Optional Protocol to the International Covenant on Civil and Political Rights, 16th December 1966 (999 UNTS 171), OXIO 4

United Nations [UN]; United Nations Human Rights Committee [UNHRC]

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Subject(s):
Civil and political rights — Human rights remedies
Core Issues

1. The admissibility requirements for individual complaints according to the Protocol
2. Whether the HRC can be considered as a ‘judicial’ or ‘quasi-judicial’ body
3. Whether the views adopted by the Committee are binding or non-binding

This headnote pertains to: Optional Protocol to the International Covenant on Civil and Political Rights, an instrument the text of which has been prepared by and/or adopted in the framework of an international organization. Jump to full text

Background

The act under review is the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR). The Optional Protocol is a treaty which was negotiated within the United Nations (UN) and opened for signature by a resolution of the General Assembly. This headnote focuses on the Optional Protocol’s delegation of additional competences upon the Human Rights Committee (HRC). From the perspective of the law of international organizations, the Optional Protocol’s significance lies in its strengthening of the institutions envisaged to protect human rights and the creation of innovative procedures for the involvement of individuals in global governance.

The ICCPR is one of the landmark human rights legal instruments. Both the ICCPR and the first Optional Protocol were adopted by the UN General Assembly (UNGA) on 16 December 1966 and entered into force on 23 March 1976. The HRC was established under Article 28 of the ICCPR. The HRC is composed of eighteen independent experts, who must be nationals of the Parties to the Covenant. Under ICCPR, the Committee has three functions: the examination of reports submitted by States Parties, assessment of inter-State complaints—though, at present, no such complaint has been filed—and the adoption of general comments.

The Optional Protocol extended the competence of the HRC, enabling individuals to submit complaints with regard to alleged violations of one of the rights enshrined in the Covenant by the States Parties to the Protocol.

As of April 2016, 115 states were party to the Optional Protocol.

Summary

By virtue of the Optional Protocol, the HRC was granted the competence to examine individual complaints concerning alleged violations of the ICCPR by the States Parties to the Protocol. Complaints could be filed by a State Party’s national, a person within a State Party’s territory and, lastly, all individuals subject to the State Party’s authority.

The Optional Protocol provides in Articles 1, 2, 3 and 5 a series of admissibility requirements which an individual complaint must satisfy in order for the merit of the case to be examined by the Committee. To be admissible, a communication must meet the following criteria:

- the complaint is lodged by an individual, or individuals, subject to the jurisdiction of a State party to the Optional Protocol;[p1, Article 1]
- the individual is a victim of a violation of one of the rights enshrined in the Covenant;[p1, Article 1]
- the victim has exhausted all available domestic remedies; [p2, Articles 2 and 5]
- the communication does not constitute an abuse of the right of submission;[p1, Article 3]
• the communication is not anonymous;[p1, Article 3]
• the same matter is not being examined under another procedure of international investigation or settlement.[p2, Article 5]

The HRC holds closed meetings when examining communications and, after considering the case admissible and having decided the merits of the case, it forwards its views to the State Party concerned and to the individual.[p2, Article 5] The communications submitted are brought to the attention of the State party to the Protocol alleged to be violating one of the rights enshrined in the ICCPR; the State Party is required to submit to the HRC written explanations or statements explaining the matter and the remedy possibly taken by the State Party.[p1, Article 4]

The Committee annually reports to the UNGA on its activities concerning complaints.[p2, Article 6] The Protocol includes standard provisions on ratification and accession, entry into force, proposal and approval of amendments, denunciation, notification, and official languages.[p2, Articles 8–14]

Analysis

The Optional Protocol did not explicitly pronounce either on the nature of the ‘views’ of the Committee nor did it outline any mechanism to establish compliance with its views. There is general consensus that the views of the HRC in relation to individual complaints are not binding. In its General Comment no 33 (2008), the HRC posited that its views present some important characteristics of a judicial decision, such as the impartiality and independence of Committee members, the considered interpretation of the language of the Covenant, the determinative character of the decisions (para 11 of the General Comment). In other words, the Committee can be deemed a ‘quasi-judicial body’ with regard to the functions deriving from the Protocol. As for the assessment of States’ compliance with the views, the Committee appointed in 1990 a Special Rapporteur for follow-up views, who directly reports to the Committee itself.

