Ten years on the UN Human Rights Committee: some thoughts upon parting

Rosalyn Higgins

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Introduction

I have been asked to cast a farewell look at the Human Rights Committee—a body I left in 1995, when elected to the International Court, having joined in 1984. How best to characterise those 12 years? They were absorbing, engrossing, and occasionally tumultuous times. Deep frustration and high emotion were intermittent companions. I think that anyone who has worked in the United Nations system, and in human rights in particular, will recognise this description. More dispassionately, I think that this period can be characterised as one both of continuity and of change.

The Human Rights Committee is the organ established under the International Covenant on Civil and Political Rights to monitor compliance with that treaty. Its 18 members are elected from among those nominated by States that have become ratifying parties to the Covenant. There is an unwritten understanding about the need for a membership that broadly reflects the geographic distribution of ratifying parties. But members are elected as individual experts, not as government representatives. With a handful of exceptions, they have always been lawyers—judges, practitioners, academics, ombudsmen, whose fields are constitutional law, criminal law and international law. The Committee has two main tasks. The first is to examine the reports provided by States (on which I will say a little more below). The second is to sit in a quasi-judicial capacity to offer its findings on cases brought by an individual against a ratifying party to the Optional Protocol.

All parties to the Covenant must submit a Report within one year of the Covenant entering into effect for them. That is an obligation under the Covenant itself. Guidelines issued by the Committee have made it clear that what is required is not a Report that tells the Committee that all human rights are observed, and then simply lists relevant laws. Instead, States are required to answer, in respect of each Covenant right in turn, how the obligations are met, what laws and administrative practices are in place, what judicial decisions relevant to each Covenant right have arrived at, and—above all—what the real problems are. States are encouraged to share with the Committee difficulties they are experiencing in implementing the rights. The Committee has also decided, creatively interpreting what was in the Covenant, that States must then submit five-yearly reports. The manner of examining this Initial Report is different from the examination of the later, periodic reports. In the latter there is more give and take between the State and the Committee—a constructive dialogue, as the Committee likes to term it, on each of the Covenant rights in turn.

How constructive the dialogue really is depends upon a variety of factors. Some countries take the
view that a filibuster is the best approach. And for the State representative to speak without pause is an effective way of ensuring that the Committee members have little chance to probe and to query. This was a technique favoured by the socialist countries in the Cold War, but has not been restricted to them alone. An interesting variation on this approach was employed by the military government of a Latin-American country, (now happily returned to democratic rule), which made its point that all restrictions on human rights were necessitated by the need to cope with the twin evils of terrorism and drugs. The technique employed was for the Government Representative to use the time set aside for the dialogue to read long extracts from tracts on those twin evils.

Other States, deliberately or inadvertently, have sent to the examination of their reports representatives who are not sufficiently qualified to answer the Committee's questions or respond to its comments. The Committee has a firm policy on this. I can remember at least four occasions during my time on the Committee when the Committee has brought the examination to an abrupt halt, asking the State concerned to return at the next session with more qualified representatives and with more positive instructions to engage in a dialogue. Sometimes the technique works, and the resumed examination improves. Sometimes the Committee merely faces a resumed filibuster.

These procedures under Article 40 of the Covenant--that is, the examination of reports--have had a certain continuity. States know what is required of them when they prepare their reports. But the polishing of these settled procedures is also required. The Committee has thus tried to establish a procedure whereby the Committee and the State get to know each other in the examination of the Initial Report; whereby the examination of the Second Periodic Report is immensely detailed; and whereby the third and subsequent Reports would be an updating, focusing on previously perceived problem areas and recent developments. I have to say that this attempted differentiation of the various "rounds" of Reports and examination has not really worked. It was impossible for example, to treat the Soviet Union's Third Report as a "mere updating"--because between the Second and Third Reports had occurred the cataclysmic changes triggered by perestroika and glasnost. Nothing was the same. Other *E.H.R.L.R. 572* countries--Mongolia, Byelorussia--were in a similar position. Indeed, nearly all of Eastern Europe was in a similar situation. Sometimes States who for long years had declined to participate in the procedures required of them--for example, Iran, and Libya--have decided once again to submit reports. The examination of these States could hardly be treated as a routine updating. And sometimes the ratification of the Covenant has been so long awaited, and is so momentous an event, that the examination of the Initial Report is a very substantive exercise. Last March the United States, for the first time in its history, submitted itself for examination by an international body. Clearly the United States Government did not expect a brief "getting to know you" session, as it submitted a vast and admirably prepared Report, and engaged in an extended dialogue over several days.

