**Geopolitics and Culture in the United Nations Human Rights Committee**[[1]](#footnote-1)\*

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*The United Nations Human Rights Committee, the monitoring treaty body of the International Covenant on Civil and Political Rights, is the closest international tribunal to a world court of human rights. This article seeks to explore if geopolitical and cultural considerations influence the votes of Committee Members in decisions on individual communications. This article introduces an original dataset on the votes and backgrounds of Committee Members, hand coded by the author. The method used in the article is empirical-quantitative analyses of the Committee Members’ votes. The article finds that certain geographical and political voting patterns do exist in votes of Committee Members. Evidence for cultural voting patterns is more limited. However, the article finds that usually voting patterns of individual Committee Members do not influence the final decision of the Committee, and the decisions of the Committee should be generally regarded as unbiased.*

 The international judge is under a constant loyalty conflict. On the one hand, as a judge he is expected to be objective and purely implement the law. On the other hand, international judges are many times nominated by interest groups that expect the judge to represent and protect their interests on the tribunal. Although many studies have been conducted on the politics of international law and international institutions, a surprisingly small amount of them have examined the behavior of international judges. Studying international judicial behavior is of special interest and importance, since in the last fifty years there has been a sharp increase in the number of international courts.[[2]](#footnote-2) However, the answer to the question of how impartial those courts are does not have a clear answer.

Among the international judicial institutions, the United Nations Human Rights Committee (“HRC”) is of special interest for researchers, since it is the closest international institution to a world court of human rights. Moreover, human rights are traditionally seen as fundamental and universal, but at the same time the broad definition of human rights in the International Covenant on Civil and Political Rights leaves much room for interpretation. Therefore, critics claim that interpretation of human rights cannot be objective, and that those entrusted with the interpretation are very prone to geopolitical and cultural influences.

 This article explores if, and to what extent, are Committee Members of the HRC (“CMs”) voting according to geopolitical and cultural patterns. In order to answer this question, the author has created an original dataset of the votes of CMs in decisions on individual communication filed to the HRC. The dataset also contains variables regarding the geopolitics and cultural characteristics of the countries against which the communications were filed and the countries from which the CMs came. The main hypothesis of the article is that CMs tend to vote in favor of countries that are close geopolitically and culturally to their country of origin.

A quantitative-empirical analysis finds evidence that certain geopolitical voting patterns exist in the votes of CMs. Evidence for cultural voting patterns is more limited. However, the article suggests that the impact of these voting patterns is not very significant in most cases, and that the decisions of the HRC as a whole are not biased. These findings contribute to our understanding of human rights, international courts and judicial behavior.

The article proceeds as follows. Part I of the article gives a general introduction to the ICCPR and the procedures of work in the HRC in light of possible geopolitical and cultural influences. Part II identifies relevant voting patterns that were found in studies on judicial behavior in international tribunals and the United Nations (“UN”) human rights system. Parts III and IV, the main parts of the article, perform the empirical analysis of the votes of individual CMs. Part V discusses what inferences could be drawn from the results presented.

I. The United Nations Human Rights Committee

1. *The Human Rights Committee and the First Optional Protocol – General Background*

 The International Covenant on Civil and Political Rights (“ICCPR”)[[3]](#footnote-3) codifies the civil and political rights recognized in the Universal Declaration of Human Rights.[[4]](#footnote-4) The ICCPR guarantees a very wide range of the most basic rights to people from all over the world. For example, the ICCPR recognizes rights as the right to life,[[5]](#footnote-5) the right not to be subject to torture or inhumane and degrading treatment,[[6]](#footnote-6) and the right for due process before the courts.[[7]](#footnote-7) The ICCPR was opened for signature on December 16, 1966 and came into force on March 23, 1976. Currently, 168 countries are members to the ICCPR,[[8]](#footnote-8) making it the most widely accepted legally obligating document granting civil and political rights.

 Geopolitical and cultural debates have been part of the United Nations human rights system, and specifically part of the ICCPR, from the beginning. The drafting of the ICCPR was a long process, giving rise to complex political negotiations.[[9]](#footnote-9) However, as expected, even when the text of the ICCPR was finally adopted, the geopolitical and cultural debates did not cease to accompany it. Currently, the debate focuses on the interpretation of the ICCPR, and it usually has two aspects. The first aspect is the contents of the rights themselves – for example, does the right to equality before the law include the right to same sex marriage?[[10]](#footnote-10) Or does the right to life include the right not to be returned to a country where one can be sentenced to death?[[11]](#footnote-11) The second debate focuses on the prioritization and balance of human rights – for example, what prevails, foreign state immunity or a person’s right to effective remedy?[[12]](#footnote-12) Or, to what extent are countries allowed to limit an individual’s freedom of expression in order to protect public order or morals?[[13]](#footnote-13)

During the Cold War, the debate in the human rights world focused mainly on the prioritization of the civil and political rights over economic and cultural rights.[[14]](#footnote-14) However, since the Cold War ended, the main debate is between Western and non-Western (or “North and South”) countries.[[15]](#footnote-15) The non-Western countries claim that the values protected by the ICCPR are too Western oriented and that the interpretation of those rights should be more accommodating to non-Western cultures and practices.[[16]](#footnote-16) An evidence for a somewhat different perception of human rights could be also derived from the existence of regional human rights treaties (mainly the European Convention on Human Rights, the American Convention on Human Rights and the African Charter on Human and People’s Rights). Whereas the rights protected by those treaties are, by large, similar to the rights in the ICCPR and inspired by the Universal Declaration on Human Rights, certain differences do exist. Those differences are many times attributed to the specific regional culture.[[17]](#footnote-17)

Following the political and cultural complexities in the field of human rights, one of the most important questions that stood before the eyes of the drafters of the ICCPR was the question of effective implementation of the treaty.[[18]](#footnote-18) Therefore, the United Nations Human Rights Committee was established under Part IV of the ICCPR. The HRC consists of 18 Committee Members (“CMs”) elected by states which are members to the ICCPR.[[19]](#footnote-19) The CMs serve for a term of four years, and are eligible for reelection.[[20]](#footnote-20) Unlike the more high profile and political Human Rights Council (or its predecessor the Human Rights Commission), the HRC is supposed to be a professional body of impartial experts. Therefore, the ICCPR states that CMs serve in their personal capacity[[21]](#footnote-21) – meaning, that they should not represent the state that nominated them.