The most striking feature of the Optional Protocol is that it allowed individuals to directly submit complaints about state conduct to an international institution. Until the creation of the Optional Protocol, individuals had limited opportunities to participate in international organizations. During the inter-bellum, a number of instruments had some scope for individual complaints. For instance, disputes concerning the Polish Minority Treaties (resolved in the Questions relating to Settlers of German Origin in Poland and Acquisition of Polish Nationality advisory opinions) had been brought to the attention of the League of Nations by private organizations. In Questions relating to Settlers of German Origin in Poland, the legality of this procedure had been explicitly confirmed by the Permanent Court (pp 21-22). Similarly, the right of individual petitioners to raise issues before the Permanent Mandates Commission (PMC)—in many ways a precursor to the UN treaty bodies—was the subject of a lengthy dispute. In its Resolution of 31 January 1923, the Council of the League of Nations created the right for individual petitions to be received from mandated territories, but written petitions had to be transmitted via the Mandatory—there was no right to directly address the League itself. Upon decision by the Council, the PMC could be authorized to hear oral petitioners. During the inter-bellum, the single instance in which this was requested by the PMC was rejected by the Council. Nevertheless, in its advisory opinion on Voting Procedure on Questions Relating to Reports and Petitions Concerning the Territory of South-West Africa (1955), the ICJ held that the UNGA was entitled to hear oral petitioners from the Mandate of South West Africa because of South Africa’s unwillingness to forward written submissions (p 12).

The degree of innovation, and controversy, helps to explain why the individual complaints procedure was included in a separate instrument to the ICCPR. The entry into force of the Covenant and its ‘success’ in terms of number of ratifications would have been jeopardized by provisions granting the individuals the right to complain directly to the Committee. A separate Protocol has ensured a separate life to a somehow ‘revolutionary’ mechanism which allows individual to directly
file complaints with an international body but which has encountered some reticence by States—as the gap in the number of ratifications of the ICCPR (168 Parties) and the Optional Protocol (115 Parties) clearly demonstrates.

The right of individual complaint before the HRC and analogous institutions has led to questions being asked about whether individuals may be considered subjects of international law. Scholars are still divided on this issue. On the one hand, the possibility ensured to individuals is subordinated to treaty provisions, which is an expression of the will of Sovereign States; on the other hand, however, individuals are allowed to directly claim redress for human rights violations before an international body.

**Impact**

Despite the non-binding nature of the views, the HRC’s use of the individual complaints procedure has spurred the protection of civil and political rights at the international level. On the one hand, individual complaints have led in some cases to positive results for the victim concerned eg compensation, retrial, etc—although it is difficult to assess how many—and in the State concerned eg a change in the law. On the other hand, views have contributed to the interpretation of the human rights enshrined in the Covenant.

The Optional Protocol model employed within the ICCPR became a template which was subsequently adopted with respect to the other major human rights instruments. However, beyond the field of human rights, international organizations remain notoriously inaccessible to members of the public.