While establishing a five-yearly cycle for Reports, the Committee has also carefully retained the right to “call in” special reports in between the regular cycle. A careful balance has to be struck. One of the strengths of the Human Rights Committee is that it is not just another UN political body berating a limited number of “targeted” States. It prides itself that it deals with each State party routinely. In turn, States know that they are called in simply because it is their turn. So in any given session one might have examinations of Libya and Liechtenstein, of Romania and Costa Rica, of Equatorial Africa and of New Zealand. Accordingly, everyone is prepared to participate and to turn up. At the same time, there have occurred such horrific events that it would be inappropriate for the Committee simply to wait for however many years until the next Report was due. So, in exceptional cases, “special calls” have supplemented the regular cycle. And often, in these “special calls”, the Committee has asked for truncated reports, addressing the perceived critical issues. In Burundi, for example, the Committee did not want to know so much about freedom of speech, or imprisonment for debt--it wanted to know about the right to life, about minority rights, about participation in public life, about security of the person. During my time on the Committee these “special reports” were asked of--and received from--Burundi, Rwanda, Haiti, Bosnia, Croatia and Serbia-Montenegro and Iraq (though the last was really an insistence than an overdue report now be made).

The Security Council has in recent times shown some fitful interest in establishing a link between human rights violations and breaches of the peace--a finding of the latter would open the possibility to sanctions of various sorts. The Committee was asked to consider whether, if in examination it found truly major human rights violations, it would want to determine them threats to the peace and report them to the Security Council. The Committee, rightly, has declined to do so. In the first place, the Committee is not a UN organ--it is an independent treaty body. Secondly, it has no authority to find threats to international peace. And thirdly, its findings are in the public domain, and the Security
Council has merely to use them.

When I joined the Committee, the vestiges of the Cold War still governed what happened at the end of a session. Article 40(4) provides that, after studying a Report submitted by a State Party, it should submit "its reports, and such general comments as it may consider appropriate, to the States Parties". The East European members insisted that this meant generalised comments, about all States, submitted to all States. The West European members insisted that members should offer their comments to each State, specifically, that was having its Report examined. Thus, when I came to the Committee in 1984, the form was, at the end of an examination, for each West European member to offer his overall comment on how he had found things in that country. In order to make the point that this had nothing to do with attacking socialist countries, the Western members would also vigorously offer the same critical observations to Western countries appearing before them. As the Eastern European members' insistence that specific criticisms could not be made seemed to disappear when Western States were being examined, these States were entitled to think that they were under double the criticism of any other States.

The new generation of East European colleagues simply wanted to know what the Committee's practices were, and to join in them. The new Hungarian member and the new Soviet member immediately also offered their concluding observations. In the last few years the tradition has been established that every single member offers his or her views at the end of an examination. This achievement of a standard Committee practice has, of course, eaten into the time available for the dialogue itself. But it remains important for two reasons. First, it shows the State under examination that criticism upon a certain point cannot be discounted as coming from a certain geographic quarter. It comes from the Committee as a whole. It was important, for example, for the government of General Pinochet to hear that the arrangements for selecting the members of the Supreme Court, after the promised return to democracy, was not satisfactory--not to the South American members, not to those from Japan, nor Jordan, nor Kenya, nor Sweden, nor France nor to the United Kingdom. The observations of individual members are also used as the basis for the final observations of the Committee itself. These Committee observations appear in stylised form, noting what difficulties a State may have faced during the period under review (perhaps famine, or a civil war), what improvements there may have been in human rights observation, what shortcomings remain in compliance with the Covenant; and they offer specific suggestions as to how these shortcomings may be dealt with. They are made available at the end of each session, first to the State concerned and then to the general public.

