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Guarding Utopia: law, vulnerability and frustration at the UN Human Rights Committee

Miia Halme-Tuomisaari

In the 1940s activists lobbied for the creation of a binding international bill of rights backed up by an international human rights court as the backbone of the post-World War II order. Together, so the activists believed, these would guarantee peace and harmony to all mankind. Seven decades later this vision has been transformed into a cluster of UN human rights treaties and expert committees known as treaty bodies to monitor them. In practice treaty bodies process document in ongoing bureaucratic cycles, which are located somewhere between an audit ritual and a court session. This duality is a source of strength as well as vulnerability and frustration, embodying an endless navigation between the 'utopia' of a robust and binding legal framework and an 'apology' for actual state conduct (Koskeniemi 2006). This article explores how this duality manifests itself in the practices of the most authoritative and 'courtlike' treaty body of the UN, namely the Human Rights Committee monitoring state compliance over the International Covenant on Civil and Political Rights (ICCPR), simultaneously exploring how the vision is kept alive.

In the 1940s a group of activists lobbied for the creation of a binding international bill of rights that would be backed up by a human rights court operating under the UN with universal jurisdiction. Together, so the utopian vision went, they would form the backbone for the international post-world war II order guaranteeing peace and harmony for all mankind (Lauterpacht and Sands 2013, Halme-Tuomisaari 2015). Seven decades later, instead of a bill of rights we have a cluster of UN human rights treaties. In place of a UN human rights court, we have a cluster of expert committees known as *treaty bodies* to monitor how states comply with their covenant bound obligations. Concretely this means the processing of infinite-seeming documents in bureaucratic cycles that culminate in public hearings known as the 'constructive dialogue', a ceremony located somewhere between an audit ritual and a court session.

This in-betweenness embodies the ambiguity that characterizes treaty bodies more generally: on the one hand, their mandates rest on clear legal grounds, on the other, the exact scope of their mandates as well as their broader relationship with 'the law' remains undefined and subject to continual negotiation. This duality opens hopes for continually greater influence, while simultaneously awakening fears of diminishing significance. It is an 'in-betweenness' that is a source of power as

well as vulnerability and frustration.¹ Nowhere are these tensions as tangibly present as in the operations of the UN Human Rights Committee, the treaty body that monitors how states comply with the International Covenant on Civil and Political Rights (ICCPR) (OHCHR 2018, ICCPR 2018a). The Human Rights Committee is commonly seen – both in its own eyes and by UN insiders as well as ‘the human rights community’ writ large – as ‘the most lawlike’ and authoritative of all the ten UN human rights treaty bodies. It is the closest UN equivalent to a human rights court (Tyagi 2011).

Civil and political rights hold a particular privileged place in the ‘unilinear narrative of origins’ (Author & Co-author 2, 2015) as the ‘first generation’ of rights; they are seen as the *most foundational* of all the fundamental human rights that are recognized by international covenants and domestic legislation. In general, the Human Rights Committee’s operations are characterized by an emphasis on ‘the law’. Undoubtedly the Committee forms a legal professional space as, with rare exceptions, all of its 18 members are renown legal experts (OHCHR 2018b). The vast majority of UN personnel linked to the Committee at the UN Office of the High Commissioner for Human Rights (OHCHR) has a legal background. The language utilized by the Committee highlights such characterizations as ‘jurisprudence’, ‘case law’ and ‘legal obligation’. The genre of documents and knowledge produced and processed by the Committee is pointedly ‘legal’, embedded in covenant-like aesthetics and peppered with references to covenant provisions.

Simultaneously the Human Rights Committee is not a court, as any of its members will tell you; in the words of the Committee’s late chairman Sir Nigel Rodley, it performs functions that are ‘court-like’. Participants in the Committee’s reporting cycles, particularly representatives of states, are at times more blunt. Ever so often, as if a virtual bomb were to explode in the main conference room of the Palais Wilson, the OHCHR’s headquarters which is the site of treaty body proceedings, a member of the state delegation may remind everyone that whereas the rulings of the European Court of Human Rights are legally binding on member states of the European Convention on Human Rights, the concluding observations issued by UN treaty bodies are not. Civil servants drafting documents for Committee proceedings may question what relationship the reporting cycles of UN treaty bodies have with the law in general, perhaps concluding, as one Finnish civil servant did, ‘nothing at all’.

¹ For introduction into the UN treaty body framework and human rights monitoring as well as their domestic applications, see Keller & Ulfstein 2012; Bassiouni & Schabas 2011; Crawford 2010; Simmons 2009; Bayefski 2000.

