

## The 1966 International Covenant on Civil and Political Rights (ICCPR) and the UN Human Rights Committee

Tanja KARAKAMISHEVA-JOVANOVSKA

‘Disregard and contempt for human rights  
have resulted in barbarous acts which  
have outraged the conscience of mankind.’  
René Cassin<sup>1</sup>

### ABSTRACT

After World War II, the world desperately needed strong faith in humanity, human rights and the values of civilisation. The world needed a strong motive and U-turn towards human solidarity and the rule of law and order, in order to win over the previous elitist arbitrariness and the “rule” of arms. That is why the international community put much of its efforts into drafting the UN Charter, with an aim to reaffirm faith in fundamental human rights, in the dignity and value of the human individual, and in the equal rights of men and women from nations large and small.

Historically speaking, civil and political rights protected in the ICCPR enabled the recognition of the human being and its liberties, especially in terms of citizenship rights, the protection of physical integrity, freedom of speech and thought, freedom from torture and slavery, the right to vote, etc. On the other side, the International Covenant on Economic, Social and Cultural Rights (ICESCR) protects the labour rights, the right to an adequate standard of living, the right to good health, the right to education, cultural rights, etc, which are all considered as “debt obligation”. This means that the State has to step up and take appropriate measurements to guarantee their application, contrary to Civil and Political Rights. These two Covenants are well-known as the *International Bill of Rights*.

*Prof. John Humphrey* prepared the first documented outline of an *International Bill of Human Rights* covering over 400 pages. The Universal Declaration was constructed upon a firm international basis wherein no regional philosophy or way of life was permitted to prevail. The Declaration was a synthesis, not only of all the hundreds of suggestions that had been made by governments, private

1 On being informed of his Nobel Peace Prize, Cassin said: ‘I am very happy. It is not given to every man to have the luck to learn law, to teach it, to make it as a judge and promote it internationally as an international judge.’ But he added: ‘I would be happier if there were a little more justice in the world.’

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organisations, and individuals, but also of the law and legal practices in all the various Members of the United Nations.<sup>2</sup>

In this chapter, special emphasis will be placed on the role and importance of the ICCPR in relation to the development of human rights. First the structure of the Covenant will be explained, and then the relationship between this Covenant and *René Cassin's* concept will be elaborated. Also, the Covenant will be analysed through a comparative prism with other relevant regional documents, their connection and mutual influence, as well as the monitoring that the UN Human Rights Committee (the Committee) performs in relation to the application of the Covenant. At the end of the chapter, several landmark cases from the work of the Committee will be elaborated upon, as well as relevant cases referring to Central and Eastern European countries.

#### KEYWORDS

UN, ICCPR, ICESCR, Human Rights Committee, René Cassin's concept

## 1. The Significance of the International Bill of Rights

The concept of human rights has existed for thousands of years. The ancient societies, the so-called city-states never elaborated on the idea of universal human rights but rather on systems of duties, conceptions of justice, legality and political legitimacy. Ancient philosophers like *Socrates*, *Plato*, and *Aristotle* argued for “a universal law of nature” that applied to all creation and provided the foundations for natural rights.<sup>3</sup>

The modern concept of human rights developed during the early Modern period, alongside Judeo-Christian ethics and the concept of natural rights,<sup>4</sup> appeared as a part of the medieval natural law tradition during the Enlightenment period in the works of *John Locke*<sup>5</sup>, *Kant* and other philosophers. This concept was featured in the political discourse of the American Revolution as well as in that of the French Revolution. The revolutionary ideals inspired by American and French Revolutionary thinkers were implemented in the U.S. Declaration of Independence in 1776, the French Declaration of the Rights of Man and of the Citizen in 1789, and the U.S. Bill of Rights in 1791.

We can generally agree that the historical origins of human rights can be categorised into three groups: religious contemplations, philosophical inspirations, and political and social theories.<sup>6</sup>

It should be emphasised that no global benchmark for human rights was established until the end of the World War I. The *Treaty of Versailles* in 1919 created the *League of Nations* and the *International Labor Organization*, two of the first international organisations, which aimed to achieve peace and encourage social justice. In

2 United Nations General Assembly Third Session, Verbatim Record of the One Hundredth and Eightieth Meeting (*Document AIPV. 180, December 9, 1948*), p. 46.

3 Aristotle, 1926.

4 Witte, 1996, p. 13.

5 The English philosopher John Locke in his book *Two Treaties of Government* employed the theory of natural law to build upon the theory of natural rights, which he argued should include “life, liberty, and possessions.” Locke, 1988, p. 87.

6 Duan, 2017.

1929, the Institute of International Law drafted and adopted the Declaration of the International Rights of Man at its meeting in New York. This document proclaimed “equal rights of every individual to life, liberty, and property” without a link to any particular nationality, gender, language, or religion.<sup>7</sup>

In 1941, U.S. President *Franklin D. Roosevelt* proposed his *Four Freedoms* identifying the basic liberties to which all persons were entitled: freedom of speech, freedom of religion, freedom from want, and freedom from fear, with the “supremacy of human rights everywhere”.<sup>8</sup> Roosevelt, together with the British Prime Minister *Winston Churchill* used his *Four Freedoms* as the foundation of the Atlantic Charter, in which they affirmed the principle of self-determination and envisioned a bright future for the world. According to the international theory, the Atlantic Charter and the Declaration of the United Nations marked the official entry of human rights as a topic of international discussion and built the essential arguments for establishing the modern human rights documents which emerged over the second half of the twentieth century when international human rights laws were introduced.

A great action of the recognition and protection of human rights had taken place at the UN General Assembly on 10th of December 1948 when the Universal Declaration for Human Rights was adopted without any votes against it. What is of great importance about the Declaration vote is the world unification (unification of the Eastern and Western Bloc) around a project that symbolised political morality. Namely, the Eastern Bloc cautiously abstain but did not vote against it. 88% of the state’s representatives voted affirmative. This demonstrated how morally compelling and publicly prevalent the human rights project had become.<sup>9</sup>

It should be emphasised that the Declaration is an expression of ‘the common standard to be achieved by all nations and all people of the world’. Article 1 of this document clearly expresses the idea of basic human rights: ‘All human beings are born free and equal in dignity and rights’. Although seemingly easy, the process of creating the Declaration was laborious, considering the circumstances under which many of the countries in the world lived at that time – apartheid in South Africa, the USSR which placed its main focus on collective rather than individual human rights, etc. The UN Commission on Human Rights, under the leadership of *Eleanor Roosevelt*

7 ‘Declaration of the International Rights of Man’, 1941, p. 664.

8 Roosevelt, 1941; Duan, 2017.

9 United Nations, General Assembly, *Verbatim Record of the Hundred and Eighty-Third Plenary Meeting*, UN Doc. A/PV.183, at 933 (1948). The Universal Declaration of Human Rights was adopted by the United Nations, with 48 votes to zero plus 8 abstentions (the BSSR, Czechoslovakia, Poland, Saudi Arabia, Ukraine, the Union of South Africa, USSR, and Yugoslavia).

faced a truly great challenge that ultimately ended successfully.<sup>10</sup> The essence of the UN Universal Declaration of Human Rights is that all humans have the right to freedom from discrimination, torture, and slavery; all humans are equal before the law; all humans have the right to privacy, peaceful public assembly, freedom of thought, and freedom of religion; all humans deserve equal pay for equal work in a safe environment; all humans deserve access to food, water, shelter, and education; and that everyone, especially governments, have a responsibility to protect human rights. Of most importance is that these rights cannot be taken away. The Universal Declaration of Human Rights is a declaration in form and essence. It is a formally non-binding document because René Cassin and its other creators believed that a document in the form of a “manifesto” supported by everyone who overthrew the Nazi regime at that point in time was the very maximum that could be achieved.

“The cruelties and oppression of the Nazi regime in Europe brought the conviction both during and after the Second World War that the international recognition and protection of human rights for people throughout the world is essential to the maintenance of international peace and order.”<sup>11</sup>

A binding human rights treaty was impossible to adopt immediately after World War II. *René Cassin* believed that it was the best possible time to create a basic document on which future generations could build other human rights documents, and that is exactly what happened. The architects of the UDHR believed that the Declaration should provide moral guidelines rather than act as a legal instrument. This is why in the international theory of human rights, some authors have viewed the Declaration primarily as a symbolic document, and its political and moral importance has outweighed its legal significance. Although René Cassin is widely known as an author of the Universal Declaration, he never made this claim himself. However, he does claim to be the sole author of the first draft of the Declaration upon which subsequent works were based. He stated that the eight-man drafting committee called on him to prepare a preliminary Declaration draft on ‘the basis of material assembled by prof. *John P. Humphrey* and prof. *Emile Giraud*’, and proposals submitted by the states, Panama and Cuba.<sup>12</sup>

However, prof. Humphrey, as Director of the Human Rights Division of the U.N. Secretariat, said that the story of “writing” the Declaration started earlier, on January

10 The UN Commission of Human Rights was consisted of eighteen representatives of governments that included Australia, Belgium, Soviet Byelorussia (the BSSR), Chile, China, Egypt, France, India, Iran, Lebanon, Panama, the Philippines, the UK, the US, the USSR, Uruguay, and Yugoslavia. The eminent UDHR team included Eleanor Roosevelt, P. C. Chang, Charles Malik, René Cassin, and Secretariat Humphrey in the most influential roles. In the human rights literature, Cassin is honored with title “father of Universal Declaration”. Winter and Prost, 2013, p. 237.

11 Oda, 1968, p. 497.

12 Cassin, 1968a, p. 4; Cassin, 1968b, p. 3.

27th, 1947, during the first regular session of the Commission under the chairmanship of Eleanor Roosevelt. According to his view, the document can be understood as an explicit elaboration of the rights granted by the UN Charter, supporting of the Declaration as a part of treaty law or, more precisely, as a codification of customary international law.<sup>13</sup>

The UDHR has become a living document, primarily with a moral authority, bearing in mind that the interpretations of the text have been adapted to the changing world. In this context, a judgment adopted by the Civil Tribunal of Brussels, explained that the

‘Declaration has to be viewed as a mere declaration, without force of law. Its sole aim is to express the common ideal to be attained by all peoples and all nations, in order that by instruction and education respect for these rights and freedoms may be developed and that measures may be taken progressively to ensure that they are recognized and universally and effectively applied in the future’.<sup>14</sup>

The opinion that the Declaration is not a legal instrument has been expressed by various authorities including the Supreme Court of Justice and the United States Ambassador to the United Nations, Arthur J. Goldberg who said: ‘The Universal Declaration has received universal recognition, but it remains just that, a declaration’.<sup>15</sup>

Mrs. Eleanor Roosevelt shared the same view: ‘It is not a treaty; it is not an international agreement. It is not and does not purport to be a statement of law or of legal obligation’.<sup>16</sup> At the same time Mrs. *Roosevelt* made a different and enthusiastic statement about the document:

‘This Declaration may well become the International *Magna Carta* of all men everywhere. We hope its proclamation by the General Assembly will be an event comparable to the proclamation of the *Declaration of the Rights of Man* by the French people in 1789, the adoption of the *Bill of Rights* by the people of the United States, and the adoption of comparable declarations at different times in other countries’.<sup>17</sup>

13 Humphrey, 1984, p. 65.

14 *M. v. United Nations and Belgium*, 45 I.L.R. 446 (Civ. Trib. of Brussels 1966), in *International law through the cases* 156, 157 (L.C. Green, 4th ed. 1978).

15 Goldberg, 1965, as well as Weston, 1990 (considering Ambassador Goldberg’s dictum as “somewhat exaggerated”).

16 Roosevelt, 1948. ‘The Declaration should not be in any sense a legislative document. The General Assembly was not a legislative body. Further, it was clear that the Declaration, as envisaged, did not create legal remedies or procedures to ensure respect for the rights and freedoms it proposed to the world; that ideal would have to be achieved by further steps taken in accordance with international and domestic law. The Declaration would have moral, not mandatory, force.’ See: Sweeney, 1988, citing Humphrey, 1967, pp. 39, 51.

