

present” (p. 442). The author’s search for a “meta-positivistic reconstruction of a new normative prism” (p. 443) may be an exhilarating pursuit, but most readers will be hard-pressed to follow it.

In general, the book’s origin at an academic conference speaks somewhat against its usefulness for general audiences. The impression is that the contributors are speaking mainly to each other, and only secondarily to nonexperts peering in from the outside. Too few concessions are made to a general readership—with Lesaffer, Lutz-Bachmann, and Haggenmacher as honorable and outstanding exceptions. The book therefore will be of only limited use for teaching. It also does not constitute—and is not intended to constitute—a general history of international law. Another limitation on the book’s utility is the complete absence of an index.

None of these caveats, however, can detract from the heroic amount of learning that is brought to bear by this galaxy of scholars. And the publisher is to be greatly commended for bringing to the attention of English-speaking audiences so many writers who would otherwise be all too little known. Even if the book is of limited use for general readers or teachers, it needs to be in the armory of every serious scholar of the history of international law.

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United Nations Human Rights Committee Case Law 1977–2008. By Jakob Th. Möller and Alfred de Zayas. Kehl am Rhein: N. P. Engel Verlag, 2009. Pp. xxiv, 603. Index. \$188, €148, £120.

The UN Human Rights Committee: Practice and Procedure. By Yogesh Tyagi. Cambridge, New York: Cambridge University Press, 2011. Pp. xxxiii, 909. Index. \$175.

The United Nations Human Rights Committee (Committee) is among the most—if not the most—influential international human rights mechanisms, with its impact felt not only across the UN system but also in the jurisprudence of regional human rights bodies and national courts. The Committee monitors compliance with the

International Covenant on Civil and Political Rights¹ (ICCPR), a widely ratified treaty that forms one of the three core documents of the International Bill of Human Rights. The Committee has received more than two thousand individual complaints brought under the (first) Optional Protocol to that treaty, a number that other UN treaty bodies do not even begin to approach.² At the same time, the Committee has come under criticism for a variety of factors, including the politicized process by which its members are elected and questions about its efficacy.

Two recent books—*The UN Human Rights Committee: Practice and Procedure* by Yogesh Tyagi and *United Nations Human Rights Committee Case Law 1977–2008* by Jakob Th. Möller and Alfred de Zayas—make significant contributions to our understanding of the valuable role that the Committee has played in developing international human rights standards thus far. The books also provide important perspectives into its future in light of common critiques of the Committee and its inherent limitations.

Aimed at a variety of audiences—states parties to the treaty, states that might be considering ratification, civil society actors seeking to hold states accountable, and individuals seeking to avail themselves of the protection of the ICCPR—*The UN Human Rights Committee: Practice and Procedure* provides the reader with a clear understanding of the mandate of and mechanisms for engagement with the Committee. Tyagi, a professor of international law at the School of International Studies, Jawaharlal Nehru University in New Delhi, India, comprehensively describes the Committee’s working methods. Yet he goes much deeper than the nuts and bolts of the Committee’s functioning. Recognizing that no human rights mechanism exists in political, social, or economic vacuums, Tyagi provides a historical overview for understanding how the Committee’s practices

¹ International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 UNTS 171 [hereinafter ICCPR]. The ICCPR currently has 167 states parties.

² The UN treaty body that has issued the next highest number of individual decisions is the Committee Against Torture, which has received fewer than five hundred individual complaints.

and procedures have developed, assesses the efficacy of the Committee against the backdrop of the financial constraints and political realities that plague the UN treaty body system, and contemplates the future of the Committee given these considerations. Throughout this framework, Tyagi weaves in the perspective of sovereign states, with a particular focus on the views of developing countries, by citing to negotiations over the Committee's development in the *travaux préparatoires*.

