CHAPTER II

ESTABLISHMENT, STRUCTURE AND STATUS OF THE HUMAN RIGHTS COMMITTEE
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Amongst the international mechanisms evolved for the implementation of human rights, as noted in the preceding chapter, was the Human Rights Committee (hereinafter referred to as the Committee). Without a fair knowledge of the Committee and its decision-making process, the achievements of the Committee cannot be objectively evaluated. Therefore, the present chapter surveys at some length the establishment, structure, status, and decision-making processes of the Committee.

I. ESTABLISHMENT OF THE COMMITTEE

Article 28 of the International Covenant on Civil and Political Rights (hereinafter referred to as the Covenant) envisages the establishment of a Human Rights Committee.¹

At its 346th meeting, the Human Rights Commission (hereinafter referred to as the Commission) discussed the provisions on the establishment of the Committee.² Though the above had wide support right from the beginning till the end of the

1 Article 28, para 1, reads: "There shall be established a Human Rights Committee." The corresponding provision of the Draft Covenant was Article 27, para 1.

Ninth Session of the Commission and thereafter, during the debates of the Third Committee of the General Assembly (hereinafter referred to as the Third Committee), however, the establishment of the Committee was opposed by various countries on various grounds. These can be discussed under the following heads:

1. **Transgression of Domestic Affairs**

   The strongest ground of opposition to the establishment of the Committee was based on the anxiety of member-states to preserve their national sovereignty. In fact, as an East European delegate warned that it was unrealistic to expect that a proposal (to the effect of establishing a Committee) which might infringe the sovereign prerogatives of independent States could be supported. He made it very clear that human rights could not be built upon the ruins of national sovereignty.

   The opposition to the establishment of the Committee was not confined to the East European countries. Some of the newly independent countries also expressed their concern that a Committee with obligatory competence would be a Sword of Damocles hanging over the heads of the young.

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nations. They feared that such a Committee might at any time intervene in their domestic affairs and might even be used for that purpose by the great Powers. It was alleged that the creation of a Committee would be a concession to such countries as Portugal and South Africa, since it (the proposed Committee) could be expected only to defend those countries and not examine complaints objectively. In short, the establishment of the Committee was opposed on the ground that its creation would lead to intervention in domestic affairs of states, which would ultimately yield negative results.

In reply, it was contended that an international system for the protection of human rights could not be regarded as violating the principles of national sovereignty or non-intervention in the internal affairs of States, since such 'infringement' or 'intervention' would have been consented to by the States Parties to the Covenant. Reacting to the fear expressed by the East European countries, the Jamaican representative to the Third Committee (Mrs Robinson)

4 Mr. Diallo (Guinea), Ibid., 1420th mtg, para 41.
5 Mr. Ousseini (Niger), Ibid., 1455th mtg, para 46.
6 Mr. N’Galli-Marsala (Congo, Brazzaville), Ibid., 1416th mtg, para 5.
7 Besides the West European representatives, the Latin American delegates too expressed similar opinion. See, Statement of Mr. Gros Espiell (Uruguay), Ibid., 1415th mtg, para 16.
went to the extent of saying that only those States which would not honour their commitments need fear intervention from the Committee. Indeed, she said, "the Committee should be regarded not as an object of fear but as an instrument of progress.

2. **Identical Implementation Measures**

The East European nations pleaded that human rights formed an integral whole. Therefore, the measures of implementation of the Covenant on Civil and Political Rights should be identical in substance with the measures of implementation of the Covenant on Economic, Social and Cultural Rights. Since the Third Committee had already decided against the establishment of a Special Committee in the case of the Covenant on Economic, Social and Cultural Rights, there was no need to devise a new implementation system for the Covenant on Civil and Political Rights. In this connexion, reference was made to the General Assembly's Resolution 543(VI), in which it was stressed that both Covenants should contain "... as many

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8 Mrs. Robinson, Ibid., 1417th mtg., para 43.

9 In fact, the representative of the United States of America proposed (A/C.3/L.1360, para 1) the establishment of a Committee on Economic, Social and Cultural Rights, whereas the representative of Italy proposed (A/C.3/L.1358, para 1(b)) the establishment of an *ad hoc* Committee of Experts. Both of these proposals were not accepted by the Third Committee. For details, see, GAOR, Twentyfirst Session (1966), Annexes, Vol. 2, paras 10-34.
similar provisions as possible, particularly in so far as the reports to be submitted by States on the implementation of those (human) rights are concerned." Therefore, in response to the proposal of establishing a Committee for monitoring the implementation of Civil and Political Rights, a warning was aired that such a Committee would serve to widen the division between closely related human rights, and that if some human rights were to be considered in isolation from others by entirely different bodies, all human rights would suffer. Observance of each set of rights was necessary for the enjoyment of the other, it was argued. For example, the right to take part in the conduct of public affairs under draft article 23 was essential to the enjoyment of economic, social and cultural rights. In reply, it was contended that if the proposed Committee was dispensed with for the sake of making the two Covenants uniform, the Covenant on Civil and Political Rights would be weakened to the extent of being a mere reiteration of the UDHR. Therefore, it was argued that the differences between them appeared to justify the establishment of different systems of implementation.

Attention was drawn to the fact that the objective of the

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10 See, UN Yearbook (1951), p. 484.
11 Mrs. Sekaninova-Cakrotova (Czechoslovakia), Third Committee Records (1966), 1416th mtg., para 23.
12 Mrs. Barish (Costa Rica), Ibid., para 19.
Covenant on Economic, Social and Cultural Rights was that State should take positive action to satisfy the economic, social and cultural rights of the individual, whereas the objective of the other Covenant was that the State should avoid certain action, specifically, action which would violate the attributes of the person as an autonomous, rational and free human being. A control mechanism was, therefore, needed in the latter case. The possibility of action by the State in violation of a civil or political right recognized by the Covenant or, to put it differently, action contrary to positive international law, required the establishment of a system of international protection. In further clarification thereof, it was argued that civil and political rights and freedoms were more precise in character and depended largely for their effective enjoyment upon the availability of effective remedies in particular instances. Thus these rights by their nature could more appropriately be dealt with by a special committee created for the purpose.

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13 Mr. Gros Espeíl (Uruguay), Ibid., 1415th mtg, para 15.
14 Ibid.
15 Mr. Osborn (Australia), Ibid., 1416th mtg, para 32. Interestingly, the Indian representative, Mr. Sinha, too expressed the same view. See, para 2. Ibid.
3. **Proliferation of Institutions**

Again leading the opposition against the establishment of the Committee, the East European countries saw no need to establish a new committee to consider the reports submitted. It was alleged that there were many other United Nations bodies concerned with human rights matters and, therefore, it would be unwise to set up a new international organ, since that would result in duplication of functions.\(^{16}\) It was argued that the Third Committee had already decided against the establishment of a special committee in the case of the Covenant on Economic, Social and Cultural Rights, because it had deemed it unnecessary to add to the number of the UN bodies, and it had preferred to leave the examination of reports to the ECOSOC. Indeed, much the same reasons militated against the establishment of a special committee for the implementation of the Covenant on Civil and Political Rights.\(^{17}\)

It was also contended that the establishment of a special committee to receive and consider reports would relegate the ECOSOC to a role of secondary importance, although under the Charter, it had been given responsibility for the whole field of human rights.\(^{18}\) In that sense,

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16 Mr. Kornyenko (Ukrainian Soviet Socialist Republic), Ibid., 1415th mtg, para 9.

17 Mr Resich (Poland), Ibid., 1414th mtg, para 12.

18 Mr Sekaninova-Cakrotova (Czechoslovakia), Ibid., 1416th mtg, para 23.
to withhold from the ECOSOC responsibility for considering the manner in which the Covenant was being implemented would be to disregard the contribution of the specialized agencies, many of which had specific responsibilities in the field of political rights.\footnote{Ibid., para 23.} For example, the United Nations Educational Scientific and Cultural Organization, in addition to its general concern with education, was also concerned with freedom of information, the elimination of propaganda for war and racial discrimination and provided technical assistance with regard to media of information, all of which was relevant to articles 19 and 26 of the Draft Covenant. Even some Afro-Asian nations showed confidence more in the ECOSOC than in the proposed Committee.

In contrast to the East European nations' stand, some other countries did not believe that the ECOSOC could carry out the functions with which the proposed Committee would be entrusted. Apart from the fact that the Council was already over-burdened with work, it was unlikely that all of its members would be parties to the Covenant. Its membership was too large for it to serve efficiently and rapidly as a conciliation body.\footnote{Mrs Robinson (Jamaica), Ibid., 1417th mtg., para 41.} The Committee which was to be composed of persons of high moral standing serving in their personal
capacity and not as government representatives, would certainly be better able than the ECOSOC to work impartially. Therefore, the establishment of a special committee was considered preferable to entrusting the matter to the ECOSOC because, first, the Council was already overburdened with work; secondly, the Committee would consist of persons elected by the States signatories and, possessing special competence in the sphere of human rights; and thirdly, the Committee members would be more impartial and further removed from political considerations, since they would serve in an individual capacity. Such a system would not constitute interference in a country's internal affairs, since the Committee's role would be no more than that of an arbitrator.

4. **Financial Burden**

Opposing the establishment of the Committee, the East European countries argued that such a body would place an unnecessary and unjustifiable financial burden on the United Nations and its member States. Even some Afro-Asian countries also feared that the establishment of the proposed Committee would entail considerable costs.

21 Ibid.
22 Miss Tabbara (Lebanon), Ibid., 1416th mtg, para 43.
23 Mr Mirza (Pakistan), Ibid., 1414th mtg, para 18.
In the view of some other representatives, however, the fear that the establishment of the proposed Committee would bring a financial pressure was "unfounded." \(^{24}\) Even so, the financial consideration should not deter countries from establishing effective implementation measures. It was argued that the importance of the subject was sufficient to justify such expenditure. \(^{25}\)

5. **Relevance of the Project**

Some countries even considered unnecessary the establishment of a special committee to implement human rights. \(^{26}\) They preferred to see the idea of establishing a committee abandoned. In their view, none was better able than the State itself to defend the interests of its nationals. In addition, it was argued that the good faith of the States Parties should be sufficient to guarantee the application of the provisions of the Covenant. \(^{27}\) Therefore, it was submitted that disputes between States could be settled even without establishing any committee whatsoever.

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24 Mr Mohammad (Nigeria), Ibid., 1418th mtg, para 45.
25 Mr Heldal (Norway), Ibid., 1415th mtg, para 35. Mr Hoveyda (Iran) endorsed this view. See, Ibid., 1416th mtg, para 27.
26 Mr Malecela (United Republic of Tanzania), Ibid., 1420th mtg, para 19.
27 Mr Akpo (Togo), Ibid., para 13.
In contrast to this submission, there were some countries which considered the establishment of a human rights committee essential. They argued that without an adequate protection system, the Covenant would be no more than an undertaking by States to respect a set of human rights, most of which were already implicitly or explicitly proclaimed in the Charter and the UDHR. In their view, the effective application of the Covenants' provisions demanded the establishment of a committee.