Regional instruments

The Covenant, an instrument of universal application, exists side by side with important regional instruments, all directed to the effective guarantee of human rights.

What is the relationship of the Covenant to the great regional instruments, in particular the Inter-American Convention on Human Rights and the European Convention on Human Rights? Very many States parties to the International Covenant on Civil and Political Rights are also parties to one or other of these instruments. By and large this has been unproblematic, but some points have arisen that have a certain interest.

The texts of the two instruments do have a great deal in common--but they are not identical. The Covenant has a larger list of rights than has the European Convention that may not be derogated from (that is, suspended) even in times of national emergency. The Covenant also contains some rights that do not figure in the European Convention at all. Among these are minority rights, rights of aliens, rights relating to the family and the child. Their concern is with subject-matter of the greatest contemporary importance. Further--and contrary to popular misconception--some of the rights that appear in both are articulated in considerably more detail in the Covenant. The right to fair trial is one such.

It cannot reasonably be said, therefore, that a State which is a party to the European Convention and allows individuals to bring claims under it to the Commission and Court, has thereby no need to allow the right of individual application under the Covenant, as all is fully covered by the right of recourse to Strasbourg. It manifestly is not.

In contrast to the position taken by the United Kingdom, the great majority of the European countries which are party to the European Convention do in fact also allow a right of individual application to the
Committee on Human Rights under the Optional Protocol to the Covenant. Several of the Western European States have entered a reservation to the Optional Protocol by which a case may not go to the Committee on Human Rights if it has already been before the European Commission or Court. This is clearly reasonable, precluding the Committee from acting, in effect, as an appeal from the European Commission or Court. But what does it mean for a case to have “been before” these organs? Several cases have raised this issue. The Committee has held that a case which was dismissed without hearings before the European Commission, as “manifestly ill-founded”, had never been before the organs of the European Court, and thus was not admissible before the Committee. However, a case that had been found, in a reasoned decision, to be admissible by the Commission, was held to have already been before that body and could not be received by the Committee.

There is no need for a special reservation of position against the possibility of a case being simultaneously before the European Commission or Court, (or the Inter-American Commission or Court) and the Committee on Human Rights. Each of the treaties specifically precludes the acceptance of jurisdiction of a case if it is currently before another such body. There are active and well established channels of communication between the secretariats of the bodies concerned to ensure that this limitation on jurisdiction is honoured.

These treaties protect many of the same rights--freedom of speech, freedom of religion, freedom from torture, fair trial, security of the person etc. At the same time they are each unique and operate against different backgrounds. The Committee—which all said and done always contains a certain number of European members—is invariably well informed as to decisions under the European Convention that bear on the matter in hand. But it is regarded as bad form to invoke European precedents directly in an instrument of potentially universal application. But the sharp-eyed observer can see, on occasion, that a European Convention case has been studied and its approach approved. The *Vuillane* case under the Covenant and the earlier *Engel* case under the European Convention make interesting reading together.

The jurisprudence of the Covenant and of the European Convention are mutually reinforcing. It seems that the language and concept of human rights encourages very similar legal reasoning between those who sit on regional courts and those who sit on universal bodies. What is so different, however, are the areas of the law (even where the rights protected are common to both) that are most developed under each instrument. In the European Convention, for example, there is a wealth of important case law on freedom of expression. The Covenant case law on this topic is very interesting, but less voluminous. The case law under the Covenant has much to say on torture and on a wider range of problems relating to the security of the person than are usually to be found in the treaty of democratic Europe.

