CHAPTER V
The Individual Petition System is an optional system provided under the Covenant on Civil and Political Rights. It provides opportunity to individuals to express their grievances at the international level.

It is to be noted here that the question of individual petition system was, perhaps one of the most controversial issues when the draft Covenant on Civil and Political Rights was being prepared by the Commission as well as at the time when draft was considered by the Third Committee of the General Assembly. What were the views of those who proposed the inclusion of Individual Petition System and what were the arguments of those who were against it? What was India's stand when the issue was discussed and debated? And how the question of Individual Petition System was finally resolved? These points along with other related matters have been analysed in the chapter.

Consideration of the question of Individual Petition System by the Commission:

Should the individual be given the right to petition against his own state? This question had aroused a wide-ranging discussion and debate when the draft
of the Covenant on Civil and Political Rights was being prepared by the Commission on Human Rights. At its 5th session when the Commission was discussing the provisions of Implementation Machinery, proposals were made both at the Commission as well as the General Assembly that the Commission should include provisions for individual petition in the draft Covenant. Therefore, the Commission started the discussion on the inclusion of individual petition system in the Covenant. During the discussion the differences of opinion among the members of the Commission ranged over a wide area.¹

Some members expressed their views against the right of individual to petition. They considered it contrary to the provisions of the United Nations Charter, international law and violation of national sovereignty of states. Proposals relating to petitions, except as provided in the Charter for Trust Territories, which did not relate to sovereign states, were considered illegal and violation of Article 2, paragraph 7 of the Charter.

On the other hand, few members held the view that the Charter had made matters relating to human rights a question of international concern and protection and

hence could be no question of trespassing on the domestic jurisdiction of states by recognising the individual right of petition in the Covenant.

They argued that how a Covenant dealing with human rights could deny the right of petition to individuals? The rights of individual had formed an important and fundamental part of the modern democracy and the individual right to appeal to the government of his country was embodied in several constitutions. Moreover, the right to petition had existed under the minorities and mandates systems of the league of nations and specially provided for in the "International Trusteeship System" established by the Charter, the practice of which had greatly accelerated the development of Trust Territories.

Another view was that international law was concerned only with states and not with individuals and the international society had not yet reached a stage of development at which individuals could be allowed to petition.

Other questioned the validity of the theory and held that in accordance with very terms of the
Covenant individual was plainly subject of international law and the main aim of the Covenant was to protect him against abuse of the power of the states and therefore he should not be denied his sole means of defence against the violation of his rights.

Many members expressed that ideally the right to petition of individual should be recognised internationally as it has been done nationally. The problems which may arise in connection with it, would have to be resolved on the basis of thorough study of the operation of the Covenant in practice.

Another point of view was that a matter of such importance should not be decided by a body composed of only eighteen states and it was suggested that such matters should be resolved by a more widely representative body, preferably by a final conference of plenipotentiaries convened for the purpose of adopting the Covenant.

Thus during the period (1949-1954), when the Commission on Human Rights was seized with task of drafting Covenant, several views were expressed in
defence of inclusion of the individual's right to petition in the draft Covenant. But all proposals initiated in the Commission and transmitted to it were either rejected or withdrawn. Consequently the final draft that emerged from the Commission had no provision for individual petition.

Consideration of the question of individual petition by the Third Committee of the General Assembly:

At the 21st session of the General Assembly in 1966, efforts were made once again to include individual petition system in the Covenant. The Netherlands delegation took initiative by proposing the insertion of an article which provided that –

The Committee may receive petitions from individuals or groups of individuals claiming to be the victim of violation of the rights set forth in the Covenant by any state party, provided that State Party complained of had declared that it recognizes the competence of the committee to receive such petitions. (2)

Speaking in defence of his proposal, the representative of Netherlands expressed that the term

human rights was properly used only if the beneficiary of those rights was able to claim them and had remedies at his disposal. For him it was a matter of principle to allow the individual whose rights were violated to seek redress himself, if necessary, without the goodwill of his government.  

