

# ADDRESS TO THE U.N. HUMAN RIGHTS COMMITTEE ON THE OCCASION OF THE COMMEMORATION OF ITS 100<sup>TH</sup> SESSION (2010)<sup>1</sup>

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## I. INTRODUCTION

1. This is a significant day to all those devoted to the international protection of human rights: we all gather today, 29 October 2010, here at the United Nations Headquarters in Geneva, to commemorate the 100<sup>th</sup> session of the U.N. Human Rights Committee, the organ established by the International Covenant on Human Rights to supervise compliance with its provisions. The Committee has been doing so, along the years of its existence, in the faithful exercise of its functions, by means either of its *Views* on communications under the Optional Protocol (Article 5(4)), or of its *Concluding Observations* on reports of States Parties to the Covenant, or else of its *General Comments*.

2. I am particularly honoured by, and grateful for, the kind invitation to address this commemorative act of the 100<sup>th</sup> session of the Committee. More than three decades ago, by the end of 1977 and the beginning of 1978, I had the occasion to assist in the processing, in the old U.N. Division of Human Rights, here at the *Palais des Nations* in Geneva, of the first lot of communications, for examination by the Human Rights Committee. The great majority of them conformed what came to be known, in those days, as the cycle of cases concerning Uruguay. Much of South America was, in those years, plagued by authoritarian and repressive regimes, which became one of the earliest challenges faced by the Human Rights Committee in its history. Today, 33 years later, if we look back, we are bound to express our recognition for the significant contribution, in all

continents, of the Human Rights Committee, to the international protection of human rights.

## II. VIEWS ON COMMUNICATIONS

3. In so far as the petitioning system is concerned, the Committee's handling of communications provides a clear illustration of its interpretation of the Covenant provisions concerning the absolute prohibition of torture or ill-treatment, a wide range of protected rights (such as the right to life, the right to a fair hearing, the right to liberty and security of person, the right to freedom of movement, the right of aliens not to be expelled arbitrarily, the right to privacy and family and reputation, among others). The Committee has further interpreted the Covenant's provisions on, e.g., the prohibition of slavery, servitude and forced labour, as well as its provisions on fundamental freedoms (such as the freedom of thought and conscience and religion, the freedom of expression, the freedoms of assembly and association).

4. By means of its *Views* on communications, the Committee has further interpreted the Covenant to deal with crucial issues, such as, for example, that of non-derogable rights and states of emergency<sup>2</sup>. In relation to another key issue, that of non-discrimination, the Committee gave a pioneering contribution when, in its views in the cases of *Broeks and Zwaan-de Vries versus The Netherlands* in 1987, it found a breach of Article 26 of the Covenant in respect of social security benefits, and upheld, in a ground-breaking way, an autonomous right to non-discrimination, thus paving the way for further developments on the issue.



11. The Committee added that the guarantees of Article 14 - in particular that of equality of all persons before the courts and tribunals - apply in all circumstances, including when domestic law entrusts a judicial body with the task of deciding about expulsions and deportations (para.62). The issue was also examined by the Committee in its *general comment* n. 15 (1986), wherein it pondered that Article 13 of the Covenant clearly aims at preventing arbitrary expulsions, in providing that expulsions can only be carried out "in pursuance of a decision reached in accordance with law", without discrimination, and giving the alien the means to pursue his appeal against expulsion (para.10).

12. Some of the *general comments* of the Human Rights Committee, on certain issues of substantive as well as procedural law, were soon to echo in other mechanisms of human rights protection, both at U.N. and at regional levels. Such was the case, for example, of *general comment* n. 24 (1994), on issues relating to reservations to the Covenant on Civil and Political Rights or the Optional Protocols thereto. I promptly captured this contribution of the Committee, in my Separate Opinions in the *Blake versus Guatemala* case (Judgments on Preliminary Objections, Merits, and Reparations), decided shortly afterwards by the Inter-American Court of Human Rights.

