

海外派遣プログラム報告書

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I 概要

派遣先：自由権規約委員会（ジュネーブ）

派遣期間：2017年7月3日－2017年7月28日

II 業務内容

国家審査（パキスタン）の質問原稿の作成と最終意見のコメント（詳しい内容を下記のレポートに記録した）、審査内容のまとめ、個人通報の整理、自由権人権委員会会議への出席、国際法委員会会議への出席等である。

III レポート

No matter your focus right now is in financial law or company law, or your interest is indeed in international law, one-month journey in Geneva would open a door to a new world that you might be hard to experience, no matter at universities or law firms. You will learn a big picture of how the treaty body - Human Rights Committee (“the Committee” or “HRC”) as the treaty body of ICCPR - works to ensure the member states to improve human rights situation domestically so as to be in line with ICCPR standards. You will also get to know how individuals’ stories would be heard and reconsidered when they believe they have exhausted all domestic remedies yet still have not received justice which they are seeking for. Although the opinions or decisions made by the Committee do not have legal binding force towards state parties, they are still deployed as the guidance and as a motivation to accelerate state members to amend their laws and rules to better guarantee civil and political rights of individuals domestically. Furthermore, the Committee will receive comments and critics from State parties from time to time in their face-to-face dialogue about the Committee’s working methods and contents, which will leave you a deep impression from a different perspective. In addition to the Committee, you could also choose to walk into other different sessions and to have great opportunities to meet many talents with various backgrounds working in Geneva and to learn about their work style.

I. Work Related with the Committee

Here I am not going to discuss the exact procedures of how the Committee finally reaches a Concluding Observation (CO) or decisions for individual communications. However, I would love to share some personal views when witnessing these procedures as well as after hearing the dialogue between the Committee and State parties.

(1) Comments for a State Party

First of all, it is a great chance to be actively involved in the national report review round and to contribute to the draft of CO which would motivate state party to promote human rights development domestically. The assistant for this program would be primarily asked to prepare a draft of comments or questions for a specific nation based on List of Issues (LOIs) and reports from civil societies and opinions of other treaty bodies. Truly it is a challenging work as you need to read lots of materials and think hard for questions which are not only key questions but also need the

questions to be fit with time limit of presentation (2-5 mins per question). However, through all these preparations, you would have a more objective view of the human rights situation in this country because you will read two different stories: one provided by the government (more positive) and the other from civil societies (more negative). During the session, after the questions been proposed to the government delegations, you could be your own judge to decide whether you buy the explain or not. Later, you would also have an opportunity to provide your comments to the Concluding Observation after the review session.

Moreover, you are in the position of helping reflect the wish of people to their government directly. The Committee session provides a platform to have direct dialogues with government. Yet before the session with the government delegations, UN agents, civil societies and individuals as third parties, would have the opportunity to present their findings, opinions or personal experiences to the committee members separately, without the presence of the government officials. This would help them better understand the human rights situation. UN agents would present an independent opinion based upon their own findings. All these facts and figures provided by UN agents were independently conducted by their own staffs. Civil societies, on the other hand, will present their findings and opinions based on years of experiences in the country. Sometimes, individual who has been treated unequally will also have a chance to present his or her own story and feelings to the Committee members. These findings and opinions are very valuable and useful as it could help you to further understand the primary issues that the State party is now facing and civil societies are concerning about and then to refine your draft of the comments or questions at the last minute where possible.

Last but not least, leaving the session behind, it is a precious opportunity for you to train your drafting and presentation skills, which would be rather important no matter for your academic career as a scholar or your practical career as a lawyer. As aforementioned, the draft of the comments means your hard work on reviewing materials, selecting key points, integrating all the information you have already known and proposing questions. Perhaps the work of reviewing and selecting is not that difficult, but integrating all the information and presenting in a precise, accurate and proper way would be totally different, letting alone such comments or questions are prepared to the distinguished delegations of a country which means you should be aware of the way to propose the questions.

(2) Individual Communications

With regard to individual communications, committee members change their roles to “judges” to review cases in this occasion. Among all the cases they are discussing, I found rather interesting when some drafts of the cases actually come out with different options when the committee members have different opinions over a specific issue, for example “option 1 - violation” and “option 2 - non-violation”, if they have different opinions over merits and the final conclusion. During the discussion, they will present and elaborate their opinions of why they prefer one option over the other and why they agree with some of the members’ opinions but disagree with others’. At this time, it is more like a debate. Sometimes the members devoted so deep and argued so fierce that debate could go out of control. I know I should not say this, but it is actually the most interesting part of hearing the communications, although most of time the discussion is a peaceful talk among gentlemen and ladies. Meanwhile, by hearing the communications, you could also imagine you are one of those members and “judge” which option you would love to choose and whose opinions are more persuasive. With such “role-play”, you would better understand the meaning and the application of related articles of ICCPR.

