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## **Defining Civil and Political Rights: the Jurisprudence of the United Nations Human Rights Committee, 2nd Edition** **By Alex Conte and Richard Burchill**

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The expansion of the United Nations human rights system is a much-followed phenomenon by both human rights practitioners and State governments as the implications of an increasingly global regime affect aspects of State sovereignty in the context of domestic oversight of these rights. During the past forty years resort to human rights treaty bodies for review of alleged State violations of individuals' rights under the various UN human rights treaties has steadily increased. No treaty body has played a larger role in the development of the international regime than the United Nations Human Rights Committee.

*Defining Civil and Political Rights: The Jurisprudence of the United Nations Human Rights Committee, 2<sup>nd</sup> Edition*, by Alex Conte and Richard Burchill, is an essential tome for any human rights practitioner on both the international and domestic level. Breaking down each treaty-ensured right addressed by the Human Rights Committee, the authors manage to track the Committee's jurisprudence without presupposing any of its future opinions. The rights-based chapters also make it an effective learning tool for students of advanced human rights study.

As indicated by the title, the book focuses on the evolution of the United Nations Human Rights Committee (HRC or the Committee) and the development of its jurisprudence as the individual complaints review mechanism for violations of the International Covenant on Civil and Political Rights (ICCPR or the Covenant). A brief introduction to the history of both the UN human rights

system and the specific institution of the HRC sets the opening stage for what proves to be a decidedly thorough examination of civil and political rights and illuminates what these rights have come to mean in the domestic context for State parties to the ICCPR.

Limiting the narrative to the “views” and General Comments, the authors explore the meaning of the individual rights and freedoms set forth in Parts I and II of the ICCPR. One of the key, reader-friendly aspects of this work is that while acknowledging that HRC decisions are very much done on a case-by-case basis, it manages to preoccupy itself less with the State-specific circumstances of the communications, instead focusing on the development of each right enshrined in the ICCPR even in light of the fact that the HRC has repeatedly stressed the importance of evaluating each communication on its own facts.

For anyone embarking on advanced study of international human rights law and, more specifically, the treaty body system, Chapters 1 and 2 provide both a concise and illustrative history of the HRC as a treaty obligation review mechanism and of its procedural *modus operandi*. Reflecting on the jurisprudence of the Committee, Conte, in Chapter 2, examines the elasticity of certain procedural restrictions, such as exhaustion of remedies, and notes the struggle of enforcement which almost always follows an issuance of final views. The elastic aspect of HRC procedures appears to have often been somewhat of an Achilles heel in the Committee’s campaign for legitimacy and the book does not attempt to excuse the Committee’s history on this topic. The chapter also briefly addresses other non-admissibility related procedural nuances of the Committee including the less-than-perfectly complied with “follow-up” procedures instituted in the early 1990s.

Inherent in the nature of human rights law is a “level of flexibility” which Conte appropriately notes at the outset of Chapter 3, “Limitations to and Derogations from Covenant Rights”. He acknowledges that this flexibility is necessary when balancing conflicting rights in the pursuit of democratic objectives, especially in the context of limiting non-derogable rights under Article 4. Using the principles of margin of appreciation, limitations prescribed by law, necessity and proportionality, and non-discrimination, which are recognised on various levels by both the European Court of Human Rights and the HRC, Conte illustrates the delicate balance between protecting non-derogable rights and recognising certain limitations on those rights. Furthermore, he explores the plain language of the articles and demonstrates the flexibility intrinsic in the use of such words as ‘fair’, ‘reasonable’ and ‘arbitrary’ which is necessary for States when they are interpreting Covenant rights. This examination is useful to anyone looking for guidance on the nuanced relationship between protection of individual rights and the needs of States and is also applicable when analysing other human rights convention obligations.

Chapter 4 initiates the right-specific discussion with “Democratic and Civil Rights”. Though the entire ICCPR technically deals with rights falling into these categories, the chapter focuses on nine provisions encompassing the freedoms of movement, expression, thought, conscience and religion, as well as recognition before the law and electoral rights, among several others. Navigating through a healthy number of HRC cases, Conte addresses each of the associated rights including several, such as non-discrimination and self-determination, which are addressed more thoroughly in later chapters.

“Security of the Person”, the focal point of Chapter 5, presents an in-depth review of those rights embodied in ICCPR Articles 6 through 10. These include several absolute rights, such as freedom from torture or degrading treatment or punishment and the prohibition against slavery, in addition to the right to life, freedom from medical treatment or experimentation without consent and liberty rights. Conte conveys the Committee’s long-held mantra that deprivation of liberty must be pursuant to the law and notes the progression of the Committee’s aggressiveness in this area which has obviously tracked increasingly alarming domestic anti-terrorism agendas. The analysis also interestingly extends to the highly controversial use of force and nuclear weapons and their relationship to security of individuals, both of which the Committee has directly addressed in General Comments.

