

Materials of Conferences

**TREATY BODIES
WITHIN THE INTERNATIONAL
HUMAN RIGHTS SYSTEM**

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In the relationships between international and national human rights law to be considered it is appropriate to refer to the conventions directly related to the treaty bodies. This is about the seven international treaties followed up by the UN committees including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The treaty bodies (the Human Rights Committee, the UN Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Discrimination Against Women, the Committee on the Elimination of Racial Discrimination, the Committee on the Rights of the Child, the Committee against Torture and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families) abide by these conventions «basic» for the respective committees. The basic conventions and the optional protocols to them include both the international rules related to specific human rights and freedoms and the legal provisions designed to monitor the signatory states' commitment to a certain convention including the provisions on the signatory states' obligation to submit regular reports. Therefore, the basic conventions along with the optional protocols to them contain the fundamentals of substantial and procedural law applied by the committees. As practice shows, in the course of carrying out their activities the committees apply not only the basic conventions and the optional protocols to them but also other international human rights treaties clarifying and specifying the provisions of the basic conventions. The treaty bodies often refer to other international human rights treaties in their concluding observations adopted upon review of reports by the states. Upon monitoring fulfillment by the states of their obligations under a respective basic convention each committee construes its provisions subject to the other international human rights treaties the respective states are signatories to. The treaty bodies also recommended the states submitting their reports to accede to particular international treat-

ties somehow related to the provisions of a respective basic convention. Moreover, the treaty bodies often refer to other international treaties in their general comments.

This raises a question as to if the treaty bodies have the right to apply other international human rights legal framework when monitoring commitment by the states to the basic conventions and the optional protocols to them or if this practice of the treaty bodies is illegal.

It is generally recognized that the international human rights rules and principles constitute one of the branches of modern international human rights law and the established international human rights rules system. The system should be understood as a setup or a structure presenting a unity of consistently arranged and functioning parts. The system may also be defined as something composed of interacting and interrelated elements possessing collectively a quality they do not have separately and presenting a relatively independent unity confronting the environment [1].

The rules contained in the seven basic conventions are an integrated part of the international human rights rules system. The place of these rules in the system to be determined it is recommended to find out in the first instance how important these conventions are in the international human rights legal framework.

For this purpose let us analyze the importance of each basic convention and answer a question as to how they are correlated.

Let us start with the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. It is generally recognized that the international conventions along with the Universal Declaration of Human Rights and the two optional protocols to the Covenant on Civil and Political Rights constitute the so-called International Bill of Human Rights [2]. These two international treaties are the key international legal instruments which along with the Universal Declaration of Human Rights are the centerpiece of the international human rights system. In fact, these conventions specify, elaborate and enshrine in treaties the provisions of the Universal Declaration of Human Rights adopted as a resolution of the UN General Assembly. The ultimate human rights norms contained in the international conventions constitute the centerpiece of the international human rights system. However, due to the fact that the human rights and freedoms are set forth in the conventions mostly as general statements the states found it necessary to clarify, specify and elaborate the provisions on these rights and to enshrine the rights omitted in other international treaties including in the following five conventions: the Convention on the Elimination of All Forms

of Discrimination against Women, the Convention on the Rights of the Child, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Convention on the Elimination of All Forms of Racial Discrimination.

In particular, the Convention against Torture elaborates and specifies the provisions of Article 7 of the Covenant on Civil and Political Rights while the Convention on the Rights of the Child interprets the provisions of Article 24 of the Covenant on Civil and Political Rights and provision 2, Article 10 and Article 12 of the Covenant on Economic, Social and Cultural Rights. The Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families in the first place elaborates and specifies Articles 6, 7 and 8 of the International Covenant on Economic, Social and Cultural Rights as applied to a certain group of relations while the Convention on the Elimination of All Forms of Discrimination against Women clarifies and specifies the provisions of Article 3 of the Covenant on Civil and Political Rights and Articles 3 and 7 of the Covenant on Economic, Social and Cultural Rights.

Although the International Convention on the Elimination of All Forms of Racial Discrimination was adopted prior to the international covenants it, in fact, elaborates certain general provisions of the covenants, namely, Clause 1, Article 2 of the Covenant on Civil and Political Rights and Clause 2, Article 2 of the Covenant on Economic, Social and Cultural Rights.

Having established that the legal provisions contained in the international covenants constitute the centerpiece of the international human rights standards system and the provisions incorporated in the abovementioned five conventions largely specify and elaborate the content of the provisions of these covenants we conclude that the provisions of the covenants and the abovementioned five conventions correlate as the general correlates to the particular.