17 *Ibid.*

On the other side, there are authors who have viewed the Declaration as a document with legal weight. Proponents of this argument contend that the UDHR derives its legal power from two essential sources: its composition based upon customary international law, and its incorporation into national legislations.<sup>18</sup> The Universal Declaration ‘constitutes an authoritative interpretation of the Charter of the highest order, and has over the years become part of customary international law’.<sup>19</sup> This argument for the force of the document’s legal power is often closely associated with the UDHR’s relevance to the UN Charter. In some systems, general or customary international law may be more easily implemented in national law than non-self-executing treaties.

Generally speaking, international human rights norms have inspired states to enshrine such standards into national constitutions and other domestic legislation. These may also provide avenues for the redress of human rights violations at a national level.<sup>20</sup> For instance, under *Article 9 of the Austrian Constitution*, generally accepted principles of international law are a part of municipal law, although this provision does not extend to treaty law.

*Article 25 of the Federal German Basic Law* provides: ‘The general rules of public international law shall be an integral part of federal law. They shall take precedence over the laws and shall directly create rights and duties for the inhabitants of the federal territory’. However, a 1957 decision of the German Federal Administrative Court, which deemed the Universal Declaration to have “programmatische importance,” nevertheless held that its provisions ‘are not general rules of international law and do not therefore, according to Art. 25 of the Basic Law form part of Federal law’.<sup>21</sup> More recent German decisions have acknowledged the formative impact of the Declaration on the crystallisation of customary rules and courts have occasionally referred to the Declaration in considering alleged violations of rights.<sup>22</sup>

Under *Article 10 of the Italian Constitution*, domestic law is to conform to generally recognised principles of international law. Italian courts have taken a relatively broad view holding that the Universal Declaration

‘is more than a mere declaration of intent from the point of view of Italian municipal law. On the contrary, it is a general principle of law which must be held to have become part of our law not only by virtue of Article 10 of the Constitution but also by virtue of the express, though also indirect, recognition

18 Hannun, 1995.

19 *Montreal Statement of the [Nongovernmental] Assembly for Human Rights* (1968), reprinted in 9 J. INT’L COMM. JURISTS REV. 94.

20 Council of Europe, n.d.a.

21 Judgment of June 29, 1957, BVerwG (Highest Admin. Ct.), 5 BVerwGE 153. See also 3 BVerwGE 171 (1956), 52 BVerwGE 313 (1977).

22 Judgment of May 4, 1971, BVerfG (Fed. Const. Ct.), 31 BVerfGE 58, Art. 16, reprinted in 72 I.L.R. 295 (Basic Right to Marry Case); Judgment of April 22, 1968, (Admin. Ct., Frankfurt), 1968 DVBI 472, Art. 15, reprinted in 60 I.L.R. 207 (Iranian Naturalization Case); Judgment of July 12, 1955, BGH (Fed. Sup. Ct.), 8 NJW 1365, reprinted in 22 I.L.R. 524 (Extradition of Greek National (Germany) Case).

accorded to it in the law which incorporated the European Convention on Human Rights into domestic law, a convention which in turn refers to the 1948 United Nations Declaration in its Preamble'.<sup>23</sup>

*The Constitution of the Netherlands in Article 93* contains an additional reference to 'resolutions of international institutions which may be binding on all persons by virtue of their contents after they have been published'.

Also, the provisions of the constitutions of Portugal, Romania, Spain and other European countries are of particular interest, since each directs its country's courts to "interpret" constitutional norms in conformity with the Universal Declaration. Many national constitutions have been directly inspired by the Universal Declaration. One author has estimated that 'no fewer than 90 national constitutions drawn up since 1948 contain statements of fundamental rights which, where they do not faithfully reproduce the provisions of the Universal Declaration, are at least inspired by it'.<sup>24</sup>

Many more examples of similarities between the provisions of the UDHR and national constitutions can be identified, since the Declaration has had a tremendous influence on national human rights standards. Its political and juridical importance cannot be questioned.

As a conclusion, the UDHR has become a source of inspiration for national constitutional catalogues of human rights. As a result, the constitutions have begun to reflect the direct domestic legal effects from international treaties, including human rights treaties. Hence, contemplations on human rights treaties are reflected as an external expression in the form of sources of law, and this is a purely positive way of approaching the issue.

'At the same time, it is quite evident that the field of human rights is concerned primarily with the effective protection of those rights, and the formally conceived issue of sources, in which these rights are merely declared, appear rather as subsidiary. It seems that the issue of the direct applicability of human rights, regardless of the source in which they are contained, is an issue more closely connected with the domestic tradition of the approach to the interpretation of law than with formal constitutional directives. And it is clear that especially the Central European region has been deeply afflicted by legal positivism (in the form of normativism), which prefers to devote attention to the formal sources and the relations between them, rather than devoting attention to the content of human rights'.<sup>25</sup>

23 Judgment of Feb. 1, 1962 (*Ministry of Home Affairs v. Kemali*), Cass. [Ct. of Last App.], Foro It. LXXXVII (1962), Part I, at 190, (1962), reprinted in 40 I.L.R. 191, 195; accord., Judgment of July 27, 1959 (*Fallimento Ditta Maggi v. Ministry of Fin.*), Trib. [Ct. of First Instance], Foro It. LXXXV (1960), I, col. 505, reprinted in 28 I.L.R. 607, 609 (both the Declaration and the European Convention 'have been made applicable in Italy by Italian municipal legislation').

24 Jayawickrama, 1992, p. 160.

25 Venice Commission. 2005.

## 2. Adoption, Structure, Implementation and Relevance of the ICCPR *versus* René Cassin's Concept

On 16th of December 1966, the UN General Assembly adopted two international treaties that shaped human rights and freedoms: The ICCPR and the ICESCR. Both these subsequent covenants have a binding force, i.e. the administrative and judicial authorities of the individual countries are responsible for their direct application. The two covenants are built on the rights contended in the UN Universal Declaration of Human Rights. According to Article 49, §1 ICCPR enters into force three months after the ratification or accession process (ICCPR Article 49, §1). All the State parties are required to take necessary steps to give effect to the rights recognised in the Covenant whereby inconsistencies of domestic law or practice with the Covenant must be changed. In the process towards the full implementation of the ICCPR, the efforts of State parties are supported by the UN Human Rights Committee (the Committee) through constructive dialogue and expert recommendations to the State concerned. State parties are requested to submit periodic reports to the Committee at intervals of between three and seven years. These reports contend the measures taken by the State concerned to implement the Covenant. Based on the information provided by the State party and other stakeholders, as well as through interactive dialogue with the State representatives, the Committee will issue recommendations to the State concerned for the effective implementation of the Covenant. It is recommended for State parties to establish a National Mechanism for Reporting and Follow-up, which can also give rise to coordinated efforts in the implementation of treaties.<sup>26</sup>

The International Covenant on Civil and Political Rights has two optional protocols. Firstly, an Optional Protocol to the ICCPR allows individuals to submit an individual complaint to the Human Rights Committee if any of their rights under the ICCPR have been violated. The First Optional Protocol was adopted by the UN on 16th December 1966 and came into force on 23rd March 1976. The Second Optional Protocol to the ICCPR aimed to commit state parties to the abolition of the death penalty. It was adopted by the UN on 15th December 1989 and came into force on 11th July 1991. Both Covenants guarantee and protect the following rights.

26 OCHR, 2016.

**Table 1. Similarities and Differences Between Covenants**<sup>27</sup>

ICCPR <sup>28</sup>	ICESCR <sup>29</sup>
<ul style="list-style-type: none"> <li>• Freedom from discrimination</li> <li>• Right to equality between men and women</li> <li>• Right to life</li> <li>• Freedom from torture</li> <li>• Freedom from slavery</li> <li>• Right to liberty and security of person</li> <li>• Right to be treated with humanity in detention</li> <li>• Freedom of movement</li> <li>• Freedom of non-citizens from arbitrary expulsion</li> <li>• Right to a fair trial</li> <li>• Right to recognition before the law</li> <li>• Right to privacy</li> <li>• Freedom of religion and belief</li> <li>• Freedom of expression</li> <li>• Right of peaceful assembly</li> <li>• Freedom of association</li> <li>• Right to marry and found a family</li> <li>• Right of children to birth registration and nationality</li> <li>• Right to participate in public affairs</li> <li>• Right to equality before the law</li> <li>• Minority rights</li> </ul>	<ul style="list-style-type: none"> <li>• Freedom from discrimination</li> <li>• Right to equality between men and women</li> <li>• Right to work</li> <li>• Freedom to choose and accept work</li> <li>• Right to just and favourable conditions at work</li> <li>• Right to form trade unions</li> <li>• Right to strike</li> <li>• Right to social security</li> <li>• Right of mothers to special protection before and after birth</li> <li>• Freedom of children from social and economic exploitation</li> <li>• Right to an adequate standard of living</li> <li>• Freedom from hunger</li> <li>• Right to health</li> <li>• Right to an education</li> <li>• Freedom of parents to choose schooling for their children</li> <li>• Right to take part in cultural life</li> <li>• Right to enjoy the benefits of science</li> <li>• Rights of authors to moral and material interests from works</li> <li>• Freedom to undertake scientific research and creative activity<sup>30</sup></li> </ul>

The rights catalogued and defined by both Covenants are substantially the same as those set forth in the Universal Declaration, but still there are some important differences. Unlike the Declaration, each of the Covenants recognises the right of all peoples to self-determination. There is no mention in either Covenant of the right to own property or of the right not to belong to an organisation. The Covenant on Civil and Political Rights gives States that are parties to the Covenant the right to take measures derogating from their obligations under it ‘in time of public emergency which threatens the life of the nation’.<sup>31</sup>

The ICCPR has 53 articles divided into 6 parts. Parts I and II contains provisions which are generally applicable to all the rights described in the Covenant while the Part III is the “backbone” of the Covenant, elaborating on substantive individual rights. The final Parts deal with the establishment of the Human Rights Committee, the Committee’s monitoring functions, and a variety of technical matters.

27 See more: <https://www.ohchr.org/en/what-are-human-rights/international-bill-human-rights> (Accessed: 15 April 2024).

28 Nowak, 2005.

29 United Nations Office of the High Commissioner for Human Rights, n.d.b.

30 English, 2024.

31 United Nations Office of the High Commissioner for Human Rights, n.d.a.

The first two Parts are composed of articles numbered from 1 to 5. They are defined as an important set of provisions with a structural nature. Article 1 guarantees the right of self-determination. This right is expressly ascribed to “peoples” rather than to individuals, and it is the only right that is common to both Covenants. Article 2 is a fundamental cornerstone of the Covenant where it is emphasised that a State party must respect and ensure the rights of the Covenant to all persons within its territory and subject to its jurisdiction. With some exceptions, such as the right to vote, these rights extend not only to citizens but to all persons in the State’s territory and jurisdiction and must be respected without discrimination. If necessary, legislation should be enacted to properly guarantee these rights.<sup>32</sup>

The obligations under the ICCPR can be broadly categorised into negative and positive obligations. Negative obligations generally impose a duty on the state to abstain from interference with the enjoyment of rights by individuals. These obligations are traditionally viewed as “classic” civil and political rights protections, in which the state must refrain from violating individual liberties. For example, ICCPR Article 6, Right to life, declares that States must not engage in the arbitrary deprivation of life, such as extrajudicial killings. Article 7, Freedom from torture, means that States are prohibited from subjecting individuals to torture or cruel, inhuman or degrading treatment, Article 17, Right to privacy, means that States must not engage in arbitrary or unlawful interference with privacy, family, home or correspondence. And Article 19, Freedom of expression, explains that States must not censor or unduly restrict speech, unless under narrowly defined and necessary limitations. On the other hand, positive obligations require that a State should take proactive measures to ensure that rights are effectively guaranteed. This extends to protection against violations by non-State actors, ensuring legal, institutional, and practical mechanisms for the realisation of rights. For example, ICCPR Article 2(2), Implementation measures, stipulates that States must adopt legislative or other measures necessary to give effect to the Covenant’s provisions. Article 6, Right to life, means that States must not only refrain from unlawful killings but must also take appropriate measures to protect individuals from any threats to life by a third party (domestic violence, organised crime, etc.). Article 14, Right to a fair trial, gives positive obligation that States are required to establish an independent and impartial judiciary, provide legal aid where necessary, and ensure due process etc. While negative obligations are generally less resource intensive and more easily justiciable, positive obligations pose significant practical and normative challenges which include requirements for State resources

32 United Nations Office of the High Commissioner for Human Rights, n.d.c.

and administrative capacity, as well as the need for detailed legislation and enforcement mechanisms.<sup>33</sup>

Article 3 of the Covenant provides the equal right of men and women to enjoy the Covenant rights while Article 4 of the Covenant recognises exceptional situations where a State party cannot protect some human rights for a temporary period of time. This article sets out the boundaries for suspending and/or derogating certain rights.<sup>34</sup> Article 5 is usually defined as a general protective provision in which it is stated that nothing in the Covenant confers the right to limit or destroy any of its provisions. A State party whose domestic law provides greater protection than those contained in the Covenant may not use that as an excuse to restrict or derogate from the fundamental rights contained in the Covenant.

