

Thematic Procedures of the United Nations Commission
on Human Rights and International Law:
in Search of a Sense of Community



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Thematic Procedures of the
United Nations Commission on
Human Rights and International Law:
in Search of a Sense of Community

Jeroen Gutter

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Jeroen Gutter

Thematic Procedures of the United Nations Commission on Human Rights and International Law: in Search of a Sense of Community

CRC prepared by: G.J. Wiarda Institute, Utrecht University Institute for Legal Studies, Boothstraat 6, 3512 BW Utrecht

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ACKNOWLEDGEMENTS

The publication of this book concludes a seven-year journey through the amazing world of the United Nations, human rights, international law and international politics. As with all voyages of exploration and discovery, the route travelled after all these years does not exactly correspond to the one one had in mind at the beginning of it. Not only did the road prove bumpier than the original ‘road-map’ had foreseen, it also turned out to be marked with unexpected crossroads, junctions, roadblocks and even cul-de-sacs. Looking back, it has been quite a traverse indeed!

Juvenile idealism perhaps, but most of all curiosity, a desire to find out and understand why this world is as it is and, more particularly, why humans, States and organisations behave as they do, induced me to accept the NWO-supported PhD project on the thematic procedures of the United Nations Commission on Human Rights within the context of the Netherlands School of Human Rights Research in December 1998.

The project’s intellectually challenging and ambitious objective was to investigate and tentatively redefine the nature of the international legal order in the light of the establishment and practice of the so-called thematic procedures of the Commission on Human Rights. For this objective to be achieved, it would not be sufficient to base oneself solely on the political, legal and institutional developments within the context of the human rights organs of the United Nations over the past 60 years. Any attempt to reformulate the nature of the international legal order would have to go beyond the formal adoption of concepts and rules and the establishment of monitoring mechanisms: it would have to investigate the reception of these concepts and rules in practice and the extent to which thematic procedures are able to make a structural contribution to their implementation.

The problem of the practical impact – or the ‘effectiveness’ as it is often referred to – of international human rights monitoring procedures may be one of the most sensitive questions human rights research has to cope with. Many commentators clearly do not feel at ease with this question, but somewhere in the back of their minds they still realise that they have to deal with it. In fact, we all know the outcome of such an exercise, so adequately captured by the Finnish international lawyer Martti Koskenniemi in the phrase, ‘[g]lobalist rhetoric: marginal practice – and none was surprised, indeed, nobody expected otherwise’, but we often add excuses, relativisations and justifications why ‘for the time being’ we do not obtain better results. Not infrequently, the problem is placed in the future: the argument goes that after the era of standard-setting from the end of the 1940s to the end of the 1960s and the era of the development of monitoring machinery from the end of the 1960s to the present, the era of ‘implementation’ has only just begun.

Developing a ‘personal vision’ on the relationship between the political, legal and institutional changes at the level of the United Nations and the practical effects of these changes – does it make a difference? – proved to be the most difficult and time-consuming aspect of my PhD project. Personally I have reached the conclusion that we do not serve the cause of the development of international law, human rights and multilateral cooperation by constructing an emerging international legal order as we should like to see it or as it should be. I think it is important for legal doctrine not to go too far ahead of the facts, not to succumb to the temptation to engage in an extreme teleological approach, but to accept the consequences of the ‘*condition humaine*’ and to work towards undoing human rights doctrine from its morally perfect pretensions – including its perception of a desired world order – that no one, not even the United Nations in our wildest dreams, is able to honour in practice. I believe that this is neither a cynical, nor a static or conservative view of international relations and the international legal order, but simply one which hopes to bring back a sense of reality to the human rights debate.

While I often experienced my PhD work as extremely solitary, it would be unforgivably unjust not to mention the people who in one way or another made it possible for me to successfully complete this study. First of all, I would like to express my gratitude to my supervisors Cees Flinterman and Terry Gill. Cees has been my mentor ever since he introduced me to the world of human rights at Maastricht University a long time ago and in each phase of the project he remained the indispensable *repère* without which no progress could be made. I also owe a particular debt to Terry not only for his willingness to join in the supervision of the project, but, more importantly, for incessantly reminding me to stay focused and not to get lost in details and, not in the last place, for warning me not to become anyone’s disciple. I experienced his enthusiasm and dedication to the science of international law as particularly contagious.

Furthermore, I wish to express my appreciation to the members of the reading committee, Professors Theo van Boven, Menno Kamminga, Fried van Hoof and Sir Nigel Rodley as well as Dr. Ineke Boerefijn for their willingness to read and comment on the final manuscript.

