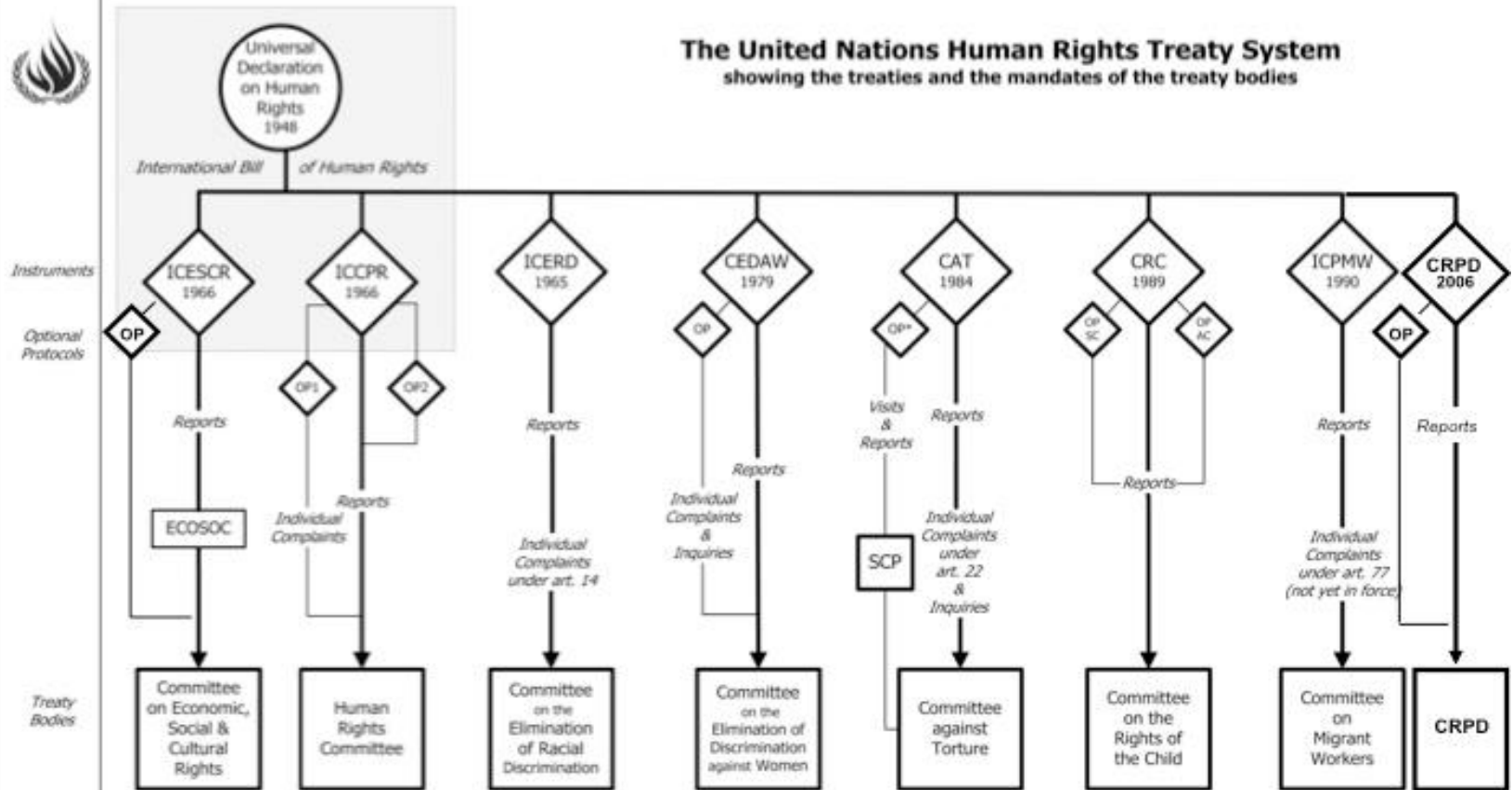


UN Treaty Bodies

Cecilia M. Bailliet



The United Nations Human Rights Treaty System showing the treaties and the mandates of the treaty bodies



There are nine human rights treaty bodies and the Subcommittee on Prevention of Torture (SPT):

