

# Oxford International Organizations

**Part IV of the International Covenant on Civil and Political Rights, 16th December 1966 (UN Doc A/6316, 999 UNTS 171), OXIO 21**

United Nations General Assembly [UNGA]; United Nations Human Rights Committee [UNHRC]

**Content type:** Notes, Multilateral treaties  
**Article last updated:** 02 July 2016

**Product:** Oxford International Organizations [OXIO]

**Subject(s):**

Civil and political rights — Human rights remedies — United Nations Human Rights Committee (HRC)

---

## Core Issues

1. Monitoring compliance with human rights obligations.
2. The non-binding character of the Human Rights Committee reports and general comments.

This headnote pertains to: Part IV of the International Covenant on Civil and Political Rights, a treaty which is the constituent instrument of an international organization. [Jump to full text](#)

## Background

This note concerns Part IV of the International Covenant on Civil and Political Rights ('Part IV') (1966), opened for signature by the United Nations (UN) General Assembly (GA) on 16 December 1966 and entered into force on 23 March 1976. Part IV constituted the Human Rights Committee (HRC). The creation of the HRC was important in a number of ways. Firstly the HRC represented an innovative model to ensure the fulfilment of non-reciprocal treaty obligations. Secondly, the success of the HRC meant that it was used as a prototype for a wide range of treaty compliance monitoring bodies.

The GA had stressed as early as 1950 the importance of the Draft International Covenant on Human Rights—at that time only one covenant had been envisaged—including measures guaranteeing its implementation. At its 178th meeting in 1950, the Commission on Human Rights approved, by seven votes to six, the inclusion of a permanent body to consider violations of human rights within the framework of the convention. However, states disagreed on the composition and functions of the body; some delegations stressed the dangers of a system of state-to-state complaints, others argued that the jurisdiction of the HRC should have been restricted to the field of civil and political rights. The name HRC was kept for the committee established by the International Covenant on Civil and Political Rights ('ICCPR') after the decision to have two different treaties rather than a common legal instrument on human rights (see United Nations General Assembly Resolution 543 (VI) Preparation of two Drafts International Covenants on Human Rights).

The mandate of the HRC included three main functions: examination of reports submitted by States Parties; assessment of inter-state complaints; and adoption of general comments. The HRC was also granted the competence to examine individual complaints under the Optional Protocol to the International Covenant on Civil and Political Rights ('Optional Protocol') (1966).

## Summary

Part IV—Articles 28–42 of the ICCPR—regulated the composition and the functions of the HRC. The body was to be composed of eighteen independent members who must be nationals of States Parties to the ICCPR. [Art 28] The members of the HRC were to be persons of high moral character and recognized competence in the field of human rights. [Art 28(2)] The experts were to be elected by secret ballot from a list of persons, who are previously nominated by the States Parties to the ICCPR. The voting procedure was outlined as follows: elections shall be held at a meeting of the States Parties convened by the Secretary-General of the UN at the UN headquarters; the quorum is achieved when two-thirds of the States Parties to the ICCPR attend the meeting; the nominees elected are those obtaining the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting. [Art 30(4)] Attention was paid to the equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems. [Art 31]

The mandate lasts four years, at the end of which members could be re-elected upon re-nomination. [Art 32] Part IV also regulated cases of death, resignation, and, more generally, any event which renders performance impossible. [Art 33] Article 34 of the ICCPR regulated the

procedure for filling vacancies with the intervention of the UN Secretary-General. The members of the HRC received emoluments from UN resources, whereas the staff and facilities required for effective performance are provided by the Secretary-General. [Arts 35-36]

According to Article 40 of the ICCPR, States Parties were required to submit reports on the measures they have adopted in order to implement the rights enshrined in the ICCPR and the progress made within one year of the entry into force of the ICCPR for the parties concerned, and whenever the HRC so requests. The HRC analyses the reports submitted and makes general comments (concluding observations) as it may consider appropriate to the States Parties. [Art 40]

The HRC was moreover competent to receive and consider communications presented by one State Party against another State Party that was not considered to be in compliance with the obligations stemming from the ICCPR, provided that the author of the claim has declared the competence of the HRC in that respect under Article 41 of the ICCPR. [Art 41] The procedure was aimed at reaching an amicable solution. If this proved impossible the HRC was able to appoint an ad hoc Conciliation Commission. [Art 42] This mechanism, however, has never been used.