When approaching the operations of the UN Human Rights Committee ethnographically, it is at times challenging to distinguish them from the proceedings of other UN monitoring mechanisms: the rituals and ritualism (Charlesworth & Larkin 2014) are largely the same, as is the incessant flow of documents embedded in UN catch phrases and action plans. In particular, the structure of treaty body proceedings bears high similarity to the Universal Periodic Review (UPR) by the UN Human Rights Council, which is also organized around reports submitted by states, accompanied by ‘lists of issues’, submissions by NGOs as well as background dossiers prepared by the UN Secretariat (Cowan 2014, Billaud 2014). The importance of these shared features gains additional weight from the observation that the civil servants at Foreign Affairs Ministries who are assigned the task of international human rights reporting commonly realize this task both for UN treaty bodies and the UPR, with the same applying to NGO delegates who will lobby their cause from one UN mechanism to the next. The compilation of documents is further realized largely by copy-pasting material from previous reports, amounting to a seamless, ongoing human rights ‘dialogue’ (Riles 1998, Author 2012, Author 2017).

The relationship of human rights ideals and their bureaucratic incarnations has started to awaken increasing debate over the last years, marked by questions on whether ‘human rights’ are vanishing from them, leaving behind only an empty shell of networks, expert practices and documentary cycles (Billaud 2016). These questions echo a broader trend of audit cultures and infatuation with indicators in contemporary governance in both inter/trans-national and national contexts (Shore & Wright 2015; Merry, Davis & Kingsbury 2015; Merry 2016). This applies beyond a doubt to human rights reporting, accompanied by an incessantly growing intensity embodied in the continual introduction of new reporting mechanisms and follow-up procedures. Together these developments contribute to distinct reporting fatigue, embodying itself as well in moments of acute boredom (Co-author 1 & Author 2013) as well as vague sentiments of bureaucratic ‘stuckness’ (Hage 2009) – even a sense of failure and alienation (Allen 2013, Hopgood 2013).

Simultaneously, so this article argues, there is no doubt that human rights monitoring is continually characterized by both genuine belief and believers: a belief both in the intrinsic goodness of human rights, and in the capacities of the law as a tool for changing the world. It is this precise belief that makes the work of UN treaty bodies and the Human Rights Committee special in the eyes of engaged insiders; it is this belief that explains how the same person could look at two monitoring mechanisms that are quite similar and call one of them ‘nonsense’ while praising the other. This

article explores how these conflicting sentiments of belief, frustration, and engagement embody themselves in the operations of the UN Human Rights Committee as it navigates its mandate in the ‘fuzzy logic’ of the UN human rights apparatus (Author forthcoming; Bourdieu).

Further it explores what this examination reveals of the current state of the utopian vision of a world governed by human rights and the rule of law is guarded and sustained at the UN Human Rights Committee. In particular it explores what roles ‘the law’ acquire in the practices of the Committee: the delicate navigation via which the Committee both emphasizes the legal nature of its actions while simultaneously downplaying them by emphasizing technical expertise and bureaucratic excellence to sooth fears for an excessive interpretation of its mandate. In all scholarship that has been produced on human rights by anthropologists, the role of ‘the law’ as an integral component has been largely overlooked: an oversight which, I argue, has significant analytical consequences reflected in misguided interpretation of alienation and cynicism on the part of engaged actors (Riles 2006). By contrast, this paper anchors its inquiry on the intrinsic attempt by activist international human rights lawyers to legalize human rights; a dynamic in which they act as both passionately engaged activists and detached bureaucrats and analysts (Author 2010, Latour 2012).

This paper builds on ethnographic glimpses from the Human Rights Committee from 2013 and 2014, years that can be seen as marking a subtle watershed for the Committee’s operations as it was the first time that, instead of being held also in New York, the Committee’s sessions were only held in Geneva, a shift of locations that echos the broader shift in the human rights phenomenon. This article is a part of a larger study of UN Human Rights Committee and other human rights bureaucracies started in 2010, further grounded in my research on a Nordic Network of human rights experts (Author 2010), as well as archival research into the origins of the dawning post-world war II phenomenon (Author 2015).

‘This is the dream!’: a Committee in dire straits

‘It’s the *Human Rights Committee!*’ My interlocutor’s eyes glimmer as he talks of the Committee’s work – this is not just any old UN committee, but the most important component of the organization’s entire human rights framework. This sentiment comes across consistently both in discussions and passing mentions with my interlocutors as well in the Human Rights Committee as in other parts of the international human rights community. To be a member of the Human Rights Committee is to be a *very important person*, to perform a service of upmost importance for the

international realization of human rights; it is one of the most fulfilling and prestigious positions that a human rights lawyer may ever hold – or as one intern summarized, *'it's the dream!'*

The Human Rights Committee was founded in 1976 when the ICCPR entered into force, after having been opened for signatures a decade earlier.² The same year saw also the entry into force of the International Covenant on Economic, Social and Cultural Rights (ICESCR), with the mid-1970s forming a decisive moment for the contemporary human rights phenomenon more generally: after the slow start of the first post-world war II decades, this moment marked a veritable 'human rights explosion', accompanied by the proliferation of international human rights instruments, a rapidly growing expert community and an expanse of the human rights discourse (Moyn 2010, Author 2010, Hoffman 2010, Prost & Winter 2013; Jensen 2016,).

