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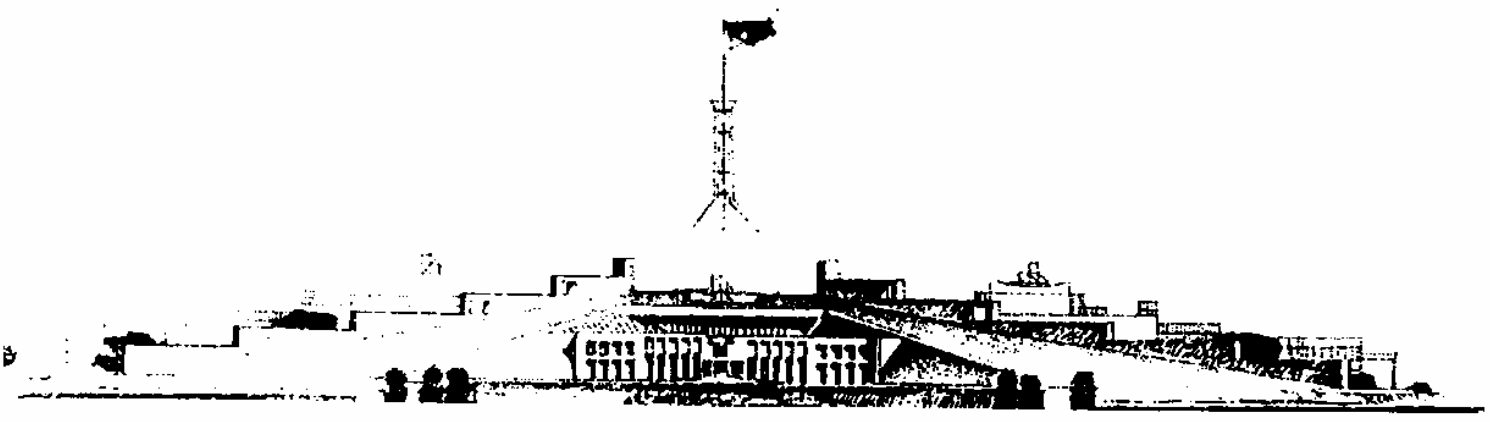
Strange Bedfellows: The UN Human Rights Committee and the Tasmanian Parliament



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Strange Bedfellows: The UN Human Rights Committee and the Tasmanian Parliament

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Executive Summary

On 8 April 1994 the UN Human Rights Committee published its view that Australia was in breach of its international human rights obligations under the International Covenant on Civil and Political Rights ('ICCPR'). This is the first time the UN Human Rights Committee has made a finding upon a complaint against Australia.

Australia ratified the ICCPR in 1980, and became bound under international law to respect and ensure the rights and freedoms set out in the ICCPR for all people within its jurisdiction. The Australian Government asserted that its laws complied with the ICCPR, and therefore there was no need to legislate to expressly protect these rights and provide remedies when they were breached. As there was no special legislation under which a person could bring an action before Australian courts, claiming a breach of the rights set out in the ICCPR, individuals did not have an opportunity to bring court actions to challenge Australia's compliance with the ICCPR.

It was not until Australia ratified the First Optional Protocol to the ICCPR in 1991 that individuals were able to take complaints about breaches of the ICCPR to the UN Human Rights Committee.

The Committee concluded that Tasmanian laws which make 'sexual intercourse against the order of nature' a criminal offence, breached the right to privacy under the ICCPR. The Committee also concluded that provisions in the ICCPR which prohibit discrimination on the grounds of 'sex', also cover 'sexual orientation'. This is a significant departure from previously accepted view that 'sex' means gender. It will have important ramifications, for it means that *all* of the rights in the ICCPR, (not just the right to privacy), must be ensured and protected, without distinction based on sexual preference. This interpretation has the potential to extend the impact of the decision beyond Tasmanian criminal law to domestic law in other Australian States and Territories, where distinctions are made on the basis of sexual preference.

The Committee's finding highlights the problems caused by the division between international law and domestic law. International law only recognises sovereign nations, and therefore from the Human Rights Committee's point of view, the fact that the law in question is a Tasmanian law, rather than a Commonwealth law, does not matter. It is Australia, as a nation, which has ratified the ICCPR and is bound by it, and therefore it is Australia, as a nation, which is in breach of its obligations under the treaty.

The Committee's view also exemplifies the problems caused by the fact that treaties are ratified by the Commonwealth executive, yet may often need to be domestically implemented by the legislatures of the Commonwealth or the States. If the legislature refuses to pass legislation implementing the international obligations to which the executive has committed Australia, then Australia finds itself in breach of international law. While several attempts have been made by the Australian Parliament to implement the ICCPR by enacting a Bill of Rights, none have been successful. If they had been, there would be no need for individuals to take complaints to the Human Rights Committee, as they could be dealt with by Australian courts, and there would be no risk to Australia's international reputation.

There are three possible responses to the Committee's specific recommendation that the Tasmanian laws be repealed. The first is for Tasmania to legislate to repeal the relevant legislation.

The second is for the Commonwealth to pass legislation, based upon its external affairs power, which would have the effect of overriding the Tasmanian laws. This would upset federal political relations, as criminal law has been considered to fall within State jurisdiction. Nevertheless, such legislation would appear to be within the legislative power of the Commonwealth.

The third possible response is for neither the Commonwealth nor the State to take action. If no action were to be taken, then Australia would be considered to be in breach of its international obligations, and this could damage Australia's international standing, particularly on matters of human rights.

The wider ramifications of this decision go beyond the question of laws about homosexual acts in Tasmania. The Human Rights Committee's decision also notes that Australia is in breach of its obligation to provide effective domestic remedies for breaches of the ICCPR. If Australia is to fully comply with this general obligation, the Commonwealth will have to ensure that there are effective judicial or administrative remedies for the breach of rights recognised by the ICCPR, even where those rights are infringed by State or Commonwealth legislation.

Introduction

On Christmas Day 1991, two important events took place, which will have a significant effect upon Australia's legal system and the fundamental human rights of Australian citizens. On that day, the First Optional Protocol to the International Covenant on Civil and Political Rights ('ICCPR') came into effect in Australia, having been ratified[1] by Australia three months previously. On the same day, Mr N. Toonen used the First Optional Protocol to make a complaint to the United Nations Human Rights Committee, claiming that Tasmanian laws which make homosexual acts a criminal offence, breach Australia's obligations under the ICCPR.

The Human Rights Committee has recently published its view on the matter[2], which upheld Mr Toonen's complaint, and recommended the repeal of the Tasmanian laws.

In order to provide the legal background to this complaint, this paper discusses the ICCPR, the First Optional Protocol and Australia's international obligations. It then goes on to discuss the complaint brought by Mr Toonen and the Human Rights Committee's decision.

The second part of the paper discusses the options for Australia in response to the Human Rights Commission's decision, and considers the wider ramifications for Australian domestic law.

The International Covenant on Civil and Political Rights

In 1947, the United Nations Commission on Human Rights decided to draft a treaty which would cast the principles recognised by the Universal Declaration of Human Rights in a form binding in international law on countries which become parties to it. The ICCPR was presented to the General Assembly of the United Nations in 1954, and was finally adopted in 1966. The ICCPR did not come into operation internationally until March 1976.