Apart from this a number of other countries also stressed on the inclusion of the provision of right to petition of individual in the Covenant. They expressed that as the basic purpose of the draft Covenant was to safeguard the rights of individual human beings, there was undeniable need to include in the body of the Covenant a provision permitting an individual to seek redress of wrongs before an international organ.  

At that time the representative of Ghana went to the extent of saying that a State refusing to vote in favour of proposed article would thereby admit that it did not intend to respect human rights. In his opinion a negative

3 GAOR, 21st session, Third Committee Summary Records, 1414th mtg., 4 Nov. 1966, para 24.


5 GAOR, 21st session, Third Committee Summary Records, 1438th mtg., 29 Nov. 1966.
vote would clearly constitute a retrograde step" in the development of international law. It is to be noted here that at this stage the inclusion of the individual petition system in the Covenant was again opposed in equally strong terms. A number of countries including India expressed their views against the proposed article. At that time Indian representative expressed his views in the following words:

All the members of the Committee including his own delegation were convinced that the rights of the individual must be protected. But that was not the question, issue was not the rights of the individual against the rights of states as some representatives had tried to emphasise but whether the inclusion of such an article would really serve the course of human rights. The purpose of the present Covenant was the protection of all human rights and in all parts of the world. It could serve its purpose if its provisions were approved and adhered to by all states. Since the article relating to individual petition was highly controversial its insertion in the Covenant should be avoided. (7)

The another ground the Indian delegate expressed against the proposed article was that the

6 Ibid.

7 Ibid, 1440th mtg., 30 Nov. 1966.

It is to be noted here that besides India the Netherlands proposed was opposed by socialist countries of Eastern Europe, by the countries of Asia and several others.
provisions of related article were not strong enough to protect the rights of individual. In this regard he held:

His delegation would have difficulty in approving this article, its provisions were in its views too weak to effectively ensure the protection of individuals. It authorised the individual to lodge a complaint by way of remedy merely provided for the Committee to forward suggestions to the state party concerned. If there was neither the willingness nor the authority at international level to take the necessary practical measures to protect the individual it was preferable not to tackle the subject. Indeed, the new article was inconsistent with the system, of implementation provided for in the Covenant in which it had been consistently maintained that it would be the states parties embodied in the Covenant. This article had made an abrupt departure from the principle and pretended to make the international machinery the protector of the rights of the individual as against its own state. But such pretensions were fake since the international machinery lacked sanctions behind it.(8)

Next ground the representative of India expressed opposing the Individual Petition System was:

That time had yet not come when an international body could take the place of the State in protecting individual if some delegations thought differently they should agree to formulate their proposals as a separate protocol.(9)
Thus the above mentioned views make it clear that the India was totally against of the inclusion of the proposed article in the text of the Covenant.

At the same time likeminded countries expressed their dissent on the following grounds: First, the proposed article started from the false assumptions that an individual could be the subject of international law. In reality an individual acquired rights and assumed duties in the international sphere only through the state.¹⁰ Secondly, the principle of sovereignty would be seriously compromised if individuals were permitted to challenge before an international body.¹¹ Thirdly, the adoption of proposed Article might lead certain states to incite individuals to make allegations against other state thus endangering international relations. Besides, this the Committee might be flooded with abusive complaints. Special stress was laid in this regard, on the potential danger of propaganda by exile groups.¹²

¹¹ GAOR, 21st session, Third Committee Summary Records, 1439th mtg., 30th Nov. 1966, para 39.
Fourthly, the inclusion of this Article in the draft Covenant might limit ratifications to the extent that the Covenant would never come in force. 13

Fifthly, the suggested procedure would tend to implant distrust between the Committee and the States Parties instead of the partnership of goodwill which could promote the observance of the human rights of every individual. 14 Sixthly, it was unnecessary because the domestic action was quite adequate to protect the rights of citizens. Therefore, the proposed Article was considered as "controversial", imperfect, impracticable, premature.