Today the number of UN human rights treaty bodies is 10, with the International Covenant on the Rights of the Disabled people being the last one. Although there are continually numerous new human rights treaties in the works in the UN, there is simultaneously an ongoing process to reform treaty bodies into a more unified and coordinated system which would eliminate current reporting overlaps; a process known as 'treaty body strengthening' accompanied by a 'consolidated single report' model, a fourth process of its kind to attempt to reform UN treaty bodies with a review forthcoming in 2020 (UN OHCHR 2017; Geneva Academy 2020). This new unified model would raise questions on how, or whether, the Human Rights Committee will be able to maintain its highly regarded status. Simultaneously there exists no scenario in which the treaty bodies would be formally unified: their individual mandates are based on the conventions that they monitor, and thus to combine the Committees, the covenant texts would have to be opened up again – a situation that nobody in the human rights field desires in the current political situation.

Pressures to increase the unity of the treaty body framework have been intensified by the 2006 creation of the UPR when the UN Human Rights Commission – a notorious body accused of excessive 'politicization' - was replaced by the Human Rights Council. The needs for reform for the treaty body framework are evident: the volume of documents processed by treaty bodies has doubled over the past decade, leaving the OHCHR struggling to keep up with the workload.³

² It is common for international covenants to enter into force via a two-fold process: first, states sign the covenant, thus committing themselves to changing possible discrepancies between domestic legislation and covenant obligations, after which they will ratify the document. After the number of states specified by the treaty have ratified the covenant

³ Currently eight UN human rights treaty bodies receive and consider individual petitions under certain conditions, most commonly via stipulations in optional covenant protocols to which state parties have become parties. see

Despite of recent efforts to speed up the process and clear backlogs, the timeframe for individual petitions has extended even up to seven years, raising reasonable concern on this complaint procedure's effectiveness. Simultaneously the treaty body system suffers from a reversed problem: only 13% of all state parties to human rights treaties comply in a timely manner with their covenant-bound obligations to provide periodic reports. Ironically this failure of state compliance is the single most important component contributing to the ability of the UN treaty body framework to operate at all, a key to its 'success': were all state parties to start fulfilling their legal obligations, the current personnel and material resources of the UN OHCHR would never suffice for managing this workload. However, at the same time this low compliance illustrates the fear of irrelevance that come forth in sentiments of frustration from the sessions of the Human Rights Committee.

The need for reform is increased by financial constraints in which the UN increasingly finds itself in the aftermath of the global financial crisis of 2008, and intensified by recent US announcement to cut funding to the UN up to 40 %. Simultaneously something appears to have shifted in the post-world war II world order: instead of a seemingly endless human rights 'rise and rise' of rights (Sellars 2002) – a phrase that captured the tenor of the previous decades – we are arguably entering an era of 'rise and fall' (Allen 2013), illustrated by the threat of numerous African states to withdraw from the International Criminal Court (Trigt 2016, BBC 2017) as well as the possible abolishing of the UK Human Rights Act following Brexit (Gearty 2016). The most significant setback to the international human rights regime arrived in June 2018 when the US announced that it would withdraw from the UN Human Rights Council (UN Human Rights Council 2018), thus ending a brief historical moment of universal human rights monitoring.⁴

'When someone works in an excellent manner'

<https://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/HRTBPetitions.aspx#individualcomm> For the ICCPR, the possibility to consider individual communications has been defined in the covenant's first optional protocol, an additional document expanding on the wording of the ICCPR which likewise entered into force in 1976, becoming binding on state parties that had ratified it; <https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCCPR1.aspx> See the current situation of UN human rights covenant ratifications and reservations here: <http://indicators.ohchr.org>. For ratifications of the ICCPR see, https://www.ohchr.org/Documents/HRBodies/CCPR/OHCHR_Map_ICCPR.pdf and its first optional protocol, see https://www.ohchr.org/Documents/HRBodies/CCPR/OHCHR_Map_ICCPR-OP1.pdf

⁴ This shift is also reflected on anthropological scholarship on human rights, as was captured by the 2016 Virtual Issue for PoLAR: Political and Legal Anthropological Review. In recognition of the 50th anniversary of the 'international bill of rights' – referring to the year 1966 when the ICCPR & ICEDCR were adopted and opened up for signatures by the UN General Assembly (<http://2covenants.ohchr.org>). The Virtual Edition brought together seminal contributions from the journal on human rights over the past 20 year period, inviting their authors to reflect on the current state of human rights in their afterwords: with virtually no exceptions, the mood was more sombre in these afterwords on the current state of human rights than a decade ago (Co-author 3 & Author 2016).