In fine, the arguments based on domestic jurisdiction, the proliferation of UN bodies, the financial implications of the proposal, and on infringement of powers and functions of the ECOSOC were not persuasive. It was felt that the non-establishment of the committee would weaken the Covenant. Hence, the establishment of a committee became an internationally accepted idea. It was, in fact, established on 20 September 1976.

Although there were no formal proposals on alternative designations to the "Human Rights Committee", other names were suggested, and it was thought that the matter should be discussed before the final adoption of the Covenant, so that a more appropriate designation might be adopted in conformity with the dignity and importance of the proposed body. Designations such as "Human Rights Council" (herein-after cited as the Annotations).
and "Human Rights Committee" were considered to be somewhat confusing in the light of the names of the various organs of the United Nations; they might also give rise to undesirable notions of hierarchy, if was thought.\textsuperscript{29} Suggestions like "Human Rights Tribunal" or "Human Rights Forum" were thought of as inappropriate for a body which was not of a judicial or arbitrative character, nor confined to deliberative functions. Other suggestions were "Human Rights Board" and "High Commission for Human Rights."\textsuperscript{30} All these suggestions were turned down and the new body was named the "Human Rights Committee." Once the establishment of the Committee was agreed to, and acted upon, the next issue was the composition or structural formulation of this body. The next section will deal with the structure of the Committee.

II STRUCTURE OF THE COMMITTEE

This section surveys briefly the size of the Committee; the qualification of its members; the nominations and election of members; terms of office of its members; staff and facilities of the Committee; and working groups of the Committee.

\textsuperscript{29} Ibid.

\textsuperscript{30} Ibid.
A. **Size of the Committee**

The Committee is composed of eighteen members. It is worth noting that the Draft Covenant envisaged a nine-member Committee, whereas the original proposals before the Human Rights Commission asked for the establishment of a seven-member Committee. The debate on all of these proposals reflected two points of view. The first pleaded for a small size of the Committee, whereas the second advocated a large size. The arguments of the first school were based on the assumption that a small size was more efficient. Its supporters argued that experience showed that the delicate task of conciliation was best performed by a small body, and that, so long as the functions of the Committee continued to be those defined by the existing articles, it was not necessary to have more than seven members at the most. The other point of view was that equitable geographical distribution and representation of the main forms of civilization would hardly be possible.

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31 See, Article 28, para 1 of the Covenant, Appendix I.
32 Article 27, para 1 of the Draft Covenant. Also see, Annotations, n.28, p.199.
33 At the 346th meeting of the Human Rights Commission, the representative of the United Kingdom proposed that the Committee should consist of seven members. See, Report of the Ninth Session of the Commission (1953), p.58.
34 See, Annotations, n.28, p.199.
with a smaller number. It was feared that the smaller countries would not have a sufficient representation, since it was likely that each of the five permanent members of the Security Council might want to have one candidate. Moreover, it was stated that it was necessary to have as large a number as possible, since the committee would have many tasks to perform, including fact-finding which would require a large number. There might also be some division of work among the members of the committee, and working groups and sub-committees might be established. Perhaps the need to attain efficiency in the field of work was a major factor in the larger size of the committee.

In light of these arguments, the Commission rejected the seven members Committee proposal and decided that the Committee shall consist of nine members. But when the Draft Covenant came before the Third Committee, even a nine-member committee was considered inadequate. Taking into account the increase in the membership of the United Nations and having realized the need to make the committee a broadly representative body of all legal systems and all forms of civilization, the Afro-Asian countries proposed


36 See, Annotations, n.28, p.199.

37 Ibid.

38 It was rejected by 14 votes to 4. See, Report of the Ninth Session of the Commission (1953), Annexure III B, paras 57-58.
that its membership should be increased from nine to eighteen. In that case, it was to be hoped, the prospects for universal recognition of the Covenant would be enhanced accordingly. That proposal was warmly received and ultimately adopted by the Third Committee.\textsuperscript{39} As a result, the Committee's composition came to be of eighteen members.\textsuperscript{40}

B. Qualifications of Members of the Committee

The qualifications of members of the Committee are laid down in Article 28, paragraph 2, of the Covenant. The provision runs as follows:

The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.

\textsuperscript{39} It was adopted by 88 votes to none, with three abstentions. See, Third Committee Records (1966), 1420th mtg, para 11.

\textsuperscript{40} The Committee on the Elimination of Racial Discrimination also consists of eighteen experts. (Article 8, para 1, of the Anti-Racism Convention). The Inter-American Commission on Human Rights is composed of seven members (Article 34 of the American Convention). The European Convention established a Commission consisting of a number of members equal to the number of parties to that Convention (Article 20 of the European Convention). See, Ian Brownlie, ed., Basic Documents on Human Rights (Oxford, 1981), edn. 2, pp. 155, 404 and 248, respectively.
A careful reading of the above provision shows that an aspirant for the membership of the Committee must possess at least two essential qualifications and one desirable qualification. The essential qualifications are: first, he should be a national of a State Party to the Covenant; second, he must be a person of high moral character and recognized competence in the field of human rights. The desirable qualification is, some legal experience. Each of these three qualifications needs a detailed analysis, which follows:

1. **Nationality of a State Party**

   The Covenant simply requires that a member of the Committee must be a national of the States Parties which nominate him. Nationals of States Parties to the Covenant which are not members of the United Nations are, of course, also eligible. The Covenant does not require that the members of the Committee be nationals of a State which has accepted the inter-State communication procedure or of a State which is a party to the Optional Protocol.

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41 The European Convention on Human Rights does not contain any express provision on the required qualifications of the members of the European Commission on Human Rights. The American Convention on Human Rights, on the other hand, makes certain qualifications. See, Article 34 of the American Convention. Ibid., p. 404.

42 Article 29 of the Covenant, Appendix I.
It follows that nationals of States which have not accepted the optional arrangements will participate in the Committee's procedures under Article 41 and under the Protocol. 43

2. **High Moral Character and Recognized Competence**

In the Draft Covenant it was provided that the members of the Committee shall be persons of "high moral standing." 44 Later on, however, the Afro-Asian countries demanded that the word "standing" should be substituted by the word "character." 45 The Third Committee acceded to this demand. 46 The present provision of the Covenant now requires that the members of the Human Rights Committee shall be persons of "high moral character." 47

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43 The situation is different in regard to the composition of the ad hoc Conciliation Commission. For details, see Chapter III.

44 Article 27, para 2 of the Draft Covenant.


46 The amendment was adopted by 87 votes to 1, with 1 abstention. See, Third Committee Records (1966), 1420th mtg, para 11.

47 Article 28, para 2 of the Covenant. Similarly, Article 8 of the Anti-Racism Convention and Article 2 of the UNESCO Protocol Against Discrimination in Education also require "acknowledged impartiality." Article 34 of the American Convention envisages that the members of the Inter-American Commission shall be persons of high moral character and recognized competence in the field e.g. human rights. Article 25 of the European Social Charter requires "the highest integrity." Agon Schwelb observed that all these requirements are included in the requirement of a "high moral character." See, Schwelb, "The International Measures of Implementation of the International Covenant on Civil and Political Rights", Texas Int'l Law Journal, vol.12, 1977, p.151.
3. **Legal Experience**

The Covenant lays down that in the composition of the Committee, "consideration" shall be given to the usefulness of the participation of some person having "legal experience", implying thereby that legal experience is not an essential qualification. This is a regrettable omission. Indeed, it should be a desirable qualification. Under the Draft Covenant, however, this qualification was little wider. It provided that "consideration" shall be given to the usefulness of the participation of some persons having a "judicial or legal experience".\(^\text{48}\) Even the Draft Covenant was being prepared, some members of the Commission questioned the legitimacy of this provision on at least two grounds: First, it was felt that this clause could be dispensed with, since persons of high moral standing and recognized competence in the field of human rights would naturally include some jurists. And States, when considering candidates for nomination, were hardly likely to overlook the nomination of jurists. On the other hand, it was recognized that the

\(^{48}\) Article 27, para 2 of the Draft Covenant (emphasis added). The UNESCO Protocol calls for an "endeavour" to include persons of "recognized competence in the field" (of education), and persons having "judicial experience, or legal experience, particularly of international character." No such provisions are included in the European Convention, as far as the members of the European Commission are concerned.
scope of appointments to the Committee should include a wider range of persons such as statesmen, historians, etc., as well as jurists.\footnote{49}

Also, doubts were expressed that this consideration gave an impression that the Committee would be a judicial body. The Afro-Asian countries as well as the socialist countries never desired such a judicial institution. Hence, the Afro-Asian countries in their amendments\footnote{50} proposed the deletion of the words "a judicial". Having debated the change, the Third Committee adopted this amendment.\footnote{51} Thus, the new provision states that in the composition of the Committee, consideration shall be given to the usefulness of "the participation of some persons having legal experience." Here, it may well be asked that, if the implementation of human rights is a matter of concern for all, including diplomats and technocrats, then why was special consideration given to persons of legal experience? In reply, it was emphasized that, besides collection of information, ascertaining of facts and making available its good offices, the

\footnotesize{\begin{itemize}
  \item \footnote{49}{See, \textit{Report of the Ninth Session of the Commission} (1953), paras 93 and 94.}
  \item \footnote{50}{A/C.3/L.1373, and Add.1 and Add.1/Corr.1.}
  \item \footnote{51}{It was adopted by 86 votes to none, with 3 abstentions, \textit{See, Third Committee Records} (1966), 1420th mtg, para 11.}
  \item \footnote{52}{Article 28, para 2, of the Covenant, \textit{Appendix I}.}
\end{itemize}}
Committee would be concerned most often with matters involving violations of legal provisions and, in such cases, the Committee would have to investigate and settle disputes for which legal experience would be invaluable.\(^5\)\textsuperscript{3} In practice, therefore, if one goes through the list of the Committee members, one will find that at least half of them are professors of international or public law and that all the other members have long and wide-ranging experience in law and diplomacy.

**C. Conditions Relating to the Election of the Members**

In addition to the prescribed qualifications, the Covenant lays down two additional conditions relating to the election of the members of the Committee. These are:

1. **First,** the Committee may not include more than one national of the same State;

2. **Second,** in the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.\(^5\)\textsuperscript{4}

While the first condition is sufficiently clear, the second condition, however, needs to be elaborated and enquired into in light of the preparatory work.