Article 43 of the ICCPR provided the guarantees in terms of privileges and immunities to the members of the HRC so that they could work without interference. [Art 43]

## **Analysis**

As anticipated, the quest for implementation with treaty obligations was high priority as early as 1950. Focusing on two of the functions of the HRC, namely the elaboration of concluding observations on states' reports and the adoption of general comments, it should be acknowledged that in both cases the outcome is a non-binding act.

Concluding observations generally use conditional tenses and a diplomatic language. According to a report presented in 2012 by the High Commissioner for Human Rights, there is still a persistent high level of non-compliance with reporting obligations, which leads to a differential treatment among states. Indeed, it is clear that states that comply with reporting obligations will be reviewed more frequently by the concerned treaty body. Furthermore, in many cases reports are poor and therefore not helpful in defining the situation in a specific country. The HRC initiated a process of follow-up to concluding observations in 2001.

General comments are aimed at interpreting the provisions of the ICCPR and at defining legal obligations for States Parties. At the time of writing, the HRC has adopted thirty-five general comments; the general comment on the right to life is currently under discussion.

## **Impact**

Concluding observations, despite being non-binding, 'name and shame' countries that have not correctly complied with the provisions of the ICCPR. This form of 'international scrutiny' has proved to be effective in inducing states to adopt new laws or to change their internal policies. There are still many challenges, among which the need to improve states' reports and to provide reliable follow-up checks.

The major success of the HRC concerns the adoption of general comments, which are considered to be points of reference not only for the activity of other treaty-based bodies but also for the development of the jurisprudence of regional human rights courts.

## **Further Analysis and Relevant Materials**

## Leading Comments

N Bernaz 'Continuing Evolution of the UN Treaty Bodies System' in N Rodley and S Sheeran (eds), *The Routledge Handbook of International Human Rights Law* (Routledge 2013) 707–724

O de Schutter *International Human Rights Law* (2nd edn Cambridge University Press 2014)

N S Rodley 'The Role and Impact of Treaty Bodies' in D Shelton (ed), *The Oxford Handbook of International Human Rights Law* (Oxford University Press 2013) 621

D Shelton 'The Legal Status of Normative Pronouncements of Human Rights Treaty Bodies' in H P Hestermeyer et al (eds), *Coexistence, Cooperation and Solidarity* (Martinus Nijhoff 2012) 553

## Materials Cited

### United Nations (UN)

International Covenant on Economic, Social and Cultural Rights (signed 16 December 1966, entered into force 3 January 1976) 993 UNTS 3

Optional Protocol to the International Covenant on Civil and Political Rights (signed 16 December 1966, entered into force 23 March 1976) 999 UNTS 302

United Nations General Assembly Resolution 543 (VI) Preparation of two Drafts International Covenants on Human Rights (5 February 1952) UN Doc A/RES/543(VI)

Draft International Covenant on Human Rights (1951) UN Doc E/1992, Annex I

## Materials Cited

### United Nations (UN)

Universal Declaration of Human Rights (10 December 1948) UN Doc A/RES/217(III) A

Reporter(s): Sara De Vido

## Source text

Original Source PDF

## Part IV

### Article 28

1. There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.

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

3. The members of the Committee shall be elected and shall serve in their personal capacity.

### Article 29

1. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in article 28 and nominated for the purpose by the States Parties to the present Covenant.
2. Each State Party to the present Covenant may nominate not more than two persons. These persons shall be nationals of the nominating State.
3. A person shall be eligible for renomination.

## **Article 30**

1. The initial election shall be held no later than six months after the date of the entry into force of the present Covenant.
2. At least four months before the date of each election to the Committee, other than an election to fill a vacancy declared in accordance with article 34, the Secretary-General of the United Nations shall address a written invitation to the States Parties to the present Covenant to submit their nominations for membership of the Committee within three months.
3. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties to the present Covenant no later than one month before the date of each election.
4. Elections of the members of the Committee shall be held at a meeting of the States Parties to the present Covenant convened by the Secretary General of the United Nations at the Headquarters of the United Nations. At that meeting, for which two thirds of the States Parties to the present Covenant shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

## **Article 31**

1. The Committee may not include more than one national of the same State.
2. In the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.