The basis of the Human Rights Committee's operations are stated in Article 36 of the ICCPR via a formulation that leaves considerable room for manoeuvre: "The Committee shall establish its own rules of procedure".⁵ This is also exactly what the Committee has done, effectively extending the scope of its activities, not always to the pleasure of state parties. Today the Committee's three primary operations are to review of periodic state reports, process individual communications, and issue of General Comments.

Reviewing state reports – an exercise usually lasting 6 hours in a public exchange between Committee members and representatives of state delegations called 'constructive dialogue' (Author 2013) - bears the greatest resemblance that the Human Rights Committee's operations have to the audit-mechanism of UPR by the UN Human Rights Council (Cowan & Billaud 2017). Concretely, as with the UPR, the processing of state reports at the Human Rights Committee consists of the submission reports according to intervals specified both by the ICCPR and the Committee, the adoption of lists of issues, ancillary material provided by NGOs, as well as public hearings in Geneva. The process concludes with the adoption of 'General Comments, which are then published in the Committee's website, accompanied by UN press releases.

Many of these phases characterize likewise the UPR, yet the two processes have significant differences. These differences echo their relationship with the law, casting the monitoring mechanism of the Human Rights Committee as a distinctly *legal*, as opposed to the overtly *political* process by the Human Rights Council – a division that echoes a classic divide emerging from international law literature (Koskeniemi 2005). These differences are manifested in the absence of independent experts at the UPR to assess how state reports concur with their legal obligations; independent experts are, by contrast, the key component of UN treaty bodies. Further, in the UPR states are able to negotiate the recommendations that conclude the review process. This opportunity is inconceivable from the viewpoint of treaty bodies, which emphasize that their Concluding Observations are based on factual breaches of contractual obligations – an issue over which there can be no bargaining.

⁵ **Article 36 of the ICCPR states:** "The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant." But Article 39, par 2 clarifies that "The Committee shall establish its own rules of procedure, but these rules shall provide, inter alia, that (a) Twelve members shall constitute a quorum; (b) Decisions of the Committee shall be made by a majority vote of the members present."

It is precisely this element of treaty body operations that is both the source of the power and vulnerability, a tension that requires advanced diplomatic skills. There is no denying that states favour the ‘softer’ approach embodied by the UPR, reflected in the low reporting percentages for treaty bodies. This summarizes the fundamental dilemma that the Human Rights Committee faces is: how to persuade state parties to present reports for this ‘lawlike’ body with no enforcement power, so as to be able expert judgements over which there exists possibility for negotiation for states? One technique to smoothen this tension finds embodiment in the phrase utilized to describe the Human Rights Committee’s monitoring process known as ‘constructive dialogue’.

The spirit of ‘constructiveness’ is among the first observations that a newcomer faces upon entering the Committee the proceedings are enwrapped in diplomatic niceties as Committee members express compliments toward members of the UN secretariat for joining their sessions – somewhat unexpectedly given that the OHCHR runs them – they complement members of state delegations for their high diligence in reporting and their commitment to the ICCPR communicated by their participation in the hearing. Committee members also regularly complement one another for the high quality of work as well as highlight the extraordinary service that the Committee as a whole provides for the international human rights community. Whereas this may at first appear puzzling – the extent of compliments is indeed vast – closer examination casts them as an integral tool for how the Committee portrays its operations as ‘constructive’, thus soothing underlying tensions over the Committee’s scope of authority.

And indeed, this is a matter that needs soothing. Although processing state reports forms the Committee’s pulse which ‘embodies the ideal of the universal’ (Author 2017), undisputedly the Committee aspires to do more: it holds a self-perception as a high-profile international body that, in addition to monitoring human rights, is also a progressive interpreter in the current scope of human rights – a role akin to that of a legislator. This self-perception comes forth in an exchange called ‘first reading’ for a document called ‘General Comment’. This is a particular genre of documents created by the Human Rights Committee which address an individual article of the ICCPR, and in light of the Committee’s ‘case law’ offer an elaborated understanding of the article’s scope and significance. The Human Rights Committee commenced the adoption of General Comments in 1982 and the last General Comment was adopted in 2014 on Article 9 on the Liberty and Security of persons. The length of the document alone testifies to its level of detail: whereas the entire ICCPR is around 7700 words, General Comment 35 is almost double that (General Comment 35).

Realistically, to follow the work toward adopting a General Comment is a stretch even for the most engaged-minded observer: it is characterized by an enormous level of detail as well as significantly prolonged pace, with consideration of individual sentences, even choices of words stretching into hours, weeks or months. The Committee will first deliberate on what article will be the target of its next General Comment in discussions that may easily go beyond a year. The Committee then appoints one of its members as the rapporteur to prepare the Comment's first draft, which is submitted to the OHCHR for translation and disseminated to Committee members in a closed process known as 'first reading'. After this has been completed the rapporteur edits the document, after which it is opened for comments from stakeholders including states and NGOs. On the basis of this feedback the document is again edited and prepared for the 'second reading', after which it is eventually adopted and published on the Committee's website. Together these phases may take years.