Keeping in view these criticism the Netherlands withdrew its proposal and co-sponsored a joint proposal with nine other countries - Canada, Colombia, Costa-Rica, Ghana, Jamaica, Nigeria, Pakistan, the Phillipines and Uruguay. 15 This joint proposal in particular added several safeguards against the fear expressed by the opponents of the proposed article. But it also failed to allay the fears of its opponents. And it became clear that the individual petition system could not be adopted at least within the text of the Covenant.

13 Ibid, para 383.
14 GAOR, 21st session, Third Committee Summary Records, 1439th mtg., 30 Nov. 1966, para 25.
It was suggested that the Covenant should have no reference of the individual petition and the proposed Article should be referred back to the Commission on Human Rights. But the Nigerian representative refused to accept this suggestion. He alleged that the real purpose of those who wanted the Article to be referred back to the Commission was to prevent the Covenant from being adopted. 16

At the crucial stage when the supporters of the individual petition system were on the verge of debacle in debate, the representative of Lebanon revived an old U.S. idea of separate 'protocol' and proposed that the substance of proposed article relating to individual communications be included in a separate protocol annexed to the draft Covenant. 17

There was no agreement on this proposal too. The Third Committee was divided into two groups. Some wanted the right of petition to be kept in an optional

16 GAOR, 21st session, Third Committee Summary Records, 1438th mtg., 29 Nov. 1966, para 6.

clause of the Covenant, while others thought it should form a separate protocol Canada, Guinea, India, Kenya, Mali, Nigeria, Sudan, UAR and most of the Afro-Asian nations supported the idea of separate protocol. On the other hand, most of the West European countries and others like Ghana, Uruguay and U.S.A. were against the formation of separate protocol. The Soviet Union and likeminded countries were unwilling to accept the right of petition at all whether in Covenant or in protocol.

The Lebanon motion was based on the premise that a separate protocol would result into the unanimity of all States. It was considered to be the most appropriate solution in view of the wide divergences of opinions because this would satisfy those states who desired a system of individual petition. At the same time States which did not wish to go as far as that but nevertheless wanted to undertake the obligations under the Covenant would be free to do so. In that way, advancement in the international protection of human rights would not be unduly positioned but would be conveniently advanced.
Those, favouring the inclusion of the article in the draft Covenant expressed doubts whether the separate protocol would serve any useful purpose if most member states refused to recognise the right of petition in the Covenant, it was hardly likely that they would change their minds when it came to inserting that right in a separate protocol or that they would be inclined to become parties of such an instrument.

Moreover, it was stressed that there was no reason for having a separate protocol because that would distrust the organic unity of the Covenants. When no consensus reached, the Chairman of the Third Committee invited the participants to vote on the Lebanese proposal. It was adopted by a narrow majority of only two votes.\textsuperscript{18} Originally it was decided that the substance of the provisions of the draft article on the individual right of petition be included in a separate protocol annexed to the Covenant. On the wordings separate protocol annexed to the Covenant the representative of India raised

\textsuperscript{18} It was adopted by 41 to 39 with 16 abstentions. India voted in favour, whereas the U.S. the original introducer of the idea of separate protocol opposed. See U.N.Doc.A/6546(1966),para 485.
an objection and expressed that:

The Lebanese proposal as adopted at the 1440th meeting did not merely contain the word "annexed" but three "key" words namely Separate Protocol to be annexed. It had subsequently been established that it was impossible to have protocol that both separate and annexed. (19)

Therefore, later on, the representative of Lebanon proposed that the title of the protocol should be "optional protocol to the International Covenant on Civil and Political Rights". 20

In consequence of the decision taken by the Third Committee the representative of Nigeria submitted a draft protocol on the right of individual petition. 21 Later, it was revised and sponsored jointly by Canada, Chile, Costa Rica, Ghana, Jamaica, Lebanon, Netherlands, Nigeria and Philippines. It was basically similar to the Article previously proposed by the Netherlands. 22 Therefore, the Pakistani