 Since the HRC is entrusted with supervising the implementation of the ICCPR within the member states, it has three main roles.[[22]](#footnote-22) The first role is to review periodical reports of states regarding the measures which they have adopted to give effect to the rights recognized in the ICCPR, as well as on the progress made in the enjoyment of those rights.[[23]](#footnote-23) The second role of the HRC is to publish general comments on the ICCPR – providing general guidance to the state parties on their obligations under the ICCPR.[[24]](#footnote-24) The third main role of the HRC, which is also the focus of this article, is to adopt decisions (that are also called “views”) on individual communications.[[25]](#footnote-25)

 The right of an individual to file a communication for a violation of a right guaranteed to him by the ICCPR is found in Article 1 of the First Optional Protocol to the ICCPR (“OP”). Although the OP is considered a separate treaty, only states which are parties the ICCPR are allowed to join it.[[26]](#footnote-26) Currently, out of the 168 states parties to the ICCPR, 115 are parties to the OP.[[27]](#footnote-27) Therefore, the jurisdiction of the HRC under the OP is not as universal as it is under the ICCPR. For instance, 3 of the 5 permanent members of the United Nations Security Council are not members to the OP.[[28]](#footnote-28) Also, certain influential countries in Asia such as India, and most of the Middle-Eastern countries (such as Israel, Egypt, Jordan, Syria and Lebanon) are not parties to the OP either. Despite that, the individual complaint procedure is one of the most familiar human rights implementation techniques developed by the United Nations.[[29]](#footnote-29)

 The procedure of decision-making and voting on the individual communications has slightly changed and evolved over the years. Currently, the procedure works as follows. The individual communications begins with the individual complainant submitting a communication to the HRC.[[30]](#footnote-30) The two preliminary requirements for a communication to be considered by the HRC are as follows. First, the complainant should have been under the jurisdiction of a state member to the OP at the time of the alleged violation.[[31]](#footnote-31) Second, the complainant should claim a violation of a right guaranteed by the ICCPR.[[32]](#footnote-32) The communication is first sent to the office of the High Commissioner for Human Rights (“OHCHR”) which insures that some minimum standards are met.[[33]](#footnote-33) After the initial screening, the communication is sent to the HRC Special Rapporteur on New Communications.[[34]](#footnote-34) The Special Rapporteur ensures that the communication contains all the necessary information and officially registers the complaint. After the registration of the communication, the state party is usually asked to make submissions both on the admissibility and on the merits of the communication.[[35]](#footnote-35)

 Following the registration of a new communication, a special rapporteur is assigned for each communication.[[36]](#footnote-36) The identity of the specific rapporteur is not known to the public.[[37]](#footnote-37) Sometimes the special rapporteur is appointed because he is familiar with the language in which the documents of the communication are written. The special rapporteur, with the assistance of the OHCHR, prepares initial recommendations and eventually a draft resolution for the HRC. Prior to the discussion in the HRC, the draft is also reviewed by a working group consisting of several CMs.[[38]](#footnote-38) The decision of the HRC on a certain communication can be one of four: inadmissible, admissible (in the rare cases that admissibility is decided separately from the merits), no violation or violation.

Since the procedure of individual communications is judicial by nature, it is the only procedure in the HRC in which CMs are allowed to add their own individual opinions.[[39]](#footnote-39)As in most judicial proceedings, the individual opinion can be either dissenting or concurring. Interestingly, neither the ICCPR nor the OP mention the possibility of individual opinions. Adding individual opinions to cases was under debate between the members of the HRC in its first sessions, and eventually the first individual opinion was written in 1979[[40]](#footnote-40) (two years after the first decision on an individual communication was issued in 1977). In the first years of the HRC, CMs were cautious with writing individual opinions and strong preference was given to decisions by consensus. This led to decisions that were described by many, including CMs, as vague and lacking sufficient legal reasoning. [[41]](#footnote-41)

However, since 1997 about 25 percent of the decisions have included at least one individual opinion, and the number rises to 35 percent when looking only on decisions on the merits. Since in the individual communications procedure the HRC is not required to speak in one voice, each CM is more accountable to the world outside the closed session of the HRC as to how he voted. Therefore, it opens us a window into the diversity and versatility of opinions among the members of the HRC, and allows us to track possible geopolitical and cultural patterns in the votes of CMs.[[42]](#footnote-42) The following two decisions can demonstrate how different geopolitical and cultural backgrounds may be seen as influencing the votes of CMs.

 The main question in *Sayadi and Vinck v. Belgium*,[[43]](#footnote-43) was the obligation of Belgium to obey the anti-terrorist sanctions that were imposed by the UN Security Council on individuals and organizations that were suspected in being associated with terrorism. The authors claimed that by implementing the UN Security Council sanctions Belgium violated their rights under the ICCPR.[[44]](#footnote-44) Belgium, on the other hand, argued that its obligation under international law to implement Security Council Resolutions prevailed over its obligations in the ICCPR,[[45]](#footnote-45) and that the HRC had no jurisdiction under the OP to review the communication.[[46]](#footnote-46) The majority of the HRC found both that the Committee had jurisdiction to decide the communication, and that Belgium had violated the ICCPR. However, not all the CMs agreed with the decision, and six CMs dissented on the question of admissibility. The CMs who dissented were Nigel Rodley (United Kingdom), Ivan Shearer (Australia), Iulia Motoc (Romania), Walter Kalin (Switzerland), Yuji Iwasawa (Japan) and Ruth Wedgwood (United States). Five of those six CMs were nationals of Western countries, and two of the CMs were also nationals of countries that are permanent members of the UN Security Council.[[47]](#footnote-47)

 Another case that may demonstrate the existence of a cultural voting pattern is the case of *X v. Colombia*.[[48]](#footnote-48) In this case Colombia refused to grant X pension rights that were granted to heterosexual couples, because he was cohabiting with a same sex partner. X claimed that his rights under the ICCPR were violated, and the HRC indeed decided that Colombia violated the complainant’s right for equality before the law (Article 26).[[49]](#footnote-49) In this case two CMs from more conservative Muslim countries dissented – these were Abdelfattah Amor (Tunisia) and Ahmed Tawfik Khalil (Egypt). The dissenting CMs argued that Colombia did not violate its obligations under the ICCPR since Article 26 does not include discrimination on grounds of sexual orientation. Additionally, they argued that international law does not recognize any human rights regarding sexual orientation. Furthermore, the dissenting CMs pointed out that Article 26 should be read in this case in the light of Article 23 which states that “family is the natural and fundamental group unit of society,” and recognizes right for marriage only between a man and a woman. Finally, they also warn the HRC from engaging in too far reaching interpretation of the rights guaranteed by the ICCPR. [[50]](#footnote-50)

 The cases brought above suggest that certain voting patterns might indeed exist, and that there are grounds to believe that they have geopolitical and cultural roots.

1. *Committee Members and the Process of their Election to the HRC*

As mentioned above, the HRC is composed of 18 members.[[51]](#footnote-51) The CMs have to be nationals of a country party to the ICCPR,[[52]](#footnote-52) and the Committee may not include more than one national of the same country.[[53]](#footnote-53) However, the country nominating the CM is not required to be a party to the OP. In order to promote the impartiality and independence of the HRC, the ICCPR also states that the CMs should be of high moral character, with recognized competence in the field of human rights (consideration being given to the usefulness of the participation of some persons having legal experience), and most importantly - the ICCPR expressly states that the CMs serve in their personal capacity and therefore should not represent the interests of their states of nationality.[[54]](#footnote-54) However, as shall be demonstrated, the national and regional background of the nominee matter very much in the process of the elections.