1Technically, Australia did not 'ratify' the First Optional Protocol, but rather 'acceded' to it because it had not previously signed the Protocol. To avoid confusing terminology, however, this Paper refers to ratification rather than accession.

2The Committee does not make binding decisions or judgments. It considers the complaint and then gives its 'view' on the interpretation of the ICCPR, and its application to the complaint. The Committee's view was decided on 31 March 1994, and made public on 8 April 1994.

The ICCPR is now the major human rights document in the international community. It covers fundamental rights such as the right to life, liberty, freedom of conscience and thought, freedom of assembly and association, freedom of speech, and privacy. It also covers political rights, such as the right to vote, and legal rights, such as the right to equality before the law.

The ICCPR is an international treaty which binds the countries that are party to it.[3] It is a fundamental principle of international law that when a country becomes a party to a treaty, it agrees to comply with the obligations imposed by it.[4] As international law only deals with sovereign countries, it does not recognise internal governing jurisdictions such as the Australian States. Section 50 of the ICCPR expressly provides that the ICCPR extends to all parts of federal countries without any limitations or exceptions. Therefore, if there is a breach of the ICCPR in any part of a federal nation such as Australia, even though it is a State law which causes the breach, it is Australia as a nation which is responsible, under international law, for the breach.

International law is different from domestic law, however, because it relies on co-operation, rather than enforcement by means of an international police force or army. Although in certain circumstances the United Nations Charter allows the imposition of sanctions or military involvement in international disputes, in almost all cases international law relies on co-operation and international political pressure for its enforcement. In the case of the ICCPR, the treaty establishes a Human Rights Committee to oversee compliance with the treaty.

The Human Rights Committee

Part IV of the ICCPR establishes a Human Rights Committee, and specifies its members and functions. The Human Rights Committee is made up of 18 experts who are nominated by countries that are parties to the ICCPR, and are elected for terms of four years by the parties to the ICCPR.

3Countries which are parties to treaties are usually described in the treaty as 'State parties'. In order to prevent confusion between 'State parties' and the Australian States, this paper refers to State parties as 'countries'.

4This principle, known by the Latin phrase *pacta sunt servanda*, is codified in article 26 of the Vienna Convention on the Law of Treaties, which provides that every treaty in force is binding upon the parties to it and must be performed by them in good faith.

The Committee currently has members from Austria, Ecuador, Egypt, France, Japan, Jordan, Senegal, Sweden, Yugoslavia, Australia,[5] Costa Rica, Venezuela, Hungary, Jamaica, the United Kingdom, Mauritius, Cyprus and Italy. The members of the Committee are listed in Appendix A.

The Committee is required, under article 45 of the ICCPR, to submit an annual report of its activities to the UN General Assembly, through the UN Economic and Social Council.

Reports to the Committee by parties to the ICCPR

Article 40 of the ICCPR requires parties to submit regular reports to the Human Rights Committee on the measures they have adopted to give effect to the rights recognised in the treaty. The Committee considers the report and may then question a representative of the relevant country to elicit further information. The Committee makes its own report and comments to the relevant country, which may include recommendations for further action by that country.

The Committee may transmit this report to the Economic and Social Council of the United Nations, and by doing so exert wider international pressure if it considers a country's report to be unsatisfactory.

Disputes between parties to the ICCPR

Another mechanism for compliance is to be found in article 41 of the ICCPR. This article allows parties to the ICCPR to make complaints against each other if they consider the other party is not fulfilling its obligations under the ICCPR. Only parties which make a declaration accepting the application of article 41 may use this mechanism, or have it used against them.[6]

The complaint may be referred to the Human Rights Committee, which may assist the parties to resolve the dispute, or if this is not possible, make a report of the facts, which also contains the submissions of the party. The Committee has no power to state its views on the merits of the dispute. If, however, the matter is referred to an ad hoc conciliation commission under article 42, then that

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5Justice Elizabeth Evatt was elected to the Committee on 10 September 1992, and is currently the chairperson of the Committee. She is the first Australian to have been elected to the Human Rights Committee.

6Australia made a declaration under article 41 on 28 January 1993.

Commission can express its views if conciliation is unsuccessful. It does not appear that articles 41 or 42 have ever been used.

Complaints by individuals : the First Optional Protocol

A further mechanism for obtaining compliance with the ICCPR is contained in the First Optional Protocol. As its title suggests, it is optional for parties of the ICCPR to enter into the First Optional Protocol, but once they do so, they are bound by it. Of the 145 nations and self-governing colonies that have ratified the ICCPR, only 76 have ratified the First Optional Protocol. Countries that have ratified the ICCPR, but have not ratified the First Optional Protocol, include the United States of America, the United Kingdom and Japan.[7]

Countries which have ratified the First Optional Protocol recognise the competence of the Human Rights Committee to receive and consider communications from individuals subject to the country's jurisdiction, who claim to be victims of a violation by the country of any of the rights set out in the ICCPR.

The composition of the Human Rights Committee, which considers these complaints, has been the subject of some controversy. The Human Rights Committee is comprised of members elected by *all* the parties to the ICCPR, but it is able to consider complaints under the First Optional Protocol, even though the Protocol has only been ratified by *some* of the parties to the ICCPR. This means that the current members of the Committee who come from the United Kingdom, Japan, Egypt and Jordan may consider complaints about other countries under the First Optional Protocol, when their own countries have not ratified it, and are not subject to it.

Procedures for making individual complaints

There are a number of restrictions on the ability to bring a complaint to the Committee. First, a person may only make a complaint if they, individually, are a victim of the violation. Complaints cannot be made by a body representing a group which may be subject to discrimination.

Secondly, a complaint will only be admissible before the Committee once all domestic remedies have been exhausted. This means that in most cases the matter will have to have been appealed to the highest court in the country, before it can be brought before the Committee.

7A list of countries that have ratified the ICCPR and the First Optional Protocol is contained in Appendix B and Appendix C, respectively.

If, however, the domestic law does not provide any remedy at all, then the matter can be brought directly before the Committee.

Thirdly, the complaint must not be under consideration by any other international body.

Once an admissible complaint is made, the Committee receives and considers submissions made by both the complainant and the country about which the complaint is made. Both sides may make further submissions, commenting on the other's submission. The Committee then examines the submissions in closed meetings. No witnesses appear before the committee, and therefore there is no cross-examination. The whole proceeding is based on the written submissions. The Committee then determines its 'view' on the complaint, and forwards a copy of its view to the parties. The Committee's view is published in its Annual Report.

The entire process can be very time consuming, particularly if objections are taken to the admissibility of a complaint. It usually takes from two to five years between the initial lodgement of a complaint and the publication of the Committee's view.

Status of the Committee's 'view'

The Committee's view is not, of itself, binding upon countries that are parties to the ICCPR and First Optional Protocol. It is the country's obligations under the ICCPR which are binding upon it under international law, rather than the Committee's view. The Committee's view is, however, highly persuasive evidence that the country is in breach of these binding treaty obligations.

As can be seen from the above description, although the treaty obligations themselves are binding under international law, the method of enforcement is not one of compulsion. The method used by the Human Rights Committee to achieve compliance with the ICCPR is publication and consequential political embarrassment. If a United Nations body publicly declares its view that a country is in breach of its human rights obligations, the adverse publicity, particularly in an international forum, is often an effective sanction, particularly amongst nations that are concerned about their good name.