In Part III, the Covenant stipulates substantive rights and fundamental freedoms. In Articles 6 to 11, which are perceived as core provisions for the protection of the life, liberty and the physical security of the individual, the narrow confines within which the death penalty may legitimately be imposed in States parties where that penalty has not been abolished are also stipulated.<sup>35</sup>

Specific prohibitions are set out concerning torture, unauthorised medical experimentation, slavery and forced labour. The rights of a person in the context of the deprivation of liberty, commonly by arrest, and in detention, are also covered here.<sup>36</sup>

Articles 12 and 13 deal with the movement into, out of, and within the country together with the rules applicable to the expulsion of aliens. Articles 14 to 16 concern the treatment of individuals within the judicial process, guaranteeing the right to a fair trial in both criminal and civil cases. This right is of fundamental importance and is closely linked to the right to an effective remedy set out in Article 2. These articles include the right to equality before the courts and to the fair adjudication of claims resolved before courts and tribunals, and they list a series of additional protections applicable to criminal trials.<sup>37</sup>

Article 15 prohibits retroactive criminal punishments, while Article 16 states that everyone has the right to be recognised as a person before the law. Articles 17 to 22 stipulate the fundamental freedoms to be enjoyed free of unjustified external

33 The dichotomy between negative and positive obligations under the ICCPR is not only a semantic distinction but reflects the dual nature of human rights protection in international law. A state's compliance with the ICCPR is not achieved solely by abstaining from direct violations, but also by actively safeguarding the rights of individuals through effective legislative, judicial, and administrative measures. The Human Rights Committee's growing jurisprudence underscores this dynamic understanding, reinforcing that the Covenant's guarantees are both defensive and enabling in character, requiring states to act where inaction would result in rights being rendered ineffective.

34 Ibid.

35 Ibid.

36 Ibid.

37 Ibid.

interference, and guarantee the right to privacy, freedom of thought and religion, freedom of opinion and expression, which is also subject to prohibitions in Article 20 of the advocacy of war or of national, racial or religious hatred, as well as the right to peaceful assembly and freedom of association, including through trade unions.

Articles 23 and 24 of the Covenant recognise the particular role of the family and address issues of marriage and the rights of children, while Article 25 highlights the right to political participation, with special emphasis on the right to vote and the right to be elected at genuine periodic elections by universal suffrage and secret ballot, as well as the right to take part in public affairs and to have equal access to public services.

Together with Articles 2 and 14, Article 26 is seen as a fundamental provision of the Covenant enshrining the rights to equality before the law and to equal protection of the law, with a wide guarantee of non-discrimination. Part III of the Covenant concludes with Article 27, which guarantees persons belonging to ethnic, religious or linguistic minorities the right, in community with other members of the group, to enjoy and practice their own culture, religion or language. While nominally expressed as an individual right, this provision may be best understood as a group right that protects a community of individuals.<sup>38</sup>

Articles 28 to 45 set up the Committee and provide for its functions and procedures, while Articles 46 and 47 include the provisions with respect to the UN Charter, and linked with Article 1, the inherent right of people to freely enjoy and utilise their natural wealth and resources. Articles 48 to 53 contain standard treaty provisions concerning the mechanisms for becoming a party, and presenting notification and amendments. Article 50 provides that the Covenant's provisions extend to all parts of a federal State without limitation or exception. This article is a restatement of the well-known principles of international law whereby a State's international responsibility is engaged by the acts and omissions of its authorities at all levels, whether national, provincial or local, and that a State's domestic law does not excuse a breach of a treaty obligation.<sup>39</sup>

The Covenant places certain limitations on the exercise of the recognised rights primarily in the interest of public safety, public order and morals, national security, or for the protection of human rights of others. Such limitations must be stipulated in domestic law and must be proportional, reasonable and non-arbitrary. The so-called limitation clauses provide states with an opportunity to balance universal human rights with national specifics, cultural and religious values.<sup>40</sup> States are under obligation to prove that restrictions are necessary and reasonable although the State is not permitted to violate or derogate any person from the right to life, freedom from torture, freedom from slavery and slave trade, freedom from civil prison, the right

38 Ibid.

39 Ibid.

40 Symonides, 2019.

against *ex post facto* criminal law, the right to recognition as a person before law, and the right to freedom of thought, conscience and religion.

These seven rights are considered the minimum fundamental rights which should remain guaranteed to an individual at all times. The state has no excuse to abridge, limit or deny them to its people.<sup>41</sup>

It is important to mention that the States can make reservations or declarations in line with the 1969 Vienna Convention on the Law of Treaties, which exempts them from certain provisions in the document. This idea was crucial for getting as many States as possible to sign the human rights treaties.

**Table 2.** Structure of International Covenant on Civil and Political Rights<sup>42</sup>

Articles of ICCPR	Details
Article 1	It recognises the right of all peoples to self-determination, including the right to “freely determine their political status”, pursue their economic, social and cultural goals, and manage and dispose of their own resources.
Articles 2 – 5	These articles enable parties to come up with legislation to give effect to the rights recognised in the Covenant, and to provide a legal remedy in case of violation of such rights.
Articles 6 – 27	Articles 6 – 27 contain rights such as: <ul style="list-style-type: none"> <li>• The guarantee of physical integrity as in the right to life and freedom from torture and slavery.</li> <li>• Freedom from unlawful arrest, the right to habeas corpus and the guarantee of individual liberty and security.</li> <li>• Fairness in law and its procedure through the rights to due process, fair and impartial trial, the presumption of innocence.</li> <li>• Freedoms of movement, thought, religion association, conscience, assembly, right to privacy and right to a nationality.</li> <li>• Disallowing propaganda for war and religious purposes as well as advocacy of national or religious hatred that will result in violence or hostility.</li> <li>• Political participation, including the right to vote</li> <li>• Equality before the law, no discrimination on the grounds of an individual either belonging or not belonging to a minority group.</li> </ul>
Articles 28 – 45	These articles establish the guidelines by which the Human Rights Committee will operate, as well as the reporting and monitoring of the Covenant. It also enables the parties to recognise the authority of the committee to resolve disputes between the parties on the implementation of the ICCPR.
Articles 46 – 47	Articles 46 – 47 state that the provisions of the ICCPR does not mean that parties will interfere with the operation of the United Nations or “the inherent right of all peoples to enjoy and utilize full and freely their natural wealth”
Articles 48 – 53	Governs ratification, entry into force, and amendments of the Covenant.

41 Ibid.

42 United Nations, 1966.

### 3. Comparison of the ICCPR with Other Relevant Regional Documents

Human rights are increasingly being acknowledged through wider instruments that offer their protection. These instruments are usually classified under three main categories: 1) the geographical criteria (regional and/or universal); 2) the category of guaranteed rights and 3) the specific category of persons or groups to whom protection is given.<sup>43</sup>

International law in general and human rights laws specifically, are enforced through a treaty system. While there are no “international police” to make sure states comply with the law, States take it upon themselves to follow the treaties they have signed. This is hardly a fool-proof system, but it has evolved over the years with the aid of different types of compliance mechanisms.<sup>44</sup>

At the UN level, there are more than a hundred human rights documents. If we add to those documents’ different regional human rights conventions and treaties, the number is further increased. Of the world’s five continents, four have established systems for human rights’ protection. The objective of these regional systems is to articulate human rights standards and mechanisms at a regional level without downgrading the universality of the human rights.

Bearing in mind that it is impossible to compare all these instruments in one chapter, the most relevant regional documents will be analysed in connection with the ICCPR. One general remark is that the main international and regional instruments uphold the same minimum human rights standards and that the Universal Declaration of Human Rights is the source of inspiration for all of them. These instruments may differ in their focus, or in their specific regional concerns but the undeniable truth is still that human rights have universal character and universal spirit. Most of the instruments are devoted to specific subjects such as racial discrimination, torture, enforced disappearances etc., or for special groups, such as women, children, migrant workers, and persons with disabilities. For example, the issue of internally displaced persons was first raised within the African political region before it became a matter for the UN concern. Furthermore, the mechanism of visiting places of detention as an effort for torture prevention was first established at European level before an Optional Protocol allowed the same mechanism under the UN Convention Against Torture. These examples show how regional and international norms and mechanisms can enhance and deepen the promotion and protection of human rights.<sup>45</sup>

The practical advantage of regional human rights norms and systems is that they are more likely to have been developed based on closer geographic, historical,

43 Council of Europe, n.d.b.

44 Currie, 2008. One such mechanism is international human rights courts. The most important are three human rights courts: The United Nations Human Rights Committee, the European Court of Human Rights, and Inter-American Court of Human Rights.

45 Council of Europe, n.d.a.

political, cultural, and social ties. Therefore, it can be said that the human rights protection is three-tiered: domestic, regional and international.

**Table 3.** Major United Nations’ Human Rights Treaties<sup>46</sup>

Major United Nations’ Human Rights Treaties		
Treaty	Monitored by	Optional Protocols
International Convention on the Elimination of Racial Discrimination (1965)	Committee on the Elimination of Racial Discrimination	
International Covenant on Civil and Political Rights (1966)	Human Rights Committee	First Optional Protocol establishing an individual complaint mechanism (1966) Second Optional Protocol aiming at the abolition of the death penalty (1989)
International Covenant on Economic, Social and Cultural Rights (1966)	Committee on Economic, Social and Cultural Rights	Optional Protocol recognising the Committee’s competence to receive communications submitted by individuals or groups (2008)
Convention on the Rights of the Child (1989)	Committee on the Rights of the Child	Optional Protocol on the involvement of children in Armed Conflict (2000). Optional Protocol on the sale of children, child prostitution and child pornography (2000). Optional Protocol allowing children to bring complaints directly to the Committee (2011).
Convention on the Elimination of All Forms of Discrimination Against Women (1979)	Committee on the Elimination of Discrimination Against Women	Optional Protocol on the right to individual complaints (1999)
Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment (1984)	Committee against Torture	Optional Protocol establishing a system of regular visits by independent international and national bodies – monitored by the Subcommittee on Prevention (2002)
Convention on the Protection of the Rights of Migrant Workers and members of their Families (1990)	Committee on the Protection of the Rights of Migrant Workers and members of their Families	
The Convention on the Rights of Persons with Disabilities (2006)	Committee on the Rights of Persons with Disabilities	Optional Protocol on Communications allows individuals and groups to petition the Committee (2006).
The Convention on Enforced Disappearances (2006)	Committee on Enforced Disappearances	

The first difference between the two treaties, the ICCPR and the ICESCR, refers to the clarity and character of obligations of states with respect to two different types of rights. Article 2(1) of the ICCPR talks about States' obligations to respect and to ensure civil and political rights without distinction of any kind while the same article in the ICESCR uses much more cryptic language about how the compliance of States to the treaty on economic, social and cultural rights will be monitored.

The second difference between the two treaties is State responsibility. When the ICCPR was adopted, an independent monitoring body known as the Human Rights Committee (HRC) was established with three main responsibilities: 1. Examining states' compliance with the treaty approximately every five years; 2. Dealing with interstate complaints and 3. Receiving complaints from individuals who consider themselves to be victims of a violation of any of the political and civil rights contained in the ICCPR.

On the other hand, the ICESCR did not contain a Human Rights Committee but another special body, the Committee on Economic, Social and Cultural Rights (CESCR) consisted of 18 independent experts that monitor implementation of the Covenant by its State parties. The Covenant protects economic, social and cultural rights, such as the right to adequate food, adequate housing, education, health, social security, water and sanitation, and work.