Sometimes the weight of the case law in a commonly protected right is to be found in different areas of that right. The right to fair trial is important to both instruments. But the case law under Article 14 of the Covenant and Article 6 of the European Convention emphasises strikingly different areas. Different problems on the ground will mean that different aspects of the law fall to be developed. Some years ago, not long after I joined the Committee, a case came to the Committee that required us to think about whether we wished to follow the lead of the European Court in the way it had begun to read in a right of judicial review to administrative decisions. I remember well that some of the European Members (though not I) urged that it would be utterly unreasonable to impose such a burden upon developing countries. Our Third World colleagues took a different view, urging us to realise that it was in the area of administrative law that so much abuse took place in their countries. In the event, this area of the case law still lies undeveloped--but the possibility has been carefully left open in the *Landry* case.

How much differences does it make that the Covenant is a universal instrument, open to developed and developing countries, democracies and dictatorships alike? Very little, I think. The Committee viewpoint has always been that the civil and political rights are not a matter of economic development but a matter of good faith. Free speech does not cost money. Nor has the Committee ever accepted that it follows from the recognition of different cultures that rights are to be construed in a limited sense in certain countries. The Third World members have taken the lead in insisting that human rights are not a set of imposed western ideas, but are of universal application, speaking to the human condition.

Let me refer once more the European Convention. It is, I suppose, impossible entirely to pass by the vexed question of incorporation. Neither the European Convention nor the Covenant are yet incorporated into English law--that is to say, no legal action may be directly brought upon them in the
English Courts. I will merely limit myself to saying that the importance of non-incorporation seems to me today mainly to lie in the fact that no cause of action can be based on a Convention right, and that still we lack the full benefit of understanding how the European Court itself has interpreted the claimed rights. I have noted with appreciation the efforts of the judiciary in recent years to find Convention rights within the common law wherever possible, and a more recent judicial tendency simply to invoke and to refer to Convention rights, and case law relating to them, notwithstanding non-incorporation. I have noted too that leading counsel, Lord Lester of Herne Hill and others, have also begun to cite the equally unincorporated Covenant and that occasional judicial reference is now made to that instrument also. But it was striking, in a recent examination of newly democratic Hungary, to learn the frequency with which the Constitutional Court cites and relies upon the provisions of the Covenant. A large package of cases was provided to us.

It is assumed that our knowledge of an international instrument depends upon its incorporation. That is true, but only in part. The Convention and Covenant are equally unincorporated but the European Convention is far the better known. Why is this? It *E.H.R.L.R. 576* is, I am convinced, because the United Kingdom accepts no right of individual application under the Covenant, while it does so under the Convention. Judges have a sense that cases before them may finish up in Strasbourg. The Convention becomes, incorporation or not, immensely relevant. It is the double constraints of non-incorporation and no individual application that keeps the Covenant--an instrument to which the United Kingdom is nonetheless a party--in the shadows in the United Kingdom.

**Cost cutting**

The Committee on Human Rights is paid for out of the UN’s regular budget. All UN Members contribute on an assessed scale, by reference to their ability to pay, to the UN budget. Ironically, this therefore means that UN Members who had chosen not to become party to the Covenant are still contributing to the costs of the procedures established under it. The alternative funding method, which has in the past been used for certain other treaty monitoring bodies, has been for their ratifying parties alone to be assessed with the budgetary costs. It goes without saying that States often vote for, and even become party to, instruments that they have no desire to see work effectively. Accordingly, many States parties to these human rights treaties simply refused to pay their assessed contribution, thus effectively ensuring that the monitoring bodies could not meet or carry out their work. Apparently it is regarded as smart practice for a State to proclaim loudly that it is a party to a human rights treaty, and that it submits itself to international monitoring, while ensuring through the purse strings that these monitoring procedures cannot function effectively.

