CHAPTER IV
INTER-STATE COMPLAINT SYSTEM

Inter-State Complaint System constitutes another vital part of the implementation mechanism of the International Covenant on Civil and Political Rights. It authorizes the Human Rights Committee to consider complaints/communications from the State Party which considers that another State Party is not fulfilling its obligations under the Covenant.¹

The present chapter has been designed to discuss as to what is Inter-State Complaint System? On which grounds its inclusion in the Covenant was opposed and how finally and on which grounds, in what form it was included in the Covenant?

Since the very inception of formulation of the draft Covenant by the Commission, till the adoption of the Covenant, the question of inclusion of the Inter-State Complaint System in the Covenant was the subject of intensive debate and discussion. A number of States

¹It should be noted that before the adoption of the Covenant similar provisions were included in the Constitution of the International Labour Organization (Article 26) and the European Convention on Human Rights (Article 24).
were not in favour of its inclusion in the Covenant. While on the other hand, few held their views in favour of Inter-State Complaint System and supported the idea of its inclusion in the Covenant. The views of both sides have been discussed below:

Grounds against Inter-State Complaint System:

Firstly, since all human rights were inter-dependent and closely related with each other, there was no need for formulating and adopting a distinct Inter-State complaint System for the implementation of Civil and Political rights in the absence of a similar system for the implementation of economic, social and cultural rights.

Secondly, the Inter-State Complaint System was considered against the principle of national sovereignty and the United Nations Charter.

Thirdly, it was expressed that the Inter-State Complaint System might be misused. It was doubted that states might use the system just for propaganda purposes to defame or to create troubles in other states. Furthermore, if relations between two states were strained any complaint made by one against the other might be viewed
with some skepticism.² Apart from this, such a system might endanger international peace and understanding and therefore might result into tension, conflicts between the States. Furthermore, it was not considered conducive to friendly relations between the states and expressed that a state would not like to use an international forum for a matter which is not concerned to its own citizens, because such an act may jeopardise its friendly relations with the state against which the complaint was directed. It was also expressed that a state might use the system if the complaint has been made on political reasons by the complaining state, of its own, and it cannot be expected at all that a state will have recourse to this remedy exclusively in the interests of the citizens of a foreign country.

Finally, doubts were expressed whether the Inter-State Complaint System would be used by the States Parties. Few held the view that if it was used it would not help the small states.

In response to the above grounds, following views were advanced by those who supported the inclusion and adoption of the Inter-State Complaint System in the Covenant.

1. It was held that something more than a reporting system was needed for the implementation of civil and political rights. As most of the Civil and Political Rights were defined with precision in the Covenant and could be secured forthwith, it would be possible for an international organ to ascertain in specific instances upon receipt of communication, whether or not a state party was fulfilling its obligation. The establishment of the Inter-State Complaint System was, therefore, desirable in order to ensure the effectiveness of the Covenant. 3

2. On the question of principle of national sovereignty and United Nations Charter it was argued that the adoption of a system of international control in the field of Civil and Political Rights would not be against the United Nations Charter because states accept the Covenant and undertake obligations of an international character in the full exercise of their sovereignty and that it could hardly be claimed that the provisions of the Covenant were matters falling within exclusive domestic jurisdiction of State. 4

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4 Ibid.
It was also expressed that there was no better starting point for the sacrifice of a portion of sovereignty than in the field of human rights. 5

3. Finally, it was held that fear expressed about the use of Inter-State Complaint System was exaggerated. States were already undertaking heavy responsibilities. There was nothing to bar them from acting in cases of violation of human rights if they so wished and no one should question whether or not they would scrupulously guard the individuals before the system was in operation. Moreover, the effectiveness of the Covenant would be on the good faith and good will of the States Parties concerned. Such good faith and goodwill were presumed to be forthcoming on acceptance of the Covenant in a spirit to make that instrument as effective as possible.

Eventually, it was decided that the Inter-State Complaint System should be included in the Covenant, but in what form it would be, was still a subject of moot point.

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5 GAOR, 21st session, Third Committee Summary Records, 1417th mtg., 8 Nov. 1966, para 13.
During the debates/discussions mainly three points were advanced in this regard. The first view favoured the text prepared by the Commission which consists strong and mandatory Inter-State Complaint System. The second proposed a mandatory Inter-State Complaint System to a restricted extent. And the third view wished to establish a broad but optional Inter-State Communication Procedure. The arguments advanced in favour and against of these view-points are discussed below.

Strong and Mandatory Inter-State Complaint System:

Supporters of this view-point held that the Covenant should contain the strong and mandatory Inter-State Complaint System. This view-point was reflected in the Commission's draft\textsuperscript{6} as well as in the proposals of Saudi Arabia,\textsuperscript{7} the United States\textsuperscript{8} and France.\textsuperscript{9}

In favour of this view, it was argued that in adopting the Racial Discrimination Covention, the Third Committee had done pioneering work which should be a source of inspiration for drafting the implementation clauses of the Covenant. Moreover, the aim of the Covenant was not

\begin{itemize}
\item \textsuperscript{6}Article 40 of the draft Covenant.
\item \textsuperscript{7}A/C.3/L 1334, See U.N. Doc.A/6546(1966) para 401.
\item \textsuperscript{8}A/C.3/L 1391, ibid, para 404.
\item \textsuperscript{9}A/C.3/L 1393 ibid, para 405.
\end{itemize}
to defend the rights of individuals and group of individuals. The purpose of the Covenant was to guarantee these rights and not to exonerate the alleged difficulties of States Parties. Therefore, the representative of the United Kingdom submitted that the effectiveness of the Covenant would lie in the strength of its implementation clauses and failure to provide for an obligatory international procedure would be a retrograde step. Similarly, the Jamaican representative said that "a complaints and conciliation system which was not mandatory would be meaningless."

**Mandatory Inter-States Complaint System with Limited Scope:**

On the other hand a few representatives favoured the adoption of a mandatory clause but felt that such a provision in order to elicit wide acceptance, should be less far reaching than the Commission's draft.