The third difference can be found in the three levels of separation between the two sets of rights: 1. Different treaties that states could pick and choose from, 2. Different legal wording, and 3. Different accountability mechanisms.

The comparison of the ICCPR with the ECHR is also very important, keeping in mind that the ICCPR has been called 'probably the most important human rights treaty in the world', in recognition of its global coverage and wide range of protected rights, while the ECHR is seen as the most important convention for the protection of human rights in Europe. The ICCPR represents a common standard of civil and political rights achievements for all peoples and all nations, while the ECHR strengthens the human rights protection and promotion in Europe.

The European Court of Human Rights was established on the basis of the ECHR, while the United Nations HRC is a body that monitors the implementation of the ICCPR established within the Covenant. While there are substantive similarities and possibilities for a comparative approach, each institution – the ECtHR and the HRC – remains an authentic interpreter of their respective treaties, and neither of them should give any binding interpretations of other norms of the international law.

The ICCPR is defined as a global treaty. In terms of substance, contents and membership of states parties, the ICCPR and the ECHR overlap to a great extent. The two documents contain certain so-called derogation clauses which allow states to suspend certain human rights obligations in times of great danger. The states can temporarily "escape" from their obligations stipulated under these treaties. Despite the fact that international human rights instruments are older than the institution of "*ius cogens*" itself, which was not expressed in a positive sense before the adoption of Article 53 of the 1969 Vienna Convention on the Law of Treaties, human rights documents

contain provisions on the non-derogatory character of certain rights guaranteed by their provisions. Article 4(2) of the ICCPR enumerates a comprehensive list of rights from which no derogation is permitted, even in times of emergency. These include: the right to life<sup>47</sup>; the prohibition of torture and cruel, inhuman, or degrading treatment or punishment<sup>48</sup>; the prohibition of slavery and servitude<sup>49</sup>; the prohibition on imprisonment for the inability to fulfil a contractual obligation<sup>50</sup>; the principle of legality in criminal law (*nullum crimen sine lege*)<sup>51</sup>; the recognition of legal personality<sup>52</sup>; and the freedom of thought, conscience, and religion.<sup>53</sup> These rights reflect the core values of human dignity, personal autonomy, and legal certainty. The inclusion of rights such as the freedom of religion and legal personality underlines the ICCPR's broader conception of non-derogability, which encompasses both physical integrity and fundamental civil liberties.<sup>54</sup>

In contrast, the ECHR limits its non-derogable rights to four provisions, as outlined in Article 15(2); the right to life, except with respect to deaths resulting from lawful acts of war<sup>55</sup>; the prohibition of torture and inhuman or degrading treatment or punishment<sup>56</sup>; the prohibition of slavery and servitude<sup>57</sup>; and the principle of legality in criminal law.<sup>58</sup> Notably absent from the ECHR's list of non-derogable rights are the freedoms of religion and conscience, the right to legal personality, and the prohibition of imprisonment for debt.<sup>59</sup> Furthermore, Article 2 of the ECHR contains a qualification not found in the ICCPR: it permits derogation for deaths resulting from the use of force in lawful acts of war, which creates a potentially broader margin for states to justify lethal actions during armed conflict.

The ICCPR adopts a more expansive view of non-derogable rights, aiming to provide comprehensive protection even under exceptional circumstances. Its explicit protection of freedom of religion<sup>60</sup> and the right to recognition as a person before the law<sup>61</sup> illustrates a broader conception of inalienable rights. By contrast, the ECHR limits non-derogable rights to the most essential protections of physical integrity and legal certainty. While the ECHR does protect other fundamental freedoms – such as freedom of expression, religion, and assembly – these rights are in principle, subject to derogation in emergencies, potentially leaving gaps in protection when national

47 ICCPR, Art. 6.

48 Ibid., Art. 7.

49 Ibid., Art. 8 paras. 1–2.

50 Ibid., Art. 11.

51 Ibid., Art. 15.

52 Ibid., Art. 16.

53 Ibid., Art. 18.

54 International Covenant on Civil and Political Rights, Art. 4.

55 ECHR, Art. 2.

56 Ibid., Art. 3.

57 Ibid., Art. 4 para. 1.

58 Ibid., Art. 7.

59 European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950.

60 ICCPR, Art. 18.

61 Ibid., Art. 16.

institutions are under strain. Another point of divergence lies in the treatment of slavery and forced labour. The ICCPR categorically prohibits both slavery and servitude, while the ECHR only guarantees non-derogability for slavery, not forced or compulsory labour, which is regulated under Article 4(2) and is not included in the non-derogable category. Moreover, jurisprudence plays a crucial role. Although the ECHR contains fewer non-derogable rights, the ECtHR has developed a comprehensive body of case law that may serve as an additional check on abusive derogations. In contrast, while the UN Human Rights Committee's jurisprudence is influential, it is not legally binding in the same way.

#### **4. The UN Human Rights Committee (the Committee) and Its Landmark Cases**

The Committee is an independent expert body created by the ICCPR. Although some of the rights protected by the ICCPR are also addressed in other human rights treaties at a global level, certain fundamental rights are substantively guaranteed to everyone only by the ICCPR, such as freedom from detention, freedom of expression, and the right to political participation. The Committee started its work in 1977 under Article 28 of the Covenant. It consists of 18 members, who must be nationals of the countries-parties to the Covenant, and are legal experts, 'persons of high moral character and recognized competence in the field of human rights', with 'consideration given to the usefulness of the participation of some persons having legal experience'. Article 36 of the ICCPR requires the UN Secretary-General to 'provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant'.

The Committee members are elected by a secret ballot to four-year terms and nominated by the States parties. Under Article 31, the Committee should take care of the equitable geographical distribution of membership and to the representation of the different forms of civilisation and of the principal legal systems. Committee members are elected in two-yearly intervals at the United Nations Headquarters, during the annual session of the General Assembly.

Members play diverse roles. One former member, Martin Scheinin, has emphasised three ideal types of Committee member, which he and a co-author call "the Captain, the Fire Brigade, and the Icebreaker".

"The captain emphasizes maintaining stability on a forward course, as if the Committee were a massive vessel that could not make sharp turns or reduce speed quickly. The fire brigade responds to burning injustices, and rushes to extinguish them by any means that work. The icebreaker leads the way through blocked seas, creating the single channel that states must follow to

reach the treaty's goal. *Scheinin* makes evident his sympathy with the fire brigade.<sup>62</sup>

The HRC has elected a new Chairperson from a different region every two years since 1987. Along with the three Vice-Chairpersons and a Rapporteur (for the Annual Report), the Chairperson participates in the Bureau to handle certain administrative matters.

There are three special rapporteurs appointed by the Committee to perform specific functions: the Special Rapporteur on New Communications, whose functions include the registration of new complaints under the Optional Protocol and such preliminary issues as requests for interim measures of protection; the Special Rapporteur on Follow-ups to Views, who monitors the implementation of the Committee's decisions on the merits of individual cases and the Special Rapporteur on Follow-ups to Concluding Observations, who is tasked with the Committee's new procedure of following-up with respect to individual State party reports considered by the Committee.<sup>63</sup>

Special Rapporteurs are appointed for two-year terms to perform specialised functions, such as the follow-up procedures. The heaviest load is carried by the Special Rapporteur for New Communications and Interim Measures, who is on call year-round for urgent decisions. One member in an average session is likely to play multiple roles, as rapporteur for one state report, task force member on another, rapporteur for a few communications, and more generally actively participating in deliberations on concluding observations, communications, pending draft general comments, and the HRC's working methods.<sup>64</sup>

Members may be re-elected upon the expiry of their terms. If a committee member vacates his or her position early, another election may be held. After elections, members also maintain contact with States parties and engage in dialogue on general issues of mutual concern through the forum of meetings with States parties that the Committee regularly schedules during its sessions. Members of the Committee serve in their personal capacity, not as representatives of their governments, and according to ethical guidelines. The proceedings of the Committee should be politically impartial.

The First Optional Protocol of the ICCPR authorises the Committee to receive complaints from individuals alleging that their rights under the ICCPR have been violated. This process is defined as the Individual communication procedure. Communications may only be submitted to the Committee where they relate to a State that has ratified this Protocol, and all domestic remedies have been exhausted.

62 Neuman, 2016; Slotte and Scheinin, 2011, p. 89.

63 Ibid.

64 Neuman, 2016, p. 9, and Human Rights Civil and Political Rights: The Human Rights Committee Fact Sheet No. 15 (Rev.1), p. 12.

The Committee acts in a quasi-judicial manner and conducting its work on a fair basis to both petitioners and States parties. In Article 5, paragraph 4 of the ICCPR, the Committee's decisions on the merits are referred to as "views". Although views are read like court judgments, in fact drafters of the ICCPR did not call them so, nor did they confer legally binding force upon them. This is the first drawback of the Optional Protocol. The second drawback is that the Protocol does not provide an enforcement mechanism of the Committee's views. In practice they are seen as recommendations. To make the Committee more effective, a State may provide an implementation of the Committee's decisions in its domestic legislation.<sup>65</sup>

The Second Optional Protocol of the ICCPR aims for the abolition of the death penalty. In Article 1 of the OP2, it is stipulated that each State Party shall take all necessary measures to abolish the death penalty within its jurisdiction. States are permitted to enter a reservation allowing the application of the death penalty in time of war, for serious crimes of a military nature committed during wartime.

The benefits of the stipulated Covenant rights depend mostly on the implementation measures taken by the States parties. Domestic implementation gives effect to the rights of individuals, while international implementation, through the mechanisms of reporting and complaint systems, is set up as a secondary means.

The Committee has three principal activities: the examination of states' reports, the decision on individual communications, and the writing of General Comments. Each of these activities has evolved over the lifetime of the Committee. According to Article 40 of the Covenant, all States are obliged to submit reports to the Committee on the measures they have adopted to give effect to the rights established in the Covenant, and on the progress made in the enjoyment of those rights. In 1997, the Committee changed its previous rule regarding subsequent periodic reports, under which States parties were generally required to submit reports every five years. The Committee may call for reports outside the five-year cycle from any States which are suffering from acute human rights crises.<sup>66</sup>

The process of examining a national report runs across two Committee sessions. At the first session, the report is assigned to a group of between four and six Committee members known as a Country Report Task Force. This Group is designed to streamline the reporting procedure and improve the quality of dialogue with States parties. At least one member of the Group should come from the same region as the relevant State. One member is the designated "country rapporteur", whose main responsibility is to make a report through the Committee's processes. With the assistance of the Committee's secretariat, the CRTF draws up a "List of Issues" arising from the relevant report and other information supplied to the Committee.<sup>67</sup>

The Committee is competent to carry out the interpretive function (authoritative elaboration) of the ICCPR implementation. Interpretations are foreshadowed

65 Human Rights Civil and Political Rights

66 Human Rights Civil and Political Rights, p. 15.

67 *Ibid.*, p. 18.

in Concluding Observations, articulated in holdings on communications, and summarised in General Comments. In this sense, the International Court of Justice expressed its appreciation of the HRC’s role in a well-known judgment applying the ICCPR:

‘Since it was created, the Human Rights Committee has built up a considerable body of interpretative case law, in particular through its findings in response to the individual communications which may be submitted to it in respect of States parties to the first Optional Protocol, and in the form of its ‘General Comments’. Although the Court is in no way obliged, in the exercise of its judicial functions, to model its own interpretation of the Covenant on that of the Committee, it believes that it should ascribe great weight to the interpretation adopted by this independent body that was established specifically to supervise the application of the treaty. The point here is to achieve the necessary clarity and the essential consistency of international law, as well as legal security, to which both the individuals with guaranteed rights and the States obliged to comply with treaty obligations are entitled’.<sup>68</sup>

In 2022, the Committee enlarged its jurisprudence by issuing 175 individual communications (95 communications decided on merit, 21 declared inadmissible and 59 discontinued). As had been the case in previous years, the Committee received the greatest number of communications from all the United Nations treaty bodies, and the backlog of submissions continued to be a major issue of concern.