Article 31 of the ICCPR states that “[i]n 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.” Therefore, although the criteria mentioned previously try to be objective and universal, the ICCPR itself implicitly assumes that different geopolitical and cultural interests exit, and that the nominated CMs should represent those interests. This could also imply that even during the process of drafting the ICCPR it was understood that the concept of human rights may not be entirely universal and that regional differences are legitimate. Finally, this provision also attempts to prevent the domination of the HRC by one social system and add international legitimacy to the decisions of the HRC.[[55]](#footnote-55)

The CMs have to be nominated by their own country of nationality,[[56]](#footnote-56) and the way that each state party nominates its candidates is a matter of internal affairs.[[57]](#footnote-57) In practice, the proximity of the nominee to the government often plays an important role in the decision to nominate him.[[58]](#footnote-58) Therefore, although it is expected that no country shall nominate a person who is not in a position to act independently because of national or international commitments, in practice not many state parties fulfill this expectation.[[59]](#footnote-59) It is also important to notice that a CM can be reelected indefinitely. For instance, the longest serving CM was Rajsoomer Lallah, national of Mauritius, who served on the HRC for 34 years. Following this, CMs are constantly under the concern of being renominated and reelected. [[60]](#footnote-60) Furthermore, due to the fact that at a given time only a small fraction of countries have their nationals on the Committee, countries are expected to be interested in promoting candidates from countries with similar interests to their own, even if they are not their own nationals.

The ICCPR establishes a rule according to which 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.[[61]](#footnote-61) However, the political process accompanying this rule is more complex, and vote trading between and within UN regional groups for nominating experts to different UN bodies is very common.[[62]](#footnote-62) The United Nations has five regional voting groups – African, Asian-Pacific (“Asian”), Eastern European, Latin American and Caribbean (“GRULAC” or “Latin”), and Western European and Others (“WEOG” or “Western”).[[63]](#footnote-63) Every regional group tries to lobby for its candidates to be elected to as many United Nations bodies as possible, including the HRC.[[64]](#footnote-64) Therefore, the elected candidates are many times those which were promoted by the regional group itself. Although the voting itself is secret, countries usually vote for candidates from their regional groups. As of 2014, the distribution is as follows: African (5), Asian (1), Eastern European (2), Latin (3) and Western (7).[[65]](#footnote-65)

It should be also noted, that like in the elections process of many other international courts under the auspices of the United Nations,[[66]](#footnote-66) CMs often run campaigns in order to be elected (or reelected) to the HRC. During these campaigns the CMs meet with representatives of different countries and try to convince them to support their candidacy. Some international judges pointed out that the process of campaigning might harm, to a certain degree, the impartiality of judges.[[67]](#footnote-67) Therefore, it is evident that geography, politics and culture are a significant part of the election process.

1. *Measures Undertaken by the HRC to Increase the Independence of CMs*

The HRC itself acknowledged the possibility of a bias and introduced relevant provisions into its Rules of Procedure to ensure that the CMs indeed serve in their personal capacity. First and foremost, according to rule 90(1), a CM is not allowed to take part in the examination of a communication if the state on behalf of which he was elected is a party to it. Additionally, according to rules 90(1)(b) and (c), a CM may not take part in the examination of a communication if he has a personal interest in the case, or if the member has participated in any capacity in the making of any decision on the case covered by the communication.

 Also, in 1985 the HRC decided to introduce additional internal guidelines (the “guidelines”) to regulate the independence of its members. These guidelines state that “[t]he independence of members of the committee is essential,” and point out that it is important that a CM shall not be removable during his terms of office, and not subject to external pressures.[[68]](#footnote-68) Furthermore, the guidelines state that the CMs should “maintain the highest standards of impartiality and integrity” and apply the standards of the ICCPR equally.[[69]](#footnote-69) Finally, the guidelines state that the impartiality of CMs should not be affected by their connections to governments, and that CMs should abstain from taking part in activities that might not reconcile with the requirement of serving as impartial experts.[[70]](#footnote-70)

 Despite the rules dictated by the Rules of Procedure and by the Guidelines, the question of impartiality of the CMs (as well as members of other treaty bodies) was a constant concern.[[71]](#footnote-71) The High Commissioner of Human Rights in her report on the Strengthening of the United Nations Human Rights Treaty Body System recommended the treaty bodies to draft clear and up-to-date rules regarding impartiality of CMs.[[72]](#footnote-72) Also, since the process of the appointment was seen as posing a special risk to the impartiality of CMs, the High Commissioner recommended countries to adopt open and transparent policies with respect to the nomination of experts as candidates. She also encouraged countries not to nominate experts while they hold a position in the government, or any other position that might expose them to pressures and conflicts. Finally, the High Commissioner also recommended limiting the number of times that a CM could be reelected to his office. [[73]](#footnote-73)

 After a process of consultation in various forums, in 2012 the chairpersons of the UN Committees met at Addis Ababa and drafted together a document of Guidelines on the Independence and Impartiality of Members of the Human Rights Treaty Bodies. This document is commonly referred to as the “Addis Ababa Guidelines.”[[74]](#footnote-74) According to the Addis Ababa guidelines, “[t]reaty body members shall not only be independent and impartial, but shall also be seen by a reasonable observer to be so.”[[75]](#footnote-75) The Addis Ababa guidelines further state that a CM might have a conflict of interest if his country of nationality has an interest in the case (even if it is not a side to the specific communication).[[76]](#footnote-76) Finally, the Addis Ababa guidelines point out that CMs may not be influenced or receive directions from anyone,[[77]](#footnote-77)and that CMs should avoid functions and activities that might be incompatible with their impartiality.[[78]](#footnote-78)

 Even though over the years there was an attempt to crystallize the obligations of CMs to be impartial, it is still unclear how much CMs actually adhere to these guidelines. Also, in reality it is both impractical and undesired to limit the CM from voting in each and every possible case in which his country of nationality or region might have an interest. Therefore, one must acknowledge that whereas certain biases should be avoided, perfect impartiality cannot be achieved.

1. Voting Patterns in International Courts and the UN Human Rights System

The HRC is both a quasi-judicial body and a part of the larger UN human rights system. Therefore, it is expected to be prone to similar voting patterns as those observed in these two types of institutions. This part shall explore the literature on geopolitics and culture in international judicial tribunals and the UN human rights system, and identify patterns that might be relevant to the HRC.