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10 *GAOR, 21st session, Third Committee Summary Records, 1417th mtg., 8 Nov. 1966, para 38.*


12 *Ibid, 1417th mtg., 8 Nov. 1966, para 44.*

Optional Inter-State Complaint System:

A large number of representatives doubted whether in the present state of international relations, a mandatory Inter-State communication procedure, based on the model of the Racial Discrimination convention, could be widely accepted. The Indian representative held the view that it would be most unrealistic to provide by a stroke of the pen not only for the receipt of reports from States but also for the admission of complaints between States. Attention was drawn to a fact that international tension and mutual suspicion still existed. Many newly-emerged States were eager to safeguard their recently acquired independence. They also often lacked the legislative infrastructure which was needed, if the rights and freedoms were to be guaranteed immediately. Therefore, they hesitated to endorse an obligatory Inter-State Complaint System and favoured an optional procedure. This approach was reflected in the Afro-Asian proposal. It was claimed that this proposal was calculated to meet the wishes of those states which would have serious difficulties in recognition the competence of a super-

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14 Indian representative, ibid, 1416th mtg, para 1.
15 Ibid, 1418th mtg, 9 Nov. 1966, para 12.
16 A/C.3/L 1379 also see A/C.3/L 1379/Rev.
national organ, operating the Inter-State communication procedure. However, the Afro-Asian proposal was strongly opposed. It was alleged that the optional clause of the Inter-State Complaint System would not improve the Covenant. In contrast, it would greatly weaken and narrow down the scope of the Covenant. Therefore, the Australian representative expressed:

It would change the complaints procedure from an integral and vital part of the mechanism for ensuring the enjoyment of human rights by the people of all States Parties into a part of a system which might or might not be subscribed to by the States concerned at their discretion. Anything that lessioned the accountability of States-Parties under the Covenant would reduce the instrument's effectiveness. (18)

It was called a "dangerous precedent" to enable a State at will to recognize or not to recognize the competence of the Committee. (19) Such a procedure, it was argued, seemed to have the major draw-back of setting up a kind of mixed system establishing inequality between States, which would find themselves divided into two categories. Those which had been able to recognize the

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17 GAOR, 21st session, Third Committee Summary Records, 1416th mtg., 7 Nov. 1966, para 55.

18 Ibid, 1416th mtg., para 34.

19 Representative of (Belgium), ibid, para 45.
Committee's competence and those which had not.\textsuperscript{20} Such a
distinction would introduce discrimination among states
parties and would raise the question whether nationals
of countries which had not made such a declaration should
serve on the Committee. And lastly, it was also opposed
on the ground that there would be little justification
for the establishment of the Committee and for the cost
involved if the optional clause never came into force or
if any ten States accepted it.\textsuperscript{21}

Most of the representatives, however, thought
that adoption of the optional procedure proposed by the
Afro-Asian powers would provide a satisfactory solution
to the main problems raised during the debate. It was
felt that, if such procedure was mandatory, many States
would hesitate to ratify the Covenant. The international
community must be given some time to overcome mutual
suspicion. Indeed, it was hoped that as all such
difficulties would gradually disappear on increasingly
number of States Parties would no doubt accept the optional
clause proposed by the Afro-Asian Powers and thereby give
full effect to the System of implementation of the
Covenant. This approach was generally preferred to both
mandatory-cum-strong Inter-State communication procedure
and mandatory-cum-weak Inter-State communication

\textsuperscript{20} Representative of France, Ibid, 1420th mtg,
11 Nov. 1966, para 37.
\textsuperscript{21} UN Doc.A/6546(1966), para 411.
procedure. As a result, the amendments of Saudi Arabia and the United States were withdrawn. Whereas some part of the French amendment was rejected and the remainder was withdrawn. And, finally, the revised Afro-Asian version of the optional Inter-State communication procedure was adopted not as a compromise but as an original solution. Consequently, the provision which was incorporated in the Article 41 of the Covenant speaks as follows:

"A State-Party to the present Covenant may at any time declare under this article that it recognises the competence of the Committee to receive and consider communications to the effect that a State-Party claims that another State-Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received and considered only if submitted by a State-Party which has made a declaration recognising, in regard to itself, the competence of the Committee. No

22 Ibid, para 413.
23 Ibid, see para 1 and 404.
24 It was rejected by 44 votes to 14, with 31 abstentions, ibid, para 419.
25 Ibid, para 405.
26 The voting was 65-0-23, ibid, para 420.
27 GAOR, 21st session, Third Committee, Summary Records, 1416th mtg., 8 Nov. 1966, para 21.
communication shall be received by the Committee if it concerns a state party which has not made such a declaration". This provision emphasises two points: First, the Inter-State Communication Procedure may be invoked only in regard to a State-Party which has made a declaration; and second, the communication may be filed against a State-Party when it failed to fulfil its obligations under the present Covenant. Both points need elaboration.

Since the Inter-State Communication Procedure is optional it is available for or applicable to a State which has made a declaration recognising in regard to itself, the competence of the committee to receive communication. It is to be quoted here that both the States which initiate the proceedings and the State against which the proceedings are initiated must have made the declaration. Thus, the System of Inter-State Communication operates on a reciprocal basis. It is also to be noted here that a State Party which wish to withdraw from the Inter-State Complaint System may withdraw its declaration at anytime. Article 41(2) of the Covenant provides that

*Article 41, para 2, of the Covenant provides that ten declarations were required for the entry into force of the Inter-State Complaint System.*
"A declaration may be withdrawn at any time by notification to the Secretary General". At the same time, of course, the Covenant puts a limitation on the operational implication of withdrawal of declaration. It states that such a withdrawal shall not prejudice any matter which is the subject of consideration already transmitted under Article 41 of the Covenant. In other words, a State against which a complaint had been lodged would not be free to withdraw its recognition of the Committee's competence until the consideration of that complaint had been completed.

Ground of Complaint:

By virtue of Article 41, paragraph 1, of the Covenant a State Party may recognize the competence of the Committee to receive and consider communications to the effect that another State Party is not fulfilling its obligations under the present Covenant. Whereas, in accordance with sub-paragraph 1(a) of the same Article,

29 The representatives of Costa Rica and Uruguay held their views that the provision of withdrawal has weakened the implementation machinery. On the other hand, the representative of Great Britain justified the right of withdrawal. See GAOR, 21st session, Third Committee Summary Records, 1429th mtg, 21 Nov. 1966, paras 3, & 5.

30 Representatives of Ukranian Soviet Socialist Republic and Soviet Union held their views in favour of clear, concise wordings of the concerned Article.
a State Party may file a communication against another State Party on the ground that it is not "giving effect to the provisions of the present Covenant". In the absence of any recorded explanations for the apparent differences in the wordings, it seems that fulfilling its obligations under the Covenant, and giving effect to the provisions of the Covenant means the same thing. What seems important, here is that not fulfilling its obligations under the present Covenant "need not necessarily involve a violation of human rights and freedoms as set forth in the Covenant. Non-performance of some obligations has no direct concern with human rights, and can nevertheless be brought before the Committee".31

Thus, mere failure to fulfil these obligations under the Covenant is a sufficient ground for initiating the Inter-State Communication Procedure.

