

Manfred Nowak. *UN Covenant on Civil and Political Rights. CCPR Commentary* (2nd rev. ed.). Kehl am Rhein: Engel, 2005. Pp. xxxix + 1277. ISBN: 3-88357-134-2.

Wouter Vandenhoe. *The Procedures before the UN Human Rights Treaty Bodies. Divergence or Convergence?* Antwerp, Oxford: Intersentia, 2004. Pp. xx + 331. ISBN: 90-5095-398-0.

Wouter Vandenhoe. *Non-discrimination and Equality in the View of the UN Human Rights Treaty Bodies.* Antwerp, Oxford: Intersentia, 2005. Pp. xiii + 293. ISBN: 90-5095-500-2.

The entire United Nations system for the protection of human rights is undergoing major changes; this holds true for both the Charter-based supervisory machinery and the treaty-based machinery. The reform of the Charter-based machinery has led quite rapidly to concrete results. The heavily criticized Commission on Human Rights has been replaced by a new Human Rights Council, which is to be more effective and efficient than its predecessor. At the same time, though receiving much less attention from the press, the treaty-based system has been subject to calls for substantial reform since at least the 1980s, leading to many ad hoc improvements in the functioning of the various committees.

Such reforms make in-depth studies of the work of the treaty bodies all the more indispensable. Of all the treaty bodies, the Human Rights Committee has received the greatest share of scholarly attention. It is the body with the longest history of examining individual complaints and, as the Optional Protocol to the Covenant on Civil and Political Rights has been ratified by 105 states parties, it thus has the largest collection of case-law. Further, the Human Rights Committee has often taken the lead in innovative working methods. For example, the Optional Protocol to the Covenant on Civil and Political Rights does not provide for a mechanism for follow-up of the

Committee's views. The Human Rights Committee was the first to develop a specific mechanism, which has now been adopted by other committees. States have accepted the competence of the treaty bodies to establish such a procedure, as is evidenced by the fact that the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women contains a provision codifying this competence.⁷

Compared with the European Convention on Human Rights, however, the amount of academic work on the UN treaty bodies still lags behind. This is probably due to the fact that many European scholars long considered the treaty bodies as less relevant than the European Court because of the non-binding nature of the outcome of their work. In the past decade, nonetheless, a slowly rising number of publications on the various committees and their work have appeared. The books currently under review address the treaty bodies from different perspectives. Nowak focuses exclusively on the Covenant on Civil and Political Rights and the Human Rights Committee, while Wouter Vandenhoe focuses on the procedures that treaty bodies have in common and the issue of non-discrimination, which cross-cuts all the human rights treaties. The latter two books constitute part of a research project undertaken by the author to study the convergence of procedural and substantive law.

Manfred Nowak has studied the Human Rights Committee's work from its beginning, and has published articles on its work in various journals since the early 1980s. He is currently the United Nations Special Rapporteur on Torture. The first edition of his monumental CCPR Commentary was published in 1993 and is probably the most widely cited study of the Committee's work. In light of the increasing number of communications examined by the Committee and the changes in the working methods, the publication of a second edition became necessary. Nowak chose to completely revise the first edition, rather than simply adding a supplement.

The completeness of the work and its thorough analysis make it unique. On an

article-by-article basis it provides insights into all the provisions of the Covenant as well as the (first) Optional Protocol,¹ including their background, by describing the drafting history and giving an overview of all relevant case-law. The article-by-article structure of Nowak's book has some consequences which may not be ideal for the new student of the Committee. Because Nowak follows the Covenant's structure (the description of states' substantive obligations precedes the presentation of the enforcement mechanisms), he refers to Committee views and concluding observations from the start, without having explained what they are. Those who use the book thus need to have a basic understanding (although not expert knowledge) of the Committee, its competences and the outcome of its work. It is not the type of book that one begins to read in order to simply get a quick overview of the Covenant and the Committee. Anyone who is somewhat familiar with the Covenant and the functioning of treaty bodies, however, will greatly benefit from it.

Another implication of following the Covenant itself is the inclusion of each and every article, up to and including the final provisions, even though many will find these of significantly less interest. Articles that are closely related, such as Articles 2(1), 3 and 26 (all on the prohibition of discrimination), are dealt with in separate chapters, which leads to some cumbersome repetition of case-law. On the other hand, this structure allows each section of the book to be used in a stand-alone manner. It could have implied that relevant issues on which there is no provision in the Covenant remained unaddressed. That would, of course, be undesirable. Nowak has chosen a pragmatic solution. Important, and heavily debated, questions concerning reservations and criticisms of the Covenant are addressed in the introduction of the book, but are not the subject of separate chapters.