In *United Nations Human Rights Committee Case Law 1977–2008*, Möller and de Zayas draw our attention to the Committee's work in hearing individual complaints under the (first) Optional Protocol to the ICCPR. Möller teaches international law at University of Akureyri in Iceland and previously served as the chief of the Communications Branch of the UN Centre for Human Rights within the Office of the High Commissioner for Human Rights (OHCHR), as a judge at the Human Rights Chamber for Bosnia and Herzegovina in Sarajevo, as president of the Human Rights Commission within the Constitutional Court of Bosnia and Herzegovina, and as an alternate member of the UN Sub-Commission on the Promotion and Protection of Human Rights. De Zayas teaches international law at the Geneva School of Diplomacy and served as a senior human rights officer and deputy chief of the Communications Branch of the UN Centre for Human Rights, as secretary for the Human Rights Committee, and as chief of the petitions unit at the OHCHR. In this book, the authors undertake the herculean task of analyzing the Committee's case law to provide a greater understanding of the normative content of each of the articles of the ICCPR and its evolution over three decades.

Tyagi's monograph is well organized into three parts. Part I considers the conceptual and institutional framework of the Committee, analyzing the development of international mechanisms for implementing human rights norms and the establishment and composition of the Committee. Part II discusses the core working methods of the Committee: state reporting (chapter 3), interstate complaints (chapter 4), and individual complaints (chapter 5). Part III analyzes the limitations and effectiveness of the Committee and concludes

with recommendations for strengthening its role in enforcing human rights standards. The volume is rounded out by nine useful appendices, including the text of the ICCPR and its optional protocols, the Committee's Rules of Procedure, the status of ratifications for the treaty and its protocols, and a model for bringing an individual complaint.

As Tyagi notes, a common critique of the Committee is that, because states are responsible for nominating and electing Committee members, this process is often highly politicized and can result in the election of Committee members who lack the requisite expertise or independence to uphold the spirit of the ICCPR. Although the treaty mandates that its members be of "high moral character and recognized competence in the field of human rights,"³ no guidelines or oversight exists to ensure that a certain standard is met. In chapter 2, Tyagi examines the institutional framework of the Committee by assessing the process of nominating and electing Committee members as well as other key logistical issues, such as financing, staffing, legal status, and decision-making. Tyagi highlights, in particular, the Committee's lack of both geographic diversity (seven of the Committee's eighteen members are from Europe and Western states, with the four other regions having only one to five representatives each) and gender diversity (only four of the current members are women), despite stated policies to the contrary. Tyagi further notes that the state-run process for selecting members has rendered the requirement that members act in their personal capacity "a legal fiction" in some instances (p. 117), though he later acknowledges that Committee members generally "consider State reports with great sincerity and utmost care" (p. 310). Recognizing these concerns, Tyagi emphasizes "a need to improve [Committee member] nomination and election procedures and to diversify their expertise" (p. 147). To this end, he recommends ensuring greater transparency in the election process and facilitating participation by civil society, academics, national human rights institutions (NHRIs), and others.

³ ICCPR, *supra* note 1, Art. 28.

In his chapters assessing the various working methods of the Committee, Tyagi identifies the legal basis for each mechanism; explains how the mechanism works in practice, providing information that the book's intended audiences—such as states or civil society—will find helpful for engaging with the Committee; and then evaluates its efficacy. His discussion of the reporting process defines four key areas on which states need to report (measures taken, progress made, factors affecting implementation, and difficulties impeding implementation) and breaks down the Committee's guidelines for the various types of reports. He further outlines the options that the Committee has at its disposal to enforce compliance with reporting obligations, beginning with the subtle nudges of reminders and *aides-mémoire* and, in the case of serious defaulters, progressing to the more forceful naming, deploring, and, ultimately, examining of defaulters. Tyagi then discusses roles for third-party actors, such as international agencies, civil society, and NHRIs, in the reporting process.

In considering the role of civil society, Tyagi identifies the types of information that nongovernmental organizations (NGOs) might submit to assist the Committee's review of a given state, like raising "questions of law, current violations of the ICCPR, and future problems" (p. 221). He also notes that NGOs may participate in various stages of the reporting procedure. Yet this section neither provides much instruction or analysis on what supplementary information civil society can and should share with the Committee nor indicates how and when such information can be presented. It is possible that Tyagi felt the existing volume of civil society submissions to the Committee obviates the need for such instruction, but practitioners who are less familiar with UN treaty bodies would benefit from a fuller discussion of these points.