1. *Voting Patterns in International Courts*

Judicial independence allows judges to develop legal opinions without being constrained by other actors.[[79]](#footnote-79) There is a very wide literature on judicial decision making in national courts, acknowledging the fact that judges do not make decisions on pure legal grounds, but are influenced by extra-legal considerations.[[80]](#footnote-80) In the international sphere, there is a discussion about whether international judges are (and should) be agents representing the interests of their countries or whether judges are (and should be) trustees that are expected to have almost complete autonomy in the legal sphere.[[81]](#footnote-81) On the one hand, some scholars argue that independence establishes the legitimacy and effectiveness of international courts, and therefore judges should be seen as trustees.[[82]](#footnote-82) On the other hand, due to the political nature and problems of implementation in international law, one should expect that biases in the decision making of international courts would be even more evident than they are in national courts, and therefore international judges should rather be seen as direct agents.[[83]](#footnote-83) As mentioned, this article will focus on three sorts of voting patterns – geographical, political and cultural.[[84]](#footnote-84)

Only a few studies have been conducted on judicial behavior in international courts, and even fewer have used empirical methods. The two main courts that were studied are the International Court of Justice (“ICJ”)[[85]](#footnote-85) and the European Court of Human Rights (“ECtHR”).[[86]](#footnote-86)

The most obvious voting pattern that was found in empirical studies was a preference of voting in favor of the state of nationality.[[87]](#footnote-87) This preference was very robust both in studies on the ICJ as well as studies on the ECtHR.[[88]](#footnote-88) Interestingly, Voeten finds that in the ECtHR judges from former socialist East European countries are more likely to vote *against* their states of nationality than their colleagues from Western Europe.[[89]](#footnote-89) According to the rules of the HRC, a CM may not take part in the examination of a communication that his state of nationality is party to, so this very strong bias is eliminated from the root.[[90]](#footnote-90)

As for wider geographical and political biases, the picture is somewhat more complicated. Posner and de Figueiredo in their article on the ICJ found that judges prefer to vote in favor of countries with similar wealth level and political regimes as their own country of nationality.[[91]](#footnote-91) However, results for regional and NATO biases were insignificant (or even opposite to what was predicted). [[92]](#footnote-92) Voeten did not find significant geographical and political biases on the ECtHR,[[93]](#footnote-93) although it should be taken into account that the ECtHR is much less diverse than the ICJ. What Voeten did find was that judges from former socialist countries are significantly less likely to vote in favor of other former socialist countries (continuing the pattern of voting against their own country of nationality).[[94]](#footnote-94) Another study conducted by Chanrachud on the very limited data available on the decisions of the International Criminal Court (“ICC”) found quite similar tendencies. Chanrachud found in his study that the more African judges sat on the panel, the more likely the court was to vote against the defendants - all of whom were African.[[95]](#footnote-95) Therefore, this tendency of reverse biases might be typical for judges from areas with newly established democracies.[[96]](#footnote-96) Finally, Frank, in a study about investment arbitration, did not find a statistically significant correlation between the development status of the respondent state, development status of the arbitrator, and the outcome of the investment arbitration.[[97]](#footnote-97)

Evidence for cultural voting patterns in decisions of international judges is somewhat moderate.[[98]](#footnote-98) In the case of the ICJ, Posner and de Figueiredo find some evidence of cultural patterns, based on language and religion. Also, whereas from interviews that Arold conducted with ECtHR judges there was an impression that judges from former communist countries might perceive human rights slightly differently (and have more expertise with social and economical rights),[[99]](#footnote-99) Voeten did not find evidence for cultural biases in the ECtHR.[[100]](#footnote-100)

An additional and important question is what drives a judge to cast a vote in accordance with a certain voting pattern. As Franck already noted over a century ago, especially in the international context, biases stem from two kinds of sources – those external to a judge and those internal to him.[[101]](#footnote-101) External biases are those which arise from a direct or implicit influence of the government on the judge – for example, direct instructions on how the judge should vote in a certain case and implicit (or even explicit) threats about the judge not being renominated. However, internal biases can also exist, and a judge might even not be aware of them. For example - a judge can *bona fide* believe that the culture from which he comes interprets human rights correctly, and therefore vote in favor of human rights practices in similar countries. Although the difference between the two sorts of biases should be kept in mind, it is practically impossible to understand what the source of a voting pattern is in a given case.

 One of the main sources of voting patterns in international tribunals might be the will of a judge to be reelected to the tribunal on which he sits, be appointed to another international tribunal or institution, or receive a prestigious position in his home country.[[102]](#footnote-102) As far as the author of this article knows, there is no international tribunal that grants life tenure. However, most of the international tribunals allow reelection, and as mentioned above, the ICCPR does not even limit the number of times that a CM can be reelected. Judges might have two main incentives to be elected to an international tribunal. First, being elected to an international tribunal is considered very prestigious in the legal world, and gives the person a rare opportunity to take part in the shaping of international legal norms. Second, the salaries of international judges and officials tend to be high – and in the cases of judges from non-Western states, much higher than the salaries they would receive in their home countries.[[103]](#footnote-103)

For reasons beyond the scope of this article, international judges indeed sometimes tend to be reappointed to other international tribunals and institutions.[[104]](#footnote-104) CMs of the HRC are no exception to that rule either. Therefore, for instance, Rosalyn Higgins, national of the United Kingdom, served on the HRC (1985-1995) and after that served as a judge (and later president) of the ICJ.[[105]](#footnote-105) Another example is Thomas Buergenthal, national of the United States, who served, among others, as judge and president of the Inter-American Court of Human Rights (1979-1991), the HRC (1995-1999) and judge of the ICJ (2000-2010).[[106]](#footnote-106)

Although currently members of the HRC are not paid salaries, the nomination to the HRC is regarded as very prestigious in the legal world. Moreover, as demonstrated above, the nomination to the HRC can give the CM an opportunity to be appointed to other prestigious international positions that pay high salaries. Since the election to other international tribunals also depends many times on the decision of the same regional group, it is expected that a CM who wants to be reelected, or elected to another tribunal, shall be aware of the interests of his regional group. However, as far as the author of this article knows, there was only one case where a government publicly refused to reappoint a CM to the HRC because of a political disagreement. This CM was Rein Mullerson, national of Estonia, who openly criticized his government’s policy on minority rights.[[107]](#footnote-107)

1. *Voting Patterns in the United Nations Human Rights System*

Although the HRC is a quasi-judicial body established by a treaty, it is also a part of the larger UN human rights system. This part will briefly describe the prior research on geopolitical and cultural voting patterns in the UN human rights system that might be reflected in the HRC. The bodies examined in this part are the so called “Charter based” Human Rights mechanisms - the United Nations Commission on Human Rights (the “Commission”), the successor of the Commission - the United Nations Human Rights Council (the “Council”), and the United Nations General Assembly (the “General Assembly”).