19 GAOR, 21st session, Third Committee Summary Records, 1415th mtg., 7 Dec. 1966, para 46.

20 Ibid.


22 At the time when representative of Nigeria introduced the draft protocol he himself admitted that it was simply a reproduction of Article 41 bis. See, GAOR, 21st session, Third Committee Summary Records, 1441st mtg., 1 Dec. 1966, para 13.
delegation suggested that it should not be treated as a new proposal and that statement should be limited to practical suggestions relating to drafting. 23

At this stage, the Soviet representative called the separate protocol as a "hasty improvisation. 24 The Ukrainian representative expressed misgivings regarding its implementation system. He contended in particular that it would be improper for the Human Rights Committee established under the Covenant to examine the Communications dealt within protocol. He suggested that a separate Committee should be established for that purpose by the States Parties to the protocol. 25

Another suggestion was that the Human Rights Committee should not be empowered to hear petitions but that a sub-committee should be established for that purpose. While that solution sounded plausible in theory, it was condemned to be almost absurd in practice. Questions were raised what would be the nature of the sub-committee, would it be an ad-hoc committee or a standing committee, if it was a standing committee, could, for example the national of a State

23 Ibid, para 15.
24 Ibid, para 21.
25 Ibid, para 51.
against which a complaint was being made and which happened to be a member of the Committee but not a member of the sub-committee, be allowed to take part in the work of the sub-committee when it was considering a petition against that national's own country; and if the Committee was to be of an ad-hoc nature, what would happen if it was deluged with petitions. Would it then be necessary to establish an ad-hoc sub-committee. 26 The idea of a separate Committee for the separate protocol thus seemed to be impracticable. Finally, the Ukrainian representative did not pursue his suggestion and thus the matter ended here.

After the debate, the Chairman of the Third Committee put to vote the text of the draft optional protocol. It was adopted by 59 votes to 2 with 32 abstentions. 27 Socialist countries abstained and only two countries Niger and Togo voted against it. Finally, it was also adopted by the General Assembly. 28

26 Ibid, 1438th mtg., 29 Nov. 1966, para 3.


28 It is to be noted here that even before the adoption of the optional protocol 1966, there were numerous instruments whereby individuals could file petitions to one or another international body. The constitutional of the International Labour Organization may be regarded as the first genuine effort to afford individual petition system. But that was limited to a specific category of rights i.e. trade union rights.
Thus, after analysing the viewpoints expressed by different country groups during the debate and discussion on Individual Petition System, it seems that the adoption of the optional protocol was a victory for everybody. Its supporters were happy that the right of individual was finally accepted however, in the separate protocol. Opponent were happy, that the right of individual petition was made optional and kept outside the body of the Covenant. And finally, India and likeminded countries were delighted that their philosophy of step by step progress was accepted which enabled them to keep their options open whether to accept or not to accept the individual petition system.

In accordance with Article 9 of the Optional Protocol ten instruments of ratification or accession are necessary for its entry into force. Having received the requisite number of ratifications, the protocol came into force on 23 March 1976, simultaneously with the entry into force of the Covenant on Civil and Political Rights. Now in accordance with the provisions of the optional protocol the individuals

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Besides, it Article 37 paragraph (b) of U.N. Charter authorizes the Trusteeship Council to accept petitions and examine them in consultation with administering authority.
of a State Party to the Covenant that becomes a party to the present protocol think that any of their rights enumerated in the Covenant has been violated by the State Party they belong may file their complaint to the Human Rights Committee. Here special attention may be drawn to the Article 1 of the optional protocol which provides:

A State Party to the Covenant that becomes a party to the present protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set-forth in the Covenant. No communication shall be received by the Committee if it concerns a State Party to the Covenant which is not a Party to the present protocol. (29)

What are the mechanics of the Individual Petition System? How does the System work is now the subject of analysis:

How does the Individual System Functions:

The procedure of the Individual Petition System has three stages:

(1) submission of communication/complaint by the individual concerned;

29 See Article 1 of the Optional Protocol to the International Covenant on Civil and Political Rights.
(ii) consideration of its admissibility by the Committee; and

(iii) consideration of merits of the communication/complaint if found admissible.