Instead, Tyagi devotes significant attention to concerns that states have raised about NGO participation in the review process, both in terms of the Committee's reliance on NGO submissions and questions about the credibility of the NGOs making such submissions. Tyagi proposes several measures that could improve the transparency

of NGO involvement, including an additional optional protocol or a revision of the Rules of Procedure to address such questions as "which NGOs should be allowed to submit information" (p. 225). While acknowledging state concern about overreliance on NGO submissions is important, Tyagi's proposals do not reconcile a desire for greater transparency with the competing objective of ensuring that the voices of those whose rights are being violated are heard in the reporting process. Limiting NGO submissions to a few "approved" NGOs or imposing onerous registration requirements could reinforce power dynamics whereby only powerful international NGOs have a voice in the process, while smaller, underresourced NGOs are silenced. It is worth noting that Tyagi's proposal does not seem to stem from doubts about the utility of NGOs in the reporting process. In discussing compliance with the Committee's concluding observations, for instance, Tyagi acknowledges that NGOs have an important role to play, explaining that, for successful implementation, "strategic non-governmental cooperation can make a big difference" (p. 262). He also rightly expresses concern that the current levels of NGO involvement in implementation are insufficient, though he stops short of addressing what factors might prevent NGOs from following up on the concluding observations or how the Committee might better facilitate NGO involvement in implementation.

The question of implementation is a frequent source of criticism of the Committee. A lack of enforcement mechanisms and the nonbinding nature of the Committee's views prompt serious questions as to the Committee's efficacy in ensuring that ICCPR standards are implemented at the national level. Recognizing these constraints, Tyagi concludes each discussion of the Committee's working methods with an evaluation of its efficacy. Among other areas of concern, he highlights significant delays in states submitting their reports under the reporting procedure, insufficient information from states, lack of awareness of the individual complaint procedure, and the inability of the Committee to enforce its decisions in individual complaints. At the same time, he notes that the constructive dialogues with states

during the reporting process and the specificity of the concluding observations have, in some cases, had a tangible impact on domestic laws and policies, and, despite concerns about the election procedures of the Committee, Tyagi has a positive assessment of the members' objectivity both in the reporting and individual complaint procedures.

As states have never utilized the interstate complaint procedure, Tyagi examines the reluctance of states to rely on this procedure, pointing largely to the fear of reciprocity and beliefs that such a mechanism could harm bilateral relations. He interestingly suggests, however, that civil society has a role to play in promoting the success of the interstate complaint procedure, for instance, by lobbying for its use or supplying complaining states with the necessary information, drawing parallels to campaigns by civil society to acquire advisory opinions from the International Court of Justice.

Tyagi concludes his volume by examining some of the limitations of the Committee and by addressing its effectiveness in light of these limitations. He focuses primarily on limitations inherent to the institutional design—the politicized nature of electing Committee members, the absence of strong enforcement mechanisms, and the built-in measures to evade state compliance (e.g., derogations and reservations)—but also considers factors such as the proliferation of parallel regimes, including regional human rights bodies and other UN treaty bodies. While acknowledging the lack of enforcement mechanisms and the nonlegally binding nature of the Committee's decisions, Tyagi reminds us that these criticisms are inherent to international law generally and not unique to the Committee. He further emphasizes that the role of the Committee is not to implement human rights standards at the domestic level, but rather is to “monitor and facilitate the implementation of the ICCPR” (p. 779). When looking at how effectively the Committee succeeds in its original intentions—that is to “influence the collective system of security of human rights” (p. 775)—Tyagi convincingly depicts reasons for moderate optimism. He points to a series of indicators where the Committee's jurisprudence has improved or altered the behavior of states parties, either directly or indirectly.

Despite this optimism, Tyagi remains realistic in his assessment of the Committee and presents recommendations throughout the volume to optimize the Committee's functioning and redress its inherent limitations.