Articles 11, 14 and 15 of the ICCPR dealing with aspects of civil and criminal proceedings are addressed in Chapter 6, “The Judicial Process”. Rights associated with ensuring a fair hearing, rights guaranteed throughout criminal proceedings, and rights relevant to the determination of criminal charges and sentencing are further broken down to reveal the methodical way in which the HRC has examined these rights during its tenure.

The right to privacy pursuant to Article 17 of the ICCPR is the focus of Chapter 7 “Privacy, Honour and Reputation”. The chapter illustrates the protection of individual privacy as well as that of the family and home by examining the positive and negative obligations on States to both prohibit and protect against breaches of privacy. The limits of the right to privacy are also detailed so as to provide an explanation of the actions taken by governments when balancing individual privacy rights against the protection of society at large. Utilising the fact patterns from final views of the Committee, Conte reveals the numerous intricacies of the right to privacy clearly so as to illuminate exactly how issues such as attacks on honour and reputation, sexuality, torture and interference with the home play out in the context of the ICCPR.

Richard Burchill introduces the stand-alone, but inter-related rights of family and children in Chapter 8. “Rights of the Family and Children” explores the various ICCPR articles linked to the protection of family and children in the context of positive and negative obligations. The bulk of these rights examined by the Committee thus far have been pursuant to Articles 17, 23 and 24. Understandably, rights associated with the family have been a primary subject of communications made to the HRC and Burchill takes great care to underpin the Committee’s interpretations of these widely divergent practices among States in the plain language of the articles. He also points out the rather tricky situation of Article 23 in that the current interpretation does not appear to extend to same-sex couples or individuals despite this presenting a contrary relationship with the protection of individual rights under Article 17. The chapter concludes that this area of protection is often the most controversial due to the nature of the rights and that for this reason it has been difficult for the HRC to develop a consistent approach.

“Self-Determination” is the focus of Chapter 9 and Burchill initiates the discussion by noting the importance of its inclusion in the Covenant as it was a key step toward moving the concept from a political principle to a justiciable right and is found in Common Article 1 of the ICCPR and the International Covenant on Economic, Social and Cultural Rights. Despite the importance of self-determination, evidenced by the number of international law documents covering the topic, there have been few communications based on this right because the Committee tends to view self-determination as a collective right and its powers of review are limited to complaints by individuals under the Optional Protocol to the ICCPR. Burchill makes the point that observers, clearly including himself in that category, view this as a cop-out as individuals can be susceptible to violations that are directed at a group. He concludes that it is unlikely that this pattern is likely to change as the HRC tends to deal with rights that more easily fit within the Optional Protocol procedure and leave views on self-determination for the state reporting procedure.

Acknowledging the vague wording of Article 27 which resulted from the highly contentious nature of the rights addressed, Chapter 10 on “Minority Rights” seeks to explore the intricacies of protections provided under the article; protections which extend not only to rights under the Covenant but also attach to all rights conferred by States upon individuals in their jurisdiction. Burchill points out that as with other international instruments there is no definition of a “minority” in the ICCPR which has proved a difficult hurdle in the Committee’s review of claims against States for Article 27 violations due to the fact that States will base their determination of membership in a minority on variable objective and subjective criteria. The chapter concludes with the recognition that the HRC has made great strides in the encouragement of participation of minorities in State decision-making processes which affect them; albeit in reality minority views and associated rights will not always be paramount since States must also consider the rights of other members of society.

The final chapter, “Equality and Non-Discrimination”, addresses the many ways in which these rights are invoked by multiple ICCPR articles. The Committee’s approach to discrimination as indicated in its General Comment 18 seems to have guided its views in situations of both direct and indirect discrimination that have come before it, though it has not always been consistent, as observed by Burchill. Articles 2(1), 3, 4(1), 14(1), 20, 23, 24, 25, and 26 all implicate different aspects and applications of the principles of equality and the prohibition against discrimination and each article is thoroughly considered through the Committee’s views on a wide range of communications. This chapter, however, leaves the reader curious as to the consistency of the Committee when applying what is already a decidedly elastic concept. The final chapter is also conveniently followed by the full text of the ICCPR and the Optional Protocol, a natural cross-referencing addition to a rights-focused volume such as this.

As a tool for exploring rights enshrined in the ICCPR, *Defining Civil and Political Rights: The Jurisprudence of the United Nations Human Rights Committee, 2<sup>nd</sup> Edition*, provides a thorough breakdown in a practical format by focusing on the rights and their inter-relatedness rather than utilising a tedious article by article approach. The brilliance of the analysis in this book lies in the art of connecting the dots from a multitude of decisions and General Comments, as well as sprinkling in general normative concepts from international law, without bogging the reader down with lists of communication and case names though they are sparingly used throughout and readily available in the footnotes. The one criticism of the approach used in this book is that except for two of the chapters by Burchill, there are no chapter conclusions, which lends an air of inconclusiveness to the volume. Perhaps, as with the jurisprudence of the Human Rights Committee and the ever-evolving nature of rights protected by the International Covenant on Civil and Political Rights, that is the point.