The level of detail is illustrated by the following exchange around paragraph 3 of the General Comment's first article on the notion of '*everyone*' – a staple in human rights lingua since the adoption of the UDHR in 1948, yet a complex concept in linguistic terms (Shipton 2003). The term inspired surprisingly vivid debate as the Committee members pondered just what it meant in the context of the General Comment in question addressing the security of persons. Committee member 1 pointed to the familiar problem of translations: in the absence of the gender-neutral entity of '*everyone*', the proposed translation of the draft offers the formulation '*les hommes et les femmes*'; Committee member 2 emphasized the importance to include specifications and add people who are '*particularly vulnerable to restrictions*'. Committee member 3 suggested that this be complemented with the phrase '*and everyone else*'; whereas Committee member 4 challenged these additions, highlighting that, indeed, everyone can be subject to restrictions of liberty, and hence any listing identifying some specific groups jeopardizes some groups being left out. In the final document the paragraph reads: '*Article 9 guarantees those rights to everyone. "Everyone" includes, among others, girls and boys, soldiers, persons with disabilities, lesbian, gay, bisexual and transgender persons, aliens, refugees and asylum seekers, stateless persons, migrant workers, persons convicted of crime, and persons who have engaged in terrorist activity.*' (General Comment 35).

This exchange is illuminating on numerous accounts. First, whereas an outsider might find the exercise boring, excruciatingly so, to the engaged Committee members – at least the handful who usually assume active roles in the debate - it is undoubtedly one of professional joy, communicated

by sharp observations, the relishing on intimate knowledge of Committee's case law that even a well-versed international human rights lawyer would struggle to achieve. Not surprisingly they are accompanied by occasional contestation as Committee members challenge one another on pieces of information shared by another, perhaps correcting its significance. The exchanges include occasional jokes, a social glue that testifies of the presence of a sense of shared community. Undoubtedly the exercise is an earnest one by a community whose members share a sense of significance in the endeavour, accompanied by a professional pleasure of the legal tools required for joining in, combined with pleasure of recognition of status that appointment to the Human Rights Committee has entailed – paired up with a commitment to the law as a tool for improving the world.

Simultaneously the substance of the debate is loaded. What this exchange on just how to frame 'everyone' addresses are ongoing tensions over state sovereignty, the extent of their covenant-based human rights obligations as well as the authority of the Human Rights Committee to define those obligations and monitor their realizations. Concretely, the reference of the debate emphasized the rights of people suspected of terrorism, among others at Guantanamo Bay. The war against terrorism has formed one of the most contentious issues for the human rights regime, which is not necessary to repeat here. Rather, the question for the present purposes becomes: what authority does the Human Rights Committee have in the matter, and what can we learn of the processes of negotiation to determine the matter from the above exchange? The matter is tricky: whereas the Committee *wants* to be influential, seeing itself as a pivotal international standard-setter and even legislator that is capable of extending the current scope of human rights via its 'jurisprudence', its authority to do so is both contested and vulnerable to attacks. Here is the true catch of the Committee's position: it's scope of operations be challenged were it appear as too influential and *lawlike* in its operations, calling states adversary to any international human rights body to activate their resistance.

The aspirations for impact are concretized by the exchange of Committee members as they discussed the purposes of the General Comment. Committee member 1 emphasized an expansionary approach, noting how '*this is one way we can overcome the tendency of states to interpret art 9 very narrowly*'. Committee member 2 echos this, yet remaining more restricted as he notes that General Comments '*codifies many of the concluding observations we have done over the years, going beyond it by establishing a guiding framework*.' As the debate continued, it communicated different understanding of the nature and purposes of General Comments: whereas some Committee members characterized them '*not as law but rather guidance*' both toward the

future conduct of states and Committee work, a few others emphasize their ‘jurisprudential’ nature to introduce additional text that complements existing wording of the ICCPR.

The consequences of being seen as too influential by state parties is illustrated by Resolution of 23, adopted by the UN General Assembly in February 2012 tabled by Russia, adopted with the support of 85 states primarily from Africa, Asia, Latin America and the Caribbean, with abstentions primarily from Western and European groups and the US. What the resolution entailed was in essence a proposal to restrict the scope of treaty body operations by proposing for a comprehensive reporting calendar; methods of work; the reporting process; and capacity to implement treaty body obligations. In light of this reality, the Committee realistically needs to be careful and to ensure that its operations are indeed seen as *constructive*, not as a ‘rogue committee’ attempting to assume the role of a legislator and a court. In order not to be subjected to such direct attempts to restrict the scope of its operations, it is more prudent for treaty bodies to keep parts of their influence hidden in the ‘fuzzy logic’ of the UN human rights apparatus (Author forthcoming) – however, while it does that, it faces another risk: that of being too invisible, and thus being treated as irrelevant.