Since its establishment in 1946, targeting of specific countries and elections to the Commission itself were seen as being heavily politically biased and not connected directly to the goal of promoting human rights. In general, in non-democratic regions there seemed to be no connection between the human rights record of a country and its prospect to be elected to the Commission.[[108]](#footnote-108) Moreover, the Commission tended to target specific countries that were with a relative disentanglement from global politics,[[109]](#footnote-109) and focused disproportionally on the Israeli-Arab conflict.[[110]](#footnote-110) Although more scrutinized research showed that the Commission was more politically biased during the Cold War than after it, even after the end of the Cold War regional blocs existed.[[111]](#footnote-111) The political biases in the Commission were heavily criticized. Following that, the Commission was dissolved and replaced by the Council in 2006.[[112]](#footnote-112) However, as of today, the reconstruction of the Commission into the Council has not improved evident political biases, and some argue that the biases have even gotten stronger.[[113]](#footnote-113)

Finally, some research has also been conducted on votes in the General Assembly on human rights issues. Voeten, who examines all the resolutions of the General Assembly, finds that countries tend to vote on human rights issues according to geopolitical blocs, and that the regime type in a country influences its voting pattern.[[114]](#footnote-114) Boockman and Dreher, who analyze only General Assembly resolutions on human rights, also find strong evidence for geopolitical voting blocs, and that democracies are more likely to support human rights resolutions than non-democracies.[[115]](#footnote-115) Additionally, they find that the wealth of a country influences its voting preferences.[[116]](#footnote-116) Another interesting finding by Boockman and Dreher is that, when controlling for voting blocs, the human rights situation in a country is irrelevant to the voting pattern in favor of human rights resolutions.[[117]](#footnote-117)

Given that the HRC is a body established under the UN treaty system, it is expected to be somewhat influenced by the voting patterns of the system. However, there are some reasons to believe that the HRC is not as influenced as its “peer” UN bodies by geopolitics and culture. First, unlike the HRC, the UN bodies discussed above are seen as diplomatic forums where the representatives are direct agents of their governments, and politics are seen as acceptable to some degree. The HRC, on the other hand, is a body of experts that is expected in theory to be free of politics (having CMs serving in their personal capacity). Also, whereas in other UN bodies the members are the ones deciding against which countries to bring a resolution, in the individual communications system the HRC decides only cases brought before it by individuals. Therefore, the ability of the HRC to target specific countries or regions is limited. Finally, the possibility of a bias is partially addressed by the Rules of Procedure.

Moreover, it is important to notice that the draft of the decision in a given communication is prepared by the treaty division in the office of the High Commissioner for Human Rights and by a special rapporteur appointed to the case. Additionally, unlike in the UN voting system, if a CM wants to vote differently from the majority he has to write a separate opinion and support it with legal arguments. These elements make it harder for CMs to act in a biased way. Finally, especially in the past, there was a tendency in the HRC to prefer decisions by consensus over a situation where CMs write individual opinions.[[118]](#footnote-118) Therefore, the HRC is expected to be somewhat less prone to geopolitical and cultural influences than other UN bodies.

1. Hypotheses and Variables
2. *Hypotheses and Selection Effects*

As mentioned in the beginning of the article, the main hypotheses are that geography, politics and culture influence the way that CMs vote. In the following passages the article will briefly elaborate on the main hypotheses.

*Geography* – as was indicated above, geographical biases are very evident in the UN system. Since the renomination of CMs is somewhat dependent on the regional group to which their countries belong, it is expected that the CMs vote in favor of their region to secure their renomination.

Additionally, geographical regions often share common history, heritage and culture. Therefore, a CM might be more inclined to vote in favor of human rights practices in his geographical region for reasons of loyalty. On the other hand, the CM might also feel special empathy to the victims of human rights violation from his region, which might lead him to be more critical of those countries. It should also be noted that not all geographical groups are identical. For instance, whereas one might see more homogeneity in the Western group, the Asian group of countries is very diverse and without much mutual identity.

*Politics* – although the HRC is not seen as a diplomatic forum, it is expected that CMs seek to follow the policy of their governments in the political sphere. This can be the case both because the CMs feel obligation towards their governments and sincerely believe in the political culture of the region, and because they may be nominated for election (and reelection) only by their country of nationality. Therefore, it is expected that the CMs follow the line of their countries and governments in the field of international policy and promote the interest of their countries’ allies.

*Culture* – since human rights are influenced to some degree by culture, it is expected that CMs will have similar understanding of human rights as countries with similar cultural legacy. This hypothesis is of special interest in the context of claims for cultural relativism in human rights. Since cultural relativists claim that human rights are culture – dependent, one should expect that CMs would share the cultural understanding of their countries about the contents and practices of human rights, and therefore vote in favor of countries the culture of which is similar to their country of origin.

Another important question to be addressed is the question of possible selection effects. The first selection effect can occur in the types of communications brought before the HRC, and the second type of selection effects might occur in the process of reviewing the communications themselves. First, different types of cases are brought against different countries. Cases brought against countries which tend to respect human rights are expected to be different from cases brought against countries with problematic human rights protection records. Even if the treaty articles claimed by complainants are similar, the questions in cases against countries which respect human rights are likely to be more complex and give more place for interpretation and geopolitical and cultural influences. Therefore, it should be taken into account that CMs from regions with problematic record of protecting human rights might not necessarily be less prone to voting patterns than their colleagues, but rather the cases brought from their regions are more clear cut and give fewer places for interpretation. This problem is partially accounted for by adding the human rights score of the country as a control variable.

Unlike the process of filing the communications, there is less place to worry about selection effects in the process of the reviewing of communications. When the OHCHR screens new communications, it examines only technical issues, such as whether the country against which the communications is filed is a member to the OP. Also, when drafting a decision on a certain communication, it is less likely that the assigned officers at the OHCHR will be biased since their identity is not known publicly and therefore they are less likely to be under external pressure. We can assume that the same is also true with regard to the special rapporteur assigned to the communication, since his identity is unknown to the public. Although subconscious biases (mainly cultural) might occur, it is impossible to control for them, because the identities of the people mentioned are unknown.

1. *Data and Variables*

I collected the data from all 571 decisions on the merits issued by the HRC between 1997 and 2013 (sessions 59-109). Older decisions were not included since until the fifty ninth session it was not indicated in the decisions who were the CMs that participated in the discussion on the communication.[[119]](#footnote-119) The texts of the decisions were taken from the Bayefsky database[[120]](#footnote-120) and supplemented by the United Nations Treaty Body Database (for decisions published after July 27, 2012).[[121]](#footnote-121) Each observation in the database is a vote of a CM in a specific decision (N= 8,390).

This article is using the “vote in favor” of a country as a dependent variable. This is a dummy variable taking the value of “1” when a CM votes that in a given case the country has not violated any of the rights claimed in the communication. Otherwise, namely when there was a violation of at least one of the ICCPR articles, the dependent variable takes the value of “0.”

