

Ireland, the UN & Human Rights

How UN treaties are misinterpreted to drive a radical agenda



Ireland is rightly a signatory to six UN human rights treaties

Periodically we have to report to UN monitoring bodies on our implementation of the provisions of these treaties

However, the monitoring bodies often interpret the treaties in a very radical way that is not justified by the treaties themselves

The interpretations of the monitoring bodies have no legal standing in Irish or international law and therefore we are not obliged to abide by them

Ireland ought to challenge the misinterpretation of the various UN treaties by both the monitoring bodies and by many NGOs



Introduction and summary

IRELAND is rightly a signatory to a number of UN treaties (See appendix one below). From time to time Ireland appears before various UN monitoring bodies to report on how well or how badly we are implementing the provisions of the various treaties.

For example, we are to appear before the UN Human Rights Council (in October 2011) to report on our domestic human rights record as part of what is called the Universal Periodic Review. (The Council consists of 47 UN Member States).

However, it is vital we are aware that these various UN bodies frequently "interpret" the treaties in a way that is not necessarily supported by those treaties at all.

These interpretations actually impose no legal obligation upon Ireland.

We ought to challenge highly contentious interpretations which often depart very far from the texts themselves.

How UN treaties are sometimes used to promote radical changes in Irish law: an example

IN JULY 2008, Ireland appeared before one of the monitoring bodies, namely the UN Human Rights Committee to report on how well we were implementing the International Covenant on Civil and Political Rights (ICCPR).

Among other things, it criticised our law on abortion.

It told us it reiterated "its concern regarding the highly restrictive circumstances under which women can lawfully have an abortion in the State party", (meaning Ireland).

It said Ireland "should bring its abortion laws into line with the Covenant".

To support its case regarding abortion it quoted Articles 2, 3, 6 and 26 of the ICCPR. But none

of these articles (see Appendix two) mention abortion at all and the wording of the articles has to be stretched very far indeed to even remotely justify the demand that Ireland "should bring its abortion laws into line with the Covenant".

Even allowing for the fact that interpretations of the law can change, the manner in which this Committee sometimes interprets the ICCPR is still novel, radical and highly contentious. Other monitoring committees operate in a similar fashion.

In fact it is highly debatable whether what the monitoring bodies are doing is properly called "interpretation" at all. To interpret a text is to draw out or discover a meaning that is plausibly to be found in the text. What these monitoring bodies often do is closer in character to invention than interpretation.

UN bodies often interpret UN treaties in a way that is not supported by the text of those treaties

What is the standing of these treaties in Irish law?

NONE of the UN Treaties we have signed is incorporated into Irish law. This means they cannot be directly invoked or relied upon before an Irish court as a rule or principle of law.

Under Article 29 of the Irish Constitution Ireland is a dualist legal order. This means that the rules of international law, including the provisions of any international treaties ratified by Ireland, do not become a part of Irish law unless they are expressly incorporated by an act of the Oireachtas.



What is the legal standing of the 'interpretations' of these treaties by UN bodies?

THE short answer is that they have no legal standing. It is very common in Irish political debate to treat the statements made by the various monitoring bodies as if they enjoyed some legal authority but this is factually and legally groundless.

There is nothing in the various treaties that declares or implies that the reports or comments of the treaty monitoring bodies have any legal standing or that we are bound by them

How Non-Governmental Organisations (NGOs) influence the monitoring bodies

IN THE lead-up to a country appearing before a UN monitoring body such as the Human Rights Committee or the Human Rights Council, NGOs in that country are invited to report to the relevant monitoring body on how well or how badly their country is implementing the treaty under examination, in their opinion.

These NGOs often have a very strong tendency to "interpret" the treaties in a radical manner and indeed many of the questions the monitoring bodies ask the delegation from the country under examination are effectively fed to them by the NGOs.

Thus, balanced and moderate UN treaties are interpreted in a radical manner by both the NGOs and the monitoring bodies in a mutually reinforcing manner.

In this way, radical interpretations of UN treaties take on a kind of false authority and standing, even in the minds of national governments, parliaments, and public opinion.

This is despite the fact that, as mentioned, the various UN treaties tend to be moderate and balanced.

Interpretations of UN treaties by UN monitoring bodies have no legal standing in Irish or International law

National sovereignty versus supranational bodies

NATIONAL sovereignty is a way of preserving democracy and ensuring that too great a gap doesn't open between the governed, and those who govern them. The further away from the governed the law is made and interpreted, the greater the gap will be.

Of course, nation-states today do 'pool sovereignty' for mutual advantage but this makes it all the more essential that those who are granted power, or even a non-legally binding monitoring role, by 'pooled sovereignty' arrangements are responsive to the views of the electorates in the various nation-states.

It becomes all the more important that the monitoring bodies at the UN are not 'captured' by a particular ideology, urged on by radical NGOs.

What is to be done?

1. We need to be more aware of the various treaties to which we are signatories and the extent to which they do and do not apply to domestic law.
2. We need to be more aware that these treaties are frequently interpreted in a very radical manner that is often contrary both to the spirit and the letter of the treaties themselves.
3. We should be prepared to challenge misinterpretations of the treaties and to do so both in national parliaments and before public opinion.

Appendix one

The United Nations Treaty System

The main ('core') human rights treaties of the United Nations are the:

1. International Covenant on Civil and Political Rights (1966) and its Optional Protocols (1976 and 1989) (ICCPR).
2. International Covenant on Economic, Social and Cultural Rights (1966) and its Optional Protocol (2008) (ICESCR).
3. International Convention on the Elimination of All Forms of Racial Discrimination (1965) (CERD).
4. Convention on the Elimination of All Forms of Discrimination against Women (1979) and its Optional Protocol (1999) (CEDAW).
5. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) and its Optional Protocol (2002) (CAT).
6. Convention on the Rights of the Child (1989) and its two Optional Protocols (2000) (CRC).

Appendix two

Text of Articles of ICCPR as quoted in the briefing note

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.
3. Each State Party to the present Covenant undertakes:
 - (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
 - (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other

competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

- (c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.
3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.
4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.
5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.
6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

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