The financing method whereby costs are to be met out of the UN budget is thus preferable, but is not without its own problems. The UN is in constant financial crisis, also through the failure of Members to pay their assessed dues. The United States, which normally pays 25 per cent of the regular budget is now some $1.5 billion in debt. This has occasioned great financial cutbacks--and indeed, these cutbacks have been demanded by the greatest debtors. These cuts are invariably “across the board” with no distinction being made between the less and more effective programmes. Although the Committee on Human Rights is not an organ of the United Nations, but rather is a treaty body, it cannot escape these across-the-board cuts. During my time on the Committee, we have once lost a total session, and have faced constant difficulties in obtaining sufficient personnel to service the work of the Committee. The staff are capable and very hard working, but have been insufficient in number. Until very recently they did not even have word processors--each revision in the preparation of a case having to be retyped from scratch. And the translation services, on which the steady progress of work so much depends, is frequently unable to cope. In the past the Committee succeeded in warding off attempts to end the publication of its examination of States. For the details and results of the Committee’s examination to be unknown is a considerable comfort to the worst violators. This year the Committee has been told that its full Annual Report (which covers both the examination of reports and the case law) cannot be published because of financial considerations.

As well as suffering with the rest, the Committee has tried to respond positively to the financial crisis by seeing if its own work methods could usefully be improved. There was more work--State Reports to be examined, cases to be dealt with--than the Committee could deal with in the time allotted to it. The answer seemed to lie in *E.H.R.L.R. 577* delegating some of the work to a Working Group, and in using the time between sessions as effectively as possible. It is against that background that decisions on admissibility are now taken in the Working Group. When a case is brought to the Committee under the Optional Protocol, the Working Group (which consists of five members out of the 18) meets ahead of the regular session to decide whether the case may proceed to the merits. It
will need to be satisfied, after submissions by the individual claimant and the State concerned, that the claim concerns a right protected under the Covenant and that all local remedies had been exhausted. Its decision that a case may proceed to the merits is final, but must be unanimous. Any recommendation, by one or more of the Working Group, that a case be found inadmissible, goes before the Plenary at the ensuing session. The Plenary Committee thus deals with proposals to reject applications as inadmissible, and with the cases that have reached the merits stage.

The Committee also sought a way to get new cases started between sessions. I was appointed as the first Special Rapporteur for New Cases, whose task it is, throughout the year, to assess new applications to see whether they are of a character so that contact can be made with both parties, to secure any further information, and to set time-limits for them to address any admissibility issues. But if a case is clearly not a case for the Covenant, or if there is already clear negative case law that covers the application, the Special Rapporteur will, after reporting to the Plenary, reject the case at the very outset.

Jamaica

When I joined the Human Rights Committee, neither I nor my fellow members ever envisaged that we would be put in a position where our decisions could mean life or death for a particular individual. Article 6 of the Covenant, while strictly limiting the application of the death penalty, does not prohibit it in terms. Further, we were not a court of final appeal, so it was hard to see how death penalty issues could come to us when we sat on Optional Protocol cases.

But come they have. Prisoners on death row in certain Caribbean countries, including Trinidad and Tobago, but most notably in Jamaica, have learned that the Committee will ask, under Rule 86, for impending execution not to be carried out before it has the opportunity to examine their case. Naturally, that makes the Covenant and Optional Protocol a popular procedure with death row prisoners. The claims they bring are various, but most of them allege their innocence and also allege unfair trial.

The Committee will not address their innocence or otherwise—in its concerns can only be with compliance with the Covenant. The Covenant does, of course, have detailed requirements for fair trial. It will be seen that it is a very, very narrow line that divides appeal from a national trial decision (which is not the Committee's role) with assessment of compliance with the Covenant right of fair trial (which is). The sorts of complaints the Committee regularly receives in those “death row” cases relate to adequacy of legal representation; the availability of legal aid; alleged bias by the judge; alleged unfairness in the summing up; the length of time in producing a written judgment; and so forth. You will see how difficult it is to map out that narrow line between us and the final court of appeal in the national jurisdiction concerned.