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\(^5\)\textsuperscript{4} Article 31 of the Covenant. In the Draft Covenant, however, the phrase "principal legal system" was not incorporated. See, *Article 30, para 2 of the same.*
During the debates of the Commission, it was generally agreed that in the election of the Committee, consideration should be given to equitable geographical distribution, but there was some discussion as to the representation of the "main" or the "different" forms of civilization. The opinion was expressed that reference to the "main forms of civilization", though taken from Article 9 of the Statute of the International Court of Justice (hereinafter referred to as the Court or ICJ), implied a classification of civilization in principal and secondary, or major or minor, categories, which might not be well-founded. It was suggested that the term "main forms of civilization" should be changed to "different forms and degrees of civilization." While the expression "different forms of civilization" was deemed appropriate, objection was raised to the expression "different degrees of civilization" on the ground that it implied a hierarchy of cultural levels which would not be desirable to introduce in the Covenant. Hence, the

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55 In the original text the phrase used was "the main forms of civilization." At the 348th meeting of the Commission, the representative of Chile submitted an amendment to have the words "the different forms and degrees of civilization" for the words "the main forms of civilization." The Commission rejected the word "degrees" and the word "different" was substituted for the word "main." See, Report of the Ninth Session of the Commission (1953), Annexure III B, paras 75 and 78.

56 See, Annotations, n.28, p.209.
Commission rejected the word "main" and substituted it by the word "different." As a result, the Draft Covenant incorporated a provision which said that "in the election of the Committee, consideration shall be given to equitable distribution of membership and to the representation of the different forms of civilization." When the Draft Covenant was being debated in the Third Committee, the Soviet delegate sought a clarification of the meaning of the phrase, "different forms of civilization", which seemed to him to represent a rather vague notion. In his opinion, it was not very advisable to use these terms in the Covenant. In addition, however, the delegate suggested the inclusion/addition of the words "and principal legal systems" after the words "the different forms of civilization." The orally revised version of the amendment was unanimously accepted.

57 Article 30, para 2, of the Draft Covenant. The UNESCO Protocol, too, provides that consideration be given to "equitable geographical distribution of membership and to representation of the different forms of civilization" as well as of the principal legal systems.

58 Mr Nasinovskey, Third Committee Records (1966), 1422nd mtg, para 5.

59 Ibid.
D. **Election of the Members of the Committee**

The election of the members of the Committee could be discussed under two heads: the authority of election, and the procedure of election.

1. **Authority of Election**

The members of the Human Rights Committee are elected not, as was proposed, by the Commission on Human Rights, by the International Court of Justice, but by the States Parties themselves. In fact, ever since the Commission started discussion on the election of the members of the Committee, it faced a dilemma: Who should elect the members of the Committee? Various views were advanced concerning the question as to which was the most competent and appropriate body to elect the members of the Committee.

Three alternative proposals were suggested. One proposal suggested that the States Parties to the Covenant should be authorized to elect the members of the Committee. Another proposal advocated that the ICJ should be entrusted with this authority. Yet, another proposal suggested that the General Assembly should be empowered to elect the members.

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60 At its 346th meeting, the Commission took up this question for consideration. See, *Report of the Ninth Session of the Commission (1953)*, Annexure III B, para 60.

of the Committee. Since each of these three proposals was well contested, a brief account of each is given below:

(a) **Election by the States Parties**

Supporters of this view argued that only those States which had ratified or acceded to the Covenant should have the right not only to nominate candidates but also to elect members of the Committee. Since a fact-finding consiliatory committee, and not a court, was to be set up, it was undesirable to overemphasize the judicial aspects of the competence of the Committee by entrusting the election to the ICJ, and that it was doubtful whether the Court could perform a task which was alien to its functions. It would also be unwise to request the General Assembly to elect the Committee since that Organ would include States which would not be parties to the Covenant and would, therefore, have no rights or obligations thereunder. 62

(b) **Election by the ICJ**

Supporters of this proposal argued that it would be unwise to leave the final choice of the members of the Committee to the State Parties alone. The rights of States Parties were safeguarded because the choice would be restricted to their nations nominated by those States

62 Ibid., p.206.
themselves. It was contended that elections should not take place in an essentially political atmosphere of a meeting of representative States. It was most important that the Committee command the confidence of the individual victims of intractions of the Covenant. Election by the Court, it was argued, would guarantee objectivity and impartiality and contribute to the prestige and importance of the Committee. The Court was the highest non-political organ of the United Nations, and there could be no question of its independence. Certain members stated that since the ICJ was an independent and impartial body, unaffected by political considerations, and highly qualified to pass judgement on a person's abilities and character, it alone should be authorized to elect the members of the Committee.

As against the supporters of the view that the members of the Committee should be elected by the General Assembly, some members of the Commission pointed out that while there was no question about the impartiality of the General Assembly, which elected members of the principal organs of the United Nations, including the judges of the ICJ, the Court was less likely to be affected by political considerations and accordingly a more appropriate body to conduct elections to the Committee.

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63 Ibid.
64 Ibid.
65 Report of the Ninth Session of the Commission (1953), para 97.
66 Ibid.
Notwithstanding warm responses to the ICJ, doubts were expressed whether the Court could be legally entrusted with the task of elections, and it was even contended that it was outside the jurisdiction of the Court. In reply, however, it was argued that although there was no legal obligation or duty on the part of the Court to elect members of the Committee, there were no constitutional barriers to its carrying out the task, if it so wished. In this connexion, references were made to the practice of the Permanent Court of International Justice and the International Court of Justice or to the President of these bodies in the appointment of members of arbitration tribunals, conciliation commissions, and other nominations. The opinion was also expressed that difficulties might arise if the Court were to refuse to undertake the task, and it was suggested that this could be avoided by ascertaining the views of the Court beforehand.

(c) Election by the General Assembly

Supporters of this view claimed that elections of the members of the Committee should be carried out by a representative body of a universal character, such as the General Assembly, rather than by the States Parties or the

67 Annotations, n.28, p.207.
68 Ibid.
69 Ibid.
Court, since the promotion of and request for human rights was a collective responsibility of the United Nations.\(^\text{70}\)

The impartiality of the General Assembly, which elected members of the principal organs of the United Nations, and also - together with the Security Council - the judges of the ICJ, could not be contested.\(^\text{71}\)

It was also stressed that members of the Committee were not to be chosen solely for their judicial or legal experience and the General Assembly was eminently competent to take into account other factors which should influence the composition of the Committee.\(^\text{72}\)

In addition to these three main proposals, some other suggestions were that the method of election might be the same as that for the election of the judges of the ICJ or of the members of the International Law Commission or that the Committee should be elected jointly by the General Assembly and the ECOSOC.\(^\text{73}\)

Having considered all these proposals and suggestions, the Commission finally decided in favour of the Court. The draft of the article prepared at its sixth session which

\[^\text{70}\] Ibid., p. 206.
\[^\text{71}\] Ibid.
\[^\text{72}\] Report of the Ninth Session of the Commission (1953), para 97.
\[^\text{73}\] Annotations, n. 28, p. 207.
had provided for election by the States Parties to the Covenant, had been changed in favour of election by the ICJ on the grounds that elections should not be the monopoly of a group of States, however directly interested. Under the Draft Covenant, therefore, the authority of election of members of the Committee was assigned to the ICJ.

However, when this matter came before the Third Committee, the climate was against the ICJ. In fact, a view prevailed that the States Parties should have full responsibility in the election process. As a result, the Afro-Asian countries proposed an amendment which called for the elimination of the role of the ICJ in the election of members of the Committee. This proposal was adopted, and now the States Parties to the Covenant, rather than the ICJ or the General Assembly, are authorized to elect.

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74 Report of the Ninth Session of the Commission (1953), para 97.

75 A Yugoslavian amendment to replace the authority of the ICJ with that of the General Assembly was rejected by 9 votes to 5, with 4 abstentions. Ibid., Annexure III B, paras 69 and 71.

76 A/C.3/L.1373 and Add.1 and Add.1/Co.1.

77 Voting was 83 - 0 - 9. See, Third Committee Records (1966), 1421st mtg, para 61.
2. Procedure of Election

The procedure of election of the members of the Committee is laid down in Articles 29 and 30 of the Covenant. Read together, these articles stipulate the procedure of election in three stages, viz. nomination of candidates, circulation of list of nominees, and election from the nominated candidates. A detailed account of these three stages is given below:

First Stage: Nomination

The process of election of members of the Committee begins with the direct nomination of candidates. Thus, nomination is a prerequisite for election, as Article 29, paragraph 1, states that "the members of the Committee

The members of the European Commission are elected by the Committee of Ministers of all States Members of the Council of Europe, while nominations are submitted by each national group of representatives in the Consultative Assembly of the Council, on which all States Members of the Council are represented. (Article 22 of the European Convention) The members of the Inter-American Commission are elected by the General Assembly of OAS. Nominations may be submitted by each State Party to the Convention. (Article 36 of the American Convention).

Under the UNESCO Protocol, the members of the Commission are elected by the General Conference of UNESCO, on which all members of UNESCO are represented, while each State Party to the Protocol is to submit nominations after consulting its National Commission for UNESCO. (Article 3)
shall be elected by secret ballot from a list of persons... nominated for the purpose by the States Parties to the present Covenant." Therefore, in the first stage, the Secretary-General of the United Nations sends out an invitation to the States Parties to the Covenant to submit their nominations of candidates for election to membership of the Committee, within three months.

The Covenant does impose two conditions on the right of nomination. First, each State Party (to the Covenant) may not nominate more than two persons; and secondly, these persons must be nationals of the nominating State.79

(a) **Number of Nominations**

The Covenant stipulates that: "Each State Party to the Covenant may not nominate more than two persons." This condition makes two points explicitly clear. One, a State Party may or may not nominate its nationals for election. Two, the number of nominations is restricted to two persons.80

79 Article 29, para 2, of the Covenant. However, the Draft Covenant permitted the nominations of up to four persons. See, Article 28, para 2, of the Draft Covenant.

80 The UNESCO Protocol provides for "not more than four" nominations. The European Convention provides for three candidates to be put forward by each national group, in the Consultative Assembly of the Council of Europe. See, Explanatory Paper on the Measures of Implementation Prepared by the Secretary-General. GA/UR, Eighteenth Session, Annexes, Agenda Item 48, 29 April 1963 and addenda 1 and 2. (UN Doc. A/5411), para 50. (hereinafter cited as Explanatory Papers).
In the Third Committee, however, the delegate of the United Arab Republic preferred the wording: "Each State Party to the Covenant may nominate at least two and not more than four persons." The Chilean delegate pointed out that if States Parties were not required to submit nominations, no minimum number could be imposed. He, therefore, suggested the words: "Each State Party to the Covenant may nominate not more than four persons." It was supported by the delegates of India and Panama.

As it was clear, the Chilean proposal had specified no lower limit on the number of persons to be nominated by the States Parties. The striking feature of this proposal was its maximum limit of four persons. Therefore, after some consultations the Chilean delegation had agreed on the wordings: "Each State Party to the present Covenant may nominate not more than two persons. These persons shall be nationals of nominating State." This wording was orally adopted.