The Mechanics of the Inter-State Communication Procedure passes through three stages:

**First Stage: Direct Inter-State Communication:**

In fact, the first stage or the preliminary stage envisages direct communication between the States Parties

31 GAOR, 21st session, Third Committee Summary Records, 1420th mtg., 11 Nov. 1966.
concerned. In accordance with Article 41, paragraph 1(a) of the Covenant, if a State Party considers that another State Party is not giving effect to the provisions of the Covenant, it may, by written communication, bring the matter to the attention of that State Party. It is to be noted here that the Committee’s role does not start at this stage and it is not required to inform the Committee of the direct communication between the complaining state and the receiving state. Obviously, therefore, some criticisms were expressed over this whole arrangement. The representative of Cyprus expressed the fear that what was called a "communication" or a "complaint" might in reality be an "ultimatum" with undesirable consequences and the Covenant would give a State the right to send a communication or an ultimatum to another State without imposing upon the complaining State the obligation to refer the matter ultimately to the Committee. A State might, therefore, send communications as often as it pleased and without any supporting evidence for the purpose of intimidating another smaller State and might never refer the matter to the Committee at all.  

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32 GAOR, 21st session, Third Committee Summary Records, 1428th mtg, 18 Nov., 1966, para 28.
In order to remove such fears, two counter-arguments were given. **First,** in the case of abuse of the Inter-State Communication Procedure, either State might refer the matter to the Committee, and **second,** this procedure's purpose was to keep the door open between the States concerned in the hope that they would do their best to find a solution before referring their dispute to the Committee.

For the Cypriot representative the first counter argument, however, appeared as a mere "wishful thinking" whereas the second one was far from convincing since the normal diplomatic channels were always available to the State Parties irrespective of the Covenant's mandate. He saw no reason why a State should not first make the use of those channels. If the States did not have sufficient goodwill to settle the matter through these normal diplomatic channels, they would not likely to settle it through the communication procedure of the Committee. Therefore, he suggested that it would be more advantageous if the complaining States were to refer the matter directly to the Committee because in that case it would have to submit full evidence after a very careful study.  

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33 Ibid, para 28, 30.
Moreover, that would diminish the fears of some States concerning the possibility of intervention in their domestic affairs and would prevent bauses. 34

Despite these contentions and suggestions the first stage of the direct communications between States not involving the Committee was included in the Covenant. 35

Under the first stage, on receipt of the communication, the receiving stage is given three months time within which it shall offer to the complaining stage an explanation or any other statement in writing clarifying the matter, which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter. 36

The maximum time limit of the preliminary stage is six months from the receipt by the receiving State of the initial communication. If the matter is resolved within this period then the State Communication Procedure comes to an end. Otherwise, if the matter is not adjusted to the satisfaction of both States Parties concerned either State shall have the right to refer the matter to the

34 Ibid.

35 Article 41, para 1(b) of the Covenant.

36 Article 41, para 1(9) of the Covenant.
Committee. And, as soon as the matter is referred to the Committee the Inter-State Communication Procedure enters into its second stage.

Second Stage: Proceedings before the Committee:

As noted earlier, either State Party may refer the matter to the Committee only when it was not adjusted by the Direct Inter-State Communication Procedure. It makes no difference whether the failure to adjust the matter was due to the non-cooperation of the receiving state or a deliberate attempt on the part of complaining State to frustrate any just solution, or lack of agreement between the two state parties.

Any of them can refer the matter to the Committee after giving a notice to the Committee and to the other State. The Secretary-General is responsible to maintain a permanent register of all communications received by the Committee under Article 41 of the Covenant. In turn, the Committee is authorised to take cognizance of the matter only after ascertaining that domestic remedies have been exhausted. To this effect, paragraph 1(c) of Article 41 of the Covenant runs as follows:
The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked with the generally recognized principles of international law. (37)

Since the above mentioned rule of exhaustion of domestic remedies is an essential pre-condition for the consideration of a communication by the Committee it seems necessary to briefly touch upon its historical development and operational ramifications. In classical terms the rule of exhaustion of local remedies developed in cases where a State used to espouse the cause of its nationals on the International Plane. 38 With the growth of the law of nations it became a customary rule of the community of nations.

The normative structures of this rule is founded upon the principle that the respondent State must first have an opportunity to correct, by its own means and within the framework of its own domestic legal system,

37 Similar provisions are found in European Convention (Article 26), UNESCO Protocol of 1962, Article 14. The Anti-Racism Convention, Article 11(3) and 14(7) (a).

the wrong allegedly suffered by the individual. This rule is actually arranging for the receiving State to be "heard" first, through the instrumentality of its courts; before it is arranged in the international procedure in broadly the same way as an individual is required to be heard before a judgment contrary to his interests is given against him. Thus, the rule of local remedies has some kinship with the rule of domestic law.

Whatever could be the utility of the rule of exhaustion of local remedies, it was incorporated into the draft Covenant as a result of careful compromise and foresight. On the one hand, reference was made to the advisability of reconciling the requirements of domestic legislation and practices with the Covenant on the ground that if all countries were to maintain that their domestic legislation and practices and prior validity, the Covenant would never be properly implemented. On the other hand, it was pointed out that the authority of national courts and institutions might be prejudiced, if the Committee were to act on a matter which could be regarded as legally settled when all available remedies had not only been invoked but exhausted, and if the Committee were to intervene in some cases without taking proper account of
the action of national organs. Finally, these conflicting views were crystalized in Article 41 of the draft Covenant in the following form:

Normally, the Committee shall deal with a matter referred to it, only if available domestic remedies have been invoked and exhausted.

It was suggested that the word "normally" would take care of cases in which a State might have failed to act upon complaints, in which domestic remedies, never having been applied, could not be said to have been exhausted.

However, when the draft articles came for discussion before the Third Committee, it invited fresh doubts. For instance, the Netherlands delegate alleged that the draft article was "very vague" since the word "normally" implied that there were various exceptions to the rule for which local remedies must be exhausted.


42 GAOR, 21st session, 1414th mtg., 4 Nov.1966, para para 23.
Similarly, having been dissatisfied with the formulation of the draft article. India and the like minded countries proposed to replace it with the following provision.

The Committee shall deal with the matter referred to it only after it has been ascertained that all available domestic remedies have been invoked and exhausted in the case, in conformity with the generally recognised principles of international law. (43)

But, even this newly-proposed provision was not readily acceptable. Besides, a French amendment, (44) a sub-amendment of Chile and Ghana was also introduced to this amendment. The revised version of this sub-amendment proposed the following text:

The committee shall deal with the matter referred to it after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognised principles of international law and the principles and purposes of this Covenant.