In order to examine the hypotheses regarding geopolitical and cultural biases, the following independent variables were used:

*Regional group* – the United Nations has five regional voting groups.[[122]](#footnote-122) These groups were formed according to geopolitical and cultural interests of countries. CMs are expected to vote in favor of the countries which belong to the same regional group as their own country of origin.

*OECD* - the Organization for Economic Co-operation and Development is an inter-governmental organization serving as a forum for governments to share experiences and seek solutions to common problems in the sphere of economic and social well-being.[[123]](#footnote-123) Currently, 34 countries are members of the OECD, most of them are regarded as developed countries with commitment to democracy. CMs from OECD countries are expected to vote in favor of other OECD countries.

*Treaty* –regional human rights treaties reflect common cultural understandings as to what human rights are. The differences in the human rights protected by regional treaties are seen as reflecting cultural particularities. Therefore, CMs are expected to favor human rights practices in countries that are signatories to the same human rights treaties as their country of origin.

*Legal system* – legal systems are seen as reflecting mutual cultural heritage, and many times countries with the same legal system share a colonial heritage.[[124]](#footnote-124) Therefore, it is expected that a CM shall vote in favor of countries that have the same legal system as his country of origin.

*NATO* – the North Atlantic Treaty Organization promotes political and military cooperation between its member states. Currently, NATO consists of 28 countries that are both committed to democratic values and belong to the geopolitical “North.”[[125]](#footnote-125) CMs from NATO countries are expected to vote in favor of respondent countries members of NATO.

*Religion* – countries that share the same religion are expected to have similar understanding of the essence human rights. Therefore, it is expected that CMs prefer voting in favor of countries with the same religion as their country of origin.

*Polity* – the polity score measures the regime in a country, and it ranges from 10 for strongly democratic countries, to -10 for strongly autocratic countries.[[126]](#footnote-126) The variable used is the absolute value of the difference between the polity score of the respondent country and the polity score of the CM’s country. CMs are expected to vote in favor of countries that have a similar regime to their own country of origin.

*GDP* – it is expected that countries on a similar wealth level have common interests and understandings regarding human rights – for instance, how many resources should the government invest to protect human rights. The variable measures the absolute value of the difference of the natural logarithm of the GDP per capita in the respondent country and the CM’s country.[[127]](#footnote-127) CMs are expected to vote in favor of countries whose level of wealth is close to their country of origin.

*Human rights* –this variable is used as a control variable and measures what was the human rights protection score of the respondent country two years prior to the decision in the communication.[[128]](#footnote-128)

The independent variables and their relation to the hypotheses are summarized in the **Appendix**.

1. *Descriptive Statistics*

Before continuing to the inferential statistics part, some descriptive statistics should be given. Between sessions 1-109, individual communications were decided against 86 countries. Therefore, there are no decisions on individual communications against 25 percent of the countries parties to the OP. In the period relevant to the article (sessions 59-109), the countries against which most of the communications were decided on the merits were Jamaica (56), Belarus (45), Uzbekistan (32), Spain (29) and Czech Republic (27), and Russia tied with Australia (26 each). It should be noted, that when decisions on admissibility are also included in the descriptive statistics, the picture is slightly different: Spain (96), Canada (62), Jamaica (59), Belarus (53) and Czech Republic tied Australia (50 each). Therefore, it is clearly seen that the number of decisions does not necessarily reflect the human rights situation in the country.

It is also important to describe the distribution of communications decided in the HRC by the regions to which the respondent countries belonged. For sessions 59-109, the proportion of the communications decided, by UN voting regions, was the following:[[129]](#footnote-129) Western (26.62%), Eastern Europe (22.42%), Latin (20.49%), Asia (19.26%) and Africa (11.21%). When we look at the distributions of the regions from which CMs were appointed to the HRC, it is somewhat different: Western (42.11%), Africa (21.05%), Latin (19.3%), Asia (10.53%) and Eastern Europe (7.02%). This demonstrates that there is no necessary connection between the number of communications filed against a region and how many CMs from that region serve on the HRC. For instance, while the number of communications against Eastern European countries was second only to the number of communications against Western countries, Eastern Europe was the group least represented on the HRC. (see **Figure 1**):

**Figure 1:**

 In order to understand the connection between the background of the CMs and the respondent countries in the decisions analyzed in the article, it is helpful to present also the following descriptive statistics on the distribution of geopolitical and cultural variables of the HRC docket and HRC composition:

**Figure 2 - Membership in NATO and OECD:**

**Figure 3 – Membership in Regional Human Rights Treaties**:

**Figure 4 - Legal Systems:**

**Figure 5 - Religion:**

 It is important to note that the descriptive statistics indicates that, with some exceptions, usually no geopolitical and cultural group has a majority in the HRC. This is an important finding, since it can indicate that even if we do find voting patterns, their implication can be somewhat limited on the decisions of the HRC as a whole.

 The next step is to see how the hypotheses regarding the interaction between the dependent variable and independent variables are reflected in the descriptive statistics using a chi-square test. **Table 1 summarizes the statistics:**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Variable** | **Probability of voting in favor –Match** | **Probability of voting in favor – No Match** | **Effect Size** | **P- Value (Chi-Square Test)** | **N** |
| Regional Group | .28 | .13 | .15 | .000 | 8,390 |
| Africa (only cases where respondent is member of African group) | .04 | .03 | .01 | .421 | 948 |
| Asia (only cases where respondent is member of Asian group) | .07 | .04 | .03 | .146 | 1,591 |
| Eastern Europe (only cases where respondent is member of Eastern group) | .11 | .12 | -.01 | .827 | 1,870 |
| Latin (only cases where respondent is member of Latin American and Caribbean group) | .04 | .05 | -.01 | .520 | 1,749 |
| Western (only cases where respondent is member of Western group) | .46 | .38 | .08 | .001 | 2,232 |
| Treaty | .22 | .15 | .07 | .000 | 8,390 |
| Legal System | .16 | .16 | .00 | .601 | 8,390 |
| Religion | .19 | .12 | .07 | .000 | 8,390 |
| OECD (only cases where respondent is member of OECD) | .38 | .31 | .07 | .000 | 2,914 |
| NATO (only cases where respondent is member of NATO) | .38 | .33 | .05 | .058 | 2,011 |

As can be seen from the table above, the most significant voting patterns (p<.01) are similarity between the CM and the respondent country in belonging to a certain regional voting group, membership in the same regional human rights treaty, similarity in religion and mutual OECD membership. A mutual membership in NATO also increases the chances of voting in favor of a country, although on a lower level of statistical significance (p<.1). Also, contrary to the expected hypothesis, similarity in legal systems does not change the probability that a CM votes in favor of a country.