(3) Another “face” of the HRC

Understanding the Committee as a monitoring body to ICCPR and promoting the human rights development in State parties, it is exciting every time to hear those sharp and meaningful questions from the Committee in the State review round and their rational discussion to seek the balance between law and humanitarian spirit in the individual communication round. The dialogue between the Committee and State parties, however, brought me to a real world in which monitoring State parties and their human rights development is indeed a hard work requiring much more endeavor into it.

On one hand, State parties showed their support and respect to the work of the Committee, on the other hand, however, they also proposed advices, opinions and sometimes even severe critics over the working methods and procedures of the Committee. For example, some of the State parties believe that, there is a significant overlap of the application of issues raised by various treaty bodies, which sometimes leads to incoherence of content of recommendations. Also, the list of issues prior reporting is supposed to set priorities and help the discussions to focus on key and import issues, but in reality, however, the List of Issues (LOIs) usually cover most of treaty articles and are too broad to State parties. Therefore, such workload is rather unfriendly to the concrete implementation of recommendations given to State parties, especially when considering State parties' domestic limited budget, resources and personnel. Some State parties also commented that the Committee should only give general comments and recommendations on what the Committee deemed as necessary from State's periodic report without judging or grading State's human rights policies. The Committee now, however, puts more effort on making pressure which tend to be bias and subjective. If such practices remain, there will be more States being discouraged to cooperate, communicate or engage with the Committee. Also, some State parties addressed that general comments of the Committee are just the interpretation of ICCPR, which has never become binding to international law and are merely expert's advices, opinions, suggestions and recommendations.

Clearly, if standing from the position of the Committee, it can be ideal and inspiring to view their hard work of promoting human rights protection and development. From the position of the State parties, however, the Committee should be more efficient with their work and be more careful of how to properly promote and be more aware of the line, i.e. the line of being independent, objective and not being suspected to interfere with State parties' domestic issues.

I do appreciate the opportunity to hear the conversation and get to know the HRC from such a different perspective. If I was once merely impressed by hearing the Committee members talking about how to improve their working efficiency and enlarge their impact and was inspired by their courage that although they understand their impact is still small and marginal but it is important to keep hope, then the conversation this time would help me better understand exactly what kind of difficulties the Committee members are now facing and how meaningful it is to keep such hope. The Committee members have been working hard. But it seems still insufficient. They need to work even harder to deal with backlog of communications and national reviews, especially without sufficient resources, personnel and money, which right now seems impossible to be provided by UN. They keep the hope of improving and promoting human rights development in each country and therefore try their best to provide professional advices and opinions, but they should also be aware of their method or otherwise could be criticized as cross the line. They tried their best to clarify and explain the articles of ICCPR but still be questioned by State parties of their competence. Nevertheless, this is the reality that the Committee members should deal with but at the same time keep their hope and proceed to achieve their goal.

II. Other Sessions and Meeting with Talents

As mentioned, in addition to the Committee session, you could also have chances to attend other sessions that are open to public with your UN badge, such as Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”) session, Universal Periodic Review (“UPR”) held by Human Rights Council, International Law Commission session (“the ILC session”), etc., if their session period overlapped with the Committee’s. Therefore, please arrange your time properly to join the sessions you would like to. For CEDAW and UPR, the public sessions are primarily about the national reports review or the discussions of a country’s general human rights situations. For the ILC session, members will discuss various different topics which aim to encourage the progressive development of international law and its codification. In this year, they discussed immunity of State officials from foreign criminal jurisdiction, succession of States in respect of State responsibility, protection of the atmosphere, protection of the environment in relation to armed conflicts, etc. For closed sessions, the HRC session is the only one which you can walk in freely with your badge. Therefore, please take advantage of this “privilege” and enjoy those “secret” meetings.

In fact, except all those aforementioned sessions, you would also have opportunities to meet with other Asian talents who are active on the international stage through Prof. Iwasawa’s introduction. By their stories of working in different sections of international organizations, you would gradually understand how the international organizations operate and corporate with each other, for example, how the UNHCR corporates with HRC and other treaty bodies. Also, you could freely ask anything you want to know or you are curious about, such as how they finally choose to work in UN, how the life looks like in UN and what can be done to prepare oneself to be ready to join the UN track. Through all these talks, you would have a chance to know a multicultural working environment which is different from your normal living and working environment in your home country. In fact, here I am not arguing that the multicultural environment is certainly better than the domestic one. However, it is definitely a best chance for you to know the outside world and then to decide which lifestyle you prefer to. After all, only when you know you have different choices, then you can choose your favorite one.

Finally, I have to say, one-month is definitely not a long period for an internship, at least in the context of China, which usually lasts for 2 or 3 months. However, you would feel gratitude and pleasant with this precious experience because in this period, you will keep receiving large amount of various theoretical and practical information you could hardly have in your normal life. Moreover, you could meet many other peer assistances who assist their own professors from other countries and talk and learn from them. Last but not least, when you finished your assignment but still have time, you could travel around Swiss and be prepared to “wow” all the time. Therefore, I sincerely thank Prof. Iwasawa and the overseas program for providing and assisting me the internship, and I hope more and more students can take advantage of the program and share their different views of it.