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Global Perspectives on Freedom of Association: United Nations

Ruairí McIntyre and Maria Cahill

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Freedom of Association under the Treaties of the United Nations: A Right of Intrinsic or Instrumental Value?

Ruairí McIntyre and Maria Cahill [*]

I. Introduction

Although included within a number of United Nations instruments,[1] the right to freedom of association is principally enshrined within Article 22 of the International Covenant on Civil and Political Rights (ICCPR) and has been developed within the jurisdiction of the Human Rights Committee (the Committee). Whilst this right has been the subject of significant commentary by the Special Rapporteur on freedom of peaceful assembly and association (the Special Rapporteur) and of numerous resolutions of the Human Rights Council (the Council), the Committee's engagement with Article 22 ICCPR has been sparse. Despite calls from the Special Rapporteur, the right to freedom of association is yet to receive a General Comment.[2]

Notwithstanding a paucity of jurisprudence, this article seeks to outline the contours of the right to freedom of association as protected by the UN treaties. Part II analyses the scope of the protections afforded, restrictions permitted, and positive obligations imposed by Article 22. Part III explores the interaction and interdependencies between the right to freedom of association and other provisions of the ICCPR. Part IV discusses the rational underpinnings of the right to freedom of association.

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[1] See Convention on the Rights of the Child (United Nations, Treaty Series, Volume 1577, 3) Article 15; Convention and Protocol Relating to the Status of Refugees (United Nations, Treaty Series, Volume 189, 137) Article 15; The Convention on the Rights of Persons with Disabilities (United Nations, Treaty Series, Volume 2515, 3) Article 29; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (United Nations, Treaty Series, Volume 2220, 3) Articles 26 and 40; International Convention on the Elimination of All Forms of Racial Discrimination (United Nations, Treaty Series, Volume 660, 195) Article 5; Convention on the Elimination of All Forms of Discrimination against Women (United Nations, Treaty Series, Volume 1248, 13) Article 7.

[2] Human Rights Council, 'Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association (A/HRC/32/36) para 93.

Although freedom of association appears to lie 'in the overlapping zone between civil and political rights',[3] the comparative analysis adopted in this article suggests that the Human Rights Committee and other UN bodies have disproportionately framed Article 22 in terms of its political and systemic significance, and have neglected to develop a philosophical basis for the right deriving from its inherent value to the human person. Whereas comparable rights have been framed as 'fundamental',[4] 'intrinsic',[5] and 'indispensable for the full development of the person',[6] freedom of association remains cast in terms of its instrumental function in buttressing political pluralism, bolstering accountability, and facilitating the myriad of 'purposes and principles of the United Nations'.[7]

II. The Scope of Article 22

(i) Article 22(1)

Article 22(1) of the Covenant provides that 'everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests'. Whilst the provisions do not apply to associations founded or mandated by law rather than by private agreement, the Special Rapporteur consistently reiterates that "association" is to be interpreted to encompass 'a wide variety of entities, both informal and formal'[8] with the purpose of collectively acting to 'express, promote, pursue or defend a field of common interest.'[9]

Whilst the Committee has inferred a right to organisational autonomy from the express provisions of Article 22(1) and routinely repeats that 'the right to form an association relates not only to the right to form an association' but also extends to all activities for which the association has been created,[10] it has failed to expressly recognise the existence of further

[3] Manfred Nowak, *UN International Covenant on Civil and Political Rights: Nowak's CCPR Commentary* (Engel 1997) 385.
[4] Human Rights Committee, *Evrezov v Belarus* (CCPR/C/114/D/1988/2010).
[5] Human Rights Committee, 'General Comment No 37 (2020) on the right of peaceful assembly' (CCPR/C/GC/37) para 102.
[6] Human Rights Committee, 'General Comment No 34 (2011) on the rights to freedom of opinion and expression' (CCPR/C/GC/34) para 1.
[7] Human Rights Council, Resolution 21/6 (A/HRC/RES/21/16) 3.
[8] Human Rights Committee, 'Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association' (A/HRC/35/28) 5.
[9] Human Rights Council 'Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai' (A/HRC/20/27) para 51.
[10] Human Rights Committee, *Korneenko v Belarus* (CCPR/C/105/D/1226/2003) para 10.2.