81 Mr Aboul Naer, Third Committee Records (1966), 1421st mtg, para 14.
82 Mr Bazan, Ibid, para 16.
83 Ibid., paras 24 and 18, respectively.
84 It was adopted by 76 votes to none, with 7 abstentions. Ibid., 1421st mtg, para 28.
(b) **Nationality of Nominating State**

The Covenant requires that the persons to be nominated "shall be nationals of the nominating State". Illustratively-speaking, State Party is competent to nominate persons of its own nationality, not of States Parties Y or Z. In variation, under the Draft Covenant, "(t)hese persons may be nationals of the nominating State or of any other State Party to the Covenant." Again, illustratively speaking, under the Draft Covenant, the State Party X was entitled to nominate not only its own nationals but nationals of States Parties A, B, C..., too. But when the Draft Covenant came up for consideration before the Third Committee, the representatives of the Afro-Asian States in the Third Committee proposed two amendments to the Draft Covenant in this regard. The first one called for the replacement of words "may be" by "shall be" between the words "persons" and "nationals." The second proposed deletion of words "or of any other State Party to the Covenant." The Third

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85 Article 29, para 2, of the Covenant. Under the UNESCO Protocol, too, these persons should be nationals of States Parties to the said Protocol.

86 Article 28, para 2, of the Draft Covenant (emphasis added). Interestingly, as noted earlier, the European Convention provides for nominations not from the State Party, but from each national group in the Consultative Assembly of the Council of Europe. Similarly, in the case of the Inter-American Court of Human Rights, even a person who is simply a national of any of the OAS members and need not necessarily be a national of the States Parties to the American Convention, may be nominated and elected. For instance, Thomas Burgenthal, a US national, is a sitting judge of the Inter-American Court.
Committee adopted\textsuperscript{87} both.

Second Stage: Circulation of List of Nominees

In the second stage, the Secretary-General prepares in the alphabetical order a list of all the persons thus nominated, with an indication of the States Parties nominating and then to be circulated amongst the States Parties to the Covenant not later than one month before the date of each election.

Third Stage: Election by Secret Ballot and Absolute Majority

In the third and final stage, a meeting of States Parties to the Covenant is convened by the Secretary-General at the Headquarters of the United Nations. At that meeting, for which two-thirds of the States Parties to the Covenant \textsuperscript{88} constitute a quorum, the persons are elected by secret ballot.

\textsuperscript{87} The first amendment was adopted by 71 votes to none, with 1 abstention; whereas the second amendment was adopted by 66 votes to 2, with 5 abstentions. See, Third Committee Records (1966), 1421st mtg, paras 11 and 12.

\textsuperscript{88} Article 29, para 1, of the Covenant. On the other hand, Article 28, para 1, of the Draft Covenant, as proposed by the Human Rights Commission, did not envisage the election of the members of the Committee by secret ballot. In the Third Committee, however, the Afro-Asian countries introduced an amendment which called for such provision. This amendment was adopted by 69 votes to none, with 1 abstention. See, Ibid., 1421st mtg, para 9.
Only those nominees "who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting", 89 are declared elected. The main purpose of the inclusion of this clause was to ensure the election of members of the Committee by as large a majority as possible and to prevent the possibility of electing members of the Committee by very few votes. 90

E. Term of Office of the Members

The regular term of office of the members of the Committee is four years. 91 It is worth-noting that the

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89 Article 30, para 4, of the Covenant. In the Third Committee, the delegate of Ghana (Mr Vanderupuyse) expressed his desire to know what exactly was meant by the words "... who obtain the largest number of votes and an absolute majority of the votes...." In response, it was pointed out by Mr Schreiber (Director in the Division of Human Rights) that in order to be elected, nominees must meet two requirements: they must obtain an absolute majority; if, however, the number of nominees of obtaining such a majority was greater than the number of seats to be filled, the nominees who had obtained the largest number of votes should be declared elected. The formula was identical with that adopted in the case of the International Convention on the Elimination of All Forms of Racial Discrimination. Ibid., paras 67 and 68.


91 Article 32, para 1, of the Covenant. The corresponding terms of office are six years in the case of the European Commission; nine years in the case of the European Court; four years in the case of the Inter-American Commission; six years in the case of the Inter-American Court; four years in the case of the Committee on the Elimination of Racial Discrimination; and six years in the case of the UNESCO Commission as established under the UNESCO Protocol.
Draft Covenant had prescribed a term of "five years."92 Owing to an Afro-Asian amendment, however, the Third Committee reduced this to four years.94 Indeed, the Covenant provides that "(t)hey (members) shall be eligible for re-election, if re-nominated...."95 In the Commission itself, the advantages and disadvantages of this provision were considered at length. It was advocated that a retiring member of the Committee should not be immediately eligible for re-election, unless he was re-nominated by a State other than the State which had nominated him previously.96 Such a procedure, it was argued, would enhance

92 Article 31, para 1, of the Draft Covenant.
94 There are two exceptions to this general rule. One, the terms of nine of the members elected at the first session, held on 20 September 1976 at UN Headquarters, expired at the end of two years. Two, a member of the Committee elected to fill a casual vacancy (under Article 33 of the Covenant) shall hold office for the remainder of the term of the member who vacated the seat on the Committee. See, Article 32, para 1, and Article 34, para 3, of the Covenant.
95 Article 32, para 1, of the Covenant. In the original text, as prepared by the Commission, the words "if re-nominated" were not included. They were inserted on the suggestion of the representative of the United Kingdom. See, Report of Ninth Session of the Commission, n.2, Annexure IIIB, para 2.
96 See, Annotations, n.28, p.211.
the independence and impartiality of the members of the Committee, and would also furnish greater emphasis to the principle of equitable geographical distribution and representation of different forms of civilization, and afford a greater chance of election to persons nominated by small powers.

Others, however, thought that to categorically preclude the re-election of members might deprive the Committee of valuable experience and service. Members, after all, would be acting in the interests of all mankind, and not merely in those of their own countries! Moreover, it was also felt that while periodic induction of new persons in the Committee might be desirable, it might also result in lack of continuity in the work of the Committee.97 Therefore, a Yugoslavian proposal to omit the reference to eligibility for re-election and to add a provision that candidates nominated by States from whose list the retiring members have been selected may not be elected for the succeeding "five years" period at the elections held to fill seats vacated by members of the Committee whose terms of office have duly expired, was rejected.98

Notwithstanding the right of re-election, the Covenant provides a safeguard against monopolistic tendencies. Under Article 32, paragraph 1, of the Covenant itself,

97 Ibid.
98 Ibid., p.212.
"the terms of nine of the members elected at the first
election shall expire at the end of two years." The
rationale behind this transitional arrangement is obviously
to ensure the gradual renewal of the Committee, and to
provide a measure of continuity and change in the composi-
tion of the system of the Committee. Although at the
drafting stage, some members of the Commission felt
otherwise; they believed that the periodic induction of
new persons in the Committee might result in lack of
continuity in the work of the Committee and in the loss
of persons having acquired valuable experience and accu-
mulated relevant knowledge.99 But, ultimately, they
agreed to include a provision on the periodical renewal
of the Committee.

In sum, the present text of Article 32 assures three
elements: first, the gradual renewal of the composition
of the Committee; second, a spirit of continuity and
permanence; and third, the option to utilize the experience
and skill of the members.

F. Vacancies

Normally, as the preceding sub-section reveals,
members of the Committee continue to hold office till
the expiry of their stipulated term of four years. In
certain situations, however, premature vacancies might arise

99 Report of the Ninth Session of the Commission(1953),
para 115.
owing to death, resignation and absence. In the event of death or resignation of a member of the Committee, the Chairman of the Committee is required to notify the Secretary-General of the United Nations, who then declares the seat vacant, from the date of death or the date on which the resignation took effect. In the event of absence of a member, however, a special procedure is prescribed. If the absence is only of a temporary character, the vacancy can be filled by the decision taken unanimously by the members of the Committee. If the absence is prolonged, the Chairman of the Committee has a duty to notify the Secretary-General who, in turn, will declare the seat vacant. 100

A pertinent question in this connection is: What is the criteria to decide whether the absence of a particular member is of a "temporary character"? At the drafting stage of the Covenant, one member of the Commission considered that the phrase "absence of a temporary character" was undesirably vague and that the period of time of absence should be specified at the expiration of which the member concerned would automatically vacate his seat. It was argued that this would prevent members of the Committee from being continually absent over a period of time which might result in there being no quorum for the Committee to carry out its functions. 101 Certain members of the Commission

100 Article 33, para 1, of the Covenant.

101 Twelve members constitute a quorum of the Committee. See, Article 39, para 2(a), of the Covenant.
objected to this on the ground that it was arbitrary and would give rise to practical difficulties. As a result, the Draft Covenant did not specify any particular period of time. Therefore, when the issue came up before the Third Committee, the Pakistani delegate suggested that the words "prolonged absence" should be used as that formulation would cover all contingencies. Other delegations felt that the notion of prolonged absence was implicit and raised the question as to when absence could be termed "prolonged". Thus, neither the notion of "prolonged absence" nor specific reasons for absence were included in the Covenant. The Covenant thus contains the following formulation:

If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character,...


103 Mr Mirza, Third Committee Records (1966), 1423rd mtg, paras 40 and 55. This suggestion was supported by the representatives of Sudan and the USSR. However, later, the Pakistani representative withdrew his oral amendment. See, para 61 of the same meeting.

104 Mr Gonzalez (Mexico), Ibid., para 42. Similarly, Mr Hoveyda (Iran) found no reason for specifically mentioning prolonged absence. Ibid., para 43.

105 Article 33, para 1, of the Covenant. Similarly, Article 18, para 1, of the Statute of the ICJ lays down that "No member of the Court can be dismissed unless, in the unanimous opinion of the other members, he has ceased to fulfil the required conditions."
The above formulation gives the members of the Committee wide-ranging discretionary powers to decide whether the absence of a particular member was of "temporary character" or otherwise. Certainly, it depends upon the facts and circumstances of each case. However, it appears to be wise for the members of the Committee to be guided by the notion of "prolonged absence." Undoubtedly, an absence which affects the smooth functioning of the Committee may be treated as a prolonged absence or an absence other than of a temporary character. Though, as noted above, the members of the Committee have discretionary powers to decide as to whether a particular member of the Committee has ceased to carry out his functions, its decision must be taken by unanimity. The unanimity requirement ensures, hopefully, that the procedure would not be used arbitrarily against an individual member.

The third and last requirement concerns the notification of vacancy of seats. The duty is imposed on the Chairman of the Committee to notify the Secretary-General of the United Nations about the unanimous opinion of the Committee. That, in turn, becomes the duty of the Secretary-General to declare the seat vacant.

However, neither the Draft Covenant nor the existing Covenant makes any provision for setting a date on which a seat becomes vacant due to the absence of a member of the Committee. Though, in the Third Committee, the Pakistani representative orally suggested that the seat of
a member should be treated vacant from the date on which the prolonged absence of the member is established by the Committee,106 no such provision is incorporated in the Covenant, adding this to the discretion of the Committee.

G. **Subsidiary Organs and Officers of the Committee**

Division of labour and supervision by competent and dedicated officers is a key to the efficient functioning of any system. Indeed, the creation of subsidiary organs and the election of the officers of the Committee are some useful applications of this principle. The following subsection deals with them.