Explicitly, whereas under the nine-powers proposal (45) the rule of exhaustion of local remedies had to be applied in conformity with the generally recognised

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(44) A/C.3/L.1393, ibid, para 405.
principles of international law, "under the sub-amendment of Chile and Ghana the application of the same rule had to be applied in conformity with "the principles and purposes of this Covenant" too.

However, the Pakistani representative, the Co-sponsor of the nine-power amendment could not see the relevance of the "words and the principles and purposes of this Covenant" since the Covenant said nothing whatever about the rule of local remedies or the principle of the denial of justice. In his view, "these words were unnecessary and might create confusion". Hence, in the light of this observation of the Pakistani representative, the sub-amendment of Chile-Ghana was withdrawn. And finally, the nine-powers proposal was adopted and became paragraph 1(c) of Article 41 of the Covenant. Accordingly, the Committee was authorised to deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognised principles of international law.

46 GAOR, 21st session, Third Committee Summary Records, 1428th mtg, 18 Nov. 1966, para 31.
Here a question arises what is the meaning and scope of the term "remedies?" A preliminary draft article used the phrase "only if domestic judicial and administrative remedies have been invoked and exhausted". But, later on, it was changed to "only if available domestic remedies have been invoked and exhausted" in order to take account of the fact that there might be remedies other than "judicial and administrative" and case where there were no available remedies. Thus, the term "remedies" has been certainly used in a broader sense. It includes administrative, judicial, legislative as well as other remedies. And exhaustion of all these remedies is a condition precedent for the consideration of a complaint by the Committee.

Exception: A sole exception to the rule of the exhaustion of domestic remedies is laid down in the last sentence of paragraph 1(c) of Article 41 of the Covenant. Accordingly, the exhaustion of domestic remedies "shall not be the rule where the application of remedies is unreasonably prolonged.

The Commission explained the meaning of the phrase "unreasonably prolonged" that it should be understood to mean "prolonged beyond the time actually necessary in practice for the investigation of a complaint." But, during the Third Committee debates, it was expressed that since there was no criterion for determining whether the application of the remedies was unreasonably prolonged, the vagueness of that sentence might cause confusion and give rise to litigation.

In order to solve this problem, the representative of the Netherlands proposed to set a time-limit, but later on her delegation came to the conclusion that the setting of a time limit might prevent the Committee from examining bona fide communications. Hence no time limit was fixed.

In order to broaden the scope of exception to the rule of exhaustion of domestic remedies, Chile and Ghana co-sponsored a sub-amendment. Its revised version

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48 Ibid.

49 GAOR, 21st session, Third Committee Summary Records, 1428th mtg., 18 Nov. 1966, para 38.

50 Ibid, para 9.
This (exhaustion of local remedies) shall not be the rule where the application of the remedies is unduly delayed or appears to be insufficient, illusory or ineffective in securing adequate redress.\(^{51}\)

The representative of Ghana asserted that the phrase (appears to be insufficient, illusory or ineffective in securing adequate redress) would facilitate a judicial decision by the committee when local remedies had been exhausted without satisfaction and that the Committee now had the competence to take up the matter.\(^{52}\) However, in a spirit of compromise, his delegation agreed to the delegation of these words. Consequently the nine-power, amendment was adopted.\(^{53}\) Thus, the only "apparent or real exception", to the rule of exhaustion of domestic remedies is "where the application of the remedies is unreasonably prolonged".

However, besides the cases of unreasonable prolongation, the committee may deviate from the rule of exhaustion of domestic remedies in those cases too


\(^{52}\) GAOR, 21st session, Third Committee Summary Records, 1228th mtg., 18 Nov. 1966, para 26.

where it feels that the allegedly available remedies are not effective. Indeed, the Committee can evolve certain additional exceptions within the framework of the Covenant. It would not be inappropriate to suggest that the cases of grave emergency deserve flexible approach. 54

Apart from these exceptions, the basic idea is to prevent undue interference by the Committee before regular domestic remedies had been applied. It is competent to interfere fully after determining the exhaustion of domestic remedies the main function of the committee is to make available its good offices to the States Parties concerned with a view to a friendly solution of the matter, on the basis of respect for human rights and fundamental freedoms as recognized in the present Covenant. 55

54 When the draft Covenant was prepared by the Commission it was suggested that in cases of grave urgency the rule of exhaustion domestic remedies should not be applicable, since it might prevent the committee from giving immediate effect to the provisions of the Covenant. But this suggestion was not accepted on the ground that much harm might result if the Committee were asked to intervene in dispute which was still before the courts of the country concerned and that nothing should be done to undermine the various systems of national justice. See U.N.Doc.A/2929(1955), pp.249-58.

55 Article 41, para 1(e) of the Covenant.
It is worth mentioning that the "good offices" procedure of the Committee is different in its Covenant and spirit from the normal good offices procedures of the peaceful settlement of disputes, usually the good offices means a tool or technique whereby disputants get footholds to resolve their controversies on the basis of their mutual political expediency which need not necessarily be in conformity with international legal norms or morality. On the other hand, the "good offices" tool of the Committee is distinctly designed to achieve friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the present Covenant.\textsuperscript{56} Thus States Parties concerned do not have freplay of their national interests.

In the exercise of its functions as a friendly solution-promoting machinery under the Inter-State communication procedure "the Committee may call upon the States Parties concerned to supply any relevant information.\textsuperscript{57} But the Committee is not authorised to make on-the-spot inquiries and investigations.

\textsuperscript{56}In the Human Rights Commission a proposal containing the expression "with a view to a friendly settlement of a matter" was objected on the grounds that it might permit States concerned to arrive at a friendly agreement, which might not be based upon the observance of human rights, but which might be based on their own interests or might be result of a bargain. Moreover, such a settlement might disregard the individuals whose rights were violated. For details see U.N.Doc.A/2929(1955), p.260.
Of course, at the time of preparing the draft Covenant, a proposal was made that if the Committee considered that the information supplied was not sufficient it may by a vote of two-thirds of all its members, conduct an inquiry within the metropolitan area or non-self governing territories in any state against which a complaint was made, and that the State thus complained against should afford full facilities necessary for the efficient conduct of the investigation.

57 Article 41, para 1(F) of the Covenant. While the Provisional Rules of Procedure were drafted it was expected by the Committee members that a communication from a State Party would contain all necessary information, they agreed to reflect in the rule concerned the power of the Committee to request, through the Secretary General, the States Parties concerned or either of them to submit additional information orally or written. It was also suggested that the proposed rule would also include that the Committee should establish a time-limit for the submission of written information or observations in view of the limited time given to the Committee to deal with a communication. See Report of the Committee 1979, para 42-44.