guarantees encompassed within Article 22. In *Wallman and others v Austria*, having found that Article 22 does not apply to organisations established by law, the Committee failed to engage with the author's submissions that compulsory membership of a regional chamber of commerce with an obligation to pay membership fees effectively denied him his right to freedom of association, including the right to found or join another association for similar commercial purposes.[11] Similarly, in *Gauthier v Canada*, despite a minority dissenting opinion inferring a right against an obligation to join an association implied from Article 22(1), the majority of the Committee dismissed as insufficiently substantiated the complainant's claim that the denial of toilet facilities within the Canadian House of Commons to those who were not members of the Canadian Press Gallery violated Article 22.[12]

The Committee's failure to enunciate a right to dissociate, or a right against compulsion to associate, in the context of Article 22 contrasts starkly with its firm recognition of such components of the right to freedom of thought, conscience and religion. In its General Comment and communication decisions, [13] the Committee has asserted that Article 18 ICCPR entails 'the right to replace one's current religion or belief with another or to adopt atheistic views', and expressly condemns policies or practices limiting this right or having the same intention or effect.[14]

(ii) Article 22(2)

A similarly reticent jurisprudence is demonstrated in the Committee's engagement with the second limb of Article 22, providing for the permissible limitation of the right to freedom of association, dependent upon the satisfaction of a series of cumulative conditions. Restrictions of the right to freedom of association must be 'prescribed by law', 'necessary in a democratic society', and in the interests of 'public order (*ordre public*), the protection of public health or morals, or the protection of the rights and freedoms of others'. Whilst the Committee has adopted a seemingly restrictive approach to the scope of permissible restrictions, it practices a reactionary, *ad hoc* style of adjudication. By comparison, the Committee's engagement with

[11] Human Rights Committee, *Wallman and others v Austria* (CCPR/C/80/D/1002/2001).
[12] Human Rights Committee, *Gauthier v Canada* (CCPR/C/65/D/633/1995). In the Committee's communication decisions, the complainant is referred to as the 'author' of the communication.
[13] See, for example, Human Rights Committee, *Hudoyberganova v Uzbekistan* (CCPR/C/82/D/931/2000).
[14] Human Rights Committee, 'General Comment No 22 (1993) on the right to freedom of thought, conscience and religion' (CCPR/C/21/Rev.1/Add.4) para x. Note, however, that the right under Article 18 is drafted differently to Article 22.

similarly drafted provisions in the context of rights with an established intrinsic aspect demonstrates a greater tendency to enumerate instructive, justiciable, and generally applicable principles.

In the context of registration or authorisation regimes governing associations (a category of restriction giving rise to the vast majority of communication decisions and featuring in many concluding observations), the Committee routinely deems such regimes disproportionate under Article 22(2) with little elaboration upon the principles guiding such findings. The Committee (contrary to the minority opinion of dissenting members) has failed to hold that arbitrary registration regimes contravene article 2(2) ICCPR[15] and has not pronounced upon any class of such regimes which may contravene Article 22 *per se*. Whilst a disapproval of unduly technical, [16] unpredictable, [17] and discriminatory[18] regimes is deducible from the Committee's case-law, principles may only be cautiously distilled from a large corpus of *ad hoc*, reserved legal reasoning.