First Stage:

The first stage of the Individual Petition System starts with the submission of communication. The main issues which need special clarification and analysis are who can file a communication? Against whom a communication may be filed? On what grounds a communication may be filed? What are necessary requirement concerning structure language and related aspects of a communication?

Who can file a communication:

Article 1 of the Protocol provides that the Committee may receive communications from individuals which means that only individuals can file a communication and the other bodies like non-governmental organization and individual groups and related organization are not authorise to fill communication on behalf of the individual. But the practical experience shows that Committee receives communication from the groups of individuals too. In fact, it is for the victim himself to file communication. But it does
not mean that every communication must be signed by the individual concerned. Situations might arise when it could difficult for the victim to act in person. In such cases he can file communication through his representative. In practice also the Committee has been liberal in this regard and it receives communication from persons acting on behalf of the victim. But it should not be understood here that anybody can file communication on behalf of any victim. Actually the Committee does not consider a communication the author fails to give the reason for that and to establish a sufficient link between himself and alleged victim. In the Committee's practice a close family connection constitutes a "sufficient" link. Here it should be noted that it is up to Committee how it interpret its sufficient link theory and the close friends may also be considered a sufficient link.


31 The Committee has received a number of communications on behalf of alleged victims. Communication submitted by Moriang Hernandez Valentim de Bazzano was one of such communications. She submitted it on her own behalf as well as on behalf of her husband her mother and her step father. For details see communication No.".115, Report of the Committee 1979, Annex VII, p.112, Communication No.R.2/8, 1977, Report of the Committee (1980), Annex VI, p.111, and communication No.R.2/11, 15 April 1977, ibid, Annex p.132.

32 Moriana family case and Ana Maria Lanza ....
Now the question comes that against whom an individual may file his communication. To find out answer to this question we have to look into the contents of Article I of the protocol which speaks:

A State Party to the Covenant that becomes a party to the present protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction.

Careful observation of above mentioned provision makes two things clear: First, a communication be filed against a state which is a party to the Covenant as well as to the protocol and which has recognized the competence of the Committee in this particular context. In other words, no communication may be filed against a State Party to the Covenant which is not a party to the protocol. It should be noted here that no State can be a party to the protocol without being a party to the Covenant. But a State can be a Party to the Covenant without being Party to the Protocol. Secondly, communication must be from individual who, subject to the jurisdiction of the State Party complaint against.

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family case are the good examples where the close family connection was justified as sufficient link for details of these cases, see, Report of the Committee, 1978, para 580 and Report of the Committee 1980, Annex VI, para 1 and 2.
Grounds of Communication:

The Optional Protocol to the Covenant provides that if any of the rights enumerated in the Covenant has been violated and that has resulted into the Victimization of any individual of the State Party concerned, the individual may file his/their communication.

It maybe recalled here that under the Inter-State communication System of the Committee, a claim by a State Party that another State Party is not fulfilling its obligations under the Covenant could be a valid ground of Communication irrespective of the fact whether there was actual violation of any of the provisions of the Covenant or not.

In contrast to this the optional protocol requires that the communication should be based on the victimization resulted from the violation of the Covenant. Moreover, any victimization/violation must not be related with the events which took place prior to the entry into force of the Covenant and the optional protocol for the States Parties concerned. However, a reference to such events may be taken into consideration if the author claims that the alleged
violations have continued after the date of entry into force of the Covenant and the Optional Protocol for the State Party concerned, or that they have had effects which themselves constitute a violation after that date. Events which took place prior to the critical date may indeed be an essential element of the complaint resulting from alleged violations which occurred after that date. \(^{33}\)

Structure & language:

The protocol does not prescribe a particular type of format of communication. However, in order to assist individuals who wish to submit communications the Committee authorised the Secretariat to draw up and make use of guidelines and a model form of communications as appropriate. But the individuals are not obliged to use the model form which is merely intended to serve as a guide to facilitate their tasks.