**Table 4.** The Committee’s Work Through the Years<sup>69</sup>

Year	New cases registered	Cases concluded	Pending cases
2021	212	132	1273
2020	170	155	1193
2019	413	134	1178
2018	190	101	746
2017	167	131	635
2016	211	113	599
2015	196	101	532
2014	191	124	456
2013	93	72	379
2012	102	99	355
2011	106	188	352

68 Taken from Neumann, *Ibid.*, p. 5; see also: *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Judgment, 30 November 2010, ICJ Reports (2010) 636, at 664.

69 Based on author’s analysis.

In the next section, several relevant cases and landmark decisions from the Human Rights Committee archive will be elaborated.

In the case of *Portillo Cáceres v. Paraguay*<sup>70</sup>, the Committee addressed, for the first time, the State's obligation to protect individuals from environmental harm under Articles 6 (right to life) and 17 (protection of the family) of the ICCPR. The Committee reinforced the recognition of environmental protection as integral to human rights, following the example set by the Inter-American Court of Human Rights and the ECtHR in cases such as *Cordella and others v. Italy*<sup>71</sup>, *López Ostra v. Spain*<sup>72</sup>, and *Dubetska and others v. Ukraine*<sup>73</sup> etc.<sup>74</sup> The IACHR, in its advisory opinion<sup>75</sup>, affirmed the existence of an autonomous right to a healthy environment, stating that any right could be jeopardised by environmental harm (paras. 63, 64). Additionally, the Committee's General Comment No. 36 on the Right to Life<sup>76</sup> raises significant points regarding the right to life in the context of environmental damage. The Committee emphasised that environmental degradation, climate change, and unsustainable development are some of the most urgent and serious threats to both the present and future generations' ability to fully enjoy the right to life (para. 62). In this case the Communication was filed by two families who had been poisoned by excessive pesticide and insecticide use from nearby industrial farms. Despite existing legal regulations prohibiting such actions, the State had failed to adequately enforce these laws. As a result, one family member died, others were hospitalised, and their families experienced significant losses, including the destruction of fruit trees, the death of farm animals, and severe crop damage. The families argued that the State had neglected its duty to protect them by not taking appropriate action. The Committee called on Paraguay to provide reparations to the victims, including a thorough investigation, criminal and administrative sanctions, and full compensation for the harm caused. The significance of this case is that it represents the Committee's explicit acknowledgment of the connection between environmental protection and human rights in an individual context, drawing on the jurisprudence of regional bodies. The Committee referenced General Comment 36, reaffirming the right to life with dignity and stating that 'States must take all appropriate measures to address societal conditions that may endanger the right to life, including environmental pollution'.<sup>77</sup>

In the case of *VDA, on behalf of her daughter LMR, v. Argentina*.<sup>78</sup> LMR is a girl with an intellectual disability. She was raped by her uncle and as a result became pregnant. The first hospital, where her pregnancy was identified, refused her mother's request

70 ESCR-Net, 2020.

71 European Court of Human Rights, 2019.

72 European Court of Human Rights, 1994.

73 European Court of Human Rights, 2011.

74 Reeh, 2019.

75 Inter-American Court of Human Rights, 2017.

76 United Nations, 2019b.

77 Reeh, 2019; See also: ESCR-Net, 2020.

78 See more: [https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WG/Amicus-Brazil\\_Annex.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WG/Amicus-Brazil_Annex.pdf) (Accessed: 15 April 2024).

for a termination of the pregnancy. She was referred to another hospital where the Bioethics Committee was solicited for an opinion as to whether this abortion could proceed. Since it was determined that this case fell within the definition of a non-punishable abortion in the Argentinian Criminal Code, the hospital began steps to carry out the abortion.<sup>79</sup> Despite the fact that the Argentinian Criminal Code does not require judicial authorisation in these cases, an injunction was ordered by a juvenile court judge, who subsequently ruled that ‘a termination should be prohibited because she did not find it acceptable to repair a sexual abuse “with another wrongful assault against a new innocent victim, i.e. the unborn child”’. This decision was upheld on appeal at the Civil Court. A further appeal was filed with the Supreme Court of the province, which overturned the Civil Court ruling and found that no judicial ruling was required for the hospital to perform the procedure in this case. Despite this ruling, the hospital and the family were under considerable pressure not to perform the abortion, and the hospital ultimately refused to perform the procedure on the grounds that the pregnancy was too advanced. The family sought assistance from other hospitals and clinics, but all of them refused. On 26th August 2006, two months after the rape had been reported and the pregnancy identified, the girl underwent an illegal abortion. VDA argued

‘forcing her daughter to continue with her pregnancy constituted cruel and degrading treatment and, consequently, a violation of her personal well-being under Article 7 of the Covenant. The refusal to terminate the pregnancy inflicted many days of mental and physical anguish and suffering on L.M.R. and her family, forcing them to resort to an illegal abortion that endangered her life and health while enduring opprobrium from numerous sources. The pressure to continue the pregnancy and give the baby up for adoption exposed the family to some very painful dilemmas. She felt that people dared to make such offers only because she was poor and found this deeply humiliating’.<sup>80</sup>

The Committee found a violation of Article 7 (prohibition of torture or other cruel, inhuman or degrading treatment or punishment) by the State party’s omission ‘in failing to guarantee L.M.R.’s right to a termination of pregnancy, as provided under Article 86.2 of the Criminal Code, when her family so requested’ as this

‘caused L.M.R. physical and mental suffering which was made especially serious by the victim’s status as a young girl with a disability. In this connection the Committee recalls its general comment No. 20 in which it states that the right protected in Article 7 of the Covenant relates not only to acts that cause physical pain but also to acts that cause mental suffering’.

<sup>79</sup> Ibid.

<sup>80</sup> ESCR-Net, 2013.

Although the Committee could not impose damages, it did point to Article 2 of the Optional Protocol to the ICCPR, which creates an obligation for Argentina to provide compensation as a remedy and to take steps to ensure similar violations of the Covenant do not occur.<sup>81</sup> This Committee's case contributed to a growing consensus in international law that restricting women's access to an abortion may be considered as torture or cruel, inhuman or degrading treatment under Article 7 of the ICCPR. Obstructing access to legal, elective medical procedures may violate the Covenant. Additionally, it indicates that the Court will analyse the right of a person with a disability under Article 7 in a way which heightens the recognised impact of the violation.<sup>82</sup>

In the case of *A.S. and Others v. Italy and Malta*,<sup>83</sup> the Committee examined a communication alleging that the Italian and Maltese authorities had failed to fulfil their duties to protect life at sea and to promptly investigate a 2013 incident in the Central Mediterranean Sea, in which over 200 migrants drowned. The central issue was that Malta, as the responsible state for the Search and Rescue (SAR) area where the event occurred, and Italy, as the first state alerted and the one best positioned to provide aid, did not meet their search and rescue obligations under international law, thereby violating the migrants' right to life. The Committee found that Italy had violated the right to life of the complainants under Article 6(1) of the ICCPR, as it did not act with the required diligence in protecting life at sea (para. 8.5). Additionally, Italy was found to have violated Article 2(3)(a) by depriving the victims of access to an effective remedy, due to unjustified delays in investigating the incident (para. 8.7). This case marked a significant moment in the efforts to hold European states accountable for human rights violations related to the mishandling of migration and the abandonment of responsibilities to save lives at sea, as required by international law.

In the case of *Daniel Billy et al. v. Australia*,<sup>84</sup> the Committee found that Australia failed to adequately protect the members of an indigenous community living on four small, low-lying islands in the Torres Strait from the adverse impacts of climate change. This resulted in violations of the complainants' rights to enjoy their culture (Article 27 ICCPR) and to be free from arbitrary interferences with their private life, family, and home (Article 17 ICCPR).<sup>85</sup> The Australian authorities were criticised for their failure to implement an adaptation program to ensure the long-term habitability of the islands and to mitigate the effects of climate change (paras. 2.7 and 2.8). The complaint was based on the unique challenges faced by the Torres Strait indigenous community, which mirrors the challenges faced by low-lying island communities globally. Even minor sea level changes could significantly affect the community's survival, cause flooding, erosion, and the loss of territory, graves, and agricultural

81 Ibid.

82 See more: [https://www.law.cornell.edu/gender-justice/resource/l.m.r.\\_v.\\_argentina](https://www.law.cornell.edu/gender-justice/resource/l.m.r._v._argentina) (Accessed: 15 April 2024).

83 Criminal Justice Network, n.d.

84 ClientEarth, 2022.

85 Climate Litigation Database, n.d.

capacity. Additionally, higher temperatures and ocean acidification have resulted in the severe degradation of marine ecosystems, including coral bleaching, reef death, and the decline of seagrass and other vital species.<sup>86</sup>

*Billy et al. v. Australia* is the first climate change-related case heard by an international human rights body, advancing to substantive legal issues.<sup>87</sup> This decision is also the first international ruling to address human rights concerns in the context of climate change for small islands and their indigenous populations, aligning with the broader climate justice movement. The Committee's decision recognised the indigenous community's right to maintain its culture and continue to live on its ancestral lands, offering one potential response to the calls for climate protection from individuals, communities, states, organisations, and social movements.<sup>88</sup>

In the case of *Lazaros Petromelidis v. Greece*<sup>89</sup> the applicant, a Greek national and conscientious objector to compulsory military service, repeatedly objected to his conscription and each time was punished. Over 14 years, he faced discriminatory treatment through alternative civil service and, on subsequent occasions, was detained, tried, and imprisoned for his stance. Despite the enactment of new laws recognising conscientious objection, the applicant was repeatedly criminally charged, and justice proceedings were delayed. The applicant claimed that Greece violated his rights under Article 18(1) (lack of recognition of the right to conscientious objection until 2001) and Article 18(2) (penalties and fines imposed for exercising this right). The Committee found that the right to conscientious objection could be derived from Article 18(1) of the ICCPR, noting that penalising individuals for refusing to serve in the military due to their conscience or religion is incompatible with the Covenant. It also concluded that the alternative civil service did not provide a real option, as excessive working hours and insufficient compensation were discouraging. In addition to finding a violation of Article 18, the Committee determined that the applicant's detention and imprisonment violated his right to freedom from arbitrary detention (Article 9(1)), his right to freedom of movement (Article 12(2)), and his right not to be tried repeatedly for the same offense (Article 14(7)). Furthermore, the applicant's rights under Articles 9(1), 12(2), 14(7), and 18(1) were found to have been violated, and Greece was required to provide an effective remedy, including expunging the applicant's criminal record,

86 Kahl, 2022b, pp. 380–381; Torres Strait Regional Authority, 2014, p. 3.

87 Climate Law Accelerator Toolkit, n.d.

88 Taken from Kahl, 2022a.

89 United Nations Human Rights Committee, n.d.a.

reimbursing fines, and compensating him adequately. The State was also urged to take measures to prevent similar violations in the future.<sup>90</sup>

The cases of *Lazaros Petromelidis v. Greece*, *Daniel Billy et al. v. Australia*, *A.S. and Others v. Italy and Malta*, *VDA v. Argentina*, and *Portillo Cáceres v. Paraguay* illustrate the broad scope of the ICCPR and its application to diverse human rights contexts.

The similarities across these cases are that they all allege violations of ICCPR rights, particularly: *Article 6* (the right to life), *Article 7* (the prohibition of torture and cruel, inhuman or degrading treatment), *Article 17* (the right to privacy and family life), and *Article 18* (freedom of thought, conscience and religion).

In each case, the State is alleged to have failed to protect or respect individual rights, either by direct action, omission, or systemic shortcomings. All these cases involve vulnerable groups or individuals: *Petromelidis*: a conscientious objector (freedom of conscience); *Billy et al.*: indigenous peoples; *A.S. et al.*: refugees/migrants at sea; *VDA/LMR*: a girl with an intellectual disability, as well as the victim of a rape; *Portillo Cáceres*: a poor, rural child and her family affected by environmental harm.

The UN Human Rights Committee has used these cases to expand the interpretation of ICCPR rights, linking civil and political rights to environmental harm, reproductive rights, and climate change. The cases could be grouped in several legal and thematic groupings: Freedom of Conscience and Civil Liberties – *Petromelidis v. Greece*: addresses individual liberty and freedom from coercive state power in matters of conscience; Environmental and Climate Justice – *Billy et al. v. Australia* and *Portillo Cáceres v. Paraguay*: the first cases where the HRC explicitly linked environmental harm to human rights under the ICCPR (notably Articles 6 and 17); Right to Life and State Protection – *A.S. et al. v. Italy and Malta*: demonstrates state responsibility for extraterritorial human rights violations (failure to rescue at sea); Reproductive Rights and Dignity – *VDA v. Argentina*: a key case establishing that denial of abortion access, especially to a rape victim with an intellectual disability, which violates the ICCPR.