The occasional references in Nowak's work to other human rights instruments is helpful, particularly because there are overlaps between rights guaranteed in the CCPR and rights in other human rights treaties. Nowak then explains the Committee's position, and shows where the interpretation of related treaty provisions concurs or differs. For example, the section on Article 7, which contains the prohibition of torture and other forms of cruel, inhuman or degrading treatment, includes a description of the development of the Committee's position on corporal punishment. The Covenant does not refer explicitly to this type of punishment, and the question therefore arises whether it is covered by 'cruel, inhuman or degrading treatment'. Nowak's explanation contains a short excursus to the Convention Against Torture, where he describes how, at the instigation of Islamic countries, the Convention Against Torture (adopted subsequently to the CCPR) excludes 'lawful sanctions' from the definition of torture (Article 1). The Human Rights Committee has taken a very clear stand, and concluded that corporal punishment constitutes a violation of Article 7. Under the individual complaints procedure, the Committee Against Torture has not yet dealt with corporal punishment; under the reporting procedure it has only on a few occasions addressed this issue, and stated that it constitutes a violation of the Convention,² without, however, motivating how this relates to the 'lawful sanctions' clause in Article 1 of the Convention. Analyses of such transversal questions are indispensable in examining the implications of the establishment of a unified treaty body, although it was not Nowak's aim to carry out a thorough study of all related and overlapping provisions. A well-written and clearly structured work, his book will be an excellent reference for those who wish (and dare) to undertake such a project, and wish to gain insights into the Human Rights Committee's work.

Vandenhoe has taken up this challenge. His book, *Non-discrimination and Equality in*

¹ There is no commentary to the Second Optional Protocol, which deals with the abolition of the death penalty; it is briefly addressed in the section on Article 6 (right to life).

² CAT Concluding Observations on Jordan, in UN Doc. A/50/44, at para. 169.

the View of the UN Human Rights Treaty Bodies, is a study of the interpretation of a sub-set of relevant norms by the treaty bodies in a thoroughly cross-cutting fashion.³ Two of the Conventions studied in his book are aimed exclusively at the elimination of discrimination. Comparing the work of CERD and CEDAW with the work of treaty bodies with a general mandate (HRC, CESCR and CRC) is useful and necessary. Many fear – especially people concerned with gender issues – that the establishment of a unified treaty body will lead to a loss of the specific expertise that is present in the committees dealing with non-discrimination. The Vienna Declaration adopted at the conclusion of the World Conference on Human Rights (1993) called on all treaty bodies to apply a gender perspective in their work. So far, there is some evidence that treaty bodies have mainstreamed women's issues to a certain extent into their work, although there is still much room for improvement and there is certainly no basis upon which to assume that CEDAW's work has become unnecessary.

Discrimination on the ground of sex is of course not the only ground for discrimination covered by the treaties. The general human rights treaties include many more grounds on which discrimination is prohibited, as well as a 'catch-all' 'on the ground of other status' clause, which leaves ample room for interpretation. Unfortunately, however, the author does not provide a thorough analysis and comparison of the various committees' interpretations. Vandenhoe's approach has been to collect relevant fragments from concluding observations, general comments and views, and barely goes further than mentioning which grounds have occasionally been qualified as a ground on which discrimination has taken place. For example, he concludes that 'age' has been referred to as a prohibited ground of discrimination, without, however, comparing the specific views of the committees in instances where distinctions on the ground of age have been considered discrimi-

natory. Such a conclusion provides only limited information, apart from the very general assertion that under certain circumstances there can be a case of age discrimination (but distinctions on the ground of age may also be justified in some cases).⁴ In my view, this is not just a nuance that would be too detailed to include in such a study. The concluding sections in the book do not explain to the reader when or why a distinction on a specific ground is considered discriminatory, and neither is there an explanation in the sections devoted to each of the treaty bodies and their work. One would think this was quite a severe shortfall for a book which aimed to cover discrimination systematically. The book goes little further than providing an inventory of what has been considered as prohibited grounds of discrimination by each of the committees. The book's title is therefore a little misleading, and the reader will search in vain for an analysis of differences in interpretation between the committees.

Indeed, more generally, this work fails to impress both at the level of analysis and comparison. This is also true for the second part of the book, in which Vandenhoe, author of several publications on economic, social and cultural rights, provides an overview of the various types of obligations imposed on states parties on the basis of the typology of obligations commonly used for analysing obligations under the CESCR, i.e., the obligations to respect, protect and fulfil. The analysis could also have been more thorough: it really only includes a list of examples grouped under headings.

