

The First Optional Protocol

Background

The First Optional Protocol is a supplementary treaty to the International Covenant on Civil and Political Rights (the 'ICCPR'). The ICCPR sets out basic human rights, such as the right to life, liberty and freedom from torture, legal and political rights such as the right to participate in the political process and the right to equality before the law, and civil liberties such as the rights to freedom of expression, freedom of association, and privacy.

When the ICCPR was being negotiated, some countries argued that there should be a mechanism for monitoring compliance of parties with the ICCPR. They proposed that an international committee should be able to hear complaints from individuals within countries which are parties to the ICCPR, so that abuses of rights under the ICCPR could be identified and international pressure applied to the relevant countries to make them change their ways. Other countries objected to the involvement of an international committee in their domestic affairs and indicated that they would not become parties to the ICCPR if this was included. As a compromise, this method of monitoring compliance was placed in a separate Optional Protocol, so that those countries which wished to commit

themselves to such supervision could do so, while other countries could become parties to the ICCPR without committing themselves to the Optional Protocol.

Australia and the First Optional Protocol

In 1980, Australia ratified the ICCPR, but did not enter into the First Optional Protocol. It was not until 1991 that the Commonwealth Government acceded to the First Optional Protocol, allowing people within Australia to make complaints to the UN Human Rights Committee about breaches of the ICCPR by Australia. Although Australia has one of the best human rights records in the world, it has never directly implemented all the terms of the ICCPR in legislation, so it is likely that there will be a number of complaints made against Australia.

Nine complaints have so far been made to the UN Human Rights Committee against Australia. The first complaint, claiming that Tasmania's laws which make homosexual acts a criminal offence breach the right to privacy, was upheld by the UN Human Rights Committee. Of the remaining eight complaints:

- three have been held to be inadmissible;
- three concern aspects of the criminal law;

- one concerns family law;
- one concerns the detention of refugees.

The procedures of the UN Human Rights Committee require that all details of complaints remain confidential until the Committee's 'view' is published, so unless the person making the complaint publishes its details against the wishes of the UN, the public cannot obtain information on what complaints are being considered by the Committee.

The UN Human Rights Committee

The UN Human Rights Committee is established by the ICCPR. It is comprised of eighteen members who are elected for four year terms. Members are required to be persons of 'high moral character and recognised competence in the field of human rights'. They do not need to have legal qualifications or experience.

The Committee may not include more than one national from the same country and in the election 'consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilisation and of the principal legal systems'.

The effect of decisions of the UN Human Rights Committee

When a complaint is made to the Committee, and the Committee agrees that there has been a breach of the ICCPR, its view is not binding on parties to the ICCPR. However, the ICCPR itself is binding upon the parties to it, under international law. Accordingly, if the Committee is correct in its interpretation of the ICCPR (and it is the most

authoritative body in interpreting the ICCPR) then the relevant country will have to remedy its breach of the ICCPR, or otherwise remain in breach of international law.

The consequences of being in breach of international law tend to be political in nature. The UN Human Rights Committee's views are brought to the UN General Assembly, and the attendant publicity is used to pressure the recalcitrant country into compliance. This is particularly effective in relation to those countries which preach to others on human rights, and face the accusation of hypocrisy.

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List of the current members of the UN Human Rights Committee:

Francisco Urbina	Costa Rica
Nisuke Ando	Japan
Marco Celli	Venezuela
Christine Chanet	France
Vojin Dimitrijevic	Yugoslavia
Omran El Shafei	Egypt
Elizabeth Evatt	Australia
Laurel Francis	Jamaica
Kurt Herndl	Austria
Rosalyn Higgins	United Kingdom
Rajsoomer Lallah	Mauritius
Andreas Mavrommatis	Cyprus
Birame Ndiaye	Senegal
Fausto Pocar	Italy
Julio Prado Vallejo	Ecuador
Waleed Sadi	Jordan
Bertil Wennergren	Sweden
Tamas Ban	Hungary

As not all parties to the ICCPR are also parties to the First Optional Protocol, a number of countries which have nationals sitting on the UN Human Rights Committee do not allow their own people to make complaints to this committee. These countries are: Japan, Egypt, United Kingdom, and Jordan.