‘Whoever is listening: we’re sitting on a crisis’

‘This is a complete abuse of this Committee! We would like to continue work on the case we started two days ago, but we cannot because the staff member is assigned to the periodic report for another Committee. The expectation is impossible for us to do our courtlike work – with the kind of resources that we have! When compared to the work of the ICC, the discrepancy is rather vivid ... I would like this message to be taken very strongly by anyone who can hear it!’ The Chairman has continued his monologue for a good 3-4 minutes. This is uncharacteristically long, and uncharacteristic is also the tenor in which the monologue is forwarded: gone is the air of smooth diplomatic eloquence, and present are instead tangible sentiments of upset and frustration. After snapping at a member of the UN secretariat in a rather unpleasant manner, the Chairman notes as much also himself, saying *‘I am told again that this is not the first time I have in my zeal to get things done not been as diplomatic or kind as I would normally wish to be, and I do apologize for any colleagues that have been on the receiving end of this.’*

No matter how much the Committee may attempt to, and succeed in, restructuring its own work, it remains that it is bound by the resources that it is allocated, particularly personnel resources by the OHCHR – and those resources are grossly insufficient for it to perform all the operations that it

would like. This applies particularly to the Committee's 'courtlike' work of processing individual communications. This shortage is directly linked to the curious predicament in which the Committee finds itself: whereas only one in eight states produces reports on time, making the compliance rate of circa 13% - a far cry from the universal participation of the UPR, the Committee suffers from a terrible backlog of individual communications – and it was to this situation that the above monologue referred. Over the past years the number of individual communications has starkly increased, with the UN Human Rights Committee receiving by far the greatest number of them out of all treaty bodies due to its particular status in the human rights field. By 2013 the backlog was estimated to be around 160 communications, which meant prolonged times for processing them, with the average ranging between 3.5 years from submission to close to 5 years.

This awakened understandable concern among Committee members – both for the unreasonable wait that this meant for those who had submitted the communications as well as the potential irrelevance that this might cause on the monitoring mechanism as a whole. These concerns translate to sentiments of frustration, intensified by a realization of the Committee's incapacity to improve matters on its own, leading one Committee member to conclude '*we're sitting on a crisis*'. To grasp the extent of this problem, one needs to realize how expensive every single sheet of paper is to produce in the UN bureaucracy when considered from the viewpoint of involved human resources: as a document arrives at the UN, it is formally received by a member of the secretariat. It is then edited to fit technical UN language and put on the official letterhead. After this it is sent to translation. After this the document is copied and distributed to relevant recipients – and as surreal as it sounds, here the UN primarily still operates in the world of paper. In the hearings documents need to be available in multiple languages and accompanied by simultaneous translation in numerous languages. Then UN summaries are written, some of which are again translated. UN Press releases are then created and released.

This process remains largely uniform no matter what the target of the work is, or what UN body it addresses. It is this work in particular that has faced cut-backs, pushing also the Secretariat to consider where staff will be most needed, which explains how the Committee found itself in the situation where its international expert were convened in Geneva, ready to engage in its highly specialized court-like work, only to discover that in the internal hierarchy of the UN this work was not given the kind of priority that would have assured the presence of needed support staff to conduct this work. The Chairman's frustration becomes highly understandable: how, indeed, is the Committee supposed to continue its diligent work toward realizing the utopia of a world order

governed by human rights and the rule of law if it was not given the needed staff for the purpose? This makes the reference to the resources of the ICC, the international criminal court, more understandable: although the founding of the International Criminal Court in 2001 was widely celebrated by the international human rights community, to those still wishing for the creation of an international *human rights* court this was a tepid victory, if not even a hindrance for the eventual reaching of this goal.

Similar logic assists to understand mixed sentiments toward the Human Rights Council. Whereas the UPR is seen as an undisputed asset strengthening the UN's human rights monitoring framework, there is undeniable jealousy toward the resources that the Human Rights Council has for its work – the fact that Spain paid a rumoured 20 million euros for the ceiling artwork by artist Miquel Barcelo of the Human Rights Council's meeting room is frequently mentioned, together with a tenor of disapproval (Reuters 2008). Mixed sentiments characterize the high visibility that the UPR receives in national and international media: the Human Rights Committee finds itself continually overshadowed by the Council, with news reports referring to it as the 'better known UN monitoring mechanism' even while covering the sessions of the Committee, often not even mentioning the Committee by name (Reuters 2014).