This study fails to provide insights into the current state of affairs on non-discrimination and equality, as one might have expected, simply because the author does not go into sufficient detail. Quoting CEDAW, for instance, in stating that the full protection of penal law should be ensured for women on equal terms with men is not at all informative as regards which penal provisions CEDAW considers to

³ Vandenhoe examines the work of all treaty bodies, with the exception of the Committee Against Torture and the Committee on Migrant Workers.

⁴ See HRC Comm. No. 983/2001, *Love et al. v. Australia*.

be discriminatory. Similarly, under the obligation to respect, reference is made to CERD recommending that states may not discriminate in purpose or effect in their asylum procedures. But what constitutes discrimination in such cases? The book does not give answers to these questions, even though it asks them, at least implicitly.

At the time that Vandenhole completed his study, the idea of establishing a unified treaty body had been raised, but it was not a very popular idea, especially not among treaty body experts. It is therefore quite understandable, although regrettable, that Vandenhole has not taken this option into account in his conclusions, which deal only with the option of submitting a 'common core document', an expanded version of the current core document that states parties submit under all treaties to which they are a party.

The author also recommends that racial and sex discrimination be reserved to CERD and CEDAW, respectively, and that the HRC might focus on discrimination on the ground of political opinion and religion, and the CESCR on discrimination on the ground of social status. Discrimination against children born out of wedlock and discrimination on the ground of disability could be 'the exclusive realm of the CRC Committee'.⁵ Suggesting that specific grounds of discrimination remain within the 'reserved domain' of a limited number of treaty bodies is a major step backwards from the achievements of the World Conference and the efforts undertaken since then by the treaty bodies to apply a gender perspective in their work. All treaty bodies have a role to play in the elimination of all forms of discrimination in the enjoyment of all human rights falling within their mandate. Vandenhole has not examined whether and to what extent multiple attention to issues such as sex and race discrimination is detrimental to the protection of individuals (if indeed that could be the case), nor to what extent this really constitutes a problem for the functioning of the monitoring

system. His suggestion is not only unacceptable from a principled point of view, it is also impractical. While the number of ratifications of CEDAW outnumbers the ratifications of both CCPR and CESCR, not all states that are party to the CESCR and the CCPR are a party to CEDAW (e.g., Iran). Moreover, many states parties have made far-reaching reservations to CEDAW, but not to comparable provisions in CCPR and CESCR, and not all provisions in the CCPR and CESCR are included in CEDAW. Reserving the consideration of discrimination with respect to only a limited number of human rights to the HRC and CESCR Committee would not do justice to the indivisibility and interdependence of all human rights.

The HRC and CESCR Committee should therefore continue to play a role in monitoring the implementation of provisions on non-discrimination and equal treatment included in their respective treaties. It could be beneficial to the credibility of the system as a whole if the treaty bodies were to hold consultations on the application of comparable and overlapping provisions so as to ensure that their interpretations are consistent. A concrete outcome of such consultations could be the adoption of a joint general comment on a subject of relevance to all treaty bodies.

The second volume by Vandenhole under review, *The Procedures before the UN Human Rights Treaty Bodies. Divergence or Convergence?*, deals with the supervisory procedures, using a comparative method. The approach taken is quite similar to that of his book on non-discrimination and equality. All relevant aspects of each of the monitoring procedures serve as headings for sections, and the author examines the functioning and practice of each of the committees. In this study, the conclusions are more elaborate than in the volume on discrimination. Each part of the book ends with a conclusion, and overall conclusions are presented at the end of the book. Clearly, comparing procedures has been much easier for this author than comparing the application of substantive provisions. Yet, in this study too, the comparison is superficial. The sections concluding each part sum up the steps taken by the treaty bodies, but do not go into any degree of

⁵ Vandenhole, *Non-discrimination and Equality in the View of the UN Human Rights Treaty Bodies* (2005), at 293.

detail. For example, individual complaints are admissible only when all available and effective domestic remedies have been exhausted. But the reader will not find a comparison at the level of interpretation of this requirement, the conclusion merely states that it is applied by all treaty bodies. In my view, this is not a comparison, but rather a summary. Moreover, this is not remedied in the general conclusions, where the findings are summarized even further.

Each of the books under review serves a purpose in the current debate on the reform of the treaty-based system of monitoring of human rights treaties. A proper account of the achievements of each of the treaty bodies requires studies as detailed as

Nowak's CCPR Commentary. Vandenhoe has undertaken the difficult task of comparing the procedures of the various organs and the positions they have taken with respect to equality and non-discrimination, issues which cross-cut all the human rights treaties. The merit of his work lies mainly in the presentation of an inventory of existing interpretations. Those involved in or following the reform discussions need to be fully informed on the consequences of the various options. All three books contribute to this in their own way, but there is much room for further studies.

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doi: 10.1093/ejil/chm010