- The Human Rights Committee (CCPR) monitors implementation of the International Covenant on Civil and Political Rights (1966) and its optional protocols;
The Committee on Economic, Social and Cultural Rights (CESCR) monitors implementation of the International Covenant on Economic, Social and Cultural Rights (1966);
The Committee on the Elimination of Racial Discrimination (CERD) monitors implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (1965);
The Committee on the Elimination of Discrimination Against Women (CEDAW) monitors implementation of the Convention on the Elimination of All Forms of Discrimination against Women (1979) and its optional protocol (1999);
The Committee Against Torture (CAT) monitors implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (1984);
The Committee on the Rights of the Child (CRC) monitors implementation of the Convention on the Rights of the Child (1989) and its optional protocols (2000); and
The Committee on Migrant Workers (CMW) monitors implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990).
The Committee on the Right of Persons with Disabilities (CRPD) monitors implementation of the International Convention on the Rights of Persons with Disabilities (2006).
- The Committee on Enforced Disappearance (CED) monitors implementation of the International Convention for the Protection of All Persons from Enforced Disappearance (2006)

Members of Committees

- Nationals of States Parties
- High Moral Character with Competence in Human Rights
- Elected to four-year terms, consideration of equitable geographic distribution of membership and to the representation of the different forms of civilization and of the principal legal systems

Consideration of State Reports

- States must report submit an initial report usually one year after joining (two years in the case of the CRC) and then periodically in accordance with the provisions of the treaty (usually every four or five years).
- In addition to the government report, the treaty bodies may receive information on a country's human rights situation from other sources, including **non-governmental organizations (shadow reports), UN agencies, other intergovernmental organizations, academic institutions and the press**. In the light of all the information available, the Committee examines the report together with government representatives. Based on this dialogue, the Committee publishes its concerns and recommendations, referred to as “concluding observations”.
- Follow-up procedures
- Incomplete, formalistic reports, out-dated. Governments blame prior regimes. Delays in filing reports, enforcement problems