Australia's involvement with the ICCPR and First Optional Protocol

The ICCPR was signed by Australia on 18 December 1972. By signing it Australia indicated that it agreed with the principles set out in the treaty, but it was not bound under international law to comply with it, until it ratified the ICCPR. The Whitlam Government decided to refrain from ratifying the ICCPR until it passed its *Human Rights Bill*, which would have implemented the treaty in Australian domestic law. The Bill was the subject to a great deal of controversy, and was not passed by the Parliament, and therefore the ICCPR was not ratified at that time.

On 13 August 1980, the Fraser Government ratified the ICCPR. The ICCPR entered into force for Australia three months later, on 13 November 1980. Instead of fully implementing the terms of the ICCPR in domestic law, the Parliament passed the *Human Rights Commission Act 1981*. The Act established the Human Rights Commission and gave it the function of examining Commonwealth laws and proposed laws to determine if they comply with the ICCPR, and to report the results to the relevant Commonwealth Minister. The Commission was also given the power to conciliate complaints about Commonwealth laws or acts which are contrary to the rights in the ICCPR, but it had no power to enforce its findings, only the power to report to the Government. Although the Act included a copy of the ICCPR in its schedule, it did not incorporate it into domestic law, nor did it offer an effective remedy for breaches of any rights set out in the ICCPR.

Several efforts were subsequently made during the 1980s to enact an Australian Bill of Rights which would have implemented the terms of the ICCPR, but none was successful.[8]

On 25 September 1991 Australia ratified the First Optional Protocol, which came into effect three months later on 25 December 1991. Since that time eight complaints have been lodged with the Human Rights Committee.[9] Three have been held to be inadmissible. Two complaints deal with criminal law, one complaint deals with family law and one complaint deals with the detention of refugees. The first complaint made was the complaint by Mr Toonen about Tasmanian laws which make homosexual acts a criminal offence.

Mr Toonen's complaint to the Human Rights Committee

8For further information on attempts to introduce an Australian Bill of Rights, see: Bailey, P., *Human Rights - Australia in an International Context*, Butterworths, 1990: pp. 50-56.

9Information provided by the Attorney-General's Department.

In his complaint, Mr Toonen claimed that ss. 122 and 123 of the Tasmanian *Criminal Code 1924* breach his right to privacy under article 17 of the ICCPR, and his right to equal protection of the law under article 26.

Section 122 of the *Criminal Code* provides that any person who has 'sexual intercourse with any person against the order of nature', or 'consents to a male person having sexual intercourse with him or her against the order of nature', is guilty of a crime. The section applies both to males and females, and would cover heterosexual anal and oral sex, as well as homosexual sex.

Section 123 provides that any male person who, whether in public or private, commits any indecent assault upon, or other act of gross indecency with, another male person, or procures another male person to commit any act of gross indecency with himself or any other male person, is guilty of a crime. This section is clearly directed at sexual acts between men only.

Tasmania is the only jurisdiction in Australia in which homosexual acts remain a criminal offence.[10]

Admissibility

The first step in determining the admissibility of Mr Toonen's complaint was showing that Mr Toonen was a 'victim' of the breach complained about. Mr Toonen had never been prosecuted under the law, and therefore had to show that he was still individually affected by it. The Human Rights Committee concluded that Mr Toonen had established that 'the threat of enforcement and the pervasive impact of the continued existence of these provisions on administrative practice and public opinion had affected him and continued to affect him personally.'[11]

The second step was showing that all domestic remedies had been exhausted. This was satisfied because Australian law provides no remedies for such a complaint. The Commonwealth's *Human Rights and Equal Opportunity Act 1986* does not provide an effective remedy for a person whose rights under the ICCPR are violated by a State

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10Homosexual acts between consenting adults in private were decriminalised in South Australia in 1972; the Australian Capital Territory in 1976; Victoria in 1980; the Northern Territory in 1983; New South Wales in 1984; Western Australia in 1989 and Queensland in 1990.

11View of the Human Rights Committee, Communication No. 488/1992, 31 March 1994, para. 5.1.

law. Despite the fact that article 2(3) of the ICCPR obliges parties to ensure that any person whose rights or freedoms under the ICCPR are violated, shall have an effective remedy, Australia has never fulfilled this obligation by legislating to provide effective domestic remedies for breaches of all rights under the ICCPR. Accordingly, the matter could not be dealt with by Australian courts, and went directly to the Human Rights Committee.

The right to privacy

The main argument made by Mr Toonen was that sections 122 and 123 are in breach of article 17 of the ICCPR.

Article 17 of the ICCPR provides:

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

The first question is the meaning of 'privacy'. The Commonwealth Government, in its submission, considered that 'privacy' involves 'matters which are individual, personal, or confidential, or which are kept or removed from public observation'. The Commonwealth considered that 'consensual sexual activity in private' falls within this concept of privacy.[12] The Human Rights Committee agreed, stating:

Insomuch as article 17 is concerned, it is undisputed that adult consensual sexual activity in private is covered by the concept of "privacy".[13]

The next question was whether the Tasmanian laws amount to an 'arbitrary or unlawful interference with his privacy'. The Tasmanian Government argued that as the challenged laws were enacted by democratic process, they cannot be an unlawful interference with privacy. While not being caught under the 'unlawful' classification, the laws were considered by the Commonwealth, and the Human Rights Committee to be an 'arbitrary interference'.

The Committee concluded that the Tasmanian legislation 'interferes' with the complainant's privacy because he is actually and currently affected by the continued existence of these laws.[14]

12View of the Human Rights Committee: para. 6.2.

13View of the Human Rights Committee: para. 8.2.

14View of the Human Rights Committee: paras 8.2 and 8.3.

On the matter of arbitrariness, the Committee noted that it had previously stated that the 'introduction of the concept of arbitrariness is intended to guarantee that even interference provided for by the law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the circumstances.' It interpreted this requirement of reasonableness to mean that any interference with privacy must be proportional to the end sought and be necessary in the circumstances of any given case.[15]

The Tasmanian Government argued that the law was necessary to protect public health and morals. The Committee rejected the argument that statutes criminalising homosexual activity help to prevent the spread of HIV and AIDS. The Committee noted that the Commonwealth Government had asserted that such laws actually impede public health programs by driving underground people who may be in risk of infection. The Committee also observed that no link has been shown between the criminalisation of homosexual activity and effective control of the spread of HIV or AIDS.[16]

The Committee rejected the notion that moral issues are exclusively a matter of domestic concern, as this would exclude a large area of State practice from the Committee's scrutiny. The Committee noted that all other Australian States and Territories have repealed such laws, and that even in Tasmania there was no consensus as to whether sections 122 and 123 should be retained or repealed.

The Committee also placed importance on the fact that the sections had not been enforced since 1984, and drew from this the implication that they are 'not deemed essential for the protection of morals in Tasmania'.[17] This assumption would appear to contradict the earlier conclusion that the existence of the sections does have a great effect upon Tasmanian society, as was accepted by the Committee in determining the admissibility of the complaint. If, as the Committee accepted, the existence of the sections has a 'pervasive impact' on 'administrative practices and public opinion', then the fact that they are not enforced would not necessarily mean that they are 'not deemed essential for the protection of morals in Tasmania'. The Committee did not recognise this contradiction.