Conversely, in adjudicating upon authorisation regimes limiting the right to freedom of assembly under Article 21, the Committee frames such restrictions as 'undercut[ting] the idea that peaceful assembly is a basic right'.[19] Reasoning within this paradigm, the Committee has offered significant guidance on the criteria governing the permissibility of registration regimes. It has held that such regimes must not be arbitrary,[20] unduly bureaucratic, entail unnecessary delay, and must be 'proportionate to the public impact of the assembly concerned'.[21]

'Provided by Law'

Similarly, whereas the Committee has not engaged with the meaning of 'provided by law' in the context of Article 22(2), a "rights-based rationale", recognising the intrinsic and inherent value of freedoms from the perspective of the individual, appears to undergird a more articulate

[15] See Human Rights Committee, *Kungurov v Uzbekistan* (CCPR/C/102/D/1478/2006) individual opinion by Committee member Fabián Salvioli. Article 2(2) of the ICCPR provides that '[w]here not already provided for by existing legislative or other measures, each State Party to the present Covenant undertales 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'.
[16] Human Rights Committee, *Korneenko v Belarus* (CCPR/C/88/D/1274/2004).
[17] Kungurov (n 14) 8.2.
[18] Human Rights Committee, Concluding Observations on Monaco (CCPR/C/MCO/CO/2) (2008) 13.
[19] General Comment No 37 (n 5) 70.
[20] Human Rights Committee, Bakytgul Suleymenvova v Kazakhstan (CCPR/C/126/1416/2014).
[21] General Comment No 37 (n 5) 70.

and elaborate engagement with parallel provisions. Dealing with the provision that permissible restrictions must be 'prescribed by law' in the context of the rights to peaceful assembly and freedom of expressions, the Committee has held that permissible restrictions must be formulated with sufficient precision in order to 'allow members of society to decide how to regulate their conduct',[22] must not confer 'unfettered or sweeping discretion on those charged with their enforcement',[23] and must be accessible to the public.[24]

'Necessary in a Democratic Society'

Conversely, in the Committee's jurisprudence addressing the permissibility of restrictions upon the right to freedom of association, scintillae of principle only emerge in the Committee's exposition of the instrumental importance of Article 22 in support of democracy. Of the cumulative conditions in Article 22(2), the Committee has only expanded upon the meaning of 'necessary in a democratic society', and it repeatedly asserts that the notion indicates 'that the existence and operation of associations … is a cornerstone of a democratic society'.[25] In *Jong-Eun Lee v Republic of Korea*, the Committee's statement that restrictions must be 'necessary to avert a real, and not only hypothetical danger to national security or democratic order' was similarly based on the importance of maintaining 'the existence and functioning of a plurality of associations' in society.[26]

Whilst commentators have sought to deduce navigable criteria from this case-law, noting that 'necessary in a democratic society' only permits restrictions 'which may claim to spring from a "democratic society"'[27] and address 'State-threatening organisations',[28] the meaning of "democracy" is unavoidably ambiguous. As demonstrated by the drafting history of Article 22(2), in which State parties expressed concern that "democracy" may be interpreted differently amongst States,[29] and in which Soviet States sought to introduce express

[22] Human Rights Committee, 'General Comment No 34 on freedoms of opinion and expression' (CCPR/C/GC/34). See also Human Rights Committee, *De Groot v The Netherlands* (CCPR/C/54/D/578/1994).
[23] General Comment No 37 (n 5) 39.
[24] General Comment No 34 (n 21) 6.
[25] See, among others, *Korneenko* (n 15).
[26] Human Rights Committee, *Jong-Eun Lee v Republic of* Korea (CCPR/C/84/D/1119/2002) 7.2.
[27] Paul Taylor, *A Commentary on the International Covenant on Civil and Political Rights* (Cambridge University Press 2022) Chapter 21
[28] Manfred Nowak, *UN International Covenant on Civil and Political Rights: Nowak's CCPR Commentary* (Engel 2005) 505.
[29] United Nations Economic and Social Council, '60th Session: Summary Record of the 169th Meeting' (E/CN.4/SR.169).

prohibitions of 'societies, unions and other organisations of a Fascist and anti-democratic nature',[30] the concept is prone to inconsistent interpretation and misappropriation.