58 At the 388th meeting of the Commission, the representatives of Egypt and Phillipines proposed an amendment (E/CN.4/L.248) to this effect the representatives of Chile presented an amendment (E/CN.4/L.280) this joint amendment (E/CN/SR 388) reads as follows: "If the Committee considers that the information supplied is not sufficient it may by a vote of two-thirds of all its members conduct an inquiry within the metropolitan area or non-self governing territory of any State complaint. The State concerned shall afford full facilities necessary for the efficient conduct of the investigation. See Report of the Ninth Session of the Commission(1953), Annex,III B, para 141."
Opinions were divided on this proposal. In support, it was said that the Committee should have adequate means to carry out its function of fact-finding and conciliation and that, therefore, it should not only receive information but also verify and supplement it when necessary. It was claimed that the proposal was permissive and not mandatory. An inquiry would be instituted only after the Committee considered that the State complained against had not supplied the necessary information and after a decision had been taken by a two-third majority of all the members of the Committee.59

The adoption of such an inquiry and investigation procedure was proposed for these reasons, it would infringe upon national sovereignty or would run counter to Article 2, paragraph 7 of the Charter, it might even be contrary to Article 87 of the Charter which provided for visiting missions to trust territories, in the present circumstances, and without some guarantees of reciprocity and universal acceptance, it was not feasible to institute such a new procedure, it might deter ratification of the Covenant by States especially as it did not require the prior consent of the State concerned,

it was unlikely that such an investigation would be successful in eliciting the facts which a State had refused to disclose voluntarily. A country which had failed to supply sufficient information would hardly vest the Committee by its domestic law with powers necessary for a successful outcome of the inquiry. 60

At one stage, it was suggested that the decision to conduct an inquiry should be made by a unanimous vote of all the members of the Committee. But it was objected on the ground that it would permit any member of the Committee to determine the fate of a decision. It was also suggested that inquiries could be conducted by the States themselves, at the request of the Committee, thereby avoiding any encroachment on their sovereignty. But it was doubted whether that method would guarantee genuine inquiries. Another point of view was that it might be better to leave the matter to the States complained against, which would itself have the option, under the existing provision of the Covenant, of asking Committee to arrange to have the allegations investigated on the spot.

60 Ibid, p.257.
The result of these suggestions—objections was that the proposal permitting the Committee to conduct investigation was rejected.\textsuperscript{61} Thus, neither the draft Covenant nor the Covenant dress the Committee with the authority of inquiry or investigation.

The authority is confined to seek relevant information. In other words, to bring the divergent points of view close together.

Corresponding to the obligation with which States Parties are straddled, viz to supply information, that the Committee may ask for the States Parties concerned have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing.\textsuperscript{62} At the time of considering its provisional Rules of Procedure, the Committee agreed that its rules should reflect the aforesaid provisions. In order to do so, the States Parties concerned should be notified as early as possible of the opening date, duration and place of the session at which the matter

\textsuperscript{61}It was rejected in a roll-call vote by 9 votes to 5 votes with 1 abstention, see Report of the 9th Session of the Commission (1953), Annex.III, para 141.

\textsuperscript{62}Article 41, para 1(g) of the Covenant.
would be examined. It was also agreed that the proposed rules should indicate that the procedure for making oral and/or written submissions shall be decided by the Committee on a case by case basis after consultations with the States Parties concerned. 63

Ultimately, Rule 77C was incorporated. It gives States Parties concerned the right to be represented and to make submissions. But, in any case, this right could not be applied to the deliberation of the Committee concerning the adoption of the Report. 64

As far as functioning of the Committee is concerned, it is provided in Article 41, paragraph 1(d) of the Covenant that the Committee shall hold closed meetings...." Interestingly it is worth noting that neither the draft Covenant as prepared by the Commission nor the Afro-Asian amendment had any reference to the closed meetings. It was 1428th meeting of the Third Committee wherein the French delegation asked for the inversion of a new Clause providing that: "the

63 See Report of the Committee (1979) para 47.

64 Ibid, para 50.
Committee shall hold closed meetings when examining communications under this article". He pointed out that the object of such a provision was to ensure that the procedure of international control of the implementation of the Covenant would not be exploited for propaganda purposes and that the Committee would not be transformed into an instrument of intervention in the international affairs of States. It was supported by a number of delegations. At the same time, however, some Latin American delegations disliked the idea of closed meetings. The Chilean delegate, for instance, alleged that with the acceptance of the French representatives proposal concerning closed meetings, the Committee's activities connected with communications would not even have benefit of publicity. He did not agree that publicity which would encourage use of the system for propaganda purposes, on the contrary he argued, that a State would hesitate to make a weak or unfounded charge against another State, if it was to be discussed in open meetings.

Similarly, explaining his stand against the closed meetings, the representative of Uruguay felt that States

65 GAOR, 21st session, Third Committee Summary Records, 1428th mtg., 18 Nov. 1966, para 18.
66 Ibid, para 23.
67 Ibid, para 45.
which respected human rights had nothing to fear from open meetings. But, since the merits of closed meetings outweighed its demerits, the French proposals was adopted by overwhelming votes. And, thus the Committee has been obliged to examine State communications in closed meetings.

The second stage of the Inter-State Communication Procedure ends with the submission of reports by the Committee within twelve months from the date of the referral of the matter to the Committee. Such a report "shall be communicated to the States Parties concerned" through the Secretary General. It may

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70 See, Article 41, para 1(n) of the Covenant. It is to be noted here that under the draft Covenant the Committee had to submit its report within eighteen months (Article 43, paras 2 and 3) and same was the situation in the original Afro-Asian amendment (as initially presented before (A/C.3/L.1379, para 2) the Third Committee. But in revised text of this amendment (A/C.3/L.1379/Rev/Corr,) this time limit was reduced to twelve months, see GAOR, 21st session, Third Committee Summary Records, 1428th mtg, 18 Nov.1966.

71 Ibid.
be noted that the Covenant obliged the Committee to submit this report whether the solution of the matter referred to it was reached or not. As far as the content of the report is concerned, however, the Covenant makes a difference between a report when a solution is reached and a report when no solution is reached.72

**Report: When Friendly Solution Reached:**

It is stipulated in the Covenant that if a solution is reached, "the Committee shall confine its report to a brief statement of the facts and of the solution reached."73 Curiously, few questions might be asked herein. What is the meaning of the phrase " brief statement of the facts"? What is the importance of a report when friendly solution was already accomplished? And if there is need of a report why a report on " brief statement of the facts" only and why not a detailed one?

72 At the time of formulating the provisional Rules of Procedure for the Inter-State Complaint System, the members agreed that there was no need to elaborate on the nature and content of the report since it was provided for in sub-para 1(n), Article 41, see, Report on Committee, 1979, para 58.