As far as the language of the communication is concerned neither the protocol nor the rules of procedure give indication. However, a view was

expressed in the Committee that authors should be free, to write in the language of their choice.\textsuperscript{34}

\textbf{Time Limit:}

The optional protocol does not provide for a time limit for the submission of a communication.\textsuperscript{35}

At its second session, the Committee considered a proposed rule on this point. Members differed on whether imposing a time-limit was in conformity with the spirit and letter of the protocol. Some members favoured a time-limit because, in their view, the establishment of a time-limit for the admission of complaints was a generally accepted principle and practice of domestic and international law. However, the Committee took no decision and it still has its right in reserve to decide upon the time-limit.\textsuperscript{36}

This flexibility will certainly provide additional discretionary powers to the Committee.


\textsuperscript{35}The same provision has also been given in the European Convention. It states that the European Commission may only deal with the matter "after all" domestic remedies have been exhausted.

The communications, in first instance, are submitted to the Secretariat of the Committee. The Secretary General maintains a permanent register of these communications. If there are more than one communication with same matter, it merges them with each other.

The Secretariat may seek various clarifications from the author of communications. After doing all that, it prepares lists and brief summaries of the contents of these communications and circulate them to the members of the Committee at regular levels. Indeed, members may request the full text of any communication. The moment communications are transmitted to the Committee, it becomes the responsibility of the Committee to start consideration of their admissibility.


38 Ibid, Rule 80.

39 Ibid, Rule 79, para 1 and Rule 81.

40 Ibid, Rule 79, para 2.
Second Stage: Determination of Admissibility -

The first task of the Committee is to "decide as soon as possible whether or not the communication is admissible under the protocol.\textsuperscript{41} For that purpose, the Committee may establish a Working Group of five of its members.\textsuperscript{42} That Working Group meets for about one week before each session of the Committee and makes recommendations to the Committee regarding the fulfilment of necessary considerations.\textsuperscript{43} On the basis of these recommendations and related rules of procedure, the Committee ascertains -

(a) that the communications are not anonymous and that it emanates from an individual or individuals subject to the jurisdiction of a State Party to the protocol;

(b) that the individual claims to be a victim of a violation by that State Party of any of the rights set forth in the Covenant;

(c) that the communication is not abuse of the right to submit a communication under the protocol;

\textsuperscript{41} Ibid, Rule 87.

\textsuperscript{42} Ibid, Rule 89.

\textsuperscript{43} See Articles 1, 2, 3 & 5(2) of optional protocol.
(d) that the communication is not incompatible with the provisions of the Covenant;
(e) that the same matter is not being examined under another procedure of international investigation or settlement; and
(f) that the individual has exhausted all available domestic remedies.

While the first two conditions are self-explanatory the last four need some comments.

**Abuse and incompatible:**

A communication in order to be admissible under Article 3 of the protocol must neither constitute an abuse of the right of individual communication nor be incompatible with the provisions of the Covenant. Question arises here that what is the meaning of the phrases abuse of the rights of submission of such communications" and "incompatible with the provisions of the Covenant. Though there has been no example of such cases in particular of the Committee so far, it does not mean that the abuse-cum-incompatible clause should remain confused.
There must be some guidelines to determine what constitutes abuse and what amounts to incompatible. The protocol and the Rules of Procedure lay down no criteria for determining abuse or incompatibility. In the absence of any authentic criteria therefore, it is submitted that all conditions in general and the abuse-cum-incompatibility clause in particular fulfil a significant purpose. That is, to safeguard the identity and credibility of the Committee on the one hand, and to respect sovereignty and will of cooperation of States Parties on the other. The above clause is designed to check the possible flood of manifestly ill founded, malicious, mischievous and crank communications. Furthermore, in absence of a prohibition on repeated submission. The abuse incompatible clause might be invoked by the Committee to reject communications which, in substance, had already been submitted many times. Thus, the Committee would have wide discretionary power in the interpretation and application of condition relating to abuse/incompatible clause.