1. **Subsidiary Organs**

Except for the ad hoc Conciliation Commission,107 the Covenant does not suggest the possibility of establishing the subsidiary organs of the Committee. The provisional rules of procedure, however, state that:

The Committee may, taking into account the provisions of the Covenant and the Protocol, set up such sub-committees and other ad hoc subsidiary bodies as it deems necessary for the performance of its functions, and define their composition and powers. 108

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106 Mr Mirza, Third Committee Records (1966), 1423rd mtg, para 40.

107 For the establishment, structure and functioning of the ad hoc Conciliation Commission, see Chapter III.

108 Rule 62(1) of the Provisional Rules of Procedure. See, Appendix III.
On the authority of the above provision, the Committee, at its first session, established a working group composed of five of its members to meet at Geneva from 8 to 10 August 1977. The terms of reference of the working group were, *inter alia*, to examine communications submitted under the Protocol; consider the pending rules of procedure and make recommendations to the Committee thereon. Similarly, at its second session, the Committee established, in accordance with rule 89 of its provisional rules of procedure, a working group composed of five of its members. The working group was to put forward recommendations to the Committee regarding the fulfilment of the conditions of admissibility laid down in Articles 1, 2, 3 and 5(2) of the Protocol.

Needless to say, the purpose of the establishment of these subsidiary bodies was efficient functioning of the Committee.


110 Ibid.

111 The members chosen for the working group were: Messrs. Evans, Ganji, Graefrath, Lallah and Vallejo; Messrs. Opsahl, Mavrommatis, Hanga, Ben-Fadhel and Rajas were chosen as alternates. Ibid.
2. **Officers**

Article 39, paragraph 1, of the Covenant refers to the officers of the Committee without mentioning their designation. On the other hand, the Draft Covenant expressly uses the words "Chairman and Vice-Chairman." In the Third Committee, however, the delegation of the United States proposed that the words "Chairman and Vice-Chairman" in Article 39, paragraph 1, of the Draft Covenant should be replaced by the word "officers", as it was preferable to give the Committee some discretion in that regard.\(^{112}\) This change was accepted. Therefore, the existing provision speaks of the "officers." Their election, terms of office and functions are discussed hereunder:

(a) **Election**

In accordance with Rule 17, the Committee elects from among its members a Chairman, three Vice-Chairmen and a Rapporteur.\(^{113}\) At its first session, in March 1977, the elected officers were: Chairman: Andreas Marrommatis of Cyprus; Vice-Chairmen: Luben G. Koulishev of Bulgaria, Mrs Harris, *Third Committee Records* (1966), 1418th mtg, para 47.

\(^{112}\) Subject to the provisions of the Covenant and the Protocol and unless the Committee decides otherwise, each subsidiary body may elect its own officers and may adopt its own rules of procedure. Failing such rules, the Committee's rules of procedure apply mutatis mutandis. See, Rule 62(2) of the Provisional Rules of Procedure. Appendix III.
Rajsoomer Lallah of Mauritius, and Torkel Opsahl of Norway; and Rapporteur: Diego Uribe Vargas of Colombia. The Committee elected Fernando Mera Rojas of Costa Rica, Rapporteur par interim.¹¹⁴

(b) Term

The officers of the Committee are elected for a term of two years.¹¹⁵ However, in accordance with the provisions of the Draft Covenant, the Chairman and the Vice-Chairman of the Committee were entitled to remain in office for the period of one year only.¹¹⁶ But when the provision came for discussion before the Third Committee, the Afro-Asian delegations as well as the delegate of the United States felt that the one year term was too short. Therefore, both suggested increase of the officers' term to two years. Explaining the reasons for this change, the Nigerian delegate stated that it would be difficult for the Committee to elect its officers every year.¹¹⁷ The amendment was adopted. Accordingly, under the existing arrangement, the officers of the Committee are entitled to remain in office for two years, unless they resigned or their seat became vacant otherwise. Indeed, they can seek re-election.

¹¹⁴ UN Monthly Chronicle (New York), vol.15, no.11, December 1978, p.56.
¹¹⁵ See, Article 39, para 1, of the Covenant.
¹¹⁶ See, Article 39, para 1, of the Draft Covenant.
¹¹⁷ Mr Mohammad, Third Commission Records (1966), 1425th mtg, para 62.
(c) **Functions**

The Chairman performs such functions as are conferred upon him by the Covenant, the rules of procedure and the decisions of the Committee.\(^118\) Specifically, he declares the opening and closing of each meeting of the Committee, directs the discussion, ensures the adoption of decisions according to the provisional rules of procedures.\(^119\)

The Chairman controls the proceedings of the Committee and in the course of discussions of an item may regulate the time to be allowed to speakers, the number of times each speaker may speak on any question and the closure of the list of speakers. He is authorized to rule on points of order.\(^120\) His ruling stands unless overruled by a majority of the members present.\(^121\) He may call a speaker to order, if his remarks are not relevant to the subject under discussion. He also has the power to propose adjournment or suspension of a meeting.\(^122\)

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118 Rule 21 of the Provisional Rules of Procedure states that: "A Vice-Chairman acting as Chairman shall have the same rights and duties as the Chairman." See Appendix III.

119 Rule 38, Ibid.

120 Ibid.

121 Rule 39, Ibid.

122 Rule 38, Ibid.
In addition, the Chairman performs various other functions of administrative, diplomatic and financial nature. Nevertheless, it must be noted that, in the exercise of his functions, the Chairman remains under the authority of the Committee. 123

H. Staff, Facilities and Finances of the Committee

No institution can perform its functions efficiently without adequate facilities and finances. The Human Rights Committee is not an exception. Its staff, facilities and source of finances are subject of study under this subsection:

1. Staff

The Covenant entrusts the Secretary-General of the United Nations with the responsibility to provide "the necessary staff and facilities for the effective performance of the functions of the Committee." 124 Hence, the Secretariat of the Committee is provided by the Secretary-General. Moreover, he is expected to provide such subsidiary bodies as may be established by the Committee. Both the Covenant and the provisional rules of procedure are silent on the size of the Secretariat. Obviously, it is left for the determination of the Secretary-General. Even then the

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123 Rule 19, Ibid.
124 Article 36 of the Covenant. The corresponding provision of the Draft Covenant was Article 36, para 3.
Secretariat of the Committee is not part of the United Nations Secretariat. 125

In addition to staff, the Secretary-General supplies several other facilities for the effective functioning of the Committee. He makes all the necessary arrangements for the meetings of the Committee and its subsidiary bodies. He is also responsible for informing the members of the Committee, without delay, of any questions which may be brought before it (the Committee) for consideration. 127

125 Notwithstanding the existing law, in reality it is. It is at present the Communications Unit of the Human Rights Division of the UN Secretariat, located in the Palais des Nations, Geneva. See, M.E. Tardu and Thomas E. McCarthy, Human Rights: The International Petition System (New York, 1980), vol 2, Part 1, p.74. Perhaps realistically, under the Draft Covenant, the Secretariat of the Committee was a part of the UN Secretariat. See, Article 36, para 3, of the Draft Covenant. Mr Shreiber, a member of the UN Secretariat said that the system proposed in the Draft Covenant was somewhat hybrid and rather exceptional in United Nations practice. See, Third Committee Records (1966), 1425th mtg, para 30.

126 Rule 25 of the Provisional Rules of Procedure. See, Appendix III; also see, Article 37, para 1, of the Covenant.

127 Rule 26, Ibid.
2. **Finances of the Committee**

Like staff and several other facilities, the finances of the Committee come from the budget of the United Nations. The emoluments, the cost of travel and subsistence of the members of the Committee are payable from the same source. Similarly, the expenditure of meetings and documentation services of the Committee is incurred by the United Nations. 

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128 See Article 35 of the Covenant.

129 Under the Anti-Racism Convention, States Parties are responsible for the expenses of the members of the Committee on the Elimination of Racial Discrimination while performing Committee's duties (Article 8, para 6, of the Anti-Racism Convention). The members of the Inter-American Commission receive emoluments and travel allowances, which are determined in the budget of the OAS (Article 72 of the American Convention). The expenses of the members of the European Commission are borne by the Council of Europe (Article 58 of the European Convention). Similarly, under the UNESCO Protocol, the members of the Conciliation and Good Office Commission receive travel and per diem allowances from the resources of UNESCO (Article 9 of the UNESCO Protocol of 1962).

130 It is appropriate to note that the representatives of Czechoslovakia, the Soviet Union, the Ukrainian Soviet Socialist Republic, Tanzania and some others opposed this arrangement. In their view, the expenses of the Committee should be contributed by the States Parties themselves. See, Third Committee Records (1966), 1424th mtg, paras 65, 67, 71 and 74.
However, the expenses of the *ad hoc* Conciliation Commission are required to be met by the States Parties concerned.\(^\text{131}\)

The arrangements concerning the supply of staff, facilities and finances establish a close link between the United Nations and the Committee.\(^\text{132}\)

III. LEGAL STATUS OF THE COMMITTEE

The status of the Committee would certainly be an important issue for the students of international law who would want to examine the international personality of this newly established international institution. Is it a subsidiary organ of the United Nations? Or, is it an independent organ? If, it is an independent organ, what kind of arrangements have been made to ensure its independent character? These vital aspects are dealt with in the following section.

A. **Place of the Committee**

It goes without saying that the establishment of the Committee is one of the remarkable achievements of the United Nations. Moreover, both of them - the Committee and

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131 Article 42, para 9, of the Covenant enumerates that, "The States Parties concerned shall share equally all the expenses of the members of the ( *ad hoc* : Conciliation Commission in accordance with estimates to be provided by the Secretary-General of the United Nations." Appendix I.

132 Similar views were expressed by Mrs Afnan, the representative of Iraw, in the Third Committee. See, *Third Committee Records* (1966), 1425th mtg, para 21.
the UN - have an intimate relationship. As noted earlier, finance, staff and other facilities of the Committee come from the United Nations. Perhaps for this reason, the Soviet representative asked a question from the UN Legal Counsel whether a body which was under an obligation to submit annual reports to the General Assembly\(^{133}\) and which was financed out of the United Nations funds and services through the United Nations should be regarded as an independent entity or as a subsidiary organ of the United Nations.\(^{134}\) The UN Legal Council's reply was that a subsidiary organ of the United Nations was one which was established by the General Assembly;\(^{135}\) the Committee, however, has not been established by the General Assembly, but by the States Parties to the Covenant themselves; therefore, it is neither a specialized agency nor a subsidiary organ of the UN. Nevertheless, one might argue that since the Committee is obliged to submit annual reports to the General Assembly, it is tacitly accountable to, or governable by the General Assembly. But it should be remembered, as Bernard Graefrath pointed out, that the Committee "does not receive recommendations, requests or

\(^{133}\) Article 45 of the Covenant enumerates that: "The Committee shall submit to the General Assembly of the United Nations, through the Economic and Social Council, an annual report on its activities."