Actual correlation of the international covenants to the other five basic treatments as correlation of the general to the particular does not mean that the covenants prevail over the other conventions basic for the committees in terms of legal force. None of the seven basic treaties is «inferior» to any other one (ones) as all the basic conventions were originally designed as absolutely free-standing and independent from the international law perspective.

Specific relationships between the seven «basic» conventions go beyond the correlation of the two international covenants to the other five «basic» conventions. The key element of the treaties basic for the committees is that these treaties often regulate related issues of human rights assurance and protection and contain many similar and nearly identical provisions.

Upon review of the relationships between the seven conventions basic for the committees it is important to keep in mind that «rules of law including international legal provisions shall not apply independently: they shall be enforced in co-ordination with other rules of law» [3].

This consideration shall be a starting point for the analysis of a range of specific provisions of international law to be applied in a certain situation. In this context the Human Rights Committee and the UN Committee on Economic, Social and Cultural Rights upon consideration of fulfillment by a certain state of a certain obligation under a certain covenant shall refer to both the effective provision of the covenant and the provisions correlated to the effective provision of the covenant and, particularly, the relevant provisions of the five conventions. In doing so the committees shall consider the fact that the provisions of the convention elaborating the provisions of the covenant shall apply if a respective state is a signatory to that convention. Similar principle shall be adhered to by other treaty bodies with respect to the rules of law contained in the covenants.

This conclusion is recommended to be used as a basis for answering a question as to how justified and lawful is application by all the seven treaty bodies of the basic conventions and the optional protocols to them along with other international human rights agreements that, as a rule, specify and elaborate the provisions of the conventions basic for the committers.

Since the rules contained in the seven treaties are an integrated part of the international human rights standards presenting a system of rules correlated in the process of law enforcement and due to the fact that the rules contained in the seven conventions are mostly of general nature and as a consequence require elaboration the question posed shall be answered positively.

Hence, the treaty bodies have all grounds for relying upon the text of the basic conventions and applying the rules correlated to the provisions of the basic conventions and, particularly, elaborating their content.

However, the aforesaid does not mean that the seven treaties play a special part as compared to the other international human rights treaties and prevail over them in terms of legal force. It would be also wrong to assert that the other human rights conventions are of lower value than the «basic» treaties.

The presence in the abovementioned seven conventions of the provisions on special treaty bodies (*The distinguishing feature of the Covenant on Economic, Social and Cultural Rights is that unlike the other 6 treaties it does not provide for establishing an independent body but imposes controlling functions on the UN Economic and Social Council by whose resolution the UN Committee on Economic, Social and Cultural Rights including experts in a private capacity was established*) is not determined

by any objective common factors but is caused by solely subjective factors that were reflected in the course of drafting and agreeing the text of these human rights treaties. Therefore, speculations by some international human rights scientists including B.G. Manov on the existence of objective causes are seen as unsubstantiated and formal.

According to B.G. Manov, one of these objective factors is that the conventions covering a universal range of issues (in the first instance, the abovementioned «basic» conventions – the author's note) supposedly require creation of special international bodies outside international organizations. In his opinion, conventions focused on a special subject should provide for participation of the international organization bodies in assisting the states in implementing international treaties [4].

B.G. Manov believes that in the former case a need for establishing independent international bodies arises from the fact that challenges facing these bodies are extremely diverse and complicated while in the latter case it results from the fact that relevant international organizations have extended experience in addressing such challenges and very often act as a nerve centre to address a respective issue and to collect the key information [4].

At the same time it must be admitted that classification of international human rights treaties into conventions covering a universal range of issues and conventions focused on a special subject does not stand up to criticism as it is not clear what are the express criteria to refer one convention (for example, the Convention against Torture) to group one and another convention (for example, the Convention on the Suppression and Punishment of the Crime of Apartheid) to group two.

It is also evident that challenges facing both the treaty bodies and the international organization

bodies monitoring commitment to the international human rights treaties may be and are really characterized by extreme diversity and complexity.

As far as the latter argument is concerned, it is not valid either as extended experience in addressing relevant issues is equally inherent to the international organization bodies and the treaty bodies.

Hence, the only outstanding feature of the abovementioned seven conventions is that autonomous international bodies are established and operate for the purpose of monitoring fulfillment by the signatory states of their obligations under these conventions. These bodies are implementing agencies of the signatory states to a certain international treaty and are fully independent in terms of its follow-up. It is critical that international human rights treaty organizations include experts in a private capacity rather than representatives of signatory states as is the case with the most of international intergovernmental organization bodies and a range of autonomous international bodies including international arms control and disarmament bodies.

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