 When we look inside the regional voting group dependent variable, a more complicated picture is revealed. According to the descriptive statistics, the most significant voting pattern is found within the Western group (p<.001). For the African and Asian groups, the probability of a CM to vote in favor of a country from his region is higher than the probability of a CM not from the regional group to vote in favor of the country, but it is not statistically significant. In the Eastern European and Latin regional groups, CMs tend to vote more *against* countries from their region, but again not on a statistically significant level.

 Another interesting question is whether CMs tend to write more or less individual opinions when a country from their region is the respondent in the communication. The descriptive statistics using a chi-square test are brought in **Table 2:**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Variable** | **Probability of writing a separate opinion respondent in regional group cases** | **Probability of writing a separate opinion in other cases** | **Effect size** | **P- Value (Chi-Square Test)** | **N** |
| Africa | .049 | .025 | .024 | .045 | 1,902 |
| Asia | .073 | .078 | -.005 | .772 | 1,005 |
| Eastern Europe | .011 | .027 | -.016 | .378 | 409 |
| Latin | .079 | .065 | .014 | .4 | 1,476 |
| Western | .148 | .047 | .101 | .000 | 3,598 |

Whereas for CMs from Asia, Eastern Europe and Latin there is no statistically significant difference between cases in which countries from their region are respondents and cases when they are not, CMs from Africa and Western are more likely to write a separate opinion when a country from their region is a respondent.

1. *Results*

The next step is to test the hypotheses presented above in a multivariate regression form. A multivariate regression enables us to control simultaneously for several variables that may influence the probability of a CM to vote in favor of a country. Therefore, the multivariate regression used in the article controls for three important variables. The first control variable, named “human rights,” is the human rights protection score of the respondent country two years prior to the decision on the communication.[[130]](#footnote-130) It is important to control for this variable, since there is an expectation for a positive correlation between the level of human rights protection in a given country and the probability that a CM votes in favor of the country. This control variable is not used in the models that use the NATO and OECD variables, because there is a high correlation (r> 0.5) between the human rights score of a country and the probability of it being a member of NATO and OECD. Therefore, including both variables in a regression might lead to multicollinearity problems. The second control variable is named “vote general,” and it controls for how the majority of the HRC voted on the communication. This is a dummy variable coded in a similar way to the dependent variable. The third control variable is the year of the decision on the communication.

The article uses two sets of regressions. The first set of regressions (the results of which are presented in **Table 3**) were run using a logit model (“logit”) with robust standard errors which were clustered for CMs. The second set of regressions (the results of which are presented in **Table 4**) were run using a logit mode with fixed effects for decisions (“FE”). The advantage of the logit model is that it allows controlling for the human rights protection score, for the way the majority voted on the case and for the year of the decision. Since these variables are constant for every decision, they cannot be included in a fixed effects regression. On the other hand, the advantage of the FE model is that it analyses each decision as a unit. This enables us to crystallize biases, separated from general trends of voting in the HRC not reflected by the control variables (i.e. omitted variable bias). Analyzing the data according to both models is expected to provide a more accurate and reliable picture of the voting patterns.

**Table 3 – Logit Models:**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
|  |  | (1) | (2) | (3) | (4) | (5) | (6) |
|  |  |  |  |  |  |  |  |
|  | Regional Group | 1.038\*\*\* |  | 0.912\*\*\* |  | 0.585\*\* | 1.105\*\*\* |
|  |  | (0.226) |  | (0.261) |  | (0.242) | (0.257) |
|  | Treaty |  | 0.290 |  | 0.138 |  |  |
|  |  |  | (0.265) |  | (0.270) |  |  |
|  | Legal system | 0.166 | 0.0762 | 0.146 | 0.0644 | 0.149 | 0.0686 |
|  |  | (0.210) | (0.214) | (0.210) | (0.214) | (0.187) | (0.189) |
|  | Religion | -0.236 | -0.107 | -0.264 | -0.162 | -0.437 | -0.285 |
|  |  | (0.371) | (0.362) | (0.378) | (0.352) | (0.354) | (0.368) |
|  | Polity | -0.0501\*\* | -0.0603\*\* | -0.0479\*\* | -0.0508\*\* | -0.0132 |  |
|  |  | (0.0252) | (0.0242) | (0.0230) | (0.0211) | (0.0183) |  |
|  | GDP |  |  | -0.169 | -0.356\*\*\* |  |  |
|  |  |  |  | (0.119) | (0.0922) |  |  |
|  | OECD |  |  |  |  | 0.857\*\* |  |
|  |  |  |  |  |  | (0.382) |  |
|  | Respondent OECD |  |  |  |  | 1.134\*\*\* |  |
|  |  |  |  |  |  | (0.246) |  |
|  | CM OECD |  |  |  |  | 0.283 |  |
|  |  |  |  |  |  | (0.297) |  |
|  | NATO |  |  |  |  |  | -0.206 |
|  |  |  |  |  |  |  | (0.395) |
|  | Respondent NATO |  |  |  |  |  | 1.768\*\*\* |
|  |  |  |  |  |  |  | (0.222) |
|  | CM NATO |  |  |  |  |  | 0.456 |
|  |  |  |  |  |  |  | (0.453) |
|  | Human Rights | 0.377\*\*\* | 0.428\*\*\* | 0.364\*\*\* | 0.402\*\*\* |  |  |
|  |  | (0.0597) | (0.0595) | (0.0604) | (0.0587) |  |  |
|  | Year Decision | 0.0554 | 0.0588\* | 0.0387 | 0.0381 | 0.0365 | 0.0183 |
|  |  | (0.0358) | (0.0348) | (0.0371) | (0.0359) | (0.0341) | (0.0352) |
|  | Vote General | 6.987\*\*\* | 6.874\*\*\* | 7.085\*\*\* | 7.009\*\*\* | 7.120\*\*\* | 7.199\*\*\* |
|  |  | (0.284) | (0.289) | (0.292) | (0.300) | (0.282) | (0.282) |
|  | Votes of CMs | 8,341 | 8,341 | 8,237 | 8,237 | 8,341 | 8,390 |

Standard errors in parentheses

\*\*\* p<0.01, \*\* p<0.05, \* p<0.1

Note: the information regarding GDP and Polity was not available for certain countries for some years. Since the number of values is very small (less than 2%) those observations were excluded from the analysis in the respective models.