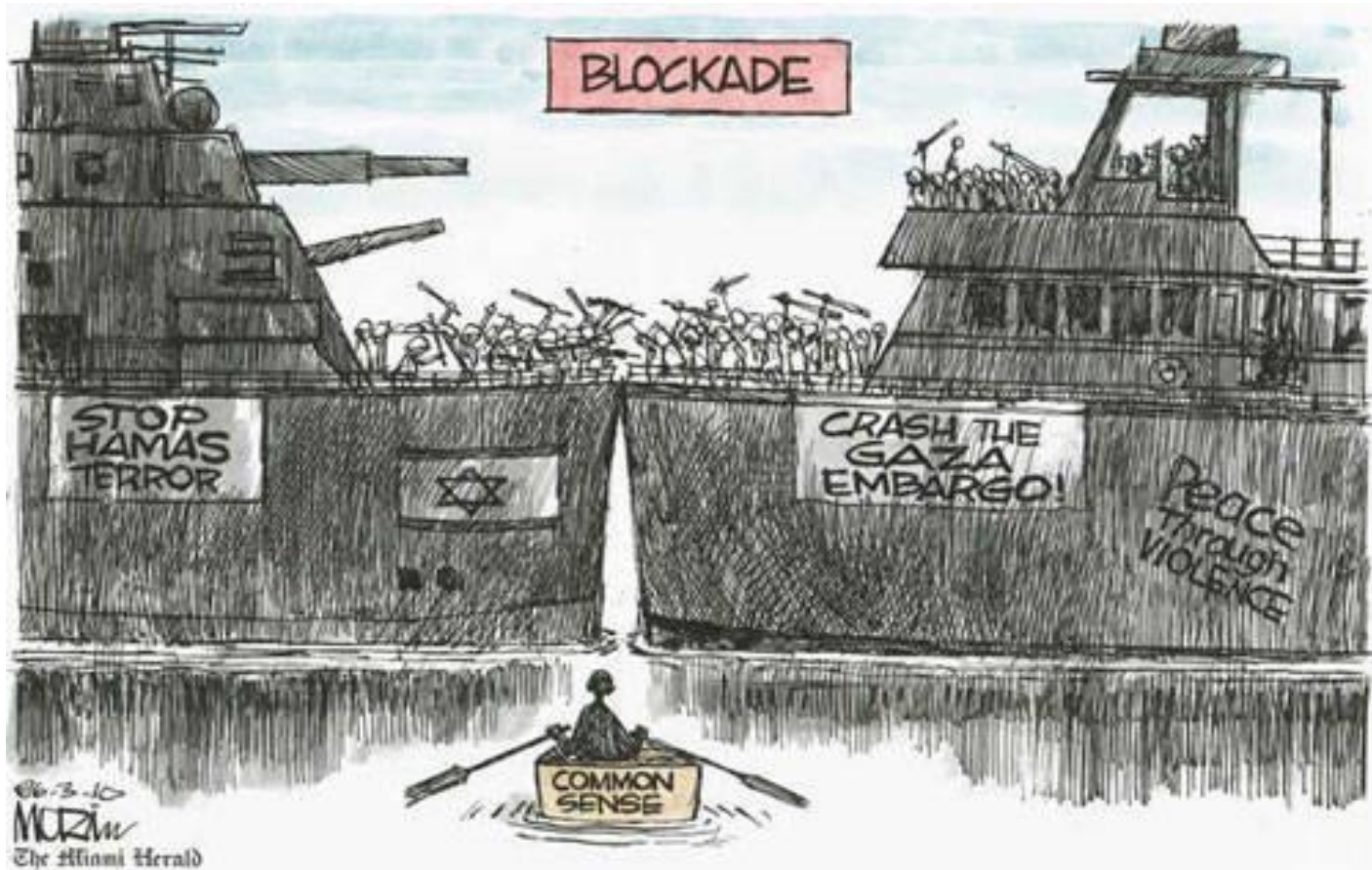
State reports

- Common core document present legal framework for human rights protection and implementation of common provisions, complements Treaty specific report
- Review measures to harmonize national laws and policies with international standards
- Monitor progress in enjoyment of rights
- Evaluate future needs for implementation
- Use concrete examples (not just refer to legislation)
- UN Country Rapporteur prepares list of issues for State to reply to
- Public examination of report- Summary Record- Issuance of Concluding Comments (should be specific to enable follow up by State)
- Special Rapporteur for Follow Up, Report to General Assembly
- NGOs file shadow reports

Guantanamo HRC



Gaza Blockade HRC



Western Shoshone CERD



Individual Complaints

- Four of the Committees (CCPR, CERD, CAT and CEDAW) can, under certain conditions, receive petitions from individuals who claim that their rights under the treaties have been violated
- Views are non-binding, lack suspensive effect.

Individual Complaints

- The [Human Rights Committee](#) may consider individual communications relating to States parties to the [First Optional Protocol to the International Covenant on Civil and Political Rights](#);
- The [CEDAW](#) may consider individual communications relating to States parties to the [Optional Protocol to the Convention on the Elimination of Discrimination Against Women](#);
- The [CAT](#) may consider individual communications relating to States parties who have made the necessary declaration under [article 22 of the Convention Against Torture](#);
- The [CERD](#) may consider individual communications relating to States parties who have made the necessary declaration under [article 14 of the Convention on the Elimination of Racial Discrimination](#); and
- The [CRPD](#) may consider individual communications relating to States parties to the [Optional Protocol to the Convention on the Rights of Persons with Disabilities](#).
- The [Convention on Migrant Workers](#) also contains provision for allowing individual communications to be considered by the [CMW](#); these provisions will become operative when 10 states parties have made the necessary declaration under article 77.
- Complaints may also be brought by third parties on behalf of individuals provided they have given their written consent or where they are incapable of giving such consent.

Individual Complaints

- Subject to State acceptance of competence of committee
- Written, confidential, no oral hearings

Admissibility ICCPR

- Communications must not be anonymous and cannot be considered unless they come from a person or persons subject to the jurisdiction of a State that is a party to the Optional Protocol.
- Normally, a communication should be sent in by the individual who claims that his or her rights have been violated by the State. No *actio popularis*. When it appears that the alleged victim is unable to submit the communication, the Committee may consider a communication from another person who must prove that he or she is acting on behalf of the alleged victim. A third party with no apparent links with the person whose rights have allegedly been violated cannot submit a communication.
- The complaint cannot be considered if the same problem is being investigated under another international procedure, and all domestic remedies must have been exhausted before it can be taken up by the Committee. But if domestic remedies are ineffective, unreasonable or onerous, unduly prolonged, or are no longer open or are in fact unavailable then no obligation to pursue.
- *Ratione Materiae* Must refer to breach of articles and provide facts and dates.