15View of the Human Rights Committee: para. 8.3.

16View of the Human Rights Committee: para. 8.5.

17View of the Human Rights Committee: para. 8.6.

The Committee concluded that sections 122 and 123 do not meet the 'reasonableness' test, and are therefore an arbitrary interference with Mr Toonen's right to privacy, contrary to article 17 of the ICCPR.[18]

18View of the Human Rights Committee: para. 8.6.

Equality rights

Equality rights arose in the case in two ways. First, article 2(1) of the ICCPR provides:

> Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

This means that in ensuring rights, such as the right to privacy under article 17, a country cannot discriminate on these particular grounds. It was argued by Mr Toonen that sexual orientation comes within the category of 'other status'. The Commonwealth Government was less certain. It expressed the view that 'other status' should not be read restrictively, and sought the Committee's opinion on whether it includes sexual orientation. Curiously, the Tasmanian Government accepted, without dispute, that 'other status' is capable of referring to sexual orientation. In its submission to the Commonwealth Government, the Tasmanian Government stated that it 'is beyond argument that homosexuals or bisexuals are as much entitled as any other Australian subjects to the rights set forth in Articles 6-26 (except to the extent that moral considerations are permitted to prevail, and do)'.[19]

The second relevant provision is article 26 which provides:

> All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

If 'other status' were to be interpreted as including sexual orientation, it was argued by Mr Toonen that sections 122 and 123 breached article 26. It was accepted that there was no problem with 'equality before the law', because the law makes no procedural distinctions between homosexuals and heterosexuals. However, it was argued that the sections discriminate in the right to equal protection of the law.

The Human Rights Committee concluded that as it had already decided that there was a breach of article 17, it did not need to address these issues. It did, however, make the following comment:

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19 Submission by Mr Simon Allston, Senior Crown Counsel for Tasmania, to Mr G.A. Mowbray of the Attorney-General's Department, dated 24 June 1992.

> The State party [i.e. the Commonwealth] has sought the Committee's guidance as to whether sexual orientation may be considered an "other status" for the purpose of article 26. The same issue could arise under article 2, paragraph 1, of the Covenant. The Committee confines itself to noting, however, that in its view the reference to "sex" in articles 2, paragraph 1, and 26 is to be taken as including sexual orientation.[20]

Prior to this statement, it had generally been accepted in both the domestic and international sphere that 'sex' meant gender, and did not include sexual orientation.[21] The submissions put to the Committee by both sides discussed the issue solely in terms of 'other status', rather than 'sex'. It is most unfortunate that the Committee made this bald statement without giving any reason why sexual orientation is to fall within the reference of 'sex'.

Some further light was shed on the issue by the separate opinion given by the Swedish member of the Committee, Mr Bertil Wennergren. He stated:

> In paragraph 8.7, the Committee found that in its view, the reference to the term "sex" in article 2, paragraph 1, and in article 26 is to be taken as including sexual orientation. I concur with this view, as the common denominator for the grounds "race, colour and sex" are biological or genetic factors.[22]

This would seem to indicate that the Committee includes sexual orientation within the term sex, because it considers sexual orientation to be invariably determined by 'biological or genetic' factors. This is a controversial assumption which is not yet adequately supported by scientific evidence,[23] and would be rejected by many homosexual people. It detracts from the view that sexual orientation is a matter of choice.

The ramifications of this interpretation of 'sex' are far more significant than the conclusion that there has been a breach of article 17. It means that there can be no discrimination on the basis of sexual orientation in relation to *any* of the rights under the ICCPR. This may, therefore, have a much greater impact on Australian domestic law, than merely affecting Tasmanian criminal laws.

20View of the Human Rights Committee: para. 8.7.

21For a discussion of the relationship between 'sex' and 'sexual orientation', see Pannick, D., *Sex Discrimination Law*, Clarendon Press, Oxford, 1985: 197-207.

22View of the Human Rights Committee, Appendix, Individual opinion by Mr Bertil Wennergren.

23'Born Gay: it's all in the genes', *Sydney Morning Herald*, 17 July 1993; 'Genes and sex', *The Age*, 20 July 1993; 'Prejudice and the X chromosome', *The Age*, 30 July 1993.

The right to an effective remedy

The ICCPR imposes an obligation upon parties to give domestic effect to the rights that it recognises. Article 2(2) provides that where not already provided for by existing legislative or other measures, parties undertake to adopt such legislative or other measures as may be necessary to give effect to the rights recognised in the ICCPR. Article 2(3) provides that parties undertake to ensure that any person whose rights or freedoms under the ICCPR are violated, shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity. Article 2(3) further provides that this remedy must be determined and enforced by competent judicial, administrative or legislative authorities, or any other competent authority provided for by the legal system of the country.

In this case, Australia did not provide an effective domestic remedy for the breach of article 19. The Human Rights Committee concluded that Mr Toonen was entitled to a remedy under article 2(3). It stated:

> In the opinion of the Committee, an effective remedy would be the repeal of sections 122(a), (c) and 123 of the Tasmanian Criminal Code.[24]

This conclusion does not merely have consequences for Tasmanian law. The significance is that not only has Australia breached its obligations under article 19, but it has also breached its obligations to provide an effective remedy under article 2(3). If Australia is to fulfil its international obligations, as pointed out by the Human Rights Committee, it will not only have to change sections 122 and 123 of the Tasmanian *Criminal Code*, but it will have to provide effective remedies for breaches of the ICCPR, as required by article 2(3).

At the moment, Australia provides no remedy for breaches of many of the provisions of the ICCPR. While the *Racial Discrimination Act 1975*, the *Sex Discrimination Act 1984*, the *Commonwealth Electoral Act 1918* and some other legislation, including State anti-discrimination laws, do provide an effective remedy for breaches of some provisions of the ICCPR, there are many others for which there is no remedy at all.[25] For example, article 15 of the ICCPR prohibits retrospective criminal laws. The High Court, in the recent case of

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24View of the Human Rights Committee: para. 10.

25The common law may also provide a remedy in some cases, but if State or Commonwealth legislation applies to the contrary, it overrides the common law, and the common law is therefore not an effective remedy.

Polyukhovich v The Commonwealth[26] recognised that the Commonwealth Parliament has the power to pass retrospective criminal laws, and there is no effective domestic remedy against this.

Another example is the right to freedom of expression under article 19. Apart from the implied constitutional right to freedom of political discourse, recognised by the High Court in *Australian Capital Television Pty Ltd v The Commonwealth,*[27] there is no effective domestic remedy for a person whose right of freedom of expression under the ICCPR has been breached. If one were to closely examine the ICCPR, one could find many more examples where Australia is in breach of its international obligation under art. 2(3) to provide an effective remedy.

It could be argued that if the Commonwealth is to insist that Tasmania change its laws so that it complies with Australia's obligations under the ICCPR, then the Commonwealth must also fulfil Australia's obligations under article 2(3), and provide effective domestic remedies for Australians whose rights under the ICCPR are breached.

Treaty interpretation

One of the criticisms which has been made of the Human Rights Committee is that because it is not a court of law, it does not give reasoned legal opinions. The Committee's view on the *Toonen* complaint is a good example. The Committee stated its view that 'sex' includes 'sexual orientation' without giving any reason. It is extremely difficult for countries to interpret a treaty, if they are not aware of the reasoning by which a conclusion is reached. The reasoning, if revealed, may be relevant to the interpretation of other terms and provisions in the treaty, but unless it is made clear by the Committee, the Committee's reasons can only be a matter of speculation.