These cases collectively show how the ICCPR adapts to evolving human rights challenges, addressing: traditional civil liberties (*Petromelidis*); emerging global threats like climate change (*Billy*, *Portillo*); state responsibility in cross-border humanitarian crises (*A.S. and Others*); reproductive autonomy and gender-based violence (*VDA/LMR*).

90 Important remark: All cases elaborated in the chapter are retrieved from the Human Rights Committee's digital archive. While it is not the first time that the Committee has examined a case involving a punitive and discriminatory alternative service, this is the first case where the conscientious objector has not reported for such service at all. Furthermore, contrary to older cases, this time it was examined under, and was found to be a violation of, Article 18(1) of the International Covenant on Civil and Political Rights (ICCPR), about freedom of thought, conscience and religion, instead of Article 26 about discrimination – although in an interesting partly dissenting opinion a member of the Committee opined that the case should have been also examined under Article 26 and the Committee should have found an additional violation. See: *Frédéric Foin v. France* (CCPR/C/67/D/666/1995); *Marc Venier and Paul Nicolas v. France* (CCPR/C/69/D/690/1996).

Despite varying contexts, they all underscore the central principle that States must protect the dignity, safety, and rights of all individuals under their jurisdiction or effective control.

## 5. The UN Human Rights Committee Cases from the Central or Eastern European Countries

In the case of *A.S. et al. v. Albania*<sup>91</sup> the authors of the communication were A.S. (born in 1957), A.L. (born in 1968), Ar. S. (born in 1977), D.S. (born in 1984), N.S. (born in 1966), and S.S. (born in 1968), all of whom were Albanian nationals of Roma origin, residing in Elbasan, Albania. They were all unemployed and lived with their families, comprised of 32 people, including children, in informal houses built without permission in the early 1990s. Despite living there for over 20 years, and the authorities *de facto* tolerating their residence, the families had not received formal recognition of their homes. Their houses were connected to the public electricity grid and municipal water supply. On July 2nd, 2014, the Albanian Council of Ministers issued Decision No. 432, which decided to widen and extend Qemal Stafa Street, a major road in Elbasan, as part of a renovation project for the football stadium. On July 16th, 2014, the Elbasan municipal urban construction inspectorate issued eviction notices to the authors, demanding they vacate their properties within five days. The notices justified the eviction on grounds of “public interest” related to the road construction. However, the authorities did not consult with the families, nor did they offer any assistance, compensation, or alternative housing. The authors argued that domestic law provided no effective remedy to challenge the eviction notices, as appeals against such orders would not suspend their execution. Furthermore, while the Agency for the Legalisation, Urbanisation, and Integration of Informal Zones determined that A.L.’s house was eligible for legalisation, the other authors’ homes were deemed ineligible due to their interference with the public road project.

Although a meeting was held on July 18th, 2014, where the authorities explained the evictions and the possibility of offering partial rental subsidies, assistance was only provided after the authors filed their complaint. No guarantees of alternative accommodation were made before the eviction date, and rental subsidies did not fully cover their rent, with no indication of how long they would last. Moreover, the municipal council had not approved any of the mayoral plans, and the release of funds for remedies would not be immediate. The authors claimed that the eviction violated their right to protect their family unit under Article 23 of the Covenant. They were forced to live in inadequate conditions that severely impacted family life. Additionally, the housing they were temporarily provided with did not meet their family needs and ignored their Roma culture. The authors argued that the eviction and destruction

91 Decision was adopted by the Committee at its 127th session (CCPR/C/127/D/2444/2014), (14 October – 8 November 2019). United Nations Human Rights Committee, n.d.b.

of their homes were discriminatory, as only Roma citizens were affected, violating Article 26 of the Covenant. They further claimed that systemic discrimination against Roma individuals made them particularly vulnerable to forced evictions and deprived them of opportunities to secure legal land tenure, violating Article 27. The Committee acknowledged the State party's argument that the authors did not exhaust domestic remedies, noting that they failed to challenge the eviction through administrative or judicial processes. While the authors attempted to legalise their homes, they did not explain why further appeals would have been ineffective. Given this, the Committee concluded that the authors had not exhausted domestic remedies, and thus the communication was inadmissible under Article 5(2)(b) of the Optional Protocol.

In the case of *A.A. v. Bosnia and Herzegovina*<sup>92</sup> the applicant was a Russian national of Chechen origin, facing extradition due to criminal charges in his home country. He claimed that his extradition would violate his rights under Articles 6 and 7 of the Covenant. The applicant had fled the Russian Federation in 2013 after facing persecution and threats from the Chechen authorities, who viewed him as a potential terrorist due to his religion, appearance, and attire (beard and short-sleeve trousers). He explained that most Sunni Muslims in Chechnya, who have been fighting for the recognition of a genocide against their people, were labelled as terrorists by the authorities, particularly those raising the issue of genocide or wearing a beard.

In 2012, the applicant's house was searched by the police, and in 2013, his car was stopped and drugs planted on him by the authorities. Fearing for his life, he fled Chechnya and initially sought refuge in Sochi, Russia, before moving to Turkey in 2013, where he worked as a computer programmer. In June 2015, the Russian Federation initiated a criminal case against him and several others for the alleged participation in an armed group in Syria. The applicant was accused of joining Da'esh (ISIS) between 2013 and 2015. The Russian authorities issued a warrant for his arrest in 2016, and in March 2018, the applicant travelled to Bosnia and Herzegovina to regularise his status. Upon arrival at Sarajevo airport, he was arrested based on two Interpol Red Notices issued by Russia and Bosnia and Herzegovina. On March 22nd, 2018, the Court of Bosnia and Herzegovina placed the applicant in provisional detention, which was later extended. The Russian Federation requested his extradition, assuring that this was not politically motivated, and that he would receive due process and humane treatment in detention. The applicant intended to apply for asylum, but this opportunity was delayed until July 2018. The Court of Bosnia and Herzegovina examined the extradition request on July 2nd, 2018, and determined that the legal conditions for extradition had been met. It noted that the applicant had filed for asylum after the extradition request, and that this did not prevent the extradition process. The applicant argued that his extradition would expose him to the risk of torture, ill-treatment, or unfair trial, but the Committee found that he failed to substantiate his claims with sufficient evidence.

92 United Nations Human Rights Committee, 2023b.

The Committee determined that the applicant had not provided convincing arguments or evidence of a real risk of harm if extradited to Russia. Thus, the Committee found that the communication was inadmissible under Article 2 of the Optional Protocol, due to the lack of substantiation of his claims regarding the risk of death, torture, or inhuman treatment.<sup>93</sup>

In the case of *Ivan Yordanov Lazarov and Yordan Ivanov Lazarov v. Bulgaria*<sup>94</sup> the authors of the communication were Ivan Yordanov Lazarov and Yordan Ivanov Lazarov, acting on their own behalf and on behalf of their deceased sister and daughter respectively, Valya Yordanova Lazarova. They were all citizens of Bulgaria. Ms. Yordanova was born on 25th March 1974. The authors claimed that the State party had violated Ms. Lazarova's rights under Articles 6, 7 and 10 (1) of the Covenant.

In 1992, Ms. Lazarova was diagnosed with schizophrenia. On 6th June 1998, Ms. Lazarova's family, lacking the support to ensure her care, was forced to place her in a Social Care Home for Mentally Ill Adults (the Radovtsi Home) in the village of Radovtsi, Bulgaria. The Radovtsi Home is an institution that is controlled and financed by the Ministry of Labour and Social Policy and the Dryanovo municipality. She remained under the care of the Radovtsi Home until her death, in January 2007. On 11th December 1998, Ms. Lazarova was diagnosed with an intellectual disability and was declared intellectually incapable by the Veliko Trnovo Regional Court. From that date, she was represented by her parents as her guardians. During her nine-year stay in the Radovtsi Home, her parents were never asked to make any decisions with respect to her accommodation, care or treatment, which was carried out by the institution. In October 2006, an inspection by the Agency for Social Assistance, which operates under the authority of the Ministry of Labour and Social Policy, established that the Radovtsi Home was in a poor state of repair. The inspectors found some 20 residents with severe disabilities isolated in a special care room. They were locked up in appalling conditions – barefoot, unwashed and soaked in urine and excrement. The Agency ordered the immediate closure of the room. It was subsequently closed down, and the practice of isolating residents ceased on 1st November 2006. Ms. Lazarova was one of the residents who had been isolated in the special care room. Ms. Lazarova was administered a medication with a sedative effect, used to moderate states of agitation. Afterwards, it was discovered that she had disappeared from the institution. Another resident reported that she had decided to go to the village, since she was hungry. According to the residents, Ms. Lazarova often cried because she was hungry, and she had previously visited a man in the village who had given her food. On that day, seven staff were working at the institution, which housed 114 residents, including 20 like Ms. Lazarova, with high support needs. The staff carried out a search on that day, which was completed by the evening. Temperatures below 0°C were expected during the night, creating a substantial risk to Ms. Lazarova. There is evidence that residents had previously gone missing in extreme temperatures and that they had allegedly died.

93 Ibid.

94 United Nations Human Rights Committee, 2023a.

The institution contacted the police on 3rd or 4th January 2007 and Ms. Lazarova was declared missing on 4th January 2007. On 8th January 2007, the authors were notified of her disappearance, and they initiated a further search. On 22nd January 2007, in a forest approximately 20 km away from the Radovtsi Home, Ms. Lazarova was found dead by a shepherd, who notified the police. The cause of death was hypothermia and physical exhaustion. She had been dead for at least 10 days before her body was found. Following Ms. Lazarova's disappearance, it became evident that she had been subject to neglect and abuse during her time at the Radovtsi Home.

The Committee found evidence of neglect and abuse resulting from beatings at the institution, malnutrition and the use of strong sedative medication without proper supervision. The State party admitted that the authorities were aware of the failures in care and treatment at the Radovtsi Home, at least following its inspection in 2006, and that those failures included a lack of staff leading to an ineffective oversight following the closure of the isolation ward. The Committee considered that Ms. Lazarova had been exposed to inhuman and degrading treatment in violation of Article 7 of the Covenant. Regarding the conditions of confinement, the Committee noted that the State party conceded that the material conditions at the Radovtsi Home were sub-standard mainly as a result of chronic underfunding and that, at the relevant time, residents could not be properly supervised owing to understaffing. The Committee also noted the information from the authors that Ms. Lazarova was regularly locked in an isolation ward until October 2006 and that the residents were kept in inhuman and insanitary conditions, without proper medication and clothing, often hungry and lacking adequate hygiene, amounting to humiliating treatment. The Committee concluded that Articles 6(1), 7 and 10(1) of the Covenant were violated. Pursuant to Article 2(3)(a) of the Covenant, the State party was obliged to provide the authors with an effective remedy. This required it to make full reparation to individuals whose Covenant rights had been violated. Accordingly, the State party was obligated, *inter alia*, to take appropriate steps to ensure that conditions in psychiatric care facilities were compatible with the State party's obligations under articles 6, 7 and 10 of the Covenant. The State party was also obliged to take all necessary steps to prevent similar violations from occurring in the future.

