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## Christina M. Cerna on Defining Civil and Political Rights: The Jurisprudence of the United Nations Human Rights Committee by Alex Conte, Scott Davidson and Richard Burchill. Ashgate Publishing Company, 2004. 257pp.

Christina M. Cerna

*Inter-American Commission on Human Rights, Organization of American States*

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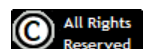
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**Defining Civil and Political Rights: The Jurisprudence of the United Nations Human Rights Committee by Alex Conte, Scott Davidson and Richard Burchill. Ashgate Publishing Company, 2004. 257pp.**

The publication of this new book on the jurisprudence of the UN Human Rights Committee comes on the heels of the 2004 Oxford University Press publication, The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary (Second Edition), edited by Sarah Joseph, Jenny Schultz and Melissa Castan. It also appears shortly before Manfred Nowak's masterful 2005 revision of U.N. Covenant on Civil and Political Rights: CCPR Commentary (Second Edition).

The editors of Defining Civil and Political Rights provide a narrative account of how the United Nations Human Rights Committee (HRC) has developed and continues to develop its jurisprudence under the individual communication procedure contained in the Optional Protocol to the Covenant, from the time of its establishment up to the conclusions of its 77th session in April 2003.

This edited volume explores such topics as: self determination; democratic and civil rights; the judicial process; privacy; non-discrimination; and rights of the family and children. The volume also includes four appendices: the text of the International Covenant on Civil and Political rights (ICCPR); its first Optional Protocol; the ratification status of the ICCPR and the Optional Protocol (as of July 7, 2003); and a Model Complaint Form.

The introduction provides a brief history of the ICCPR, the nature of the rights and the obligations of the States Parties and the functions of the Committee. The second chapter sets forth the procedure for the processing of individual petitions by the HRC under the Optional Protocol. It points out that communications must be from individual victims who must be subject to the jurisdiction of the State. The Committee does not consider complaints from juridical persons (such as corporations) and does not accept petitions from non-governmental organizations or collective victims. Also, an unrelated third party, having no relation to the victim, cannot submit a communication on the victim's behalf.

The book is an interesting, readable narrative describing the evolution of the jurisprudence regarding the eight sets of rights selected. It is most interesting in those areas in which it reveals a critical eye. The Introduction notes that the HRC has been hampered in the development of a comprehensive jurisprudence by two main factors: that early communications came mainly from a few states, such as Uruguay and Zaire, and; these communications dealt with gross and systematic violations of the right to be free from torture, the right to liberty and security of the person, the right to due process, and so forth. The one drawback, perhaps, is the failure of the authors to locate the evolution of the HRC's jurisprudence in its respective historical and comparative contexts. For example, regions such as the Americas returned to democratic forms of government, and as a consequence the nature of the communications changed from dealing with gross and systematic violations under dictatorships to issues involving more mundane questions such as deprivation of judicial due process in democratic states.

The authors are critical of the jurisprudence that has been developed by the HRC's leap outside the confines of civil and political rights and find that concerning issues of discrimination (ICCPR, Art. 26) "there have been certain views in which the evident desire for consensus has

led to less than satisfactory legal reasoning. Indeed, some views have been so brief as to be almost completely devoid of legal reasoning” (9). For example, in the European system, in contrast, the non-discrimination provision is a “parasitic right” which must be linked to other substantive rights protected by the European Convention (162).

The authors are also critical of the HRC’s failure to explain in the landmark *Thompson v St Vincent and the Grenadines* case (88 *et seq.*), why a mandatory death sentence involved a violation of article 6 (right to life) or any other provision of the Covenant, since the Committee had dealt with many communications from persons sentenced to death under mandatory death penalty legislation and never before found a violation on the basis of the law. The reason why the Committee changed its jurisprudence in this area has to do with a decision of the Inter-American Commission on Human Rights (IACHR), cited in the *Thompson* decision. The lawyers representing Thompson also represented another death row prisoner before the IACHR, and won their case before the Commission on the argument that mandatory sentencing did not afford the defendant consideration of his individual personal circumstances or those of the crime. The *Hilaire v Trinidad and Tobago* case, decided by the IACHR, was at that time before the Inter-American Court but the lawyers cited their copy of the confidential report of the Commission which they gave to the HRC and which clearly influenced the decision of the members of the HRC in *Thompson*.

A comparative approach would have led the authors to give greater importance to the HRC’s 1983 decision to consider the mother of Elena Quinteros as much a victim as her daughter, due to the “anguish and stress caused to the mother by the disappearance of her daughter” (96). Also, reference to the European Court’s decision in the 1989 *Soering* case, holding that a decision to extradite Soering to a country with the “death row syndrome” (i.e., “the very long period of time spent on death row...with the ever present and mounting anguish of awaiting execution of the death penalty”) and which would give rise to a breach of article 3 (cruel, inhuman or degrading punishment) would have assisted in an understanding of the HRC’s decision to go in a different direction in the *Ashby* case (97), holding that detention on death row for a specific period of time does not by itself violate article 7 of the Covenant. A discussion of such a reference would also have given the views of the dissenting members of the HRC greater resonance.

The three authors do not approach the material in exactly the same way and Burchill, for example, does make reference to the European Court, suggesting that the HRC should follow the Court’s lead and view same-sex marriages as a human rights’ concern (216) in his discussion of the rights of the family and children. Also, his consideration of developments regarding the legalization of same-sex marriages in Belgium, the Netherlands, Spain and Canada on this issue assists in understanding the evolving historical context.

This text is an ambitious work which condenses into some 224 pages several decades’ worth of case law decisions from the HRC, comprised of a constantly changing membership. Giving coherence to this jurisprudence, by describing the case law in the way that they have chosen is no small accomplishment, and distinguishes it from the encyclopedic approach undertaken in the Nowak and the Joseph *et al.* commentaries. Ideally, this book would be read with a computer at hand to pull up the cases and references to General Comments and Concluding Observations

cited. It is an excellent addition to the libraries of international human rights practitioners and scholars alike.

*Christina M. Cerna, Inter-American Commission on Human Rights,  
Organization of American States  
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