This leads to the further criticism of human rights treaties, that they are cast in such wide terms and general language that a country cannot be sure of what it is committing itself to, when it ratifies them. 'Sexual orientation' is not mentioned at all in the ICCPR. It is doubtful that at the time the ICCPR was drafted, it was intended to apply to sexual orientation.[28] However, it is clear from the terms of

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26(1991) 172 CLR 501.

27(1992) 177 CLR 106.

28See McGuinness, P.P., 'Human Rights Law Not Intended to Apply to Gays', *The Australian,* 12 April 1994, and the response by Charlesworth, H., Letter to the Editor, *The Australian*, 18 April 1994.

article 2(1), which refers to 'distinction of any kind such as... sex... or other status', that the list of categories of discrimination was not exhaustive and that it was intended to be developed over time. The Human Rights Committee has interpreted 'other status' widely, including within it, for example, the status of attending a private school.[29]

While some argue that Australia should not bind itself under international law to comply with treaties when it cannot tell what the full extent of these obligations will be, others argue that Australia should be willing to accept an international standard of human rights, as determined by the international community.

Federalism and Australia's international obligations

Under Australia's constitutional arrangements, only the Commonwealth has power to enter into international treaties. This power is exercised under s. 61 of the Constitution, which grants executive power to the Commonwealth.

Accordingly, no Australian State can enter into international treaties of its own accord, and Australian States are not recognised under international law as having 'international personality'. When Australia enters into a treaty, according to international law the treaty binds the whole of Australia, regardless of the federal system, and the distribution of legislative powers between the Commonwealth and the States.

As noted earlier, the ICCPR makes particular reference to federal states in article 50. Article 50 provides:

> The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

When Australia ratified the ICCPR, it did so subject to a general reservation[30] that article 50 shall be given effect subject to article 2(2).

29Charlesworth, H., 'Equality and Non-Discrimination under the Optional Protocol', in Centre for Comparative Constitutional Studies, *Internationalising Human Rights: Australia's Accession to the First Optional Protocol*, 1992, 51, at p. 60.

30A reservation is a formal statement made by a party at the time of signature or ratification of a treaty, altering its obligations under a certain provision of the treaty. A party may not make a reservation that is incompatible with the object and purpose of the treaty: Vienna Convention on the Law of Treaties, art. 19.

Article 2(2) provides that the measures to give effect to the Covenant are to be taken in accordance with the constitutional processes of the State party. It was asserted by Australia that this meant that as legislative power is divided between the Commonwealth and the States, where the subject matter falls within the authority of a State, then it is up to the State to implement that part of the Covenant.

In 1984, the Commonwealth Government decided to remove its reservation to article 50 of the ICCPR.[31] It was generally considered to be ineffective,[32] because the Commonwealth Parliament has the power under the external affairs power in s. 51(xxix) of the Constitution to implement the terms of an international treaty, regardless of whether it would not otherwise have had power to legislate in relation to that subject.[33] Accordingly, the Commonwealth cannot claim that its constitutional processes are restricted by the federal nature of the Constitution.

One consequence of the fact that the Australian States are not recognised under international law is that, when a complaint against a State law is brought to the Human Rights Committee under the First Optional Protocol, it is the Commonwealth Government which is asked to respond, not the relevant State. Accordingly, when the Human Rights Committee made its consideration of the Toonen complaint, it did so on the basis of the submissions of Mr Toonen and the Commonwealth. This was significant, because the Commonwealth did not act as the mouthpiece of the Tasmanian Government. On the contrary, while the Tasmanian Government objected to the admissibility of the complaint, the Commonwealth

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31It was replaced by a 'federal statement' that: 'Australia has a federal constitutional system in which legislative, executive and judicial powers are shared or distibuted between the Commonwealth and constitutent states. The implementation of the treaty throughout Australia will be effected by the Commonwealth, State and Territory authorities having regard to their respective constitutional powers and arrangements concerning their exercise'.

32When the United States proposed to make a similar reservation, it was noted by Professor Schachter of Columbia University that such a reservation would not provide a legal justification for a failure of the United States to meet the requirements of Article 2 within a reasonable period and in all parts of the country. The reservation would be legally impermissible if it were construed as setting aside the basic commitments of Article 2 of the Covenant, because it would be incompatible with the object and purpose of the Covenant: Schachter, O., 'Obligation to Implement the Covenant in Domestic Law', in Henkin, L. (ed.), *The International Bill of Rights*, Columbia University Press, 1981: 328-9. See also the discussion as to whether Australia's reservation was impermissible in: Triggs, G., 'Australia's ratification of the International Covenant on Civil and Political Rights: Endorsement or Repudiation?' (1982) 31 *International and Comparative Law Quarterly* 278, 290-94.

33See the discussion on the external affairs power below.

Government instructed the Human Rights Committee that Australia did not wish to challenge the admissibility of the complaint.[34]

Although the Commonwealth included some representations of Tasmanian views in its general submission, the Commonwealth submission substantially accepted Mr Toonen's complaint, leaving the Committee to make a decision on the basis of the views of one side only, while the Tasmanian Government, whose laws were the subject of the complaint, had no standing to represent its case. This procedure, although consistent with the fact that international law only recognises sovereign nations, does not seem to accord with Australian notions of natural justice.

Possible Australian responses to the Human Rights Committee's view

The view expressed by the Human Rights Committee is not, of itself, binding on Australia. The ICCPR, however, is binding on Australia under international law. If Australia is in breach of its obligations under the ICCPR, it is obliged under international law to remedy this breach. As the Human Rights Committee is the most authoritative body for the interpretation of the ICCPR, its opinion that Australia is in breach of its obligations, must be taken seriously.

There are three possible responses to the Human Rights Committee's view. The first is for Tasmania to repeal the relevant sections.

The second response is for the Commonwealth Parliament to pass legislation, based on the external affairs power in s. 51(xxix) of the Constitution, in order to override the Tasmanian *Criminal Code*, and abolish the relevant offences.

Tasmania may choose to challenge the constitutional validity of any such Commonwealth legislation in the High Court. On the basis of current authorities, it is unlikely that such a challenge would be successful. The High Court established in the Franklin Dam case of *Commonwealth v Tasmania*,[35] that a law that carries out or gives effect to a treaty is within s. 51(xxix) whether or not the subject-matter of the treaty to which the law gives effect involves a relationship with other countries, or persons or things outside Australia. Justices Mason, Murphy, and Deane went further,

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34Morgan, W., 'Sexuality and Human Rights: The First Communication by an Australian to the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights', Volume 14 *Australian Year Book of International Law* 277, 290.

35(1983) 158 CLR 1.

concluding that the external affairs power is not confined to the legislative implementation of 'obligations' under international treaties. Justice Deane stated at p. 259:

> Circumstances could well exist in which a law which procured or ensured observance within Australia of the spirit of a treaty or compliance with an international recommendation or pursuit of an international objective would properly be characterised as a law with respect to external affairs, notwithstanding the absence of any potential breach of defined international obligations or of the letter of international law.