As for the preparation of the manuscript before publication I am indebted to the people at Utrecht University’s Wiarda Institute. The cooperation with Peter Morris who corrected my English and Titia Kloos who took care of the lay-out of this book could not have been more efficient.

My colleagues at SIM/Netherlands Institute of Human Rights and the Netherlands School of Human Rights Research deserve special attention. I am indebted to Saskia Bal and Maaïke Hogenkamp at SIM’s documentation centre not only for their assistance in looking up remote documents, but especially for maintaining and updating a beautiful collection of (United Nations) human rights documents, making the life of a researcher a lot easier. My thanks also go to Maeyken Hoeneveld and Marcella Kiel at the secretariat for their support and assistance throughout my stay at SIM. Marcella’s help in the final stages of this project has been invaluable. Better a near neigh-

bour than a distant cousin as the proverb goes and I could not have had a better neighbour than Leo Zwaak whose door has always been open to discuss anything from human rights to flying rats and parking tickets. I am also indebted to Hans Werdmölder. His advice and moral support has been important and helped me to take the final hurdles before completing my manuscript.

Writing a PhD thesis may be a solitary exercise, but the burden has been made much lighter to bear with the support and friendship of my fellow PhD candidates at SIM and the Research School. I will never forget the coffee breaks, lunch discussions, dimsum dinners and after work drinks with Floribert Baudet, Nicola Jägers, Rolanda Oostland, Hilde Reiding and Simone Wijte. Special thanks go to my friend Jukka Viljanen and not only for keeping me updated on Matti Nykänen's latest adventures and one-liners.

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ABBREVIATIONS AND ACRONYMS

ACM	Advisory Committee on Human Rights and Foreign Policy, the Netherlands (Adviescommissie Mensenrechten)
AJIL	American Journal of International Law
AYIL	Australian Yearbook of International Law
Bulletin	United Nations, Bulletin of Human Rights
CERD	United Nations Convention on the Elimination of All Forms of Racial Discrimination (1965)
CHR	United Nations Commission on Human Rights
Convention against Torture	United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (1984)
Declaration on Torture	United Nations Declaration on the Protection of All Persons from Being Subjected to Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment (1975)
Decolonisation Committee	the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples (1961)
Disappearances Declaration	United Nations Declaration on the Protection of All Persons from Enforced Disappearances (1992)
ECOSOC	United Nations Economic and Social Council
EHRLR	European Human Rights Law Review
EJIL	European Journal of International Law
Encyclopedia	Encyclopedia of Public International Law
GA	United Nations General Assembly
GAOR	United Nations, General Assembly Official Records
French draft	the original draft resolution providing for the establishment of the Working Group on Enforced or Involuntary Disappearances introduced by France in February 1980; U.N. Doc. E/CN.4/L.1502
Hague Recueil	Recueil des Cours de l'Académie de Droit International
HRJ	Human Rights Journal
HRLJ	Human Rights Law Journal
HRM	Human Rights Monitor (International Service for Human Rights)

Abbreviations and Acronyms

HRQ	Human Rights Quarterly
HRR	[The] Human Rights Review
ICCPR	International Covenant on Civil and Political Rights (1966)
ICJ Reports	Reports of Judgments, Advisory Opinions and Orders of the International Court of Justice
ICJ Press Release	Press Release by the International Commission of Jurists
ICLQ	International and Comparative Law Quarterly
ICRC	International Committee of the Red Cross
NGO	Non-governmental organisation
NILR	Netherlands International Law Review (Nederlands tijdschrift voor internationaal recht)
NJB	Nederlands Juristenblad
NQHR	Netherlands Quarterly of Human Rights
OHCHR	United Nations, Office of the High Commissioner for Human Rights
Privileges Convention	United Nations Convention on the Privileges and Immunities of the United Nations (1946)
RDH	Revue des Droits de l'Homme
RGDIP	Revue Générale de Droit International Public
RIAA	United Nations, Reports of International Arbitral Awards
Special Process	Special process on missing persons in the territory of the former Yugoslavia (1994)
Special Rapporteur of the Sub-Commission	the Special Rapporteur concerning the topic of administrative detention established by the Sub-Commission on the Prevention of Discrimination and Protection of Minorities (1985)
Sub-Commission	the Sub-Commission on the Prevention of Discrimination and Protection of Minorities/Sub-Commission on the Promotion and Protection of Human Rights (from 1999 onwards)
UDHR	Universal Declaration of Human Rights (1948)
UN Doc	United Nations Document
1988 Body of Principles	United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988)
	YUN Yearbook of the United Nations