HRC Processing

- Once a communication has been declared admissible, the Committee asks the State concerned to explain or clarify the problem and to indicate whether anything has been done to settle it. A time limit of six months is set for the State party's reply. The author of the complaint then has an opportunity to comment on the State's reply. Once this stage is completed, the Committee expresses its final views and sends them to the State concerned and to the author.
- The Committee places individuals who complain and States that are alleged to have violated their rights on an equal footing throughout its proceedings. Each has an opportunity to comment on the other's arguments.
- The findings of the Committee - its views on communications that have been declared admissible and examined on their merits, and its decisions declaring other communications inadmissible - are always made public immediately after the session at which the findings are adopted and are reproduced in the Committee's annual report to the General Assembly.

Interim Protection HRC

- It usually takes about 12 to 18 months to declare a case admissible or inadmissible. The process of examining the merits of the case may then take a year or two, depending on how cooperative States parties and the authors of complaints are in submitting all the information needed by the Committee.
- People who allege that their human rights are being violated may need protection before the Committee adopts its final views. Without prejudging the merits of complaints, the Committee has for this reason sometimes addressed urgent requests to the States involved. There have been cases, for example, in which the Committee has advised against a threatened expulsion, requested the suspension of a death sentence or drawn attention to the need for an urgent medical examination.

Evidence & Burden of Proof

- The Committee has as yet no independent fact-finding functions, but it is bound to consider all written information made available by the parties concerned.
- In a number of cases dealing with the right to life, torture and ill-treatment, and arbitrary arrests and disappearances, the Committee has established that the burden of proof cannot rest alone with the person complaining of the violation of rights and freedoms. The Committee also views a refutation in general terms of a complaint of a violation of a person's human rights as insufficient.

Views

- The Human Rights Committee works by consensus, but individual members can append their opinions to the views it expresses on the merits of a case or to its decisions to declare communications inadmissible. Decisions may recommend legislative amendment, payment of damages, release of detained persons., etc.
- **Results**
- Problems with compliance, but several countries have changed their laws as a result of decisions by the Committee on individual complaints under the Optional Protocol. In a number of cases, prisoners have been released and compensation paid to victims of human rights violations. In 1990, the Committee instituted a follow up mechanism to assist it in monitoring more closely whether States parties have given effect to its final decisions on the merits

CAT Agiza Case Extraordinary Rendition to Egypt



General Comments

- The Committees also publish their interpretation of the content of human rights provisions, known as [general comments](#) on thematic issues or methods of work.

Inter-State Communications

- IESCR optional
- ICCPR optional
- CAT optional
- CRC optional
- CERD **compulsory**
- ICRMW optional
- This has never been utilized

Inquiry/Preventive Procedures

- Committees conduct on-site inquiries under certain circumstances, such as via a preventive procedure under the CAT, or urgent actions in cases of disappearances CPAPED.
- ICESCR IP/PP optional
- CAT IP compulsory, opt out clause, PP optional
- CEDAW IP optional/opt-out clause
- CPAPED IP compulsory, Urgent Action compulsory

Inquiry

- Committee Against Torture (Brazil, Mexico, Peru, Sri Lanka, Turkey, former Yugoslavia)
- Committee on the Elimination of Discrimination Against Women (Mexico)
- CRPD
- Confidential (unless State consents to publication)
- Upon receipt of reliable, well-founded indications of serious, grave, or systematic violations (early warning/rapid response)
- States must have recognized competence of the Committee for inquiry
- UNCAT-OP preventive inquiry- complementary regular visits to places of detention by independent international and national entities (Sub Committee on Prevention of Torture and national bodies established by States) (Benin, Cambodia, Honduras, the Maldives, Mauritius, Mexico, Paraguay and Sweden)

Ciudad Juarez- CEDAW



No Monitoring Bodies

- Covention on the Prevention and Punishment of the Crime of Genocide (but see ICJ)
- Convention on the Political Rights of Women
- Convention relating to the Status of Refugees
- Slavery Convention

Markus Schmidt

- Challenges:
- How to achieve **implementation** of international standards at the national level
- How to improve **effectiveness** and visibility of UN monitors

Class Assignment

- Please review the committee's conclusion, summary record, view, or inquiry report. Provide a critical evaluation and discuss, reflecting upon Schmidt's concern.
- Analyze the thematic scope of the document-is it focused or broad? What is its purpose? Are there concrete proposals, or is the language vague? Are the goals capable of achievement-Is this capable of implementation, or primarily symbolic? Who are the principal actors in terms of accountability? How would you enforce this document? Are there legitimacy problems with respect to the recommendations?