Justice Brennan was more hesitant, noting that if the Commonwealth's legislation was not based on 'obligations' in the international treaty, then the other matters in the treaty which are relied upon must be assessed along the lines of the test developed by Justice Stephen in *Koowarta v Bjelke-Petersen*[36], to discern whether they are matters of 'international concern'.

If the Commonwealth Parliament were to pass legislation based on its international obligations under the ICCPR, then it would be a valid exercise of the power of s. 51(xxix) of the Constitution. Even if, for some reason, the legislation were not considered to be implementing treaty obligations, it is most likely that the Human Rights Committee's view would be considered by the High Court to be an 'international recommendation' or a matter of 'international concern'. In determining whether an international duty exists, the High Court has stated that this depends upon the construction which the international community attributes to a treaty, and the operation which the international community would accord to it in particular circumstances'.[37] The decision of the Human Rights Committee would almost certainly be considered indicative of the view of the international community.

Accordingly, any Tasmanian challenge to Commonwealth legislation implementing the Human Rights Committee's recommendation would be likely to fail.

The third possible response is for neither Government to take action. If this option were to be chosen, Australia would find itself subject to a great deal of adverse publicity and international pressure.

The Human Rights Committee, stated at the end of its 'view' that the Committee wishes to receive, within 90 days, information from Australia on the measures taken to give effect to the Committee's views. The Committee has appointed a Special Rapporteur for the

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36(1982) 153 CLR 168.

37*Queensland v The Commonwealth* (1989) 167 CLR 232, per Mason C.J., Brennan, Deane, Toohey, Gaudron and McHugh JJ. at 240.

Follow-Up of Views in order to monitor the responses of countries. Reports upon a country's response are included with the publication of the Committee's view in its Annual Report to the General Assembly of the United Nations, and the matter will be raised again when Australia makes its regular report to the Committee on its implementation of the ICCPR.

This constant publicity of Australia's failure to implement its international human rights obligations would mean that any criticism that Australia makes of human rights abuses in other countries would not be treated seriously, and Australian efforts to further the international advancement of human rights may be seriously damaged.

International Ramifications

Does the Human Rights Committee's view mean that laws which make homosexual acts a criminal offence in all the countries which are parties to the ICCPR must now be changed? The answer is not clear.

In its consideration of the Australian complaint, the Human Rights Committee took into account the fact that homosexual acts are not criminal offences in other Australian States and Territories, and that there was a lack of consensus on the matter in Tasmania itself.

If a similar complaint was brought to the Committee from a country which had strong religious and cultural beliefs about homosexuality and where laws prohibiting homosexual acts were enforced throughout the country and were generally accepted and approved of by the population, it is possible that the Committee would consider laws criminalising homosexual acts to be 'reasonable' in the circumstances.

The level of discretion allowed to countries which have a different cultural and religious background, was discussed by the European Court of Human Rights in the case of *Dudgeon v The United Kingdom.*[38] The case concerned the right to privacy under article 8 of the European Convention on Human Rights, which is similar to article 17 of the ICCPR. The Court decided by a majority of fifteen to four, that a Northern Ireland law which made homosexual acts a criminal offence, was in breach of article 8. Like Tasmania, the Northern Ireland Government argued that the legislation had as its object the 'protection of health or morals' and was therefore valid. The

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384 EHRR 1981, 149.

Court accepted that in some cases the law may be different in a more conservative society. It stated:

> The fact that similar measures are not considered necessary in other parts of the United Kingdom or in other member States of the Council of Europe does not mean that they cannot be necessary in Northern Ireland... Where there are disparate cultural communities residing within the same State, it may well be that different requirements, both moral and social, will face the governing authorities.[39]

Nevertheless, the Court held that the fact that the Northern Ireland government had acted in good faith was insufficient, and that the government had failed to justify the legislation. The Court noted that the law was no longer enforced in relation to people over the age of twenty-one. Accordingly, it was difficult to show a 'pressing social need' for the legislation.

Although this case was decided under a different international treaty, and by a different body, it is still an influential part of international jurisprudence, and was referred to by the Human Rights Committee in its view on the *Toonen* complaint. On this basis, it is likely that laws criminalising homosexual acts in Western European countries,[40] or other Western countries such as the United States, where it is difficult to establish a strong religious, cultural and social consensus supporting such laws, would be considered by the Human Rights Committee to be in breach of article 17 of the ICCPR.

In the United States of America, as at 1993, it was a criminal offence to engage in homosexual acts in twenty-three states, and the District of Columbia.[41] The States of Alabama, Arizona, Florida, Georgia, Idaho, Louisiana, Minnesota, Mississippi, New Jersey, North Carolina, Oklahoma, Rhode Island, South Carolina, Utah, and Virginia outlaw consensual sodomy between people of the same or opposite sex. In addition, eight States outlaw sodomy only between people of the same sex: Arkansas, Kansas, Maryland, Missouri, Montana, Nevada, Tennessee and Texas.

In 1986, the constitutional validity of Georgia's anti-sodomy legislation was challenged in the Supreme Court. The Court held, in the case of *Bowers v Hardwick*[42] that the right to privacy, which has

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39Quoted in: Robertson, A.H., and Merrills, J.G., *Human Rights in Europe*, Manchester University Press, 1993: 202.

40As at 1993, Cyprus and Gibraltar were the only Western European jurisdictions where it remained a criminal offence to commit homosexual acts.

41'Developments in the Law - Sexual Orientation and the Law' May 1989, 102 *Harvard Law Review* 1508, 1519; and 'Gay Rights' *CQ Researcher*, vol. 3(9), 5 March 1993: 202.

42478 US 186 (1986).

been extracted from the 'due process' clause of the Bill of Rights does not contain a right to engage in homosexual sodomy.

In 1992, in the case of *Commonwealth v Wasson,*[43] the Supreme Court of Kentucky struck down the State law which criminalised homosexual sodomy on the basis that it was inconsistent with the State Constitution. It held, by a 4-3 majority, that the defendant's rights to privacy and equal protection of the law were violated by this particular law.[44] The majority decision declared: 'We need not sympathise, agree with, or even understand the sexual preference of homosexuals in order to recognize their right to equal treatment before the bar of criminal justice'.[45] The Court went on to observe that '[s]imply because the majority... finds one type of extramarital intercourse more offensive than another does not provide a rational basis for criminalizing the sexual preference of homosexuals'.[46]

The United States is not a party to the First Optional Protocol, so there is no opportunity for a similar complaint to be brought to the Human Rights Committee from one of these States. However, the United States has ratified the ICCPR and would be in breach of its international obligations under the ICCPR if it failed to take action.

Amongst those countries which have ratified the First Optional Protocol, there are a number which still have laws criminalising homosexual acts. Five of the eighteen members of the Human Rights Committee come from countries where homosexual acts may in some circumstances be an offence.[47] The view of the Human Rights Committee in the *Toonen* complaint may prompt complaints to the Committee from individuals in these countries. It would be interesting to see if the Human Rights Committee would respond in the same way if a complaint was brought by an individual from a country with strong religious and cultural objections to homosexuality. If the Committee were to apply the same standard, it could be accused of cultural imperialism, whereas if it allowed different standards, it could be accused of detracting from the universality of human rights. Such a case would exemplify the problems involved in an international committee applying standard rules to vastly different cultures.

43842 S.W. 2d 487 (Ky. 1992)

44Case Note, April 1993 106 *Harvard Law Review* 1370.