*E.H.R.L.R. 578* The Committee has now had so many of these types of cases that it has been able to establish certain key points in its jurisprudence, which are now regularly applied. The first is that exactly because it is not a final criminal court of appeal, issues of evidence and the handling of the trial are in principle for the local authorities, unless it is manifestly clear from the materials put before it that the Covenant right of fair trial has not been complied with. Nor is an applicant likely to succeed when he claims (as is often the case) that his State appointed lawyer failed to call the witnesses he desired. The Committee accepts that where a State appointed lawyer is provided, he must be of reasonable competence. But it has no way of knowing whether the failure to call certain witnesses was negligence, or, rather sound judgment of counsel on behalf of the client.

But other elements have fallen the Committee's side of the demarcation line and have led to an interesting jurisprudence. Faced with cases which have proceeded in the absence of representation of the accused, the Committee has found that the right to legal representation is axiomatic in a death penalty trial. The Committee has also found that, while local remedies must indeed be exhausted before a case can be brought to the Committee, the remedies must be available and effective. Thus, although in particular circumstances reference to the Jamaica Constitutional Court might afford a remedy, the Committee has found in many cases that, because there is no legal aid for that recourse, it is not an “available” remedy within the meaning of the Covenant.

The question of “effective remedy” has led to some interesting parallel actions and interchanges between the Committee and the Privy Council. The Privy Council is, of course, *inter alia*, the final court of appeal for Jamaica. In one case, *Pratt & Morgan*, the applicants' claimed that some 45 months (four years) after their appeal against conviction had been dismissed in Jamaica, no written
The judgment had been given. The Judicial Committee, when the case first came to it, found the delay extremely regrettable but no violation of the right to fair trial.

The Committee, to which *Pratt & Morgan* also came, found otherwise. The Privy Council was of course addressing Jamaican law, and the Committee the law of the Covenant. But there was an undoubted difference of approach. The Committee has held, in the *Henry* case, that if domestic law provides for various instances of appeal, “the convicted person is entitled to have, within a reasonable time, access to written judgments, duly revised, for the instances of appeal”.

The *Pratt & Morgan* case returned, on different issues, to the Privy Council. The focus was no longer on fair trial, but on the so-called “death row phenomenon” itself. In a judgment that attracted wide attention, Lord Griffiths, for the Judicial Committee, observed that “Appellate proceedings that echo down the years are not compatible with capital punishment”. The judgment stated that “a State that wishes to retain capital punishment must accept the responsibility of ensuring that execution follows as swiftly as practicable after sentence, allotting a reasonable time for appeal and consideration of reprieve.” The Judicial Committee then concluded that “in any case in which execution is to take place more than five years after sentence, there will be strong grounds for believing that the delay is such as to constitute ‘inhumane and degrading punishment or unfair treatment’.”

The Committee had, in a series of cases, found that while being on death row undoubtedly placed tremendous strain on condemned prisoners, the phenomenon *E.H.R.L.R. 579* would only constitute “inhuman and degrading treatment” in particular circumstances. Further, it had always set its face against fixing any set passing of time that would constitute a violation of Article 3 of the Covenant.

After the judgment of the Privy Council, the Human Rights Committee carefully reviewed its death-row jurisprudence, including this point. It decided, after lengthy consideration, not to move to the five year indicator established by the Privy Council, but to continue to treat the matter on a case-by-case basis. However, the Committee is mindful of the fact that the five years must include, in many cases, recourse not only to the local courts and Judicial Committee itself, but recourse under the Optional Protocol. It is thus itself part of the Judicial Committee’s five years. This responsibility bears heavily on it, when it is so constrained in its resources and the time granted to it to carry out its responsibilities. The reality is that the Caribbean death-row cases have come to assume a priority in the case law of the Committee, though there are many other urgent and important cases awaiting the Committee’s attention.