Where Tyagi's volume is remarkable for the breadth of its coverage of the Committee, Möller and de Zayas's volume *United Nations Human Rights Committee Case Law 1977–2008* is notable for its depth of review of the individual complaint procedure. The first two chapters provide an introduction to the individual complaint mechanism from a conceptual and procedural standpoint, while the remainder of the book is devoted to a substantive analysis of the Committee's jurisprudence. The authors then examine the follow-up to the Committee's decisions and conclude by describing how the Committee's case law has evolved since its inception. The volume ends with several relevant appendices, including the text of the (first) Optional Protocol, the rules of procedure that relate to the individual complaint procedure, and a chart of the states parties to the Optional Protocol and the status of cases against these states.

Unlike Tyagi's book, which presents its subject matter in a manner accessible to both novices and individuals familiar with the Committee alike, Möller and de Zayas seem to direct their study at readers who already have some knowledge of the Committee and its methods of work. While the first chapter begins by briefly discussing the establishment of the Committee and its working methods, it would benefit from greater organizational clarity and background information to educate individuals unfamiliar with the Committee. The chapter also contains some asides—often valuable recommendations of how the functionality of the Committee could be improved based on the authors' insider knowledge—that assume a prior understanding of the UN human rights system. For an informed readership, however, Möller and de Zayas's study provides a wealth of information, in addition to its excellent substantive legal analysis, that any advocate engaging with the Committee's individual complaint mechanism will find useful. Chapter II tracks the processing of individual complaints to the Committee, shedding light

on communications behind the scenes and the Committee's decision-making process.

Chapter III provides practitioners with indispensable insight into the admissibility criteria for individual complaints. Although specified in the (first) Optional Protocol and the Committee's Rules of Procedure, the nature of these requirements is not always straightforward. The authors analyze the Committee's decisions on admissibility to clarify the scope of these requirements. For instance, in the sections discussing the concept of *victim* under the Optional Protocol and a prohibition on hypothetical violations, the authors rely on the Committee's case law to explain how the Committee interprets the requirement that the complainant be personally affected by the alleged violation, as well as how certain claims that might otherwise appear to allege hypothetical harms—as in the case of *Toonen v. Australia*⁴—have been distinguished as admissible. Also noteworthy is this chapter's discussion of the *ratione materiae* requirement that the complaint allege a violation of rights protected by the ICCPR. Möller and de Zayas address how the Committee has effectively precluded the justiciability of Articles 1–5 under the (first) Optional Protocol, as well as how a broad interpretation of Article 26 on the right to equality before the law has allowed the Committee to admit cases covering discriminatory legislation on subject matter that otherwise falls outside the scope of the ICCPR protections.

The full magnitude of Möller and de Zayas's effort reveals itself in chapter IV, where they analyze how the Committee has interpreted the content of the ICCPR's substantive articles through its case decisions, general comments, and, in some instances, concluding observations. Given the difficulties in researching Committee case law, the book provides a crucial research tool to practitioners. Although these substantive analyses are not a substitute for reading the referenced cases, they

⁴ *Toonen v. Australia*, Communication No. 488/1992, para. 5.1, UN Doc. CCPR/C/50/D/488/1992 (1994) (noting that “the author had made reasonable efforts to demonstrate that the threat of enforcement and the pervasive impact of the continued existence of these provisions on administrative practices and public opinion had affected him and continued to affect him personally . . .”).

provide a broad overview of what the Committee has said and direct practitioners to relevant cases. Where the Committee has issued extensive decisions interpreting an article of the ICCPR, the authors have broken up the assessment according to different themes that emerge from the jurisprudence. For example, the section examining the right under Article 7 not to be subjected to torture considers the Committee's case law in the context of (1) physical torture and ill-treatment, (2) prolonged incommunicado detention, (3) mental anguish of relatives, (4) methods of judicial execution, (5) death-row phenomenon, (6) mental anguish of victims following conviction in an unfair trial, and (7) deportation to face possible torture. Although not an exhaustive review of all of the Committee's jurisprudence on the right not to be subjected to torture, the authors provide a fine summary of the Committee's case law in each of these thematic areas to give the reader a good understanding of how the Committee has interpreted this article.