45842 S.W. 2d 487, 501.

46842 S.W. 2d 487, 502.

47Australia, Cyprus, Ecuador, Jamaica, and Mauritius: 'Wide interest in ruling on Tasmanian gays' *Canberra Times*, 14 April 1994.

Conclusion

The position in which Australia currently finds itself is a direct consequence of the ratification of international treaties without ensuring adequate legislation is passed to implement their terms. The fact that the executive may ratify international treaties, but only the legislature may change domestic law, leaves a chasm in which Australia's international reputation may slip and suffer damage. If the executive cannot be certain that the Parliament will pass the legislation necessary to fulfil its prospective obligations under a treaty, then the treaty should not be ratified.

The case brought by Mr Toonen is a perfect example of the Commonwealth's failure to legislate to fulfil its international obligations. As long as there is no legislation giving individuals domestic remedies for breaches of rights under the ICCPR, there will be a continual procession of individuals making complaints to the United Nations Human Rights Committee.

While criticisms have been raised about the involvement of a United Nations body in Australian domestic disputes, this would not occur if Australia had adequate domestic remedies. The First Optional Protocol provides that complaints can only be made to the Human Rights Committee once domestic remedies have been exhausted. If there were domestic remedies, these could be enforced by Australian courts, and there would be no need for the involvement of United Nations bodies, and no need for the adverse publicity which has been described in one case as 'to all intents and purposes a potent declaration of international delinquency'.[48]

48Davidson, 'The Procedure and Practice of the Human Rights Committee under the First Optional Protocol to the International Covenant on Civil and Political Rights' (1991) 4 *Canterbury Law Review* 337, 353, quoted in Caleo, C., 'Implications of Australia's Accession to the International Covenant on Civil and Political Rights' (1993) 4 *Public Law Review* 175, 187.

Appendix A

Members of the UN Human Rights Committee

Kurt Hendl	(Austria)	Elizabeth Evatt	(Australia)
Julio Prado Vallejo	(Ecuador)	Fransciso Urbina(	Costa Rica)
Omran El Shafel	(Egypt)	Marco Bruni Celli	(Venezuela)
Christine Chanet	(France)	Tamas Ban	(Hungary)
Nisuke Ando	(Japan)	Laurel Francis	(Jamaica)
Waleed Sadi	(Jordan)	Rosalyn Higgins	(UK)
Birame N'Diaye	(Senegal)	Rajsoomer Lallah	(Mauritius)
Bertil Wennergren	(Sweden)	Andreas Mavrommatis	(Cyprus)
Vojin Dimitrijevic	(Yugoslavia)	Faust Pocar	(Italy)

Appendix B

International Covenant on Civil and Political Rights (ICCPR)

(New York, 19 December 1966)

Entry into force generally: 23 March 1976.
Entry into force for Australia: 13 November 1980.

Parties	**Signature**	**Ratification Accession(a) Extension(e) Succession(s)**
Afghanistan		24 Jan 1983(a)
Albania		4 Oct 1991(a)
Algeria	10 Dec 1968	12 Sep 1989
Angola		10 Jan 1992(a)
Argentina	19 Feb 1968	8 Aug 1986
Armenia		23 Jun 1993(a)
Australia	18 Dec 1972	13 Aug 1980
Austria	10 Dec 1973	10 Sep 1978
Azerbaijan		13 Aug 1992(a)
Barbados		5 Jan 1973(a)
Belarus	19 Mar 1968	12 Nov 1973
Belgium	10 Dec 1968	21 Apr 1983
Benin		12 Mar 1992(a)
Bolivia		12 Aug 1982(a)
Bosnia & Herzegovina		1 Sep 1993(s)
Brazil		24 Jan 1992(a)
Bulgaria	8 Oct 1968	21 Sep 1970
Burundi		9 May 1990(a)
Cambodia	17 Oct 1980	26 May 1992(a)
Cameroon		27 Jun 1984(a)
Canada		19 May 1976(a)
Cape Verde		6 Aug 1993(a)
Central African Republic		8 May 1981(a)
Chile	16 Sep 1969	10 Feb 1972
Colombia	21 Dec 1966	29 Oct 1969
Congo		5 Oct 1983(a)
Costa Rica	19 Dec 1966	29 Nov 1968
Cote d'Ivoire		26 Mar 1992(a)
Croatia		12 Oct 1992(s)
Cyprus	19 Dec 1966	2 Apr 1969
Czechoslovakia	7 Oct 1968	23 Dec 1975
Czech Republic		22 Feb 1993(s)
Denmark	20 Mar 1968	6 Jan 1972
Dominica		17 Jun 1993(a)
Dominican Republic		4 Jan 1978(a)
Ecuador	4 Apr 1968	6 Mar 1969
Egypt	4 Aug 1967	14 Jan 1982

Parties	**Signature**	**Ratification Accession(a) Extension(e) Succession(s)**
El Salvador	21 Sep 1967	30 Nov 1979
Equatorial Guinea		25 Sep 1987(a)
Estonia		21 Oct 1991(a)
Ethiopia		11 Jun 1993(a)
Finland	11 Oct 1967	19 Aug 1975
France		4 Nov 1980(a)
Gabon		21 Jan 1983(a)
Gambia		22 Mar 1979(a)
Germany*	9 Oct 1968	17 Dec 1973
Grenada		6 Sep 1991(a)
Guatemala		5 May 1992(a)
Guinea	28 Feb 1967	24 Jan 1978
Guyana	22 Aug 1968	15 Feb 1977
Haiti		6 Feb 1991(a)
Honduras	19 Dec 1966	
Hungary	25 Mar 1969	17 Jan 1974
Iceland	30 Dec 1968	22 Aug 1979
India		10 Apr 1979(a)
Iran	4 Apr 1968	24 Jun 1975
Iraq	18 Feb 1969	25 Jan 1971
Ireland	1 Oct 1973	8 Dec 1989
Israel	19 Dec 1966	3 Oct 1991
Italy	18 Jan 1967	15 Sep 1978
Jamaica	19 Dec 1966	3 Oct 1975
Japan	30 May 1978	21 Jun 1979
Jordan	30 Jun 1972	28 May 1975
Kazakhstan	16 Feb 1994	
Kenya		1 May 1972(a)
Korea, Dem People's Rep		14 Sep 1981(a)
Korea, Republic of		10 Apr 1990(a)
Latvia		14 Apr 1992(a)
Lebanon		3 Nov 1972(a)
Lesotho		9 Sep 1992(a)
Liberia	18 Apr 1967	
Libya		15 May 1970(a)
Lithuania		20 Nov 1991(a)
Luxembourg	26 Nov 1974	18 Aug 1983
Former Yugoslav Republic of Macedonia		18 Jan 1994(s)
Madagascar	17 Sep 1969	21 Jun 1971
Malawi		22 Dec 1993(a)
Mali		16 Jul 1974(a)
Malta		13 Sep 1990(a)
Mauritius		12 Dec 1973(a)