\(^{134}\) Mr Nasinovsky, Third Committee Records (1966), 1435th mtg, para 58.

\(^{135}\) Mr Stavropoulos, Ibid., para 61.
any guidelines from the General Assembly or other UN agencies. 136 Thus, it would not be inappropriate to observe that the functioning of the Committee is not governed by the General Assembly. However, none can deny that the Committee functions under the auspices of the UN. Moreover, the fact of the matter is that there exists an obvious co-operation between the Committee and the United Nations and its activities in the human rights field. Nevertheless, it is necessary to stress that the Committee is a "unique body." 137 It enjoys a "special status." 138 Further it is an independent body as the following discussion of the conventional foundations of its independent status and impartial functioning of its members reveals.

B. Independence of the Committee

Sean MacBride rightly observed that the composition of any international institution must be above suspicion of bias. Its members should, as far as possible, be selected on a non-political basis; they should not be

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137 See, Statement of Sir Evans, a member of the Committee, (UN Doc. CCPR/C/SR.153), 1 August 1979, para 7.

138 See, Statement of Mr Van Boven, the representative of the UN Secretary-General to the Committee, Ibid, para 11.
merely functionaries of their governments but should be jurists of high standing who would command respect. 139 Though the Covenant does not content itself with the general provision that the members of the Committee shall be "independent" or "impartial" experts, 140 it has various features which give an impression that they (members) are relatively independent in reality. This impression is discernible from the following arrangements:

1. Relatively Sound Election Procedure

Eighteen members of the Committee are elected by secret ballot from a list of persons nominated by the States Parties. However, the choice is confined to the nationals of the States Parties to the Covenant only. A State Party is entitled to nominate its own nationals only.

Under the text of the Covenant, as proposed by the Commission on Human Rights, a State Party would have had the right also to nominate nationals of other States

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140 Article 8, para 1, of the Anti-Racism Convention provides that the members of the Committee on the Elimination of Racial Discrimination shall be experts of "acknowledged impartiality". No such provision is found in the Covenant.
Parties. This arrangement, which would have enhanced the independent status of the members of the Committee, was however eliminated by the Third Committee. Nevertheless, the position under the Covenant is somewhat more favourable to the independence of the members than, for instance, under the Anti-Racism Convention for two reasons: first, the Anti-Racism Convention provides that each State Party may nominate only one person from among its own nationals, thus practically appointing the member. Other States Parties to the Convention do not have even the limited choice between two candidates from one nominating State which the Covenant makes possible. The Anti-Racism Convention further provides that: "For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee, shall appoint another expert from among its nationals, subject to the approval of the Committee." There is thus no election. Obviously, such a nominee will conduct himself like a plenipotentiary of his government. Under the Covenant, in contrast, even a casual vacancy is filled by the same election procedure as a normal vacancy.

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142 Ibid.

143 Article 8, para 5(b), of the Covenant.

144 See, Article 34 of the Covenant, Appendix I.
The members of the Committee are elected through an election procedure more sound than the one by which the members of the Committee on the Elimination of Racial Discrimination are elected. However, the subjectivity of the independence of the members of the Committee becomes evidently clear from the fact that, usually, they (members) seek re-election which is possible only if they were re-nominated by their respective governments. Thus, a member of the Committee who desires re-election will naturally endeavour to please his government so as to get re-nomination. Undoubtedly, it will affect the independence of the member of the Committee. Perhaps for this reason, the Yugoslavian representative suggested a prohibition of re-eligibility of members of the Committee. But it was rejected by the Commission. It retained the existing provision that members should be eligible for re-election, "if renominated." The argument that prohibition of immediate re-election might promote independence, because members would not be influenced by the desire to secure re-election was thought by others to be of small weight in view of the high qualifications required for membership and of the fact that members would act in their personal capacity.

146 Ibid., para 115.
In the light of these arrangements, it would not be wrong to observe that, ultimately, the States Parties control the composition of the Committee through the electoral process. It is not clear at this point how States Parties will use this tool once the work of the Committee becomes more widely known. 147

2. **High Qualification**

As noted earlier, the members of the Committee are required to be persons of high moral character and recognized competence in the field of human rights. But there is no international machinery for ascertaining that the candidates possess these qualifications in fact. 148 Thus, this aspect is left to the good sense of the States Parties. Nevertheless, the stipulated conventional qualification operates as a limit against the unfettered power of a State Party to nominate any candidate for the election of the Committee's membership. In practice, too, individuals elected to serve on the Committee have been persons of great ability possessing impressive credentials. As Graefrath, a member of the Committee, observes, most of the


148 Similar views were expressed by Shabtai Rosenne, on the required qualifications of the Judges of the International Court of Justice. See, Rosenne, *The World Court : What It is and How it Works* (New York, 1962), p. 49.
members of the Committee are professors of law or diplomats of recognized competence. Inclusion of such learned persons in the Committee will certainly contribute to the impartial functioning of the Committee.

3. **Personal Capacity**

Schwelb, a noted human rights expert, observes that:

The organ should be clearly independent, consisting of persons serving in a personal capacity without fear or favour and responsible to their consciences alone. Independence and objectivity are the life breath of the international judicial inquiry. The recognized independence of the members of a Commission, Committee, or panel must be reinforced by their accepted personal authority flowing from their unquestioned personal integrity, wide experience, sound judgement, patience, and courtesy...." 149

True, the Covenant requires that the members of the Committee shall serve in their "personal capacity." 150 But it does not stipulate that they must be independent of their governments. Similarly, the Covenant provides no guarantees for the independence of members. Nevertheless, the idea of "personal capacity" is self-explanatory. It means that a member of the Committee is not the plenipotentiary of the State Party of which he is a national and which has nominated him. 151 In the broader sense, the

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150 Article 28, para 3.

151 See, Schwelb, n.47, p.151.
term of "personal capacity" means that the members of the Committee are independent and impartial experts who need not and should not take guidance from any person or quarter. Indeed, they must remain open minded.

4. Solemn Declaration

Article 38 of the Covenant states that "every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously." Accordingly, the Provisional Rules of Procedure provide the Oath of Office to the effect:

"I solemnly undertake to discharge my duties as a member of the Human Rights Committee impartially and conscientiously."

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152 This provision originated at the 354th meeting of the Commission, when the representative of Philippines proposed an additional article, which read as follows: "Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will exercise his powers impartially and conscientiously." The proposed article was adopted by the Commission by 14 votes to 3 and included in the Draft Covenant (Article 38). See, Report of the Ninth Session of the Commission (1953), Annexure IIIIB, para 109.

153 See, Rule 16 of the Provisional Rules of Procedure, Appendix III. Similarly, a judge of the ICJ makes a solemn declaration under Article 20 of the Statute of the ICJ.
It was stated in the debates of the Commission that the members of the Committee should identify themselves with the Committee's aims through a solemn declaration. This would stress, both for the members themselves and for the public, the importance and seriousness of the Committee's responsibilities, and ultimately, it leads to psychological and moral accountability of members to act independently and impartially.

5. **Security of Tenure**

The members of the Committee enjoy almost complete security of their tenures. They do not serve at the pleasure of anyone - even their nominating states. They are not subject to impeachment. A member can be removed from his office only when, in the unanimous opinion of all other members, he has ceased to carry out his functions and the absence was not of a temporary character. This security of tenure will certainly promote the impartial functioning of the members of the Committee.

6. **Independent Source of Salaries**

From the point of the independence of members of the Committee, it is worth-noting that the members of

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155 See, Article 33, para 1, of the Covenant.
the Committee "receive emoluments from United Nations resources." 156 Under the Anti-Racial Discrimination Convention, on the other hand, a State Party is responsible for the expenses of its national who is a member of the Committee on the Elimination of Racial Discrimination,157 and thus, in fact, the State concerned becomes his employer.158

Thus from the financial point of view, too, the members of the Committee are more independent of the States Parties of which they are nationals than the members of the Committee on the Elimination of Racial Discrimination.

156 Article 35 of the Covenant reads: "The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities."

157 Article 8, para 6, of the Anti-Racial Convention states: "States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties."

158 See, Schweb, n.47, p.152. It is worth noting that the expenses of the European Commission on Human Rights are borne by the Council of Europe (Article 58 of the European Convention). The members of the Conciliation and Good Offices Commission on Discrimination in Education receive travel and per diem allowances from the resources of UNESCO (Article 9 of the UNESCO Protocol of 1962). The members of the Inter-American Commission on Human Rights receive emoluments and travel allowances, which are determined in the budget of the Organization of American States (Article 72 of the American Convention).
7. **Non-Participation in Certain Cases**

   It is provided in the Committee's rules of procedure that, at the time of considering an individual petition, a member shall not take part in the examination of a communication by the Committee:

   (a) if he has any personal interest in the case; or

   (b) if he has participated in any capacity in the making of any decision on the case covered by the communication. 159

8. **Privileges and Immunities**

   In order to enhance the independence of the Committee, the Covenant provides that:

   The members of the Committee, and of the ad hoc Conciliation Commission which may be appointed under article 42, shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations. 160

   It may be noted that the Draft Covenant did not include any article on the privileges and immunities of the members of the Committee, though as many as three proposals were considered by the Commission. In the Third Committee, the representative of the United Kingdom 161 introduced an amendment, 162 which called for the insertion of a new article

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159 Rule 84, para 1, Appendix III.

160 Article 43 of the Covenant.

161 Lady Gaitskell, Third Committee Records (1966), 1435th mtg, para 55.

The UK delegation expressed the belief that a provision ensuring the members of the Committee the privileges and immunities necessary for the proper discharge of their work should be included in the Covenant. The provision, it was suggested, should also apply to the members of any ad hoc bodies which the Committee might set up. Otherwise, it was argued, that with the possible threat of actions, either by Governments or by individuals or organizations weighting upon them, members of the Human Rights Committee might well feel inhibited from discharging their task with the necessary freedom and impartiality. The need for such an immunity was urged by the UK, even after the persons concerned were no longer members of that Committee.

Though most of the representatives did not raise objection to the usefulness of the British proposal, some of them suggested certain limitations on the scope of such privileges and immunities. The Tunisian representative,

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A former President of the European Commission of Human Rights, after his retirement, was sued for negligence before a British Court by an individual who had unsuccessfully sought to petition the Commission during his Presidency. The Court dismissed the case on the grounds that the President had acted in his official capacity. However, had the European Convention for the Protection of Human Rights not contained a provision for continuing immunity from legal process, the former President would have possibly found himself in a difficult position. See, n.161.
for instance, suggested that the members of the Committee or ad hoc Conciliation Commission should be entitled for privileges and immunities only "in the exercise of their functions." 164 The British delegate strongly opposed the Tunisian amendment 165 and expressed the hope that Tunisia would withdraw the amendment. 166 At this stage, the UN Legal Counsel was asked to express his views. The Legal Counsel pointed out that the controversy about the continuation of immunities beyond the tenure of membership was unnecessary because the Convention on the Privileges and Immunities of the United Nations, 1946, specified in the second preambular paragraph that "representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization", 167 a provision

164 Mr Hanablia, Third Committee Records (1966), 1436th mtg, para 41. As early as in the debates of the Commission on Human Rights, it was stressed that while traditional diplomatic privileges and immunities might be of wide scope, the inclusion of the words "when engaged in the business of the Committee" would furnish governments with sufficient safeguards. See, Annotations, n.28, p.279.