**Succession**

The ending of the Cold War, so long desired, has of course brought its own tragedies. High among these has been the suffering occasioned by the turmoil of disintegrating States.

The disintegration of the former Yugoslavia presented the Committee with certain very difficult questions. The Covenant had been ratified by Yugoslavia. Although Serbia-Montenegro claimed to be the legal successor in respect of Federal Yugoslavia, that claim had been rejected at the United Nations. What the United Nations had decided was both clear and confused. The legal sense was far from clear. The General Assembly, by resolution, determined that Serbia-Montenegro was not the legal successor to the Socialist Federal Republic of Yugoslavia, and was to be suspended from the General Assembly. It could apply for membership *de novo* as a new country. That much was clear. What was not clear was that Serbia-Montenegro was at the same time allowed to continue to sit in all other bodies, and does so to this day, behind the nameplate of the Socialist Federal Republic of Yugoslavia. And of course it has not applied for membership *de novo* as Serbia-Montenegro.

What were the implications for the protection of human rights under the Covenant? The Committee, though an independent body, clearly wished to do nothing inconsistent with the General Assembly’s finding that Serbia-Montenegro is not the legal successor to the former Yugoslavia. At the same time, it was unthinkable that the peoples in that unhappy country should be unprotected by the Covenant, and abandoned.

The question of State succession to treaties is far from easy. Broadly speaking—and without any of the necessary qualifications—it could be said that States do not normally succeed to the treaties of their predecessors, save in respect of treaties of a special character, including notably treaties relating to land and boundaries.

The Human Rights Committee, in a series of careful policy statements, has found that human rights
treaties too are “treaties of a special character”, and that, in a disintegrating state, new States that emerge within its borders assume the obligations of the Covenant within their own territories. Accordingly, and explicitly on this basis, the Committee invited (under the “Special Report procedure”) the Governments of Bosnia-Herzegovina, Croatia and Serbia-Montenegro, to present short reports and attend for examination thereon. Even though this call came in the depths of hostilities, each of those governments prepared a report and came to Geneva for the requested dialogue. It may be imagined that this attracted a great deal of public attention and a heavy diplomatic presence, among others, in the audience. As usual, the Committee supplied its own Observations on each country. Serbia-Montenegro, of course, continued to view itself as the successor to Yugoslavia; and Croatia acceded to the Covenant between receiving the invitation and actually coming to Geneva. Nonetheless, the Committee Chairman and various Committee members took the opportunity to make clear the legal basis of the presence of those countries, and none of them refuted it.

The States parties to the Covenant hold a biennial meeting, mostly for purposes of election of the Committee. It was with a certain astonishment that the Committee last year learned that the States parties had refused to allow Serbia-Montenegro to participate in the meeting on the ground that it was not the legal successor in all regards to the Socialist Federal Republic of Yugoslavia. This was done without any consultation with the Chairman of the Human Rights Committee.

The outcome has been that Serbia-Montenegro informed the Committee that, although its Fourth Periodic Report was under preparation and it had regarded the forthcoming dialogue with the Committee as valuable, it would not now present its report or submit itself for scrutiny. It is hard to think what purpose other States think they have achieved, when they could have once again affirmed that Serbia-Montenegro is not the overall successor of the Federal Republic but that it still is liable for human rights on its present territory. The Chairman of the Committee on Human Rights is seeking to retrieve this situation.

The approach of the Human Rights Committee to this question of State succession has been acted upon elsewhere also. It has met with the approval of the Chairpersons of the various Human Rights Monitoring Bodies and with the Commission on Human Rights.