In the case of *A.B. and B.D. v. Poland*<sup>95</sup> the applicants submitted a complaint on their own behalf and on behalf of their two children, both of whom were minors. All family members were citizens of the Russian Federation and of Chechen origin, who had fled from the country and arrived in Belarus in January 2017 with the intention of applying for asylum in Poland. According to the complaint, A.B.'s brother was working in a security firm in Chechnya in 2010. He disappeared a few months after he got the job and had not been heard from since. In the first half of 2013, men, some in camouflaged uniforms, arrived at A.B.'s house in Grozny, asking him about his cousin, who, they claimed, was suspected of involvement with a terrorist organisation. A.B. told them he did not know where his cousin was. The men took him to a private house

95 See more on: <https://ccprcentre.org/decision/17375> (Accessed: 20 April 2024).

where he was held for several days and beaten and tortured. After this incident, the A.B. decided to flee the Russian Federation. He travelled to Poland where he applied for asylum. Immediately after this he left for Denmark where he also applied for asylum. After five months in Denmark, he was sent back to Poland and a month later, he returned to the Russian Federation and lived in a village near the city of Kaluga. He did not however, return to Chechnya. On 7th and 14th December 2016, his wife, B.D., who was living in the city of Shali in Chechnya, received a summons from the police ordering her husband to report to the police station. Later in December 2016, A.B. and B.D. visited A.B.'s mother in Chechnya. An hour after they arrived, men in camouflage uniforms broke into the house. They asked where A.B.'s brother was. They beat A.B. in front of his family and raped B.D., after which, they kidnapped A.B. and held him for three days during which he was tortured through the use of electric shocks and beatings. He was later taken by car and thrown out near the village of Valerik in Chechnya. On 24th December 2016, A.B. was taken to a hospital in Grozny where he was treated for serious injuries including concussion and posttraumatic cerebral deviations with severe hypertension, amnesia, multiple abrasions to his face and bruising of the soft tissue of his upper extremities. He was discharged from the hospital on 4th January 2017. On 16th January 2017, the spouses left the Russian Federation and travelled to Belarus. They arrived at Terespol at the border between Belarus and Poland. Even though they told the Polish Border Guards that they wanted to apply for asylum and showed the guards their medical records and the police summonses as evidence of their fear of persecution, their request was not acknowledged. The guards simply stamped their passports with a denial-of-entry stamp, indicating that their entry into Poland had been rejected, as they did not hold valid visas.

The applicants tried again to apply for asylum again on 18th, 19th, 20th, 21st, 23rd, 24th, 26th, 28th, 29th and 30th January, and 1st, 2nd, 3rd, 6th, 13th, 15th and 16th February 2017. A Belarusian human rights defender also prepared a written motion for asylum in Polish on their behalf. The applicants made several further attempts to apply for asylum, on 20th and 25th April, 25th May and 24th August 2017. On 27th August 2017 a representative of the Helsinki Committee for Human Rights sent a letter in Polish on behalf of the applicants to the Head of the Polish Border Guard reiterating the Committee's decision and informing the authorities that the applicants would come to the border on 29th August 2017 to request asylum. The applicants went to the checkpoint at the Border in Terespol on 29th August 2017 with a written motion in Polish requesting asylum, including supporting documents and the Committee's letter requesting interim measures, however the Border Guard did not accept the asylum claim and once again the authors received a denial-of-entry stamp and were sent back to Belarus. In response to a request by the Helsinki Foundation for an explanation, the Border Guard stated that the applicants had not claimed asylum. The applicants claimed that they made more than 20 attempts to request asylum at the border. On each of those occasions, however, their claim for asylum was not recognised by Border Guards with the result that the claim was not passed on to the competent authorities for consideration. The applicants addressed the Committee on

24th August 2017, claiming that Poland had violated their rights under articles 7 and 13 of the Covenant and in conjunction with article 2 of the Covenant. The applicants requested that the Committee grant interim measures of protection by requesting the State to accept their applications for international protection and register them as asylum-seekers. The applicants asserted that the Asylum Procedures Directive applied to all international protection applications lodged within the territory of the European Union, including the borders. According to the Practical Handbook for Border Guards (Schengen Handbook),<sup>96</sup> once a foreigner makes an application, he or she is considered an asylum applicant and, from that moment, he or she will benefit from the rights enshrined in European Union law. From that moment a foreigner should therefore be allowed to remain within the territory of the given member State until his or her case is reviewed. Moreover, the Return Directive explicitly stipulates that such a foreigner should not be regarded as staying illegally on the territory of that member State unless and until a negative decision on the substantive application, or a decision ending his or her right of stay as an asylum-seeker, has entered into force. The Schengen Borders Code provides for exceptions to entry conditions in the event that a foreigner fails to fulfil all entry conditions.

On 25th August 2017, the Committee decided to grant the applicants' request for interim measures and made the above-mentioned requests to the State. On 25th October 2017, the State requested that the Committee examine the admissibility of the communication separately from its merits and declare it inadmissible and that interim measures be lifted as the applicants were no longer in the territory of the State party. The Committee granted the request to lift interim measures, but pursuant to rule 93 (1) of the Committee's rules of procedure, the Committee decided to examine the admissibility of the communication together with its merits. The Committee recalled its jurisprudence on the obligations of State parties towards foreigners in which it confirms that States must respect and ensure the rights laid down in the Covenant to anyone within their power or effective control, even if not situated within the physical territory of the State. The Committee also recalled that, if the legality of a foreigner's entry or stay is in dispute, he or she is entitled to submit reasons against their expulsion before the competent authority, and must be given full facility for pursuing a remedy against expulsion so that this right would, under all the circumstances of the case, be an effective one. The Committee recalled its jurisprudence which underlines that States have an obligation not to extradite, deport, expel or otherwise remove a person from their territory when there are substantial grounds for believing that there exists a real risk of irreparable harm, including both physical pain and mental anguish, such as is contemplated under Article 7 of the Covenant, either in the country to which removal is to be affected or in any country to which the person may subsequently be removed. The Committee found that by denying the applicants the opportunity to have their protection claims considered and by denying them the right or opportunity to challenge those denials, including failures to provide

| 96 Council of the European Union, 2018. |

access to legal assistance, to produce an interview either at the time of the expulsion decision or thereafter, and to offer a remedy with suspensive effect on their expulsion orders, the State failed to afford the applicants the procedural safeguards necessary to avoid arbitrariness and provide effective redress in violation of Articles 2(3) and 7 of the Covenant.

The cases of *A.A. v. Bosnia and Herzegovina, A.S. et al. v. Albania, Ivan Yordanov Lazarov and Jordan Ivanov Lazarov v. Bulgaria*, and *A.B. and B.D. v. Poland* are all communications submitted to the UN Human Rights Committee, involving alleged violations of the ICCPR.

The similarities across these cases are that all cases involve vulnerable individuals or communities: *A.A., A.B. and B.D.*: Russian nationals of Chechen origin, often associated with persecution or security-based discrimination; *A.S. et al.*: members of the Roma community in Albania; *Lazarov case*: a family seeking justice for the death of a relative, pointing to violations of due process and right to life. All these applicants claimed violations of ICCPR rights, especially: *A.A. and A.B. and B.D.*: violation of Articles 6 and 7 (Right to life and Prohibition of torture) in the context of extradition or asylum; *Lazarov case*: Violation of Articles 6 and 14 (Right to life, Fair trial); *A.S. et al.*: Likely claims under non-discrimination (Art. 26), housing rights, or the right to privacy/family life (Art. 17).

Each case concerned the alleged failures of national authorities to protect individuals from serious rights violations – either due to state action, omission, or discriminatory policies. All communications involve more than one individual – either families (*Lazarov, A.B. and B.D.*) or communities (*A.S. et al.*), reflecting collective harm or shared grievance.

While all four cases centre on the ICCPR and involve state obligations to protect fundamental human rights, they differ in context: two (*A.A., A.B. and B.D.*) involve cross-border risks and asylum/extradition, one (*A.S. et al.*) focuses on domestic ethnic discrimination, one (*Lazarov*) is about state accountability for death and due process.

These cases collectively illustrate a range of human rights challenges—from non-refoulement and procedural safeguards, to anti-discrimination and access to justice—as encountered by ethnic minorities, asylum seekers, and victims of state neglect in the European context.

## 6. Conclusion

Civil and political rights are human rights which are often considered as “liberty rights” that imply the abstinence of the state from intervening in the liberty of any human. Civil and political rights are the foundation of every democratic society. It is no coincidence that these rights, seen as fundamental rights, are essential for every democratic state and international organisation. Many international documents together with the national constitutions define and protect these rights. The UN

Declaration as well as the above-mentioned UN covenants have laid the foundations of general and specific civil and political, individual and collective rights of people across the world. They are further elaborated and explained in numerous regional documents and interpreted by different Courts. The UN Universal Declaration serves as fundamental document for all human rights' covenants and treaties. They actually expand the UN Declaration with the stamp of legal force. They have their DNA, as René Cassin foresaw.

Civil and political rights are also referred to as the “first generation” or “first dimension” of human rights, which distinguishes them from economic, social and cultural rights, as well as from the collective or solidarity rights of the third generation. They are the most important achievements of the American and French revolutions in the late XIX century, and other democratic revolutions of the XIX and XX centuries based on the natural law doctrine. These rights are primarily concerned with the recognition of human dignity, the right to live according to one's own choice while enjoying equality and liberty in the State and society.

The UN Human Rights Committee, as was explained in this chapter, is acting as a quasi-judicial body conducting its work on a fair basis to both petitioners and States parties. The Committee's decisions are referred to as “views”. They are not court judgments. These “views” are not legally binding, which is seen as a weakness in the ICCPR First Optional Protocol. Also, these Committee's decisions have no enforcement mechanism, and in practice they are seen mainly as recommendations. It is up to the national States to provide a domestic mechanism for the implementation of the Committee's decisions. As can be seen from the cases enumerated in this chapter, the Committee has no mechanisms to establish sanctions against the states that violate the provisions of the Covenant, which indicates that this body is a toothless watchdog of the Covenant and of the rights of citizens. It is a body that barks but cannot bite when it needs to show serious legal power.

## Bibliography

- Aristotle (1926) *Aristotle in Twenty-Three Volumes*. Cambridge–London: Harvard University Press.
- Cassin, R. (1968a) ‘How the Charter on Human Rights was born’, *UNESCO Courier*, XXI(1), pp. 4–6.
- Cassin, R. (1968b) ‘Quelques souvenirs sur la Déclaration universelle de 1948’, *Revue de droit contemporain*, XV(1), pp. 11–16.
- ClientEarth (2022) *Daniel Billy et al. v. Australia: briefing note* [Online]. Available at: <https://www.clientearth.org/media/znzc2w2n/daniel-billy-et-al-v-australia-briefing-note.pdf> (Accessed: 7 May 2024).
- Climate Law Accelerator Toolkit (n.d.) *Daniel Billy v. Australia*. [Online]. Available at: <https://clxtoolkit.com/casebook/daniel-billy-v-australia/> (Accessed: 22 May 2024).
- Climate Litigation Database (n.d.) *Daniel Billy and others v Australia (Torres Strait Islanders Petition)* [Online]. Available at: <https://climatecasechart.com/non-us-case/petition-of-torres-strait-islanders-to-the-united-nations-human-rights-committee-alleging-violations-stemming-from-australias-inaction-on-climate-change/> (Accessed: 22 May 2024).
- Corte di Cassazione (1962) *Ministry of Home Affairs v. Kemali*, Judgment of 1 February 1962, *Foro Italiano* LXXXVII (1962) I, 190, reprinted in 40 *I.L.R.* 191.
- Council of Europe (1950) European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), *European Treaty Series*, No. 5 [Online]. Available at: [https://www.echr.coe.int/documents/d/echr/convention\\_ENG](https://www.echr.coe.int/documents/d/echr/convention_ENG) (Accessed: 20 May 2024).
- Council of Europe (n.d.a) *Legal protection of human rights* [Online]. Available at: <https://www.coe.int/en/web/compass/legal-protection-of-human-rights> (Accessed: 8 May 2024).
- Council of Europe (n.d.b) *Rule of law*. [Online]. Available at: <https://www.coe.int/en/web/portal/rule-of-law> (Accessed: 15 April 2024).
- Council of the European Union (2018) *Views adopted by the Human Rights Committee under article 5(4) of the Optional Protocol, concerning communication No. 3017/2017 (CCPR/C/135/D/3017/2017)* [Online]. Available at: <https://data.consilium.europa.eu/doc/document/ST-10213-2018-INIT/en/pdf> (Accessed: 23 May 2024).
- Criminal Justice Network (n.d.) *The applicability of human rights treaties to search and rescue operations in the high seas: A landmark decision of the UN Human Rights Committee* [Online]. Available at: <https://www.criminaljusticenetwork.eu/en/post/the-applicability-of-human-rights-treaties-to-search-and-rescue-operations-in-the-high-seas-a-landmark-decision-of-the-un-human-rights-committee> (Accessed: 20 May 2024).
- Currie, J.H. (2008) *Public International Law*. 2nd edn. Toronto: Irwin Law.

