a body of independent experts in public meetings in Geneva and New York has a important symbolic function. While states parties are accountable towards the HRC, that body itself has neither the effective power nor the capacity to effect changes in the practices or policies of the accountable states. The accountability must be linked to the society in the reporting state party, the members of whom are the intended beneficiaries of the ICCPR. It is their rights that each government has the responsibility to respect and ensure. See: Kretzmer, David. 2010. *The UN Human Rights Committee and International Human Rights Monitoring. Straus Working Paper 12/10*. New York: New York University School of Law. p. 68. Available at: <http://www.law.nyu.edu/sites/default/files/siwp/WP12Kretzmer.pdf> (11. 6. 2023).

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