Chapter Nine

The Essence of Petitions and Fact-finding Procedures

Introduction

In this chapter we shall try to identify what monitoring and supervisory bodies have laid down as the essence of petitions and fact-finding procedures.

I. The Essence of Petitions Procedures

One can distil as the essence of petitions procedures the concept of international protection, the principle of equality of arms, the duty of States parties to cooperate in good faith in the examination of petitions, and the concept of the living law.

A. The Concept of International Protection

The United Nations’ role in shaping the future world is greatest in the human rights jurisprudence it has developed to help build a world of human dignity and progress based on respect for human rights. At the forefront of this work has been the UN Human Rights Committee, which monitors the implementation of the International Covenant on Civil and Political Rights (1966).

It is striking how much the Human Rights Committee has influenced the human rights jurisprudence of the world. The first thing that stands out from the case law is that the Human Rights Committee is in the process of clarifying the constitutional or public order of the world and its corresponding legal norms. The Human Rights Committee is articulating the principle of international supervision of human rights, namely that what is legal or illegal is determined, in the final instance, by a UN Human Rights body. 111 States are at present bound by the petitions procedure operated by the Committee and, undoubtedly, the remaining States will do so when they see the light – as eventually they must if they are to do justice to their own citizens.
The second thing that stands out is that the Human Rights Committee is in the process of humanizing sovereignty. The Committee insists that governments are not at liberty to act as they see fit but must conform to international human rights standards. Of equal significance, third, the Human Rights Committee has held in a landmark case that the foremost United Nations organ, the Security Council, must comply with international human rights norms when its actions affect individuals. This is a breath-taking decision of the Human Rights Committee in the case of Sayadi and others v. Belgium (2008). In that case, Belgium argued that it was shielded from scrutiny because it was acting to implement a Security Council resolution. 'No', the Committee replied; Belgium must comply with its human rights obligations, which took precedence. The Security Council cannot act in breach of human rights.

Fourth, the Human Rights Committee has insisted that even in times of public emergency there can be no excuses for violating fundamental rights such as the right to life or not to be tortured. In a time when human rights are being flouted in the name of acting against terrorism, the Human Rights Committee holds aloft the banner of international human rights law and insists that no Government is above the law.

Fifth, among the legal precepts developed by the Human Rights Committee are the following:

- Governments are legally bound to take reasonable and appropriate measures to protect people within their jurisdiction or control.
- The law must strictly control and limit the circumstances in which a person may be deprived of his or her life by the authorities of the State.
- A State, by invoking the existence of exceptional circumstances, cannot evade the obligations it has undertaken under international human rights law by ratifying the Covenant.
- A situation in which the functions and competences of the judiciary and the executive are not clearly distinguishable or where the executive is able to control or direct the judiciary is incompatible with the notion of an independent and impartial judiciary.
- Governments are under a legal obligation to ensure that remedies for violations are effective. Expedition and effectiveness are particularly important in the adjudication of cases involving torture.
- Where violations have taken place Governments must take measures to ensure that similar violations do not take place in the future.
- Governments should take specific and effective measures to prevent the disappearance of individuals and establish effective facilities and