At times Committee members may be even more direct in their sentiments, one member characterizing the UPR as 'distracting'. Such characterizations connect directly to the 'political' nature of the UPR, accustoming states to the possibilities of negotiations and away from the view of human rights violations being objective matters of fact. In the debates accompanying the UN treaty body reform one could detect such sentiments also in any mention that might clarify the inter-relationship of the Committee and the Council: unfailingly Committee members emphasize the need to eliminate even possible scenarios where the UPR could be seen as 'interpreting' the Committee's Concluding Observations – and thus the prevailing of 'politics' over 'law'. Considering all this, the irritation of the usually diplomatic and eloquent chair of the Committee becomes understandable: after decades of work the Committee member finds itself upstaged by a showy newcomer; a light-weight when compared to the excruciatingly detailed *serious* expert work in which the Committee takes such pride in excelling.

Sometimes, quite unintentionally, such insults come also from within the UN. One such occurrence took place in the opening exchange for the Committee's session in March 2013 between a high profile representative of the OHCHR and the Committee's chair: upon concluding her short

congratulatory statement on the importance of the Human Rights Committee's work, the high profile UN official concluded *'I would like to stay here - but I have to go to the human rights council , which you can imagine is a very entertaining place to be,'* to which the Committee's chairman Sir Nigel Rodley responded wryly *'we'll try to harness our entertainment quality over the next three weeks.'*

Conclusion

This article illustrates the tensions that characterize the operations of the UN Human Rights Committee, a high-profile UN monitoring body: on the one hand, it aspires to operate as a distinctly legal body with robust authority extending to both the 'courtlike' processing of individual cases as well the adoption of General Comments akin to legislation, on the other, it realistically needs to continually negotiate its mandate with state parties, keeping particularly those states that are adversary toward international human rights monitoring bodies at bay. In doing so it needs to remain guarded and unfailingly 'constructive' in order not to face initiatives to curtail the realm of its operations. Simultaneously it continually faces the peril of not succeeding in grasping 'the world's' attention, embodied in insufficient resources to carry out these operations – for appearing to be too slow, too technical and legal, too bureaucratic and modest, even being cast as irrelevant.

Sadly, the Committee can do only so much by itself to ensure that its activities are noted; at the end of the day, due to both the ambiguous legal nature of treaty bodies as well as the volatile nature of international law as a whole, it has no mechanisms for forcing states to participate in its activities. The vicariousness of the Committee's mandate was concretized in the Committee's October 2013 session when the US abruptly cancelled its appearance at the hearing due to its government lock down which had frozen most government operations. The cancellation came on a very short notice – of course giving rise to speculations whether there was also something intentional in it – resulting in what can only be described as a shared anti-climax, a substitute, also in objective terms, to the excitement that was before the cancellation scheduled into the agenda.

Thus, instead of finding itself in one of the big conference rooms of the UN Geneva headquarters, the Palais des Nations, roasting the US for its appalling human rights conduct, on that particular crisp November day the Committee and its audience including numerous US NGO delegates found themselves at the Palais Wilson, listening as the Committee continued the excruciating first reading of General Comment 35. The frustrations were impossible to miss, embodied by a member of a US

NGO that had flown to Geneva anyway – having bought a ticket that allowed for no cancellations: whereas an NGO delegate was supposed to be realizing the social media plan that had been all set up around the US hearing, physically joining in on the ‘realization of utopia’, he was now sitting in the audience, picking his teeth as if in physical expression of idleness and frustration. In a valiant effort to perform engagement and interest the NGO delegate stayed at the sessions until the break – after which the beautiful afternoon of Geneva proved simply too tempting, enticing US NGOs to go wandering into the city, leaving only the Committee to its arduous work.

More than anything else, this moment concretized the dilemma both of the UN Human Rights Committee and the utopian vision for a world order based on human rights and the law. Only for as long as the Committee succeeds in inspiring belief and dedication in ‘the world’ toward this utopia, will its excruciatingly detailed expert practices continue to hold meaning; should ‘the world’ lose interest and fail to join in, the Committee like other treaty bodies would be reduced to a bureaucracy of irrelevance. How this hope stays alive remains one of the most striking elements and puzzles of the contemporary human rights phenomenon, combining with it constructive diplomatic and bureaucratic stamina – while simultaneously balancing sentiments of frustration, fatigue and fears of irrelevance.

Bibliography

Allen, Lori (2013) *The Rise and Fall of Human Rights Cynicism and Politics in Occupied Palestine*. University of Stanford Press, Stanford.

Bassiouni, M. Cherif, and William A. Schabas (eds.) (2011) *New Challenges for the UN Human Rights Machinery?* Intersentia.

BBC (2017) African Union backs mass withdrawal from ICC, 1 February, 2017, <http://www.bbc.com/news/world-africa-38826073>

Billaud, Julie (2014) ‘Keepers of the “Truth”’. In *Assessing the Universal Periodic Review* (eds. Charlesworth & Larkin). Cambridge University Press, Cambridge, 63-84.

2016 A Post-Human Rights Anthropology of Human Rights? PoLAR: Political and Legal Anthropology Review. <https://polarjournal.org/a-post-human-rights-anthropology-of-human-rights/>.

