

1 Overview of HRC

Overview of UN Human Rights Committee

As of October 2001, 148 states are parties to the ICCPR. Of these, 98 are also party to the First Optional Protocol. The USA is party to the ICCPR but not to the First Optional Protocol. The Committee has found violations in 282 cases under the Optional Protocol since 1977.

A. POWERS, FUNCTIONS AND PERFORMANCE OF THE ICCPR COMMITTEE

1. INTRODUCTION

COMMENT ON THE FORMAL ORGANIZATION OF THE ICCPR COMMITTEE

Please read the provisions bearing on the organization and functions of the ICCPR Committee, set forth in Articles 28-45 of the Covenant and in its First Optional Protocol. The following discussion incorporates some of those provisions.

Note the three dominant functions of the Committee: (1) Article 40 requires states parties to 'submit reports' on measures taken to 'give effect' to the undertakings of the Covenant and 'on the progress made' in the enjoyment of rights declared by the Covenant. The reports are transmitted to the Committee 'for consideration'. The Committee is to 'study' them. (2) The same article instructs the Committee to transmit 'such general comments as it may consider appropriate' to these states parties. (3) The Optional Protocol to the Covenant – a distinct agreement requiring separate ratification – authorizes the Committee to receive and consider 'communications' from individuals claiming to be victims of violations by states parties of the Covenant, and to forward its 'views' about communications to the relevant individuals and states. The materials in this chapter consider each of these activities.

Articles 28-31 of the Covenant provide the crucial information about the Committee's membership. The 18 members are to have 'high moral character and recognized competence in the field of human rights'. Consideration is to be given to the utility of including 'some persons having legal experience'. In fact, all members of the Committee have had such experience in some capacity: private practice, the academy, public interest work, diplomacy, judicial offices, or government. Note the characteristic provisions of Article 31(2) that consideration in elections 'shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.' As of October 2001, the 18 Committee members came from Argentina, Australia, Benin, Canada, Chile, Colombia, Egypt, Finland, France, Germany, India, Israel, Japan, Malta, Mauritius, Tunisia, the United Kingdom, and the United States.

Under Article 28(3), all members are to be 'elected and shall serve in their personal capacity'. The UN term for such members is 'experts,' as opposed to the 'representatives' of states who sit on the UN Commission on Human Rights. If one links the reference to 'personal capacity' with references in the preceding paragraph to 'high moral character' and 'recognized competence' of members with an emphasis on their

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legal experience, the compelling inference is that Committee members are to act independently of the governments of their states, not under orders of their government – as does, for example, a state’s representative (often with a rank of ambassador) on the UN Commission. This feature of independence of members characterizes each of the six treaty organs.

Generally, this aspiration appears to have been realized, but in many contexts, ‘independence’ in the sense identified has been a relative rather than absolute concept. Consider members who are nationals of (and originally nominated for election by) states of an authoritarian character directed, say, by a single party, a military clique, or a personal dictator. Moreover, since membership on the Committee is a part-time business, a minority of members have continued to hold government (diplomatic and other) posts, again qualifying the degree of possible independence from their governments’ positions on given issues.

The Committee meets for three sessions annually, each three weeks long, at UN headquarters in Geneva (twice) and New York. There is some intersessional work by individual members or by working groups, which may meet for one week prior to the start of each session. Since emoluments (\$3,000 per year plus living expenses) paid by the UN are low and the work is part-time, members hold ‘regular’ jobs, closer to full time, and must fit the Committee’s work into already busy schedules. Most meetings (the dominant exceptions being meetings considering ‘communications’ under the Optional Protocol or considering drafts of General Comments) are public, though generally poorly attended by outsiders and gathering little press coverage. Often representatives of international NGOs or national NGOs of the country at issue in e.g. a state report will attend. The ICCPR Committee has never enjoyed or indeed sought the publicity and notoriety of the UN Human Rights Commission.

Decisions of the Committee should formally be by majority vote pursuant to Article 39(2). In fact, all decisions to date have been taken by consensus, although as a formal matter any member could demand a vote on any issue.