It goes without saying that a study of this scale will necessarily have some gaps. For example, in their analysis of Article 7, the authors acknowledge that the discussed cases tend toward torture and ill-treatment in relation to detention, as the article has been most frequently invoked in this context. Yet the Committee has evolved significantly in its application of Article 7 outside of detention settings,⁵ as well as in its consideration of these harms through a gendered lens, developments that would add richness to the discussion of this article. For example, in *K.L. v. Peru*, a case omitted from the authors' analysis, the Committee found that Peru had violated the petitioner's right to be free from ill-treatment by denying her a therapeutic abortion.⁶ In finding a violation of Article 7, the Committee assessed the gravity of the mental harm in

⁵ See, e.g., Juan Mendez, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman, and Degrading Treatment or Punishment, para. 15, UN Doc. A/HRC/22/53 (Feb. 1, 2013) (“[W]hile the prohibition of torture may have originally applied primarily in the context of interrogation, punishment or intimidation of a detainee, the international community has begun to recognize that torture may also occur in other contexts.”).

⁶ *K.L. v. Peru*, Communication No. 1153/2003, UN Doc. CCPR/C/85/D/1153/2003 (2005).

light of subjective factors, such as the petitioner's age (as she was a minor) and health status (as she was pregnant with an anencephalic fetus), and noted that the harms were a foreseeable consequence of compelling the petitioner to carry the pregnancy to term.⁷ This case does not fit squarely into Möller and de Zayas's themes, yet the decision deepens our understanding of the Committee's approach in determining when mental suffering is sufficiently severe to constitute a violation of Article 7 and reinforces that torture and ill-treatment can exist outside of the detention setting. The case's absence from the analysis is indicative perhaps of some of the trade-offs that Möller and de Zayas were compelled to make to review all of the substantive articles of the ICCPR within the space of a single volume and to distill this undertaking into the clear and well-organized book that they have produced.

Beyond the substantive legal analysis that forms the basis of their volume, we see glimpses of Möller's and de Zayas's insider perspectives on the workings of the Committee through their commentary throughout the book. While perhaps outside of the scope of the treatise, the reader is left wanting a separate chapter that consolidates these assessments of the Committee and that suggests what the Committee might do to strengthen its influence and efficacy. In the first chapter, for example, Möller and de Zayas briefly suggest a framework for implementing the unused interstate complaints procedure and identify some potential reasons that the Committee receives fewer individual complaints than regional human rights bodies, such as the Inter-American Commission on Human Rights and the European Court of Human Rights. These analyses, though, are necessarily limited in the context of an introductory chapter that otherwise is intended to lay out the basics of the Committee's working methods. A concluding chapter devoted to assessing how the Committee could further develop the complaint procedure and improve implementation would be a welcome addition. Such a chapter might have allowed exploration of additional rea-

⁷ *Id.*, para. 6.3.

sons—such as stronger enforcement mechanisms or the ability to negotiate friendly settlement agreements—that regional bodies receive a greater number of complaints and the extent to which (in the view of individuals with such intimate knowledge of the Committee) the Committee could actually implement such proposals.

Each of these works contributes impressively to the scholarship on the Committee. Taken together, these two books provide an in-depth treatment of the issues and could assist practitioners and states parties alike to engage meaningfully with the Committee. Moreover, these studies come at a time when the UN treaty body system is at a crossroads. Due to resource constraints and a proliferation of UN human rights mechanisms (not only treaty bodies but also special procedures and the Universal Periodic Review), among other challenges, the OHCHR launched in 2009 an ambitious treaty body strengthening process that seeks, *inter alia*, to harmonize the work across UN treaty bodies, streamline state reporting obligations, and improve the quality of members serving on each treaty body.⁸ As this new process proceeds, it will be crucial to look comparatively across the treaty bodies, and even regional bodies, both in terms of their structure and jurisprudential developments. In the context of this ongoing debate, *United Nations Human Rights Committee Case Law 1977–2008* and *The UN Human Rights Committee: Practice and Procedure* offer important insights into the Committee and help provide a framework for thinking about the future of the treaty body system in general.

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⁸ See, e.g., Navanethem Pillay, *Strengthening the United Nations Human Rights Treaty Body System: A Report by the United Nations High Commissioner for Human Rights* (June 2012), available at <http://www2.ohchr.org/english/bodies/HRTD/docs/HCRptTBSstrengthening.pdf>.