Parties	**Signature**	**Ratification Accession(a) Extension(e) Succession(s)**
Mexico		23 Mar 1981(a)
Moldova		26 Jan 1993(a)
Mongolia	5 June 1968	18 Nov 1974
Morocco	19 Jan 1977	3 May 1979
Mozambique		21 Jul 1993(a)
Nepal		14 May 1991(a)
Netherlands	25 Jun 1969	11 Dec 1978
Neth. Antilles		11 Dec 1978(e)
New Zealand	12 Nov 1968	28 Dec 1978
Nicaragua		12 Mar 1980(a)
Niger		7 Mar 1986(a)
Nigeria		29 Jul 1993(a)
Norway	20 Mar 1968	13 Sep 1972
Panama	27 Jul 1976	8 Mar 1977
Paraguay		10 Jun 1992(a)
Peru	11 Aug 1977	28 Apr 1978
Philippines	19 Dec 1966	23 Oct 1986
Poland	2 Mar 1967	18 Mar 1977
Portugal	7 Oct 1976	15 Jun 1978
Romania	27 Jun 1968	9 Dec 1974
Russia	18 Mar 1968	16 Oct 1973
Rwanda		16 Apr 1975(a)
St Vincent & the Grenadines		9 Nov 1981(a)
San Marino		18 Oct 1985(a)
Sengal	6 Jul 1970	13 Feb 1978
Seychelles		5 May 1992(a)
Slovakia		28 May 1993(s)
Slovenia		6 Jul 1992(a)
Somalia		24 Jan 1990(a)
Spain	28 Sep 1976	27 Apr 1977
Sri Lanka		11 Jun 1980(a)
Sudan		18 Mar 1986(a)
Suriname		28 Dec 1976(a)
Sweden	29 Sep 1976	6 Dec 1971
Switzerland		18 Jun 1992(a)
Syria		21 Apr 1969(a)
Tanzania		11 Jun 1976(a)
Togo		24 May 1984(a)
Trinidad and Tobago		21 Dec 1978(a)
Tunisia	30 Apr 1968	18 Mar 1969
Ukraine	20 Mar 1968	12 Nov 1973
United Kingdom	16 Sep 1968	20 May 1976
Belize		20 May 1976(e)

Parties	**Signature**	**Ratification Accession(a) Extension(e) Succession(s)**
Bermuda		20 May 1976(e)
Cayman Is.		20 May 1976(e)
Falkland Is. and depend		20 May 1976(e)
Gibralta		20 May 1976(e)
Gilbert Is		20 May 1976(e)
Guernsey		20 May 1976(e)
Hong Kong		20 May 1976(e)
Isle of Man		20 May 1976(e)
Jersey		20 May 1976(e)
Montserrat		20 May 1976Ie)
Pitcairu Group		20 May 1976(e)
St Helena and depend		20 May 1976(e)
Solomon Is.		20 May 1976(e)
Turks and Caicos Is.		20 May 1976(e)
Tuvalu		20 May 1976(e)
Virgin Is.		20 May 1976(e)
United States of America	5 Oct 1977	8 Jun 1992
Uruguay	21 Feb 1967	1 Apr 1970
Venezuela	24 Jun 1969	10 May 1978
Vietnam		24 Sep 1982(a)
Yemen		9 Feb 1987(a)
Yugoslavia	8 Aug 1967	2 Jun 1971
Zaire		1 Nov 1976(a)
Zambia		10 Apr 1984(a)
Zimbabwe		13 May 1991(a)

* Signed for the German Democratic Republic on 23 March 1973 and ratified 8 November 1973. The GDR acceded to the FRG on 3 October 1990.

Appendix C

(First) Optional Protocol to the International Convenant on Civil and Political Rights (New York, 19 December 1966)

Entry into force generally: 23 March 1976
Entry into force for Australia: 25 December 1991

Parties	**Signature**	**Ratification Accession (a) Extension (e) Succession (s)**
Algeria		12 Sep 1989(a)
Angola		10 Jan 1992(a)
Argentina		8 Aug 1986(a)
Armenia		23 Jun 1993(a)
Australia		25 Sep 1991(a)
Austria	10 Dec 1973	10 Dec 1987
Barbados		5 Jan 1973(a)
Belarus		30 Sep 1992(a)
Benin		12 Mar 1992(a)
Bolivia		12 Aug 1982(a)
Bulgaria		26 Mar 1992(a)
Cameroon		27 Jun 1984(a)
Canada		19 May 1976(a)
Central African Republic		8 May 1981(a)
Chile		27 May 1992(a)
Colombia	21 Dec 1966	29 Oct 1969
Congo		5 Oct 1983(a)
Costa Rica	19 Dec 1966	29 Nov 1968
Cyprus	19 Dec 1966	15 Apr 1992
Czechoslavakia		12 Mar 1991(a)
Czech Republic		22 Feb 1993(s)
Denmark	20 Mar 1968	6 Jan 1972
Dominican Republic		4 Jan 1978(a)
Ecuador	4 Apr 1968	6 Mar 1969
El Salvador	21 Sep 1967	
Equatorial Guinea		25 Sep 1987(a)
Estonia		21 Oct 1991(a)
Finland	11 Dec 1967	19 Aug 1975
France		17 Feb 1984(a)
Gambia		9 Jun 1988(a)
Germany		25 Aug 1993(a)
Guinea	19 Mar 1975	17 Jun 1993
Guyana		10 May 1993(a)
Honduras	19 Dec 1966	
Hungary		7 Sep 1988(a)
Parties	**Signature**	**Ratification**

		Accession (a) Extension (e) Succession (s)
Iceland		22 Aug 1979(a)
Ireland		8 Dec 1989(a)
Italy	30 Apr 1976	15 Sep 1978
Jamaica	19 Dec 1966	3 Oct 1975
Korea, Republic of		10 Apr 1990(a)
Libya		16 May 1989(a)
Lithuania		20 Nov 1991(a)
Luxembourg		18 Aug 1983(a)
Madagascar	17 Sep 1969	21 Jun 1971
Malta		13 Sep 1990(a)
Mauritius		12 Dec 1973(a)
Mongolia		16 Apr 1991(a)
Nepal		14 May 1991(a)
Netherlands	25 Jun 1969	11 Dec 1978
Neth. Antilles		11 Dec 1978(e)
New Zealand		26 May 1989(a)
Nicaragua		12 Mar 1980(a)
Niger		7 Mar 1986(a)
Norway	20 Mar 1968	13 Sep 1972
Panama	27 Jul 1976	8 Mar 1977
Peru	11 Aug 1977	3 Oct 1980
Philippines	19 Dec 1966	22 Aug 1989
Poland		7 Nov 1991(a)
Portugal	1 Aug 1978	3 May 1983
Romania		20 Jul 1993(a)
Russia		1 Oct 1991(a)
St Vincent & the Grenadines		9 Nov 1981(a)
San Merino		18 Oct 1985(a)
Senegal	6 Jul 1970	13 Feb 1978
Seychelles		5 May 1992(a)
Slovakia		28 May 1993(s)
Slovenia		16 Jul 1993(a)
Somalia		24 Jan 1990(a)
Spain		25 Jan 1985 (a)
Suriname		28 Dec 1976(a)
Sweden	29 Sep 1967	6 Dec 1971
Togo		30 Mar 1988(a)
Trinidad & Tobago		14 Nov 1980(a)
Ukraine		25 Jul 1991(a)
Uruguay	21 Feb 1967	1 Apr 1970
Venezuela	15 Nov 1976	10 May 1978
Yugoslavia	14 Mar 1990	
Zaire		1 Nov 1976(a)
Zambia		10 Apr 1984(a)