Conclusions

The Committee, in its 20 years of existence, has, I believe, achieved much, managing the necessary continuity with a constant review of procedures and the taking of necessary opportunities. The tone of impartiality, courtesy, and friendly but concerned legal examinations was set by those who came before me. Sir Vincent Evans, my predecessor, was at the heart of establishing the status and reputation of the Committee. The Committee in its present membership is very strong indeed—perhaps the strongest ever. We may expect vigorous action and new initiatives. My successor, Lord Colville, will have much to do.

It would be tempting to end on this upbeat note; but I do not believe it would be the whole story.

The Committee remains under tremendous pressures so far as its resources are concerned. Further, there are tendencies developing that concern me greatly. A few years ago States with dubious human rights records were genuinely concerned as their turn approached to appear before the Committee. The many anxious inquiries to the Secretariat at the Human Rights Centre, the corridor conversations with Committee members, all testified as to that. I think they have now learned how to “play the game”. They, and other countries, seem mainly concerned now with “treading water” during the dialogue, simply with “getting through” the two or three days of examination, so that these matters can be shelved again for another few years.

As for the liberal democracies, their approach has often been that the Covenant is a splendid instrument—splendid, that is, for the Third World countries and Eastern Europe, where human rights are in urgent need of attention. Although they submit their reports and attend for public examination, the impression is often given that the Covenant is not really for them, because the observance of human rights is fully guaranteed in their countries.

It is not, of course. While violations are manifestly more severe in certain places than in others, the Committee has yet to find a country fully conforming with its human rights obligations. A handful of countries—one could cite Finland as an example—treat every contact with the Committee (whether in Article 40 examinations, or in the case law) as an opportunity to make sure that everything is as it
should be, that things are put right. But that welcome attitude is not widespread. “They do not understand our culture”. This is an explanation so often offered in Zaire or Iran to explain why they are not prepared to apply universal standards of human rights. It is a sad thing when one now hears it announced here in the United Kingdom that there is no intention to act on any of the Committee’s recommendations, because “they do not understand our culture”. What is this culture, that cannot be understood by American, French, German and Italian members of the Committee, not to mention Commonwealth Supreme Court Justices?

Moreover, it may be that the Committee is less fashionable today than it has been for these past 20 years. Effective treaty bodies seem of less interest today to those who plan the UN’s human rights programmes and allocate its resources. The flavour of the moment is mega-conferences on human rights--whether in Vienna, or Stockholm or Beijing. They do indeed raise the public profile of human rights--but they also allow States to avoid all legal engagement. Aspiration is all.

Is it therefore all still worthwhile? I think it is, in spite of this rather strong feeling of anxiety that I have. Anyone involved in human rights believes that any incremental improvements that can be made are worthwhile. And anyone who has ever served on the Human Rights Committee will also be fortified by some very special memories.

Let me share some of those that have made me proud to have been a member. There was the remarkable day, before the Cold War was finally over, when we heard with astonishment an East European member of the Committee telling the Vietnamese representatives that it was not compatible with the Covenant’s right of free-expression for their Constitution to guarantee only politically acceptable speech. That member was Rein Mullerson, who is today Professor at King’s College and on the Executive Council of the British Institute of Human rights. There was the moment when the new member from Germany, half-turning to his Israeli colleague, also new, told a Latin American country that wanted to amnesty all past acts of torture, that he was in a position to say that a country that would not face its past, would never have a future. And there was the response of the Costa Rican President of the Human Rights Committee to the query of one member as to whether, because he had as a child been in Auschwitz, he should not recuse himself from a free speech case relating to holocaust denial. But then, said *E.H.R.L.R. 582* the Chairman, we should all have to recuse ourselves, because the holocaust is a personal tragedy for every one of us.

The work continues to be important and I can only conclude by expressing my profound appreciation to my former colleagues on the Committee for all that we have shared together, to those in government who proposed that I might serve on the Committee, and to the LSE, in whose employment I was, for allowing it to happen.

E.H.R.L.R. 1996, 6, 570-582