13. And, throughout my years of Presidency of the Inter-American Court (1999-2004), I kept in mind the keen awareness, on the part of the Human Rights Committee, of the *time factor* in the settlement of cases raising issues of competence *ratione temporis*. In this respect, reference can also be made to the Committee's *general comment* n. 26 (1997), on the *continuity* of obligations, with an incidence in another area of international law. The Committee boldly stated therein that "the Covenant is not the type of treaty which, by its nature, implies a right of denunciation" (para.3). In insisting that "international law does not permit a State which has ratified or acceded or succeeded to the Covenant to denounce it or withdraw from it" (para.5), the Committee reiterated the view that it has consistently taken in its long-standing practice, to the effect that

"The rights enshrined in the Covenant belong to the people living in the territory of the State Party. (...) Once the people are accorded the protection of the rights under the Covenant, such protection devolves with territory and continues to belong to them, notwithstanding change in government of the State Party, including dismemberment in more than one

State or State succession or any subsequent action of the State Party designed to divest them of the rights guaranteed by the Covenant" (para.4).

14. The general obligation of States Parties *to respect and to ensure* the rights recognized by the Covenant (Article 2(1)) was examined by the Committee in its *general comment* n. 31 (2004). Such general obligation, added to the specific obligations in respect of each of the protected rights, were all obligations *erga omnes partes*, as Article 2 is couched in such terms as to make it clear that "every State Party has a legal interest in the performance by every other State Party of its obligations" (para.2). The enjoyment of the protected rights is to be secured to all individuals, irrespective of any circumstances, under the jurisdiction of the State Party (para. 10). This applies also to cases of expulsions (para. 12). States Parties are thus to conform their domestic law and practices with the Covenant (para.13), and are to provide accessible and effective remedies to individuals to vindicate the protected rights (para. 15).

15. *General comment* n. 31 further asserts that States Parties are to secure the "direct applicability" of the Covenant provisions in domestic law, as well as the "interpretive effect" of the Covenant provisions in the application of domestic law (para. 15). Article 2(3) provides for reparations to individuals whose Covenant rights have been violated, and the Committee noted in this respect that reparations can consist of:

"restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations" (para.16).

Last but not least, *general comment* n. 31 espoused the view that the individual's right to an effective remedy:

"may in certain circumstances require States Parties to provide for and implement provisional or interim measures to avoid *continuing situations* and to endeavour to repair at the earliest possible opportunity any harm that may have been caused by such violations."<sup>5</sup>

## V. CONCLUSIONS

16. In the exercise of its functions, the Human Rights Committee has thus aptly identified, in its interpretation of the Covenant on Civil and Political Rights, the proper time and space

dimensions in all its consequences. Examples of the former are provided by its endorsement of the notions of *continuing situation*<sup>6</sup> and *persistent effects*, in its handling of communications, as well as, in certain circumstances, of *potential victims*<sup>7</sup>. As to the latter, an example is provided by its endorsement of the *extra-territorial* application of the protected rights.

17. The hermeneutics pursued by the Human Rights Committee, on the basis of the general rule of treaty interpretation (Article 31 of the two Vienna Conventions on the law of Treaties of 1969 and 1986), has been proper to a system of protection which is ineluctably *victim-oriented*. It has disclosed distinct features, namely:

- a) it has pursued a hermeneutical criterion grounded on the principle *pro persona humana, pro victima*;
- b) it has pursued a holistic approach, relating the protected rights *inter se* (thus avoiding to consider them in isolation from each other), in a way conducive to the acknowledgement of the interdependence and indivisibility of all human rights;
- c) it has worked in the framework of the universality of human rights.

18. The contribution of the Human Rights Committee to the international protection of human rights has been reckoned within the United Nations system as a whole, and indeed beyond it, at regional level. There have been, in recent years, successive judgments of the European Court of Human Rights which refer to *Views* adopted by the Committee on communications. Likewise, the Inter-American Court of Human Rights, ever since my years serving and presiding it until now, has referred, in successive judgments, to the *Views*, as well as *General Comments*, of the Committee. And I am confident that the new African Court on Human and Peoples' Rights will be no exception to this trend.