- Duan, F. (2017) 'The Universal Declaration of Human Rights and the Modern History of Human Rights', *SSRN*, 9 November [Online]. Available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3066882](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3066882) (Accessed: 20 April 2024).
- English, G.M. (2024) *Theatre and Human Rights: The Politics of Dramatic Form*. London: Taylor and Francis.
- ESCR-Net (2013) *L.M.R. v. Argentina* (CCPR/C/101/D/1608/2007) [Online]. Available at: <https://www.escr-net.org/caselaw/2013/lmr-v-argentina-un-doc-ccprc101d16082007> (Accessed: 9 May 2024).
- ESCR-Net (2020) *Portillo Cáceres and others v. Paraguay* (CCPR/C/126/D/2751/2016) [Online]. Available at: <https://www.escr-net.org/caselaw/2020/portillo-caceres-and-others-v-paraguay-ccprc126d27512016-communication-27512016> (Accessed: 21 May 2024).
- European Court of Human Rights (1994) *López Ostra v. Spain*, Judgement of 9 December 1994 [Online]. Available at: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22001-57905%22%7D> (Accessed: 21 May 2024).
- European Court of Human Rights (2011) *Dubetska and Others v. Ukraine*, Judgement of 10 February 2011 [Online]. Available at: <https://hudoc.echr.coe.int/fre#%7B%22itemid%22%3A%22001-103273%22%7D> (Accessed: 21 May 2024).
- European Court of Human Rights (2019) *Cordella and Others v. Italy*, Judgment of 24 January 2019 [Online]. Available at: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22002-12310%22%7D> (Accessed: 20 May 2024).
- Hannum, H. (1995/96) 'The Status of the Universal Declaration of Human Rights in National and International Law', *Georgia Journal of International and Comparative Law*, 25(1), pp. 287–397 [Online]. Available at: <https://digitalcommons.law.uga.edu/cgi/viewcontent.cgi?params=/context/gjicl/article/1396/> (Accessed: 20 May 2024).
- Humphrey, J.P. (1984) *Human Rights and the United Nations: A Great Adventure*. New York: Transnational.
- Inter-American Court of Human Rights (2017) *Advisory Opinion OC-23/17 (Environment and Human Rights)* [Online]. Available at: [https://www.corteidh.or.cr/docs/opiniones/seriea\\_23\\_esp.pdf](https://www.corteidh.or.cr/docs/opiniones/seriea_23_esp.pdf) (Accessed: 20 May 2024).
- Jayawickrama, N. (1992) 'Hong Kong and the International Protection of Human Rights' in Wicks, R. (ed.) *Human Rights in Hong Kong*. Hong Kong: Oxford University Press.
- Kahl, V. (2022a) 'Rising Before Sinking', *Verfassungsblog: On Matters Constitutional*; <https://doi.org/10.17176/20221003-230341-0>.
- Kahl, V. (2022b) 'Daniel Billy et al. v. Australia', *Verfassung und Recht in Übersee / Law and Politics in Africa, Asia and Latin America*, 55(3), pp. 380–381 [Online]. Available at: <https://www.jstor.org/stable/27305882> (Accessed: 19 May 2024).
- Kahl, V. (2023) *Rising Before Sinking: The UN Human Rights Committee's landmark decision in Daniel Billy et al. v. Australia* [Online]. Available at: <https://ricedh.org/wp-content/uploads/2023/04/Rising-Before-Sinking-The-UN-Human-Rights-Committees-landmark-decision-in-Daniel-Billy-et-al.-v.-Australia.pdf> (Accessed: 23 May 2024).

- Locke, J. (1988) *Two Treatises of Government*. Student edn. Cambridge: Cambridge University Press.
- Neuman, G.L. (2016) 'Giving Meaning and Effect to Human Rights: The Contributions of Human Rights Committee Members', *Harvard Human Rights Program Working Paper Series* [Online]. Available at: [https://hrp.law.harvard.edu/wp-content/uploads/2016/12/Gerald-L-Neuman\\_HRP-16\\_002.pdf](https://hrp.law.harvard.edu/wp-content/uploads/2016/12/Gerald-L-Neuman_HRP-16_002.pdf) (Accessed: 24 May 2024).
- Nowak, M. (2005) *U.N. Covenant on Civil and Political Rights: CCPR Commentary*. 2nd edn. Kehl: N.P. Engel.
- Oda, S. (1968) 'The Individual in International Law' in Sørensen, M. (ed.) *Manual of Public International Law*. London: Palgrave Macmillan, p. 54.
- Office of the United Nations High Commissioner for Human Rights (OHCHR) (2016) *National mechanisms for reporting and follow-up: a practical guide to effective State engagement with international human rights mechanisms*, HR/PUB/16/1. [Online]. Available at: [https://www.ohchr.org/sites/default/files/Documents/Publications/HR\\_PUB\\_16\\_1\\_NMRF\\_PracticalGuide.pdf](https://www.ohchr.org/sites/default/files/Documents/Publications/HR_PUB_16_1_NMRF_PracticalGuide.pdf) (Accessed: 30 September 2024).
- Reeh, G. (2019) 'Human rights and the environment: The UN Human Rights Committee affirms the duty to protect', *EJIL:Talk!*, 9 September [Online]. Available at: <https://www.ejiltalk.org/human-rights-and-the-environment-the-un-human-rights-committee-affirms-the-duty-to-protect/> (Accessed: 19 May 2024).
- Reeh, G. (2020a) 'Climate change in the Human Rights Committee', *EJIL:Talk!*, 18 February [Online]. Available at: <https://www.ejiltalk.org/climate-change-in-the-human-rights-committee/> (Accessed: 20 May 2024).
- Roosevelt, E. (1948) 'Statement to the United Nations General Assembly on the Universal Declaration of Human Rights', 9 December [Online]. Available at: [https://www.gwu.edu/~erpapers/documents/displaydoc.cfm?\\_t=speeches&\\_docid=spc057137](https://www.gwu.edu/~erpapers/documents/displaydoc.cfm?_t=speeches&_docid=spc057137) (Accessed: 24 April 2024).
- Roosevelt, F.D. (1941) *Message to Congress*. Washington, D.C.: U.S. Government Printing Office.
- Slotte, T., Scheinin, M. (2011) 'Captain, Fire Brigade or Icebreaker? Political Legitimacy as a Rationale in Human Rights Adjudication' in Kurtén, T., Hertzberg, L. (eds.) *Legitimacy: The Treasure of Politics*. Lausanne: Peter Lang, pp. 89–128.
- Symonides, J. (2019) *Human Rights: Concepts and Standards*. London: Routledge.
- Torres Strait Regional Authority (2014) 'Torres Strait Climate Change Strategy 2014–18: Building Community Adaptive Capacity and Resilience' [Online]. Available at: [https://www.tsra.gov.au/\\_\\_data/assets/pdf\\_file/0003/6393/TSRA-Climate-Change-Strategy-2014-2018-Upload.pdf](https://www.tsra.gov.au/__data/assets/pdf_file/0003/6393/TSRA-Climate-Change-Strategy-2014-2018-Upload.pdf) (Accessed: 22 May 2024).
- Tribunale di Milano (1959) *Fallimento Ditta Maggi v. Ministry of Finance*, Judgment of 27 July 1959, *Foro Italiano* LXXXV (1960) I, col. 505, reprinted in 28 *I.L.R.* 607.
- United Nations (1966) International Covenant on Civil and Political Rights (entered into force 23 March 1976), *United Nations Treaty Series*, No. 171 [Online]. Available at: [https://treaties.un.org/PAGES/ViewDetails.aspx?chapter=4&clang=\\_en&mtdsq\\_no=IV-4&src=TREATY](https://treaties.un.org/PAGES/ViewDetails.aspx?chapter=4&clang=_en&mtdsq_no=IV-4&src=TREATY) (Accessed: 20 May 2024).

- United Nations (1966) International Covenant on Civil and Political Rights [Online]. Available at: <https://byjus.com/free-ias-prep/international-covenant-civil-political-rights-iccpr/> (Accessed: 20 May 2024).
- United Nations (2019a) *General Comment No. 36 on article 6 of the International Covenant on Civil and Political Rights* (CCPR/C/GC/36) [Online]. Available at: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f36&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f36&Lang=en) (Accessed: 20 May 2024).
- United Nations (2019b) *Report of the Special Rapporteur on extreme poverty and human rights* (A/74/480) [Online]. Available at: <https://documents.un.org/doc/undoc/gen/g19/261/15/pdf/g1926115.pdf> (Accessed: 10 May 2024).
- United Nations (n.d.) *Human Rights: Civil and Political Rights – Fact Sheet No. 15 (Rev.1)*. [Online]. Available at: <https://2covenants.ohchr.org/downloads/FactSheet%20Civ%20and%20Pol%20Rights.pdf> (Accessed: 19 May 2024).
- United Nations General Assembly (1948) *Third Session: Verbatim Record of the One Hundred and Eightieth Meeting* (A/PV.180), 9 December.
- United Nations Human Rights Committee (2022) *Views adopted by the Committee under article 5(4) of the Optional Protocol concerning communication No. 3624/2019 (Daniel Billy et al. v. Australia)*, UN Doc. CCPR/C/135/D/3624/2019, 21 July [Online]. Available at: <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=f5I3vqngd2TJhTIVALPDLqxO5AQycUw0ElkpQNIB7Di4oSIJjZKNQPZa91H4ttFwgUhbmq9SfE4RCB9%2FzPI3Ofkhor2suKTMlCaFiFKdgQ%3D> (Accessed: 22 May 2024).
- United Nations Human Rights Committee (2023a) *Views adopted under the Optional Protocol, communication No. 3171/2018* (CCPR/C/137/D/3171/2018) [Online]. Available at: <https://ccprcentre.org/files/decisions/G2309017.pdf> (Accessed: 24 May 2024).
- United Nations Human Rights Committee (2023b) *Views adopted under the Optional Protocol, communication No. 3257/2018* (CCPR/C/139/D/3257/2018) [Online]. Available at: [https://ccprcentre.org/files/decisions/G2325282\\_\(3\).pdf](https://ccprcentre.org/files/decisions/G2325282_(3).pdf) (Accessed: 24 May 2024).
- United Nations Human Rights Committee (n.d.a) *Decision database* [Online]. Available at: <https://ccprcentre.org/decision/17251> (Accessed: 22 May 2024).
- United Nations Human Rights Committee (n.d.b) *Views under the Optional Protocol: Albania – Roma* [Online]. Available at: [https://ccprcentre.org/files/decisions/127\\_2\\_Albania\\_-\\_Roma.pdf](https://ccprcentre.org/files/decisions/127_2_Albania_-_Roma.pdf) (Accessed: 23 May 2024).
- United Nations Office of the High Commissioner for Human Rights (n.d.a.) *International Covenant on Civil and Political Rights* [Online]. Available at: [https://legal.un.org/avl/pdf/ha/iccpr/iccpr\\_e.pdf](https://legal.un.org/avl/pdf/ha/iccpr/iccpr_e.pdf) (Accessed: 20 April 2024).
- United Nations Office of the High Commissioner for Human Rights (n.d.b.) *International Covenant on Economic, Social and Cultural Rights* [Online]. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights> (Accessed: 21 April 2024).

- United Nations Office of the High Commissioner for Human Rights (n.d.c.) *Fact Sheet No. 15 (Rev.1): Civil and Political Rights* [Online]. Available at: <https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet15rev.1en.pdf> (Accessed: 21 April 2024).
- Venice Commission (2005) *Report on the protection of human rights* (CDL-UD(2005)012) [Online]. Available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-UD\(2005\)012rep-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-UD(2005)012rep-e) (Accessed: 14 May 2024).
- Weston, B.H. (1990) *International Law and World Order*. Durham: Duke University Press.
- Winter, J., Prost, A. (2013) *René Cassin and Human Rights: From the Great War to the Universal Declaration*. Cambridge: Cambridge University Press.
- Witte, J. (1996) 'Law, Religion, and Human Rights', *Columbia Human Rights Law Review*, 28(1), pp. 1-31.