
Book Reviews

Jeroen Gutter. ***Thematic Procedures of the United Nations Commission on Human Rights and International Law: In Search of a Sense of Community***. Antwerpen and Oxford: Intersentia, 2006. Pp. 443. €85.00. ISBN: 9050955576.

This volume, originally a doctoral thesis by Jeroen Gutter of Utrecht University, offers a comprehensive overview of 26 years of thematic mechanisms of the UN Commission on Human Rights. The first mechanism was the working group on enforced or involuntary disappearances in 1980, created in response to human rights violations under the military dictatorships in Argentina (1976–1983) and in Chile (1973–1980) (at 82). The volume helps to close a research lacuna as only very few authors have to date dealt in detail with the UN thematic mechanisms (e.g. Pastor Ridruejo, de Frouville, Lempinen, Rudolf and Nifosi¹).

To this day, thematic mechanisms are less controversial than country mechanisms because they primarily take up a specific topic

and seek cooperation with countries regarding that topic and individual cases (rather than 'confronting a country's government'). The present special rapporteur on torture, Manfred Nowak, for example, submitted a 26-page report on general trends to the UN General Assembly in 2008, with an appendix of no less than 345 pages covering his exchanges with governments of 59 countries. Generally, these mechanisms are considered to be excellent for the promotion and protection of human rights. However, given the sometimes polarized atmosphere at the Human Rights Council – as with the Commission – some of them have come under pressure, including more recently regarding the right to freedom of religion or belief.

In 2007 the Organization of Islamic Conference was successful in getting a resolution passed which urged a global prohibition of the public defamation of religions, clearly a response to the caricatures in Denmark, the protests and the ensuing debate. Again, in 2008 a resolution proposed by Islamic countries was adopted by the Council, stating its deep concern about the defamation of religions and urging governments to prohibit it. According to a report in the *International Herald Tribune*, 'the European Union said the text was one-sided because it primarily focused on Islam. EU countries, including France, Germany and Britain, voted against it. Previously EU diplomats had said they wanted to stop the growing worldwide trend of using religious anti-defamation laws to limit free speech.'²

On a more general plane, some states attempted to stifle the margin of action of special rapporteurs in 2007 by means of a code of conduct adopted by the Human Rights Council.

Returning to the volume under review, the author offers in the first two chapters a general

¹ José Antonio Pastor Ridruejo, *Les Procédures Publiques Spéciales de la Commission des Droits de l'Homme des Nations Unies*, in *Recueil des Cours*, Vol. 228 (1991-III), pp. 182–272; Olivier de Frouville, *Les Procédures Thématiques: une contribution efficace des Nations Unies à la Protection des droits de l'homme*, Paris: Editions A. Pedone, 1996; Miko Lempinen, *Challenges Facing the System of Special Procedures of the United Nations Commission on Human Rights*, Turku/Åbo: Institute for Human Rights, Åbo Academy University, 2001; Beate Rudolf, *Die thematischen Berichterstatte und Arbeitsgruppen der UN-Menschenrechtskommission. Ihr Beitrag zur Fortentwicklung des internationalen Menschenrechtsschutzes*, Berlin et al.: Springer, 2000; Ingrid Nifosi, *The UN Special Procedures in the Field of Human Rights*, Antwerp: Intersentia, 2005.

² *International Herald Tribune*, UN rights council passes Islamic resolution on religious defamation, 27.3.2008.

introduction and a helpful discussion of the relationship between domestic jurisdiction and human rights in the UN. He looks at the practice of UN political human rights organs from 1945–1980. Chapter III discusses the history and development of the thematic procedures, chapter IV its working methods. Gutter gives particular attention to three mechanisms, the working group on enforced or involuntary disappearances (established in 1980), the special rapporteur on torture (1985), and the working group on arbitrary detention (1991). He criticizes in particular this last working group regarding the position it held that the UN Covenant on Civil and Political Rights could be applied to non-state parties. This position could not be justified under international law. In another case, the author takes issue with a legal opinion delivered by the working group in December 2002 on the Guantánamo case because it ‘may indeed be criticised for exceeding its mandate’ which excludes (international) armed conflicts (at 171ff., 184ff. (quote at 186)).

In the concluding chapter V, the author emphasizes, among many other points, the ‘non-existence of an effective sense of community required to support the objectives, norms and standards adopted within the context of the UN’. One cannot but agree with his assertion that ‘abstract legal constructions cannot make good the “real” discrepancy between the proclaimed values of the UN and its Member States on the one hand, and social reality on the other’ (at 355). And he sends a clear message of realism and caution considering a number of discrepancies in political positions both between the United States and Europe as well as between the ‘North’ and the ‘South’, citing as examples the death penalty, abortion – and more recently, I would add, the issue of defamation of religion. Implementation of human rights and fundamental freedoms still is, he concludes, a question of politics, and he advises that ‘moral perfectionism ... is not an acceptable policy option in the world of men, however tempting that may be, particularly for an organization like the United Nations’ (at 373).

This is an excellent overview of a topic which to date has not been researched in a

comprehensive and detailed manner. It is most helpful for the student of human rights as well as for the expert.

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