Recourse to other procedures:

With a view to determine the admissibility of a communication, Article 5, paragraph 2(a) of the
Optional Protocol and Rule 90, paragraph 1(a) of the Rules of procedure provide that the committee shall ascertain whether the same matter is not being examined under another procedure of international investigation or settlement.

This provision seems to rest on the principle of functional decentralisation and prevention of duplication. However, it remains to be seen, what are other procedures of international investigation or settlement? Will these procedures exclude the operation of the Committee ever, or the Committee can take action after the completion or unreasonable prolongation of these procedure? How the Committee will ascertain whether the same matter is being examined or unreasonably prolonged?

It should be noted here that the Committee has determined that the procedure set up under ECOSOC Resolution 1503 (XIVIII) does not constitute a procedure of international investigation or settlement within the meaning of article 5, paragraph 2(a), since it is concerned with the examinations of situations which appear to reveal a consistent
pattern of "gross violation" of human rights and a situation is not "the same matter" as an individual complaint.\footnote{See, Report of the Committee (1978), para 582.} It has also been decided by the Committee that Article 5, paragraph 2(a) can only relate to procedures implemented by inter-state or inter governmental agreements.

It is further to be noted here that the examination of the some matter under another procedures merely constitutes a temporary bar to the Committee's procedure unless a reservation is made to some other effect.\footnote{See, Reservation on Denmark, Iceland, Italy, Norway and Sweden, to the optional protocol (UN Doc.ST/LEG/SEK D/13) pp.121-22.} And it has been asserted by the Committee that it is not precluded from considering a communication, although the same matter has been submitted under another procedure of international investigation or settlement.

(I) If it has been withdrawn from or is no longer being examined under other procedures at the time when the Committee reaches a decision on the admissibility of the communication submitted to it.\footnote{See, Report of the Committee, 1978, para 583.}
(II) if the application of other procedure is unreasonably prolonged. 47

To ensure efficient and expeditious implementation of this provision the Committee has requested the Secretariat to engage in such exchange of information with other international bodies and their respective Secretariats as may be necessary to enable the Committee to ascertain whether the same matter as that submitted to the Committee under the protocol is being examined under another procedure of international investigation or settlement. 48

Exhaustion of Domestic Remedies:

The Committee considers that the exhaustion of domestic remedies clause should be interpreted and applied in accordance with the generally accepted principles of international law as applied in the field of human rights. If the State Party concerned disputes the contention of the author of a communication that all available details of the effective

47 See the last sentence of Article 5, para 2, of the Optional Protocol.

remedies available to the alleged victim in the particular circumstances of the case. In this connection, the Committee has considered insufficient a general description of the rights available to accused persons under the law and a general description of the domestic remedies designed to protect and safeguard those rights.\textsuperscript{49}

Despite the simplistic formulation of these conditions, it is quite evident even now that "the Committee will have to face many difficulties resulting from this provision". In taking a decision on admissibility of communication. In its course of reaching a decision on the admissibility of communication, the Committee usually requests the State Party concerned and/or the author of the communication to submit additional written information or observations.\textsuperscript{50}

In several cases, information sought from the authors, mainly on the ground and circumstances justifying their acting on behalf of the alleged victims including the author's reasons for believing that the alleged victims would approve of the author's acting

\textsuperscript{49} Report of the Committee, (1980).

\textsuperscript{50} It is to be noted here that the Committee may declare a complaint inadmissible without sending it to the State Party concerned for comments and observations. But the Committee cannot declare a communication ......
on their behalf and the author's reasons for believing that the alleged victims are unable to act on their own behalf. In one instance, the author was requested to furnish additional information concerning the identity of the victims on whose behalf the author was acting. In some other instances, the authors were requested to furnish information on the efforts made or steps taking by the alleged victims or on their behalf to exhaust domestic remedies, or to give details of the facts of unsubstantial allegations. The Committee or the working group may indicate a time-limit also for the submission of such information or observation with a view to avoiding undue delay.