73 Article 41, para 1(h) of the Covenant.
"A brief statement of the facts" means, as the Indian representative explained in the Third Committee, "facts as ascertained by the Committee, facts as presented by one party, and facts as presented by the other party. 74

On the utility of a report in case of friendly solution of the matter, even at the drafting stage it was suggested that the Committee need not report where an agreement or solution was reached. It was felt, however, that reference to the solution would not only help other States Parties but might prevent any future controversy on the precise scope of the solution. 75 Moreover, this kind of reports will certainly demonstrate the successful functioning of the Committee. Consequently, more and more people and the States Parties would like to entrust faith in and support to the Committee. Regarding the provisions of brief report it was held that after a question had been settled, there was no need to dwell on all the facts, which might have adverse repercussions on international relations and on the work of the Committee. 76

74 GAOR, 21st session, Third Committee Summary Records, 1428th mtg., 18 Nov. 1966, para 11.

Committee. Agreements were very often possible only because of the mutual concessions undue publicity might make it difficult for governments to make concessions, especially if the details of the matter were to become publicly known in their own countries. Yet it seems the provision on a brief report was included in the Covenant in order to prevent the Committee from becoming a paper producing cum propaganda machinery.

Report: When no solution reached:

The really tough task arises when a solution is not reached. In that case the Covenant obliges the Committee to "confine its report to a brief statement of the facts; the written submission and records of the oral submissions made by the States Parties concerned shall be attached to the report." The concerned provision of the draft Covenant authorised the Committee to draw up a report on the facts, and state its opinion as to whether the facts found disclose a breach by the state concerned of its obligations under the Covenant.

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76 Ibid.

77 Article 41, para 1(h), (II) of the Covenant.

Though this draft provision was opposed in the Human Rights Commission itself on the ground that such a finding "would affect the honour and reputation of a State, which would stand convicted before the international community." The real opposition to it was voiced in the debates of the Third Committee. Indeed, a number of delegations wished the implementation clauses of the Covenant as strong as possible. However, that did not mean that States had to be held as guilty parties. They emphasized that it was the responsibility of governments to ensure the well-being of their people. They should therefore be facilitated in that task, for otherwise the Covenants would remain a "dead letter". Probably for this reason, in an earlier discussion, the U.S. representative doubted the wisdom of requiring the Committee to present opinions in cases where no amicable solution was achieved. In her view that was a quasi-judicial function for which the Committee was not equipped, and thought that it might interfere with the informal negotiations by which the Committee to promote agreement between the States Parties. Later on, another U.S.


80 GAOR, 21st session, Third Committee Summary Records, 1430th mtg., 22 Nov. 1966, para 22.

representative emphasized the point that the role of the Committee, as envisaged in the Afro-Asian amendment was essential to act as a conciliation body available to the State concerned, and, it was not competent to determine whether has a State Party had failed to fulfil its commitments under the Covenant.  

Obviously, therefore, the provision of the draft Covenant which authorized the Committee to express its opinion whether the State concerned committed a breach of the Covenant was replaced by a new provision wherein the Committee is authorized to report on the "brief statement of the facts" and written/oral submissions of the States Parties concerned. Thus, "The Committee is not empowered to express its view as to whether any violation of the Covenant has occurred or not.

The submission of the report containing the brief statement of the facts is not necessarily the closure of the Inter-State Communication Procedure. With the consent of the States Parties concerned, but no otherwise, the procedure can be extended one stage further for action before an ad-hoc conciliation commission.

82 Ibid, 21st session, 1417th mtg., 8 Nov. 1966, para 53.
Third Stage: Proceedings before the ad-hoc Conciliation Commission

Article 42, paragraph 1(a) of the Covenant provides statutory basis to the third stage of the Inter-State Communication Procedure, it states:

It a matter referred to the Committee in accordance with Article 41 is not resolved to the satisfaction of the States Parties concerned, the Committee may with the prior consent of the States Parties concerned appoint an Ad-hoc Conciliation Commission. The good offices of the (Ad-hoc Conciliation Commission) shall be made available to the States Parties concerned with a view to an amicable solution of the matter on the basis of respect for the present Covenant.(83)

It is clear from this provision that the Third Stage of the Inter-State Communication Procedure begins with the task of establishing an Ad-hoc Conciliation Commission. Therefore, without a fair understanding of the establishment and structure of the ad-hoc conciliation commission its mechanics can not be satisfactorily studied.

83 The Anti-Racism Convention - also provides for establishment of Ad-hoc Conciliation Commission (see Article 12 of the Convention).
Establishment of Ad-hoc Conciliation Commission:

The establishment of the Ad-hoc Conciliation Commission within the framework of the Inter-State Communication Procedure was a contribution of the Third Committee, since there was no such agreement in the draft Covenant.

During the debates of Third Committee on the draft Covenant, the Afro-Asian amendment provided **inter-alia** that "..... the (Human Rights) Committee may appoint at the request of both the parties an Ad-hoc Conciliation Commission." 84

In response to the Afro-Asian amendment, two sub-amendments were introduced - one by the United States of America and another by Chile. The U.S. sub-amendment proposed to replace the Afro-Asian text by the following words:

The Committee may, with the prior consent of the States Parties concerned appoint an Ad-hoc Conciliation Commission. 85


On the other hand, the Chilean sub-amendment called for the replacement of the Afro-Asian text by the following words:

...The Committee shall invite the States concerned to appoint an Ad-hoc Conciliation Commission.\(^{(86)}\)

While the Chilean draft did not even provide for the consent of the parties concerned before the Committee proceeds to the appointment of an Ad-hoc Commission the Afro-Asian document entirely left the initiative for the appointment of a conciliation Commission to the States Parties concerned. The U.S. sub-amendment was a mid-way between the Chilean proposal and the Afro-Asian text. It left to the Committee a minor initiative of proposing the establishment of the Ad-hoc conciliation Commission with the consent of the States Parties.\(^{(87)}\) Indeed, all these three proposals had their proponents and opponents.

The sponsors of Afro-Asian amendment explained that their proposal was intended to provide another and more effective method - conciliation through mediation -

\(^{86}\) A/C.3/L.1405, para 1, Ibid, para 446.