Indeed, similarly obtuse concepts governing the permissibility of restrictions upon ICCPR rights, such as the 'public morality' provision pertaining to freedom of association and comparable rights, have received little specification in the jurisprudence of the Committee. Whilst it has stated that the concept of morality 'must be based on principles not deriving from a single tradition'[31] and commentators have stressed that the notion is liable to mask prejudice and majority opinion, other strands of the Committee's case law demonstrate that it tolerates variation in the meaning of "public morality" between States in accordance with prevalent political and religious views.[32]

In this regard, the Committee's failure to recognise an intrinsic aspect of the right to freedom of association, and failure to ground Article 22 within a "rights-based" philosophy, may deprive the Article 22 guarantee of an important safeguard against the misappropriation of the concept of measures necessary "in a democratic society", particularly as it threatens associations espousing minority opinion. Without the counteracting force of a jurisprudence framing the importance of the right to freedom of association from the perspective of individual participants, oppressive restrictions posed by prevalent prejudicial political opinion upon dissentient associations may be afforded undue leeway under the nebulous rubric of "democracy". The presently unbalanced philosophical basis for the right fails to account for an inherent tension between the imperative of preserving peace and the importance of facilitating associations in a "democratic society". Whilst a refinement of the notion of "democracy" to expressly incorporate plurality (discussed in Section IV) may also serve to safeguard against such an imbalance, a firm recognition of the inherent importance of Article 22 is likely to qualify the permissibility of restrictions upon the right to freedom of association with regard to 'human rights, as opposed to [that which is] merely reasonable or expedient'.[33]

Overarching Principles in the Context of Article 21

[30] United Nations Economic and Social Council: Commission on Human Rights, '8th Session: Summary Record of the 325th Meeting' (E/CN4.SR.325).
[31] General Comment No 22 (n 13) 8.
[32] Human Rights Committee, Delgado Páez v Colombie (CCPR/C/39/D/195/1985).
[33] As is the case in the context of the right to peaceful assembly: General Comment No 37 (n 5) para 40.

The Committee's recent General Comment on Article 21 appears to have established a series of implied, overarching principles applicable to restrictions upon the right to peaceful assembly. The Committee has asserted that limitations must be 'content neutral, and thus not be related to the message conveyed by the assembly'[34] and that restrictions 'should be guided by the objective of facilitating the right'.[35] It is yet to be seen whether the Committee follows these principles in the context of Article 22. Whilst the two rights are textually similar, the Committee is unlikely to deviate from its reserved jurisprudence until the publication of a General Comment on Article 22.

(iii) Positive Obligations

In line with the interpretation of many rights under the Covenant as having 'horizontal effect',[36] the right to freedom of association is liable to be read in conjunction with States' duty under article 2(1) to 'take the necessary steps … to adopt such laws or other measures as may be necessary to give effect to the rights recognized' in the ICCPR. The Human Rights Committee has asserted that states are obliged to protect individuals from violations of Covenant rights arising from acts committed by private persons and entities,[37] and the Special Rapporteur has sought to establish a series of positive obligations upon States 'to facilitate peaceful assembly and association'.[38] In addition to protecting associations from reprisals, response to violations of Article 22 has been deemed essential to the discharge of such positive duties. States are expected to 'enact robust national laws', create independent and effective adjudicatory mechanisms, and provide reparations for violations of the right to freedom of association. Moreover, the Special Rapporteur appears to have outlined a series of strikingly burdensome expectations in the context of associations' access to resources.[39] Whilst the Human rights Council has reiterated that freedom of association entails freedom to solicit, receive, and utilise

[34] *Ibid* para 38.
[35] Human Rights Committee, *Turchenyak and others v Belarus* (CCPR/C/108/D/1948/2010) para 7.4.
[36] Sarah Joseph and Melissa Castan, *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary* (Oxford University Press, 2013) 569.
[37] This is a general obligation under the ICCPR, see Human Rights Committee, 'General Comment No 31 on the nature of the general legal obligation imposed on States Parties to the Covenant' (CCPR/C/21/Rev.1/Add.13) para 8.
[38] Human Rights Council, 'Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association' (A/HRC/32/36) para 19.
[39] *Ibid*; Human Rights Council, 'Advancing accountability and ending impunity for serious human rights violations related to the exercise of the rights to freedom of peaceful assembly and of association: Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voule' (A/HRC/53/38) citing the UN General Assembly, 'Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law' (A/RES/60/147).