165 Lady Gaitskell, Third Committee Records (1966), 1436th mtg, para 45.

166 Lady Gaitskell, Ibid., 1437th mtg, para 3.

deriving from Article 105 of the Charter. Such privileges and immunities were called "functional privileges and immunities" to distinguish them from "diplomatic privileges and immunities", which were granted to individuals. Moreover, the Legal Counsel argued that section 22 of the Convention specified exactly how far such privileges and immunities extended. Accordingly, the Counsel submitted, the Tunisian amendment would not change the legal position. Thereupon, the Tunisian representative withdrew his suggestion, and the text of Article 42 as proposed by the United Kingdom, was adopted.

Now, under the existing provision, not only the members of the Committee, but the members of ad hoc Conciliation Commission too enjoy certain privileges and immunities. These privileges include: freedom from arrest, non-liability for opinions expressed in the exercise of their functions and

168 Mr Stavropoulos, Ibid., 1436th mtg, para 46. Article 105 of the UN Charter declares, inter alia:

1. The Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes.

2. Representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connexion with the Organization.

169 Ibid.

170 The voting pattern was 77 - 0 - 2.
various other diplomatic safeguards. 171

On the subject of immunities and privileges of the members of the Commission, doubts were raised as to the possibility of application of privileges and immunities in a State which was not a party to either the Covenant or the Optional Inter-State Communication Procedure. This issue, raised by Iraqi delegation 172, was clarified by the UN Legal Counsel, who stated that the failure of a State which had ratified the Covenant to make a declaration recognizing the competence of the Committee in the Inter-State Communication Procedure would have no effect on the privileges and immunities of the members of the Human Rights Committee or the Conciliation Commission. 173 On the other hand, the Legal Counsel regarded, if a State had not ratified the Covenant, it was not, of course, bound to apply it. However, it would be consistent with past practice that such a State would accord the necessary privileges and immunities out of courtesy. There had been

171 It is pertinent to note that the judges of the Inter-American Court are never to be held liable for any decisions or opinions issued in the exercise of their functions (Article 70, para 2, of the American Convention). See, Brownlie, n.40, p.413.

172 Since the establishment of ad hoc Conciliation Commission would be binding only on those States which had made the declaration accepting the Committee's competence in the Inter-State complaints system, the delegate wondered what the position of the Commission's members would be in States which had not made the declaration. Mrs Afnan, Third Committee Records (1966), 1436th mtg., para 43.

173 Mr Satovropoulos, Ibid., para 47.
many precedents, the Legal Counsel continued, where privileges and immunities had been granted in such cases, but none where they had been withheld.174

These privileges and immunities, along with various other arrangements, as discussed above, ensure the independence of the members of the Committee. Theoretically, there is every reason to believe that the Committee will operate as an independent organ and its members will participate in the meetings of the Committee with fewer inhibitions.

Meetings and methods of the Committee is the subject matter of the next sub-section.

IV. MEETINGS OF THE COMMITTEE

The provisions concerning meetings or sessions, place of meetings, form of meetings and languages of the proceedings of the meetings of the Committee are dealt with in detail in the provisional rules of procedure of the Committee as adopted by the Committee itself.

A. Periodicity of Meetings

The Covenant is silent on the periodicity of the meetings of the Committee. It merely states that "the Committee shall meet at such times as shall be provided in its rules of procedure."175 Therefore, under the Provisional Rules of Procedures, it is provided that: "The Committee shall

174 Ibid.

175 Article 37, para 2, of the Covenant.
normally hold two regular sessions each year."\textsuperscript{176} Thus, the Committee is obliged to hold at least two meetings every year. Indeed, the Committee is impliedly authorized to hold as many meetings as it considers desirable. In practice, therefore, during the initial years the Committee used to hold two sessions every year. But as soon as the Committee's workload increased, it held meetings three times a year. Again, the duration of the meetings depends upon the work of the Committee. Sometimes, it lasts for fifteen days only, and occasionally even beyond a month or so.

Besides regular meetings, the special meetings of the Committee may also be convened by the decision of the Committee itself.\textsuperscript{177} In addition, the Chairman of the Committee is also authorized to call for special meetings in consultation with the other officers of the Committee. However, the Chairman has a duty to convene special sessions of the Committee under two circumstances: first, at the request of a majority of the members of the Committee; second, at the request of a State Party to the Covenant.\textsuperscript{178}

In its four years of existence, the Committee has never been convened for a special meeting.

\textsuperscript{176} Rule 2(1) of the Provisional Rules of Procedure. See, Appendix III.

\textsuperscript{177} Rule 3(1) of the Provisional Rules of Procedure. See, Appendix III.

\textsuperscript{178} Ibid.
B. **Place of Meetings**

The Covenant provides that "(t)he Committee shall normally meet at the Headquarters of the United Nations or at the United Nations office at Geneva."\(^{179}\) The Draft Covenant, on the other hand, provides that "(t)he Committee shall meet at the Headquarters of the United Nations or at Geneva."\(^{180}\) During the debate in the Third Committee on this provision, the arrangement of the Draft Covenant was considered too limited in scope. Many delegates did not approve of it, as it excluded the possibility of the Committee meetings at places other than New York or Geneva. Apart from the fact that extraordinary circumstances might require it to meet elsewhere, the Committee might receive invitations which it should be allowed to accept. Therefore, in order to make the arrangement more flexible, the Afro-Asian nations asked for the insertion of word "normally" in the text of Article 37, paragraph 1, of the Draft Covenant.\(^{181}\)

Speaking on the Afro-Asian amendment, the Pakistani delegate stated that there was every advantage in the Committee's meetings at Headquarters or at Geneva when carrying out its functions of receiving and examining reports and preparing comments. Apart from the savings

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179 Article 37, para 3, of the Covenant (emphasis added).
180 Article 37, para 3, of the Draft Covenant (emphasis added).
which would result, such a procedure would greatly simplify the organization of work. Moreover, he suggested that the plenary meetings devoted to the consideration of communications, in the case of States which had recognized the Committee's competence, should preferably be held at Headquarters or at Geneva, so that the Committee could work secure from publicity and tension. But, when the occasion arose for the Committee to make its good offices available to States involved in a dispute, the Committee could, of course, if it deemed it necessary, send some of its members to a given capital city, which was for it alone to decide. 182

Similarly, the Indian representative made it very clear that the purpose of the Afro-Asian amendment was precisely to leave open the possibility of the Committee meeting elsewhere than at Headquarters or at the UN offices at Geneva. 183

Now, the UN Headquarters and the UN offices at Geneva are "normal" places of meeting, 184 not permanent place of

182 Mr Mirza, Third Committee Records (1966), 1425th mtg, paras 43 and 44.
183 Mr Saksena, Ibid., para 41.
184 At the eighth session of the Committee, some members stressed the importance of holding one session in New York a year as most developing countries were represented by missions in New York, which was not the case in Geneva. Further, they submitted that it would be more convenient for States on the other side of the Atlantic to have their reports considered at New York. See, Report of the Human Rights Committee, GAOR, Thirty Eighth Session, Supplement No. 40 (A/35/40), para 416 (hereinafter referred to as Report of the Committee, 1980).
meeting. Indeed, a meeting - regular or special - can be convened at some other place also.\textsuperscript{185} A State Party to the Covenant may also request the Committee to hold meeting(s) within the territory of that particular country. In practice, too, the Committee has taken a positive stand on these requests. For instance, having been informed that the Government of the Federal Republic of Germany was considering the possibility of hosting one of the Committee's 1981 sessions, the Committee decided at its Twelfth Session to meet for the second two weeks of its Fourteenth Session, from 19 to 30 October 1981, in Bonn, the Federal Republic of Germany.\textsuperscript{186}

Earlier, at the Eighth Session of the Committee, some of its members had expressed the view that the Committee should hold some of its future meetings in developing countries provided that this did not involve too much expenditure for the host developing countries.\textsuperscript{187} At its Thirty-fourth Session, the General Assembly, \textit{inter alia}, noted the recommendations of the Human Rights Committee regarding the holding of future meetings of the Committee in developing countries and requested the Secretary-General

\textsuperscript{185} Rule 5 of the Provisional Rules of Procedure states; \textit{inter alia}; "Another place for a session may be designated by the Committee in consultation with the Secretary-General".


to explore that possibility, taking into account the recommendations of the Committee, and to submit a report to the Assembly at its Thirty-fifth Session. 188

C. Form of Meetings

It is provided in the Provisional Rules of Procedure that the meetings of "the Committee and its subsidiary bodies shall be held in public unless the Committee decides otherwise or it appears from the relevant provisions of the Covenant or the Protocol that the meeting should be held in private." 189 Theoretically, therefore, the Committee and its bodies can hold two type of meetings – public and private. In contrast, the Draft Covenant expressly obliged the Committee to hold its "hearings and other meetings in closed session." 190 Accordingly, under the Draft Covenant, a public meeting was not permissible in any circumstances.

In fact, whether the Committee ought to be allowed to hold public meetings was debated in the Commission as well as the Third Committee. There were some countries

188 See, General Assembly Resolution 34/45, para 9. UN Doc. A/34/46. Mavrommatis, the Chairman of the Committee, spoke at the Twelfth Session of the Committee in support of holding meetings in developing countries. See, UN Press Release HR/2088, 10 April 1981, p.5. This meeting will be held at the Scientific Centre, Ahrstrasse 45, Bonn – Bad Godesberg (West Germany).

189 Rule 33 of the Provisional Rules of Procedure, Appendix III.

190 Article 39, para 2(d), of the Draft Covenant.
like France and Bulgaria which favoured private meetings, whereas a few others advocated public meetings. At the same time, some others suggested that the Committee should establish its own rules of procedure, leaving it free to decide on its procedural matters. The Soviet delegate endorsed this view and observed that the Committee could decide, depending on the particular case, whether to hold closed or open meetings. Thus, he suggested, the periodic reports from States could be considered at an open meeting, while disputes between States could be dealt with at closed meetings. However, it should be for the Committee to decide the matter, and there should be no provision stipulating in advance that all meetings were to be held in closed session. Similarly, the representative of the United States wanted that the question of closed meetings should be dealt with by the Human Rights Committee itself.