\(^{87}\) GAOR, 21st session, Third Committee Summary Records, 1429th mtg., 21 Nov. 1966, para 54.
for cases where the limited system of good offices of the Committee was inadequate to resolve the initiative. 88

They felt that the first initiative in this regard should come from the States Parties concerned, since those States alone could decide whether the procedure might produce something permanent. 89 It was told that in the Afro Asian text, the consent required was essential under Article 33 of the U.N. Charter. 90 Moreover, an element of consent would facilitate the work of the Ad-hoc conciliation Commission. 91

Representatives supporting the Chilean text contended that conciliation could only be effective if it was mandatory. 92 The successful optional clauses provided for in the Afro-Asian amendment would destroy the conciliation

88 Ibid, para 16.


90 Article 33 of the UN Charter states inter-alia that parties to any dispute shall seek solution by peaceful means of their own choice.

91 GAOR, 21st session, Third Committee Summary Records, 1429th mtg., 21 Nov. 1966, paras 34 and 35.

92 Ibid, para 22.
system at its root, since they would make it possible for a state to frustrate the process at any juncture, once a state had exercised its option in accepting the competence of the Committee, it should be deemed to have accepted each further step in the procedure. 93

In addition, it was considered desirable to raise the status of the parent body - the Committee, instead of reducing it. The conciliation Commission, therefore, should be seen as an off-shoot of the Committee, and should be called the Ad-hoc conciliation sub-Committee. 94

Speakers opposed to the Chilean text expressed the view that the notion of compulsory conciliation 95 besides being inconsistent with the principles of state sovereignty, was incompatible with Article 33 of the U.N. Charter, which provided that parties to any dispute should seek a peaceful solution of their own choice. The Chilean proposal was considered unrealistic, since the solution of matters arising out of the Covenant must essentially depend on the goodwill and co-operation of the States concerned. 96

94Ibid, para 20 and 42.
95Ibid, para 52.
96Ibid, para 453.
Moreover, it was pointed out that from a legal standpoint, a sub-committee was normally a body appointed by the Chairman or by the members of the Committee. The term "sub-committee" itself appeared to imply that all action taken by the body concerned would have to be ratified by its parent body the Committee\textsuperscript{97}, which means regression in status of newly proposed body.

In the light of these objections, when the mandatory conciliation procedure as envisaged in the Chilean amendment failed to be adopted,\textsuperscript{98} efforts were concentrated on the Afro-Asian text as amended by the U.S. amendment. Several speakers though that it would be preferable to accept the U.S. amendment which authorised the Committee to appoint the Ad-hoc conciliation Commission with the "prior consent" of the States Parties concerned. In their view, the Committee, if it were denied this right of initiative might be reduced to importance.\textsuperscript{99} Hence, it

\textsuperscript{97}GAOR, 21st session, Third Committee Summary Records, 1430th mtg., 22 November 1966, para 23.


\textsuperscript{99}GAOR, 21st session, Third Committee Summary Records, 1429th mtg., 21 November 1966, para 24.
was considered desirable to replace the Afro-Asian phrase" the Committee, may, appoint at the request of both the parties an ad-hoc conciliation commission" by the phrase proposed by the United States" the Committee may with the prior consent of the States Parties concerned appoint an Ad-hoc Conciliation Commission. This change was accepted, and adopted after a role-call vote. Consequently, as the existing Covenant stands, the Committee may take initiative and appoint an Ad-hoc Conciliation Commission "with the prior consent of the States Parties concerned". Undoubtedly, it is an optional clause within an optional procedure.

**Composition:** On the composition and characteristics of the Ad-hoc Conciliation Commission, Article 42, paragraph 1(b) of the Covenant states:

The Commission shall consist of five persons acceptable to States Parties concerned. If the States Parties concerned fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission concerning whom no agreement has been reached shall be elected by secret ballot by a two-third majority of the Committee from among its members.

This formula for the establishment of a five-member Ad-hoc Conciliation Commission\(^{100}\) contains two

\(^{100}\)A/C.3/L.1329th mtg., Rev.1, para 3.
alternative processes - reselection and election. When the members are "acceptable to the States Parties concerned" it is merely a formality of selection. And these acceptable members need not be members of the Committee. However, in case the States Parties concerned fail to reach agreement on some or all members of the Conciliation Commission, the process of election will be invoked. And the Committee will elect them from amongst its members only. It is worth to recall that the original Afro-Asian proposal on this matter had provided that -

If both the parties fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission concerned whom no agreement was reached shall be elected with the consent of the parties concerned. (101)

In support of this text which required the second consent of the parties concerned the representative of the United Arab Republic one of the nine sponsors of the Afro-Asian amendments said that it would facilitate the work of the conciliation Commission since it was unthinkable that the Commission could work effectively if one of the States Parties to the Covenant took exception to one of its members. (102)


102 GAOR, 21st session, Third Committee Summary Records, 1429th mtg., 21 Nov. 1966, para 5.
However, the US sub-amendment to the Afro-Asian text removed the element of second consent from the Ad-hoc Conciliation Commission procedure. And, in accordance with finally adopted arrangements if the parties fail to agree on the selection of the Commission they "shall be elected by secret ballot by a two-third majority vote of the Committee from among its members." \(^{103}\)

Irrespective of the fact whether the members of the conciliation Commission are selected or elected, "they shall not be nationals of the states parties concerned, or of a State not Party to the present Covenant or of a State Party which has not made a declaration under Article.\(^{104}\)

As far as qualifications of the members of the Conciliation Commission is concerned, in the absence of an express provision, it would be logical to observe that those members of the Conciliation Commission who are "acceptable to the States Parties concerned" need not fulfil any prerequisite qualifications. However, those members of the Conciliation Commission who are

\(^{103}\)See the last part of Article 42, para 1(b) of the Covenant and also GAOR, 21st Session, Third Committee Summary Records, 1430th mtg., 22 Nov. 1966, para 23.

\(^{104}\)Article 42, para 2 of the Covenant.
elected by the Committee from amongst its members would automatically/naturally possess all the necessary qualifications of a member of the Committee. In this way, an Ad-hoc Conciliation Commission might be composed of persons of different qualifications.

Probably, in order to ensure the functional impartiality of the Ad-hoc Conciliation Commission, the Covenant lays down that:

The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties concerned.\(^\text{105}\)

In addition, the Covenant authorizes the conciliation Commission to "elect its own Chairman and adopt its own rules of procedures.\(^\text{106}\) It means the conciliation Commission would be independent of the Committee. It is to be noted here that whereas the members of the Committee receive emoluments from the United Nations,\(^\text{107}\) the expenses of the Conciliation Commission shall be equally shared by the States Parties concerned.\(^\text{108}\) Like the

\(^{105}\) Ibid.

\(^{106}\) Ibid, para 3.

\(^{107}\) See Article 35 of the Covenant.