resources,[40] the Special Rapporteur, in stressing the obligation upon States to foster an enabling environment in which associations can operate effectively, has stated that States should provide tax benefits, reduce the costs of bank transfers, and provide other forms of public support regarding access to financial resources for civil society.[41] Writing extra-officially, former Special Rapporteur Main Kiai has opined that a right to funding should be viewed as 'inherent' to the right to freedom of association.[42]

Whilst the rhetoric of the Special Rapporteur is unlikely to translate into justiciable duties upheld by the Human Rights Committee, case-law suggests firm support for the financial autonomy of civil society. The Committee has held that measures restricting foreign aid for accountability-monitoring NGOs are inconsistent with the Covenant[43] and repeatedly stresses that legal provisions restricting foreign funding for civil society must not risk the effective operations of non-governmental NGOs.[44] Such decisions fail, however, to enunciate a clear positive duty requiring States to facilitate associations' unimpeded access to resources.

The Committee has, however, developed more robust protection for a range of rights ancillary to the exercise of the right to peaceful assembly within the "rights-based" paradigm patent in its treatment of Article 21. Its General Comment recognises a broader category of rights 'outside the immediate context of the gathering' but which are 'integral' to the meaningful exercise of the right, and has recognised the protection entailed by Article 21 for 'participants' or organizers' mobilization of resources'.[45] Consistent with its fostering of tangible and intelligible criteria illuminating the scope and content of comparable ICCPR rights, an intrinsic rationale additionally appears to provide a basis for the emergence of positive duties and ancillary rights in the Committee's jurisprudence.

III. Freedom of Association and Other Rights under the ICCPR:

[40] Human Rights Council, Resolution 27/31 (A/HRC/RES/27/31).
[41] Human Rights Council, 'Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association' (A/HRC/50/23) para 12.
[42] Maina Kiai and Jeff Vize, 'Three years after Tunisia: Thoughts and Perspectives on the Rights to Freedom of Assembly and Association from United Nations Special Rapporteur Maina Kiai' (2014) 10(1) Journal of Global Ethics 114.
[43] *Korneenko* (n 15).
[44] CCPR/C/VEN/CO/4 and CCPR/C/ETH/CO/1
[45] General Comment No 37 (n 5) para 33.

In line with the Special Rapporteur's frequent reiteration of the fact that 'all human rights are interdependent and indivisible',[46] the Committee has exposited the relationship between Article 22 and a series of ICCPR rights. The jurisprudence developing these interactions once again demonstrates the emphasis on the instrumentalist orientation of the right to freedom of association evident in the analysis of the Human Rights Committee.

(i) Freedom of Expression

The Human Rights Committee has asserted that freedom of expression is 'integral to the right to freedom of assembly and association,[47] and has held (as an established principle of its jurisprudence) than 'freedom of expression rights of individuals are implicated in their efforts to communicate through associations'.[48] Furthermore, the relationship is bidirectional, and Committee decisions indicate that violations of article 22 may *prima facie* establish a breach of article 19 in certain instances.[49]

Despite the generality of these statements outlining the close connection between both rights, the Committee only appears to adopt a conjunctive reading of Articles 22(1) and 19(2) in the context of politically significant associations. Adjudicating upon the dissolution of an opposition party in *Farah v Djibouti*, the Committee stated that freedom of expression 'is particularly necessary to ensure the functioning of political parties in a democratic society', and in *Kungurov v Uzbekistan*, the Committee appears to have accepted the submission that the activities of an NGO in gathering and disseminating information about national human rights violations qualify as 'core freedom of expression activities'.[50]

Although the Committee's General Comment on freedom of expression purports to establish freedom of expression as an 'inherent' prerequisite to the right to freedom of association, the instrumentalist orientation of the Committee's Article 22 jurisprudence appears to erect a threshold of political and democratic significance for the concurrent application of both rights.