In the light of these views, the Afro-Asian nations suggested that the obligation of the Committee to hold private meetings in all cases should be dispensed with. It was accepted by the Third Committee. However, it does

191 See, Statements of Mr Bahnev (Bulgaria) and Mr (France), Third Committee Records(1966), 1425th mtg, paras 68 and 69, respectively.
192 Mr Egas (Chile), Ibid., para 71.
193 Mr Nasinovsky, Ibid., para 72.
194 The Indian representative too supported this view, Ibid., para 73.
195 Mrs Haryis, Ibid., 1426th mtg, para 9.
not mean that the Committee will always hold public meetings. In fact, it is for the Committee itself to decide whether to hold open meetings or closed meetings to consider reports of the States Parties. Nonetheless, the Committee is still bound to hold closed meetings when examining communications from States Parties under Article 41, and when examining communications from individuals under the Optional Protocol. 196

D. Languages of the Meetings

The provisional rules of procedure of the Committee enshrine the provision concerning the languages of the Committee. Accordingly, there are five official languages, viz. Chinese, English, French, Russian and Spanish. 197 The working languages of the Committee are only four, viz. English, French, Russian and Spanish. 198 However, speeches made in any of the working languages are interpreted into the other languages. 199 Moreover, any speaker addressing the Committee and using a language other than one of the official languages is entitled to receive from the UN Secretariat interpretation services into one of the working languages. 200

196 See, Article 41, para 1(d) of the Covenant, and Article 5, para 5, of the Optional Protocol, respectively. For details, see next chapter.
197 Rule 28 of the Provisional Rules of Procedure.
198 Ibid., Chinese is not a working language of the Committee.
199 Rule 29, Ibid.
200 Rule 30, Ibid.
Summary records of the meetings of the Committee are prepared in the working languages, whereas all formal decisions of the Committee are available in the official languages.

V. DECISION-MAKING PROCESS OF THE COMMITTEE

According to paragraph 2(b) of Article 39 of the Covenant, "(d)ecisions of the Committee shall be made by a majority of votes of the members present." The Covenant does not make any distinction between substantive matters and procedural matters. It means that irrespective of the gravity of the matter, the decisions of the Committee are to be taken by a simple majority. At the same time, the Covenant does not clarify the position

201 Rule 31, Ibid.
202 Rule 32, Ibid.
203 In accordance with Article 39, para 2(a) of the Covenant, twelve members constitute a quorum of the Committee. The Draft Covenant provides that "seven members shall constitute a quorum." It must be remembered that the Committee of the Draft Covenant consisted of nine members only. Therefore, the requirement of "seven members" as constituting a quorum was quite reasonable. But, when the membership of the Committee was increased to eighteen, the old provision regarding quorum was rendered redundant. For this reason, the Afro-Asian countries proposed in their amendments that in view of the enhanced strength of membership of the Committee, the quorum be raised from seven to twelve members. It was considered as the logical consequence of the increase in the total membership of the Committee. And it was accepted by the Third Committee. See, Statement of Mr Mohammad (Nigeria), Third Committee Records (1966), 1425th mtg, para 62.
in cases of deadlock with members of the Committee equally divided. Does the Chairman of the Committee in case of a deadlock have a casting vote? The Covenant is silent on this question. The Draft Covenant and the preparatory work, however, throw light on this issue.

In the Draft Covenant it was said that "if the votes are equally divided, the Chairman shall have a casting vote." But the circumstances of the post-Draft Covenant period did not help. The casting vote of the President of the ICJ in the South West Africa cases made various countries skeptical of the casting vote as such. Therefore, when the decision-making clause of the Covenant was being discussed in the Third Committee, a large number of Afro-Asian, Latin-American and Socialist countries expressed serious concern over the casting vote formula. In an amendment, they asked for its elimination. Speaking on

204 Article 39, para 2(b), of the Draft Covenant.

205 On 4 November 1960, Ethiopia and Liberia instituted separate proceedings against South Africa in a case concerning the continued existence of the mandate for South West Africa. By the casting vote of the President Percy Spender, since the votes were equally divided (seven-seven), the Court found that Ethiopia and Liberia could not be considered to have established any legal right or interest appertaining to them in the subject matter of their claims and accordingly decided to reject those claims. See, ICJ Reports (1966), R.P. Anand called this judgement a "mockery of the international judicial procedure". See, Anand, Study in International Adjudication (Delhi, 1969), p.134.

206 A/C.3/L.1373 and Add.1 and Add.1/Cor.1. The representative of the United States also introduced an amendment to the same effect. (A/C.3/L.1390). However, since the nature of both Afro-Asian as well as the US amendments was the same, the latter was withdrawn. See, Annexes, No., paras 357-59.
their behalf, the Pakistani representative stated that the Chairman should not have a casting vote, for that procedure had had unfortunate results in the past. In his view, the Committee should follow the same procedure as other United Nations Organs, under which only those proposals which received a majority of the votes were adopted.

Owing to the widespread opposition to the casting vote clause, the Third Committee found no difficulty in adopting the Afro-Asian amendment and the clause relating to "casting vote" was eliminated. Now, under the Covenant, all decisions of the Committee can be made by simple majority of members. The provision does, however, give rise to new questions. What will happen if the votes are equally divided? How to resolve the deadlock? The answer can be found not in the Covenant but in the Provisional Rules of Procedure of the Committee. Rule 61 states that "(1)f a vote is equally divided on a matter other than election, the proposal shall be regarded as rejected."

That it was not a positive solution came out clearly at the first session of the Committee in connexion with the right of the Committee during a session to revise the

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207 Mr Mirza, Third Committee Records (1966), 1425th mtg, para 63. Almost similar views were expressed by Mr Nasinovaky (USSR), Ibid., para 67.
the agenda and to defer or delete items and to add only urgent and important items.

Divergent viewpoints were expressed as to whether the decisions to add new items should be qualified by consensus or by a unanimous or two-third majority votes or be limited to urgent and/or important issues. The discussion revolved around Article 39, paragraph 2(b), of the Covenant which stipulates a majority vote for adoption of decisions by the Committee. Some members maintained that experience gained recently, both inside and outside the United Nations, showed that there had been a trend among legal bodies towards the adoption of decisions on the basis of consensus. To provide for efforts to be made to reach decisions by consensus would not contravene the Covenant but would underscore the resolve of members to work harmoniously and in a spirit of co-operation. Efforts had been made throughout history to incorporate moral principles into positive law. The Committee now had an opportunity to do so and should take advantage of it. It was claimed that the proposal concerning consensus as a decision-making mechanism was not designed to change the rule regarding the voting procedure

209 Ibid., para 28.
210 Ibid.
211 Ibid.
prescribed under the Covenant, but to ensure that efforts
to reach a consensus should always precede a resort to
voting.212

All members were in agreement on the merits of trying
to work by consensus, especially on procedural matters.
Many of them thought, however, that consensus should be
regarded merely as a working principle and not as a rule
of procedure. To provide for it in the rules of procedure
might considerably restrict the Committee's power of decision-
making.213 In some members' view, it could mean more than
a spirit of co-operation implying rather the idea of com-
promise which would, in turn, be incompatible with the
independence and impartiality to which the members of the
Committee were committed. It was also pointed out that
under Article 39, paragraph 2(b), of the Covenant, decisions
of the Committee had to be made by a majority vote of the
members present.214

Replied to questions raised by members of the Committee
on consensus in the light of Article 39, paragraph 2(b),
of the Covenant, the Legal Counsel of the United Nations
pointed out that any provision which would rule out the
possibility of a vote or require a larger majority than a

212 Ibid.
213 Ibid., para 29.
214 Ibid.
majority of members present was contrary to the Covenant.\textsuperscript{215} However, nothing prevented the Committee from adding a provision to the effect that it would attempt to arrive at a consensus before taking a vote, on the express condition that the provision of the Covenant would be observed.\textsuperscript{216} Members of the Committee generally expressed the view that its method of work normally should allow for attempts to reach decisions by consensus before voting, provided that the Covenant and rules of procedure, are observed and that such attempts do not unduly delay the work of the Committee.\textsuperscript{217}

In practice also, the Committee makes all efforts to reach a decision by consensus. It is interesting to note that most of the decisions have not been taken by vote so far. The Committee has spared no effort to reach consensus on all issues, since it has proved to be a useful method of work. As a member of the Committee rightly noted, "It (consensus) lays emphasis on co-operation and mutual understanding between Committee members."\textsuperscript{218}

However, there might arise certain situations when it would be difficult for all members of the Committee to reach a common conclusion. In such a situation, can members of

\begin{itemize}
\item \textsuperscript{215} Ibid., para 30.
\item \textsuperscript{216} Ibid.
\item \textsuperscript{217} Ibid., para 32.
\item \textsuperscript{218} Graefrath, n.136, p.6.
\end{itemize}
the Committee who were unable to agree with the views of the Committee as a whole may attach their individual opinions to the views of the Committee?

This important issue came up for discussion during the second session of the Committee. There was no unanimity. Some members of the Committee maintained that if individual opinions were to be appended to the views of the Committee, which were to be transmitted to the States Parties concerned, it would weaken the opinion of majority as well as the moral authority of the Committee. They further maintained that such a provision would be contrary to the spirit of consensus prevalent in the Committee and in conflict with Article 5(4) of the Protocol which speaks only of the views of the Committee (not of the individual members). It was also pointed out that in some domestic legal systems majority decisions are legally binding and published dissenting votes have no effect whatsoever. This was not the case here, they added, because the views of the Committee were not judgments and only morally binding. Moreover, it was maintained, such a provision might result in lengthy dissenting opinions which would, in turn, create confusion and disappointment to the authors of the communications and could tempt the government of the State Party concerned to utilize dissenting opinions for its own purpose.


220 Ibid.
Other members of the Committee held the view that the provision on individual opinions was not beyond the scope of the Protocol which laid down the duties of the Committee but not its functions. They maintained that it (the individual opinion) was not contrary to the spirit of consensus since the latter was not a principle but a method of work. It was also maintained that Committee members were entitled to the benefit of the right of dissent as provided for in article 19 of the Covenant, in particular because a situation might arise in the future whereby members of the Committee could not agree on a major point. Far from weakening the opinion of the majority, they said, such a provision would strengthen the functioning of the Committee.

The Committee finally agreed that a member of the Committee may request that a summary of his individual opinion shall be appended to the views of the Committee when they are communicated to the individual and to the State Party concerned. In practice too, on various

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221 Ibid., para 88.
In the present submission, however, there is no difference between the duties and functions of the Committee.

222 Article 19(1) states that everyone shall have the right to hold opinions without interference. It seems logical to observe that a person does not lose his right of dissent after joining the membership of the Committee. However, his personal rights and official functions cannot be asserted in isolation.


224 Ibid., para 89. See, also Rule 94(3) of the Provisional Rules of Procedure. Appendix III.
occasions, the members of the Committee have expressed their separate opinions which have been published along with the Committee's findings. For instance, in the *Alberto Grille Motta* case, Christian Tomuschat, a member of the Committee, appended his individual opinion to the Committee's views.

The foregoing analysis of the Committee, establishment, structure, status, meetings and decision-making, sought to cover the whole gamut of the preliminary aspects of the Committee. The substantial aspects, like jurisdiction and functions of the Committee will be analyzed in the next chapter.

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