Charlesworth, Hilary, and Emma Larking

2014 Human Rights and the Universal Periodic Review. Cambridge, United Kingdom: Cambridge University Press.

Crawford, James (2010) The Future of UN Human Rights Treaty Monitoring. Cambridge University Press, Cambridge.

Cowan, Jane (2014) 'The Universal Periodic Review as Public Audit Ritual'. In *Human Rights and the Universal Periodic Review* (eds. Charlesworth & Larkin), Cambridge University Press, Cambridge, Pp. 42–62.

Cowan, Jane, and Julie Billaud

2017 The “Public” Character of the Universal Periodic Review: Contested Concept and Methodological Challenge. In *Palaces of Hope*. Ronald Niezen and Maria Sapignoli, eds. Pp. 106–126. Cambridge: Cambridge University Press.

Gerty, Conor (2016) The Human Rights Act Should Not Be Repealed, Sept 27, 2016
<https://ukconstitutionallaw.org/2016/09/17/conor-gerty-the-human-rights-act-should-not-be-repealed/>

Hage, Ghassan

2009 Waiting. Print on Demand edition. Carlton, Vic: Melbourne University Publishing.

Hoffmann, Stefan-Ludwig, ed.

2010 Human Rights in the Twentieth Century. Cambridge ; New York: Cambridge University Press.

Hopgood, Stephen (2013) The Endtimes of Human Rights. Cornell University Press, Ithaca.

ICCPR 2017. <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>

General Comment 35.

https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f35&Lang=en

Jensen, Steven L. B.

2016 The Making of International Human Rights. New York, NY: Cambridge University Press.

Keller, Helen & Ulfstein, Geir (eds) (2012): UN Human Rights Treaty Bodies: Law and Legitimacy. Cambridge University Press, Cambridge.

Koskeniemi, Martti

(2005) From Apology to Utopia: Cambridge University Press.

Merry, Sally Engle (2016) The Seductions of Quantification. University of Chicago Press, Chicago.

Merry, Sally Engle, Kevin E Davis, and Benedict Kingsbury, eds. (2015) The Quiet Power of Indicators. Cambridge University Press, Cambridge.

Moyn, Samuel

2012 The Last Utopia: Human Rights in History. Reprint. Belknap Press.

Prost, Antoine, and J. M Winter

2013 René Cassin and Human Rights: From the Great War to the Universal Declaration. Cambridge: Cambridge University Press.

Reuters 2008 New U.N. artwork raises controversy <https://www.reuters.com/article/us-art-ceiling/new-u-n-art-work-raises-controversy-idUSTRE4AH95M20081119>

2014. U.N. Watchdog Urges Israel to Probe Possible Gaza War Crimes

Reuters, October 30. <https://www.reuters.com/article/us-un-rights-mideast/u-n-watchdog-urges-israel-to-probe-possible-gaza-war-crimes-idUSKBN0IJ1GI20141030>, accessed September 30, 2018.

Riles, Annelise (2001) Network Inside Out. The University of Michigan Press, Ann Arbor.

2006 Anthropology, Human Rights, and Legal Knowledge: Culture in the Iron Cage'.
American Anthropologist 108(1): 52–65.

Sellars, Kirsten

2002 The Rise and Rise of Human Rights. Stroud, Gloucestershire: Sutton.

Shipton, Parker (2003) 'Legalism and Loyalism: European, African, and Human "Rights."' In *At the Risk of Being Heard* (eds. Dean & Levi). University of Michigan Press, Michigan, Pp. 45–79.

Shore, Cris & Sue Wright (2015) 'Audit Culture Revisited: Rankings, Ratings, and the Reassembling of Society.' *Current Anthropology* 56(3).

Trigt, E. Van (2016) Africa and withdrawal from the ICC, 28 October, 2016,
<https://www.peacepalacelibrary.nl/2016/10/africa-and-icc-withdrawal/>

Tyagi, Yogesh

2011 The UN Human Rights Committee: Practice and Procedure. 1st edition. Cambridge University Press.

UN OHCHR.

2017 Treaty Body System Reform Initiatives by the UN between 1988 to 2014.
[https://www.geneva-academy.ch/joomlatools-files/docman-files/Research%20documents/Official%20documents%20Treaty%20Body%20Reform%20\(1988%20-%202014\).pdf](https://www.geneva-academy.ch/joomlatools-files/docman-files/Research%20documents/Official%20documents%20Treaty%20Body%20Reform%20(1988%20-%202014).pdf).

2018a. Human Rights Committee. <https://www.ohchr.org/en/hrbodies/ccpr/pages/ccprindex.aspx>

2018b. Members

<https://www.ohchr.org/EN/HRBodies/CCPR/Pages/Membership.aspx>

UN Human Rights Council (2018). 20.6.2018.

<https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=23230&LangID=E>