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[46] General Assembly, 'Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association: Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association' (A/74/349) para 18. The Council has adopted a more descriptive formulation, describing (in the context of freedom of association and assembly) all human rights as 'universal, indivisible, interdependent and interrelated': see Human Rights Council, Resolution 26/13 (A/HRC/RES/26/13).
[47] General Comment No 34 (n 21) para 4.
[48] See Human Rights Committee, *Sister Immaculate Joseph v Sri Lanka* (CCPR/C/85/D/1249/2004) and, *Kungurov v Uzbekistan* (CCPR/C/102/D/1478/2006).
[49] Human Rights Committee, *Farah v Djibouti* (CCPR/C/130/D/3593/2019) para 7.9.
[50] *Kungurov* (n 47) para 8.8 repeating the language of the author of the communication.

Consistent with the Committee's framing of Article 22 as subservient to the aims and principles of a "democratic society", only associational activities contributing to enhanced accountability and plurality appear to warrant a combined application of both rights.

(ii) The Right to Participate in Public Affairs

Consistent with its focus on the democratic significance of freedom of association, the Human Rights Committee has deemed freedom of association to be 'an essential adjunct' to the right to 'take part in the conduct of public affairs' under article 25 ICCPR.[51] In allowing individuals to contribute to public debate and influence governmental decision-making,[52] associational freedom plays an important role 'in shaping governance and the rule of law, inclusiveness, and development across all regions'.[53] National measures obstructing the registration and activity of political parties,[54] permitting the arbitrary dissolution of political parties,[55] and limiting the participation of particular parties in government[56] have been subject to sustained criticism of the Human Rights Committee on the basis of a combined application of Articles 22 and 25.

(iii) The Right to Privacy

In recent years, the commentary and resolutions of various UN institutions have emphasised the importance of digital spaces for online associations and assemblies, and have focused on the interaction between the rights to privacy and Articles 21 and 22 ICCPR. The Special Rapporteur has condemned the 'chilling effect' that surveillance and information gathering may have on the exercise of the rights to freedom of association and assembly in online spaces,[57] the Human Rights Council has highlighted the important role of new information and communication technologies for associational freedoms,[58] and the General Assembly has called on States to 'ensure that the same rights individuals have offline, including the rights to freedom of expression, of peaceful assembly, and of association, are also fully protected online,

[51] Human Rights Committee, 'General Comment No 25 on the right to participate in public affairs, voting rights and the right of equal access to public service' (CCPR/C/21/Rev.1/Add.7); repeated in *Farah* (n 48) para 7.10
[52] *Korneenko* (n 15).
[53] General Assembly, 'Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voule' (A/77/171) para 8.
[54] Human Rights Committee, Comments on Tunisia (CCPR/C/79/Add.43) para 12.
[55] Human Rights Committee, Concluding Observations on Kazakhstan (CCPR/C/KAZ/CO/2) para 52.
[56] Human Rights Committee, Concluding Observations on Swaziland (CCPR/C/SWZ/CO/1) para 53.
[57] Human Rights Council, 'Joint Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies' (A/HRC/31/66) para 75.
[58] Human Rights Council, Resolution 21/17 (A/HRC/RES/21/17).

in accordance with human rights law'.[59] Interestingly, the Human Rights Committee, in its recent General Comment on freedom of assembly, has firmly stated that the collection of data and information must not harass and intimidate individual participants in assemblies, and must respect their right to privacy.

Given the instrumentalist orientation of its jurisprudence in the context of Article 22, the Committee is unlikely to formulate an intersection between the rights of freedom of association and privacy with similar regard for the rights of the individual. Indeed, the Committee's failure to establish an inherent aspect to the right to freedom of association may also explain its failure to develop interactions between Article 22 and other intuitively connected freedoms. The Committee's General Comment on freedom of thought, conscience and religion does not engage with freedom of association, and communications straddling the intersection of both rights have been dealt with solely under the rubric of article 18.[60]

