Optional Protocol cases concerning the Nordic States before the United Nations Human Rights Committee

By Alfred de Zayas and Jakob Th. Möller*

Introduction.
The Human Rights Committee (often referred to as the United Nations Human Rights Committee) was established in 1976 as the monitoring organ of the International Covenant on Civil and Political Rights, which entered into force on 23 March 1976. It is composed of 18 experts elected by States Parties to the Covenant, at present 85. Unlike the United Nations Commission on Human Rights, which is composed of 43 Delegations of States members of the United Nations (at present 159 States members), the Committee's members serve in their personal capacities and do not represent their countries of nationality. As a treaty body, it is not strictu sensu a United Nations body. It functions, however, with the assistance of the United Nations Secretariat, i.e. the Centre for Human Rights, United Nations Office at Geneva, and reports to the General Assembly of the United Nations through the Economic and Social Council. It will be referred to hereinafter as the Committee or HRC.

The membership of the HRC as of 1 January 1987 is as follows:

Mr. Andrés Aguilar (Venezuela)
Mr. Nisuke Ando (Japan)
Ms. Christine Chanet (France)
Mr. Joseph Cooray (Sri Lanka)
Mr. Vojin Dimitrijevic (Yugoslavia)
Mr. Omran El-Shafei (Egypt)
Ms. Rosalyn Higgins (United Kingdom)
Mr. Rajsoomer Lallah (Mauritius)
Mr. Andreas Mavrommatis (Cyprus)
Mr. Joseph Mommersteeg (Netherlands)
Mr. Anatoly Movchan (Union of Soviet Socialist Republics)
Mr. Birame N'Diaye (Senegal)
Mr. Fausto Pocar (Italy)
Mr. Julio Prado Vallejo (Ecuador)
Mr. Alejandro Serrano Caldera (Nicaragua)
Mr. S. Amos Wako (Kenya)
Mr. Bertil Wennnergren (Sweden) and
Mr. Adam Zielinski (Poland).

Although it cannot be said that there is a "Nordic" seat in the Committee, it should be noted that the initial composition of the Committee included two Nordic members, Professor Ole Espersen (Denmark) of the University of Copenhagen and Professor Torkel Opsahl (Norway) of the Institute of Public Law of the University of Oslo. Professor Espersen retired in 1978 and later became a Cabinet Minister in

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Denmark. Professor Opsahl served as a Committee member through its twenty-eighth session, his term expiring on 31 December 1986. When Professor Opsahl declined to seek reelection, Sweden nominated Justice Bertil Wennergren who was elected in September 1986 for a term of four years, beginning on 1 January 1987.

In order to monitor implementation of the provisions of the International Covenant on Civil and Political Rights by States parties, the Committee has been given four principal tasks under the Covenant and the Optional Protocol thereto:

1. State reports.
   Article 40 of the Covenant provides that the Committee shall examine reports by States Parties "on the measures they have adopted which give effect to the rights recognized (in the Covenant) and on the progress made in the enjoyment of those rights." Such reports are due within one year of a State's becoming party to the Covenant and thereafter periodically every five years.²

2. General comments.
   In order to facilitate the preparation of reports by States parties, the Committee has formulated a number of "general comments" under article 40, paragraph 4 of the Covenant.² Such comments have drawn attention to certain shortcomings, or areas that could have been better elucidated in the reports by States parties and also contain authoritative interpretations on the scope and meaning of Covenant provisions thus providing a needed commentary and elucidating ambiguities in the text of the Covenant.

3. Inter-State complaints.³
   Pursuant to article 41 of the Covenant, inter-State complaints may be examined by the Committee. This article establishes an optional procedure whereby a State may submit a communication to the Committee alleging that another State "is not fulfilling its obligations" under the Covenant. This procedure applies, however, only to States that have made a declaration recognizing the Committee's competence to examine such complaints. Thus far 20 States have made the declaration, including all five Nordic countries. This procedure came into effect in 1979, but to date no inter-State complaint has been lodged, possibly due to the general reluctance of governments to risk impairing their bilateral relations with other governments.

   Article 41 provides for a confidential procedure in which the Committee at closed meetings would "make available its good offices to the States Parties concerned with a view to a friendly solution of the matter". If no solution is reached, the States may consent to the establishment of a conciliation commission under article 42 of the Covenant.

4. Individual complaints.
   Under the Optional Protocol individuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies may submit written communications to the Human Rights Committee for consideration. Thirty-eight of the 84 States which have acceded to or ratified the Covenant have accepted the competence of the Committee to deal with individual complaints by ratifying or acceding to the Optional Protocol.

   These States are:
   Argentina, Barbados, Bolivia, Cameroon, Canada, the Central African Republic, Colombia, Congo, Costa Rica, Denmark, the Dominican Republic,