**Further Analysis and Relevant Materials**

**Leading Comments**

M K Addo *The Legal Nature of International Human Rights* (Brill, 2010) Chapter IV


**Materials Cited**

**UN Human Rights Committee**

*Human Rights Committee General Comment No 33: The Obligations of States Parties under the Optional Protocol to the International Covenant on Civil and Political Rights*, 5 November 2008, UN Doc CCPR/C/GC/33

**United Nations**

International Covenant on Civil and Political Rights, United Nations (16 December 1966) 999

UNTS 171, UN Doc A/6316

Article 28
Related Cases

International Court of Justice


Permanent Court of International Justice

*Acquisition of Polish Nationality*, Advisory opinion, 15 September 1923, (1923) PCIJ Series B No 7, ICGJ 274 (PCIJ 1923)

*Questions relating to Settlers of German Origin in Poland, Germany v Poland*, Advisory opinion, 10 September 1923, PCIJ Reports Series B No 6

Related Materials

United Nations


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Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976, in accordance with Article 9

The States Parties to the present Protocol,

Considering that in order further to achieve the purposes of the International Covenant on Civil and Political Rights (hereinafter referred to as the Covenant) and the implementation of its provisions it would be appropriate to enable the Human Rights Committee set up in part IV of the Covenant (hereinafter referred to as the Committee) to receive and consider, as provided in the present Protocol, communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant. Have agreed as follows:

**Article 1**

A State Party to the Covenant that becomes a Party to the present Protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant. No communication shall be received by the Committee if it concerns a State Party to the Covenant which is not a Party to the present Protocol.

**Article 2**

Subject to the provisions of article 1, individuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies may
submit a written communication to the Committee for consideration.

**Article 3**

The Committee shall consider inadmissible any communication under the present Protocol which is anonymous, or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of the Covenant.

**Article 4**

1. Subject to the provisions of article 3, the Committee shall bring any communications submitted to it under the present Protocol to the attention of the State Party to the present Protocol alleged to be violating any provision of the Covenant.

2. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

**Article 5**

1. The Committee shall consider communications received under the present Protocol in the light of all written information made available to it by the individual and by the State Party concerned.

2. The Committee shall not consider any communication from an individual unless it has ascertained that:

   (a) The same matter is not being examined under another procedure of international investigation or settlement;

   (b) The individual has exhausted all available domestic remedies. This shall not be the rule where the application of the remedies is unreasonably prolonged.

3. The Committee shall hold closed meetings when examining communications under the present Protocol. 4. The Committee shall forward its views to the State Party concerned and to the individual.

**Article 6**

The Committee shall include in its annual report under article 45 of the Covenant a summary of its activities under the present Protocol.

**Article 7**

Pending the achievement of the objectives of resolution 1514(XV) adopted by the General Assembly of the United Nations on 14 December 1960 concerning the Declaration on the Granting of Independence to Colonial Countries and Peoples, the provisions of the present Protocol shall in no way limit the right of petition granted to these peoples by the Charter of the United Nations and other international conventions and instruments under the United Nations and its specialized agencies.

**Article 8**

1. The present Protocol is open for signature by any State which has signed the Covenant.

2. The present Protocol is subject to ratification by any State which has ratified or acceded to the Covenant. Instruments of ratification shall be deposited with the Secretary-General of the United
3. The present Protocol shall be open to accession by any State which has ratified or acceded to the Covenant.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

Article 9
1. Subject to the entry into force of the Covenant, the present Protocol shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or instrument of accession.

2. For each State ratifying the present Protocol or acceding to it after the deposit of the tenth instrument of ratification or instrument of accession, the present Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 10
The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

Article 11
1. Any State Party to the present Protocol may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Protocol with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendment which they have accepted.

Article 12
1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations. Denunciation shall take effect three months after the date of receipt of the notification by the Secretary-General.

2. Denunciation shall be without prejudice to the continued application of the provisions of the present Protocol to any communication submitted under article 2 before the effective date of denunciation.
Article 13

Irrespective of the notifications made under article 8, paragraph 5, of the present Protocol, the Secretary-General of the United Nations shall inform all States referred to in article 48, paragraph 1, of the Covenant of the following particulars:

(a) Signatures, ratifications and accessions under article 8;

(b) The date of the entry into force of the present Protocol under article 9 and the date of the entry into force of any amendments under article 11;

(c) Denunciations under article 12.

Article 14

1. The present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States referred to in article 48 of the Covenant.