IV. Refining the Rationale

Although the Human Rights Committee's decisions pertaining to other freedoms enshrined within the Covenant emphasise the 'intrinsic' value of rights 'for the full development of the person',[61] there is a conspicuous absence of any such reasoning in the context of freedom of association. Whilst communication decisions pay brief lip-service to the 'severe consequences' that restrictions pose for the freedom of association of the individual, its jurisprudence appears to follow the general focus of the UN institutions on the ways in which 'associational groupings have tangibly improved societies across the world'.[62] Communication decisions concentrate on the value of associational freedom as 'as a cornerstone of a democratic society'.[63]

This article seeks to demonstrate the impediments posed by this one-dimensional approach to the interpretation of freedom of association. It concludes with two primary reflections: Firstly, the failure of the Committee to outline an intrinsic, rights-based rationale appears to have impeded the emergence of individual-centric criteria and principles illuminating the scope and

[59] UN General Assembly, Resolution on the promotion and protection of human rights and fundamental freedoms, including the rights to peaceful assembly and freedom of association (A/RES/73/173) para 4.
[60] Human Rights Committee, *Malakhovsky and Pikul v Belarus* (CCPR/C/84/D/1207/2003).
[61] *Korneenko* (n 15) on the right to freedom of expression.
[62] Human Rights Committee, 'Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association' (A/HRC/35/28) para 2.
[63] See, for instance, Human Rights Committee, *Zvozskov v Belarus* (CCPR/C/88/D/1039/2001) para 7.2.

content of Article 22. It also appears to have stymied the emergence of positive duties thereunder, and may hinder an exposition of (increasingly necessary) interactions between the right to freedom of association and other ICCPR rights. Although the Committee has enunciated a limited number of principles detailing the meaning of "necessary in a democratic society", its jurisprudence engaging with Article 22 does not compare to the instructive and justiciable principles guiding the application of Articles 18, 19 and 21.

Secondly, the failure to recognise an inherent aspect to the right may deprive the Committee's jurisprudence of an important counteracting safeguard against the misappropriation of the concept of "necessary in a democratic society" which operates as a primary limitation upon the scope of permissible restrictions. Without firm recognition of the importance of associational freedom for the individual, the exigencies of a "democratic society" may be interpreted broadly in order to suppress minority opinion. It must be noted, however, that a refinement of the meaning of "democracy" to expressly prioritise pluralism may provide an alternative safeguard to this effect. In addition to the Council's recognition of the importance of associational freedoms in buttressing 'transparency and accountability',[64] it has been recognised that the rights protected by Articles 21 and 22 'are so fundamental in part because of their crucial role in promoting pluralism',[65] and the Committee's decisions have been expressly based upon the necessity of preserving 'the existence and functioning of a plurality of associations'.[66] Communication decisions have firmly criticised *de facto* prohibitions of political opposition parties[67] due to the fact that political parties, in particular, 'are a form of association essential to the proper functioning of democracy'.[68] Indeed, in protecting the promotion of 'ideas not favorably received by the government or the majority of the population', the Committee's jurisprudence reflects the wider priority amongst UN institutions in promoting associations and assembly as 'measures to assist in the strengthening of a pluralistic civil society'[69] on account of their tendency to include marginalised communities,[70] strengthen democratic governance,[71] and serve the human rights principle of non-discrimination enshrined in the Charter of the United Nations, the UDHR, and the ICCPR.[72]

[64] Human Rights Council, Resolution 17/24 (A/HRC/RES/17/24).
[65] A/HRC/32/36 (n 37) para 17.
[66] *Zvozkov* (n 62) para 7.2
[67] Human Rights Committee, *Saidov v Tajikistan* (CCPR/C/122/D/2680/2015).
[68] Farah (n 48) (n 87) para 7.2
[69] Rights Council, Resolution 17/24 (A/HRC/RES/17/24).
[70] A/74/349 (n 45) para 10.
[71] *Ibid*.
[72] Charter Article 1(3); UDHR Article 2; ICCPR Articles 7 and 8.

Whilst this refinement of the meaning of "democratic society" may not reorient the right to freedom of association to meaningfully account for the rights of the individual, it nonetheless provides the Committee with a method of safeguarding the rights of minority, politically controversial associations within the established instrumentalist paradigm of the Committee's jurisprudence examining Article 22.