\(^{108}\) See Article 42, para 9 of the Covenant.
Committee the meetings of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations office at Geneva.\footnote{109} Of course, meetings may be held at such "other convenient places as the Commission may determine in consultation with the Secretary General of the United Nations and the States Parties concerned.\footnote{110}

As far as the secrecy of the meetings of the conciliation Commission is concerned, the Covenant does not contain any provision in this regard. However, since the Conciliation Commission is authorized to adopt, its own rules of procedure it would be free to hold private or public meetings at its discretion. Nevertheless, with respect to the source of information, it is expressly provided in the Covenant that "the information received and collected by the Commission may call upon the States Parties concerned to supply any other relevant information.\footnote{111} Thus besides ensuring the availability or relevant information the Covenant establishes a functional coordination between the Committee and the Conciliation Commission.

\footnote{109}{GAOR, 21st session, Third Committee Summary Records, 1429th mtg., 21 Nov. 1966, para 49.}

\footnote{110}{Article 42, para 4 of the Covenant.}

\footnote{111}{Ibid, para 6.}
Submission of Report:

The final task of the Ad-hoc Conciliation Commission is submission of report Article 42, paragraph 7 of the Covenant states as follows:

When the Ad-hoc Conciliation Commission has fully considered the matter, but in any event not later than twelve months after having been seized of the matter it shall submit to the Chairman of the Committee a report for communication to the States Parties concerned.

As far as the formulation or contents of the report is concerned, the Covenant stipulates three possible situations.

First, when the Ad-hoc Conciliation Commission is unable to complete its consideration of the matter within the stipulated period of twelve months, it shall confine
its report to a brief statement of the status of its consideration of the matter. 112

In case of the second situation, namely, when an amicable solution to the matter on the basis of respect for human rights as recognised in the present Covenant is reached, "the Commission shall confine its report to a brief statement of the facts and of the solution reached". 113

However, under third situation wherein no amicable solution of the matter reached, the Ad-hoc Conciliation Commission's report "shall embody its findings on all questions of fact relevant to the issues between the States Parties concerned and its views on the possibilities of an amicable solution of the matter". 114

In addition, "this report shall also contain the written submissions and record of the oral submissions made by the States Parties concerned". 115

112 Ibid, para 7(a)
113 Ibid, para 7(b)
114 Ibid, para 7(c)
115 Ibid.
It is worth noting here that the Afro-Asian draft, which was identical to the relevant paragraph of the Anti Racism convention provided that the Ad-hoc Conciliation Commission shall prepare "a report embodying its findings... and containing such recommendations as it may consider proper for the amicable solution of the matter. 116

The Chilean sub-amendment sought to replace this provision with an arrangement wherein the report of the sub-committee (prototype the Ad-hoc conciliation Commission) had to include "conclusions it has reached on the questions raised between the parties and recommendations it considers appropriate for the amicable settlement of the matter. 117 The oral amendment of France proposed to replace the Afro-Asian provision by a different arrangement where the report of the Ad-hoc Conciliation Commission had to contain "its views on the possibilities of an amicable solution of the matter. 118

While the Chilean sub-amendment was watered down some of the Afro-Asian delegates themselves supported the French sub-amendment because the "views" of the Ad-hoc

116 These wordings were almost identical with Article 13, para 1 of the Anti Racism Convention.


118 Ibid, para 447.
Conciliation Commission, in their view, would be much better received by the States Parties than its "recommendations" which might only lead to a deterioration of the dispute.\textsuperscript{119} Hence, the French phrase was adopted.\textsuperscript{120} Consequently, as noted earlier, the report of the Ad.hoc Conciliation Commission shall, in case of its failure to resolve a matter include its "views" on the possibilities of an amicable solution of the matter.

The report will have to be submitted to the Chairman of the Committee for Communication to the States Parties concerned. In turn, within three months of the receipt of the report, the States Parties shall notify the Chairman of the Committee whether or not they accept the contents of the report.\textsuperscript{121} If they accept the report, then perhaps there would be no problem. But, in case the report was not accepted the Covenant does not provide further remedy.

\textsuperscript{119}GAOR, 21st session, Third Committee Summary Records, 1431st mtg., 22 Nov. 1966, para 3.

\textsuperscript{120}The voting pattern was 55-22-18, see U.N. Doc.A/6546 (1966), para 468.

\textsuperscript{121}See Article 12, para 7(d) of the Covenant.
Thus after analysing the mechanics of the procedure it seems unrealistic to assess the Inter-State complaint system of the Committee, since, to this date, not a single state has invoked it. It has remained a paper procedure. Therefore, what is being attempted here is an "assessment of its Theoretical framework".

The Inter-State Complaint System of the Committee is the 'key-stone' of the implementation clauses\textsuperscript{122} of the Covenant. It is "the crux of the Covenant"\textsuperscript{123} and "one step further" were some high sounding phrase which were used at the time of incorporation of this procedure into Covenant. But the fallacy of these phrases is exposed by the optional nature of the procedure. Under this procedure, a State Party might or might not make a declaration to the effect of recognizing the competence of the Committee, might not accept the Committee's offer of good offices even though good offices declaration are the fragile method of dispute settlement and will remain free to withdraw. Furthermore, ten parties had to make declaration to bring the procedure into force.\textsuperscript{124}

\textsuperscript{122}GAOR, 21st session, Third Committee Summary Records, 1420 mtg., 11 Nov. 1996, para 3.

\textsuperscript{123}Ibid, para 37.

\textsuperscript{124}See Article 41, para 2, of the Covenant.
At the top of it if the good offices of the Committee fails to bring solution of the matter, it is merely obligated to report a brief statement of facts. It may be noted that under the draft Covenant, the Committee was entitled to express its opinion as to whether the facts disclose a breach by the States Parties concerned of its obligations under the Covenant. Third Committee replaced it with the existing arrangement wherein the Committee has to confine its report to brief statement of facts. Thus, apart from the whole procedure being optional this is the most important reduction of the authority of the Human Rights Committee.

Be that as it may be, the brief statement of the facts would be based on the information and submission received from States Parties concerned. Presumably it would be a basis for compromise afforded to the States Parties which are invited to use it. Therefore, it cannot have the character of an objective ascertainment. Even if it is the States Parties will not be legally bound to respect it.

Of course, in the case of failure of the good offices of the Committee, the conciliation procedure may be put into action. But in this supplementary
procedure too the notion of consent appears several times. First the Committee may or may not appoint an Ad-hoc Conciliation Commission, second, the States Parties may or may not give their consent to the selection of one or another member of the Commission, and third, the States Parties would not be legally bound to respect the views of the Ad-hoc Conciliation Commission.

What will happen if the Ad-hoc Conciliation Commission failed to settle the matter or one of the State Parties concerned refused to respect its views.

Under the existing procedure, there is no answer to this vital question.