As far as the question of compliance with various time limits is concerned, it is made clear by the Committee that it has no authority to depart from the time-limit of "six months" as laid down in article 4, paragraph 2, of the protocol and the admissible without having the observations and comments from the government concerned.


52 Ibid, para 151.

States Parties must comply with it. However, in practice, the Committee has exercised a reasonable degree of flexibility. It takes into account, for instance, delays in the dispatch and delivery of mail etc.\textsuperscript{54}

After collecting all the necessary information and the recommendations of its Working Group, the Committee has three options. First, to declare the communication admissible, second, to declare the communication inadmissible, third, to discontinue the consideration of the communication.\textsuperscript{55} Indeed, there are few cases where the Committee found a communication partly admissible and partly inadmissible,\textsuperscript{56} when the Committee declares a communication inadmissible, its decision is communicated to the author of the communication and, where the communication has been transmitted to a State Party concerned, to that State Party.


\textsuperscript{55}If the author of a communication fails to furnish the necessary informations to the Committee the Committee in such case, may discontinue the consideration of the communication.

\textsuperscript{56}See, Moriana family case. In this case the Committee found that the communication was inadmissible in so far as it related to the author of communication, while it was held admissible in relation to the remaining alleged victims on whose behalf the author of communication was acting. See Report of the Committee, (1979) Annex VII, p. 126.
However, that decision of inadmissibility may be reviewed at a later date by the Committee upon request by or on behalf of the individual concerned.\textsuperscript{57} 

If a communication is declared admissible, the next stage of the Committee's procedure is to start consideration of the communication on its merits.

**Third Stage: Consideration of Merits:**

After a decision on admissibility of communication, the Committee transmits that decision and the text of the relevant documents to the State Party concerned. The author of the communication is also informed of the decision of the Committee.\textsuperscript{58} Then the State Party concerned gets a period of six months to submit to the Committee written explanations or statements clarifying the matter under consideration and the remedy, if any, that may have been taken by that State.

Any explanation or statement submitted by State Party are communicated to the author of the communication, who may submit any additional written

\textsuperscript{57} Rule 92, para 2, of the Rules of Procedure of the Committee.

\textsuperscript{58} Ibid, Rule 93(C).
information or observations within such time-limit as the Committee decides. There is no indication in the protocol that an individual may himself plead before the Committee. Thus, there is no practice of oral hearings. Thus, it is indicative of an important difference between the procedures of the Human Rights Committee initiated by individual communications and the procedure in inter-state matters, where the right of the State to make oral and/or written submission expressly provided for. Thenceforth, the Committee starts consideration of a communication in the light of the all written information made available to it by the individual and by the State Party concerned. Even those members of the Committee who are nationals of States which have not become parties to the optional protocol are entitled to participate in consideration of individual communication. But a member is not entitled to take part in the examination of a communication, if he has any personal interest in the case, or if he has participated in any capacity in the making of any decision on the case covered by the communication.60

59 Ibid, 94(C)

60 Ibid, Rule 84, para 1.
Proceedings are conducted in close meetings. It is the view of members of the Committee that although the principle of confidentiality should govern their deliberations when dealing with communications, a minimum of information should be made available in the report of the Committee without divulging the contents of the communications, the nature of the allegations, the identity of the author and the name of the State Party against which the allegations were made. It was felt that the general public had a legitimate interest in knowing the main trends in the approach of the Committee in its consideration of communication.\textsuperscript{61} After these deliberations, the next step for the Committee is to formulate its views on the matter. For that purpose the Committee refers to the working group of not more than five of its members to make recommendations to the Committee. On the basis of these recommendations the Committee formulates its views. These views of the Committee, which are normally formulated through consensus are communicated to the author of the communication and to the State Party concerned. In its views the Committee expresses its power in a

broad way. In connection of a number of cases the Committee has dealt so far it has pronounced not only on the violation of the provisions of the Covenant but it has also suggested some remedial measures to be taken by the State Party concerned.

Thus with the transmission of the suggestion and views expressed by the Committee, on the related matter, to the State Party concerned the proceedings of the Individual Petition System get end.