## **Article 32**

1. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these nine members shall be chosen by lot by the Chairman of the meeting referred to in article 30, paragraph 4. 2. Elections at the expiry of office shall be held in accordance with the preceding articles of this part of the present Covenant.

## **Article 33**

1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of that member to be vacant.

2. In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the United Nations, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

### **Article 34**

1. When a vacancy is declared in accordance with article 33 and if the term of office of the member to be replaced does not expire within six months of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the States Parties to the present Covenant, which may within two months submit nominations in accordance with article 29 for the purpose of filling the vacancy.

2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Covenant. The election to fill the vacancy shall then take place in accordance with the relevant provisions of this part of the present Covenant.

3. A member of the Committee elected to fill a vacancy declared in accordance with article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

### **Article 35**

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

### **Article 36**

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant.

### **Article 37**

1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.

2. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

3. The Committee shall normally meet at the Headquarters of the United Nations or at the United Nations Office at Geneva.

### **Article 38**

Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.

### **Article 39**

1. The Committee shall elect its officers for a term of two years. They may be re-elected.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, inter alia, that:

- (a) Twelve members shall constitute a quorum;
- (b) Decisions of the Committee shall be made by a majority vote of the members present.

## **Article 40**

**1.** The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights:

- (a) Within one year of the entry into force of the present Covenant for the States Parties concerned;
- (b) Thereafter whenever the Committee so requests.

**2.** All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.

**3.** The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.

**4.** The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.

**5.** The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this article.

## **Article 41**

**1.** A State Party to the present Covenant may at any time declare under this article that it recognizes 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 recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

- (a) If a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication 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;
- (b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(c) The Committee shall 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 recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged;

(d) The Committee shall hold closed meetings when examining communications under this article;

(e) Subject to the provisions of subparagraph (c), the Committee shall 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;

(f) In any matter referred to it, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;

(g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing;

(h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:

(i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

(ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. In every matter, the report shall be communicated to the States Parties concerned.

**2.** The provisions of this article shall come into force when ten States Parties to the present Covenant have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

## **Article 42**

### **1.**

(a) If 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 (hereinafter referred to as the Commission). The good offices of the 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;

(b) The Commission shall consist of five persons acceptable to the 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-thirds majority vote of the Committee from among its members.

- 2.** The members of the Commission shall serve in their personal capacity. 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 41.
- 3.** The Commission shall elect its own Chairman and adopt its own rules of procedure.
- 4.** The meetings of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. However, they 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.
- 5.** The secretariat provided in accordance with article 36 shall also service the commissions appointed under this article.
- 6.** The information received and collated by the Committee shall be made available to the Commission and the Commission may call upon the States Parties concerned to supply any other relevant information.
- 7.** When the 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:
  - (a) If the Commission is unable to complete its consideration of the matter within twelve months, it shall confine its report to a brief statement of the status of its consideration of the matter;
  - (b) If an amicable solution to the matter on tie basis of respect for human rights as recognized in the present Covenant is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached;
  - (c) If a solution within the terms of subparagraph (b) is not reached, the 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. This report shall also contain the written submissions and a record of the oral submissions made by the States Parties concerned;
  - (d) If the Commission's report is submitted under subparagraph (c), the States Parties concerned shall, within three months of the receipt of the report, notify the Chairman of the Committee whether or not they accept the contents of the report of the Commission.
- 8.** The provisions of this article are without prejudice to the responsibilities of the Committee under article 41.
- 9.** The States Parties concerned shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.
- 10.** The Secretary-General of the United Nations shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States Parties concerned, in accordance with paragraph 9 of this article.

## **Article 43**

The members of the Committee, and of the ad hoc conciliation commissions which may be

appointed under article 42, shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

#### **Article 44**

The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the States Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

#### **Article 45**

The Committee shall submit to the General Assembly of the United Nations, through the Economic and Social Council, an annual report on its activities.