19. Turning back to the universal level, the International Court of Justice, as the principal judicial organ of the United Nations, has, in the exercise of its contentious as well as advisory functions in recent years, referred either to relevant provisions of the Covenant on Civil and Political Rights, or to the work of its supervisory organ, the Human Rights Committee. Thus, as to contentious cases, in its Judgment in the case of *Armed Activities on the Territory of the Congo* (D.R. Congo *versus* Uganda, 19.12.2005), the

Court held that the Covenant provisions were applicable to the case. Shortly afterwards, in its Judgment in the case of the *Application of the Convention against Genocide* (Bosnia-Herzegovina *versus* Serbia and Montenegro, 26.02.2007), the Court recalled the wording of Articles 2 and 3 of the Covenant to support its interpretation of the meaning of the word "undertakes" in the Convention against Genocide (Article 1).

20. As to its advisory function, the ICJ held, in its Advisory Opinion on *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (09.07.2004), that the Covenant is not unconditionally suspended in times of conflict (para. 106), and that the Covenant applies outside the States Parties' territory when they exercise their jurisdiction therein, as emerges from the legislative history of the Covenant, as well as from the consistent practice of the Human Rights Committee (paras. 107-111 and 134). Earlier on, in its Advisory Opinion on the *Threat of Use of Nuclear Weapons* (08.07.1996), the ICJ referred to Article 6 (right to life) of the Covenant. Very recently, in my Separate Opinion in the Court's Advisory Opinion on *Accordance with International Law of the Declaration of Independence of Kosovo* (22.07.2010), I deemed it fit to refer to Article 1 of the Covenant(s) as well as to the Human Rights Committee's position on the States' automatic succession in respect of human rights treaties and on the extra-territorial application of human rights (paras. 154 and 191), - already referred to.

21. At the end of this incursion into the work of the Human Rights Committee, along its first 100 sessions, singling out some of the main positions it has adopted, in its *Views on Communications*, its *Concluding Observations on States Reports*, and its *General Comments*, and their repercussions, we can conclude that the Committee's contribution, through the interpretation of the Covenant, to the evolution of the International Law of Human Rights itself, has been remarkable. On the present commemoration of the 100<sup>th</sup> session of the Committee, may I present my compliments to it, and the expression of confidence that it will continue to render its invaluable contribution to the cause of the prevalence of human rights along its next 100 sessions. Thank you very much for your attention.

Geneva, 29 October 2010.  
A.A.C.T.

## NOTAS

1. Discurso proferido pelo Autor na Organização das Nações Unidas, no *Palais des Nations*, em Genebra, aos 29 de outubro de 2010; texto reproduzido de: 29 *Netherlands Quarterly of Human Rights* (2011) pp. 131-137.
2. Cf., e.g., [Various Authors] *Droits intangibles et états d'exception* (eds. D. Prémont et alii), Bruxelles, Bruylant, 1996, pp. 1 ss.
3. Para. 5.4, in both cases. In the *L. Rajapakse versus Sri Lanka* case (2006), likewise, the Committee again pondered that personal security was to be safeguarded in distinct circumstances, also beyond the context of formal deprivation of liberty.
4. Cf., e.g., F. Pocar, "Patto Internazionale sui Diritti Civili e Politici ed Estradizione", in *Diritti dell'Uomo, Estradizione ed Espulsione* (Atti del Convegno di Ferrara di 1999 per Salutare G. Battaglini, ed. F. Salerno), Padua/Milan, Cedam, 2003, pp. 89-90.
5. Para. 19 (emphasis added).
6. On the origins of the notion of "continuing situation", and its configuration in international litigation and case-law, and in international legal conceptualization at normative level, cf.: ICJ, case of the *Jurisdictional Immunities of the State* (Counter-Claim, Germany versus Italy, Order of 06.07.2010), Dissenting Opinion of Judge A.A. Cançado Trindade, paras. 55-94.
7. The notion of "potential victim" was soon to mark presence in the evolving international case-law in the domain of international human rights protection; cf. A.A. Cançado Trindade, "Co-existence and Co-ordination of Mechanisms of International Protection of Human Rights", 202 *Recueil des Cours de l'Académie de Droit International de La Haye* (1987), ch. XI, pp. 262-283.