**Table 4 - Logit Model with Fixed Effects for Decisions:**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
|  |  | (1) | (2) | (3) | (4) | (5) | (6) |
|  |  |  |  |  |  |  |  |
|  | Regional Group | 0.881\*\*\* |  | 0.708\*\*\* | 0.419\* | 0.904\*\*\* |  |
|  |  | (0.204) |  | (0.241) | (0.240) | (0.201) |  |
|  | Treaty |  | 0.314 |  |  |  | 0.0867 |
|  |  |  | (0.236) |  |  |  | (0.249) |
|  | Legal System | 0.215 | 0.171 | 0.192 | 0.201 | 0.203 | 0.156 |
|  |  | (0.168) | (0.166) | (0.172) | (0.169) | (0.164) | (0.170) |
|  | Religion | -0.514\*\*\* | -0.373\* | -0.513\*\* | -0.649\*\*\* | -0.643\*\*\* | -0.406\*\* |
|  |  | (0.195) | (0.192) | (0.200) | (0.203) | (0.200) | (0.198) |
|  | Polity | -0.0252 | -0.0479\*\* | -0.0193 | 0.0171 |  | -0.0282 |
|  |  | (0.0213) | (0.0206) | (0.0228) | (0.0238) |  | (0.0228) |
|  | GDP |  |  | -0.207 |  |  | -0.419\*\*\* |
|  |  |  |  | (0.149) |  |  | (0.132) |
|  | OECD |  |  |  | 0.691 |  |  |
|  |  |  |  |  | (0.428) |  |  |
|  | CM OECD |  |  |  | 0.551\* |  |  |
|  |  |  |  |  | (0.332) |  |  |
|  | NATO |  |  |  |  | -0.350 |  |
|  |  |  |  |  |  | (0.355) |  |
|  | CM NATO |  |  |  |  | 0.629\*\* |  |
|  |  |  |  |  |  | (0.260) |  |
|  | Votes of CMs | 1,220 | 1,220 | 1,190 | 1,220 | 1,254 | 1,190 |
|  | Number of Communications | 81 | 81 | 79 | 81 | 83 | 79 |

Standard errors in parentheses

\*\*\* p<0.01, \*\* p<0.05, \* p<0.1

 Each of the models includes variables for geopolitical and cultural patterns. Due to high correlation between some of the independent variables, I present different models which try not to inflate (or reduce) the statistical significance because of problems of multicollinearity.[[131]](#footnote-131)

The first model includes the variables on regional group, legal system, religion and polity as independent variables. Only the coefficients of the regional group and polity are statistically significant. The coefficient of the group variable is positive and highly statistically significant (p<.01), implying that CMs are more likely to vote in favor of a respondent country that belongs to their country’s regional group. Also, the coefficient of polity is negative and significant (p<.05) – meaning that the larger the difference between the polity score of the respondent country and the country of the CM, the less likely is the CM to vote in favor of the respondent country. The coefficient of legal system is positive, however not statistically significant. Contrary to the hypothesis, the coefficient of religion is negative, meaning that CMs are less likely to vote in favor of countries that share the same religion as their country of origin. In the FE regression the regional group variable coefficient is highly statistically significant as well, and the coefficient of religion is negative and significant. The polity coefficient is negative, but loses its significance.

 The second model uses regional treaty instead of regional group, keeping all other variables. The coefficient of regional treaty is positive but not statistically significant. In the logit model, all other coefficients have the same direction and statistical significance. In the FE model, the polity score is negative and statistically significant.

The third model is similar to the first model, but adds the GDP variable as a measurement of similarity in wealth between countries. The coefficient of the GDP variable is negative, but not statistically significant. The direction and significance of the other coefficients is the same as in the first model both in the logit and the FE specifications.

The fourth model is similar to the third model, but it uses the variable of regional treaty instead of regional group. In this specification the GDP coefficient is negative and statistically highly significant (p<.01) in the logit model, meaning that CMs are less likely to vote in favor of a country the GDP of which is different from the GDP of their country of origin. In the FE model the GDP coefficient is negative as well, however not statistically significant.

The fifth model adds mutual membership in OECD to the first model, and controls also for whether the CM comes from an OECD country, and for the respondent country being a member of OECD. The OECD coefficient is positive and statistically significant in the logit specification. Therefore, CMs from OECD countries tend to vote in favor of other OECD countries. The OECD coefficient is also positive and significant in the FE specification, however on a lower level.

The sixth model uses mutual membership in NATO instead of OECD as a measure of geopolitical (and perhaps even cultural) similarity. It also controls for the CM coming from a NATO member country and for whether the respondent country is member of NATO. The NATO coefficient is negative, contrary to the hypothesis, but does not have statistical significance.

Additionally, it is very important to notice that the human rights variable coefficient is positive and highly statistically significant in all the models. Therefore, the human rights score of a country is a very strong predictor of the probability of a CM to vote in favor of a country. This might indicate that although mutual characteristics of countries can cause the CM to vote in a certain way, in general CMs do not vote in a biased way.

 Since the regional group coefficient is highly statistically significant in all the models, it is also interesting to look inside of this variable and see whether we can see different patterns in different regions. In order to gain a more accurate picture of the regional patterns, this article uses two types of dependent variables. The first dependent variable is the probability of voting in favor of a country, which was used in the previous analyses. The second dependent variable is named “vote combined.” Vote combined is coded as “1” if the CM voted in favor of a country or wrote a separate opinion in favor of a country, and “0” otherwise. The article uses this additional variable for two main reasons. First, it increases the variance and therefore allows us to have a more accurate picture of the voting patterns of CMs from regions that have less communications against them. Second, CMs from regions with problematic human rights score are less likely to vote that the respondent country did not violate any right listed in the communication. However, they might view the violation as less severe than CMs from other regions and write a separate opinion in favor of that region. Such a separate opinion can argue that although the respondent country did violate the rights of the complainant, however it violated less treaty articles than the majority recognized.

**Table 5 –Regional Groups with Vote in Favor as Dependent Variable:**

|  |  |  |
| --- | --- | --- |
|  | (1) | (2) |
|  | Logit Model | FE Model |
|  |  |  |
| Western | 1.144\*\*\* | 0.928\*\*\* |
|  | (0.354) | (0.358) |
| Latin | -0.276 | -0.541 |
|  | (0.550) | (0.728) |
| Eastern Europe | -1.329\*\*\* | -1.456 |
|  | (0.415) | (1.556) |
| Asia | 0.497 | 0.432 |
|  | (0.655) | (0.719) |
| Africa | 1.182\*\* | 16.17 |
|  | (0.529) | (770.8) |
| Respondent Western | 1.734\*\*\* |  |
|  | (0.484) |  |
| CM Western | 0.171 | 0.347 |
|  | (0.341) | (0.326) |
| Respondent Latin | -0.0630 |  |
|  | (0.499) |  |
| CM Latin | -0.638\*\* | -0.540 |
|  | (0.321) | (0.330) |
| Respondent Eastern | 0.944\*\* |  |
| Europe | (0.476) |  |
| CM Eastern | 0.970\*\*\* | 1.025\*\* |
| Europe | (0.318) | (0.416) |
| Respondent Asia | 0.0273 |  |
|  | (0.351) |  |
| CM Asia | 1.028\* | 1.424\*\*\* |
|  | (0.535) | (0.307) |
| Respondent Africa | 0.105 |  |
|  | (0.534) |  |
| Year decide | 0.0196 |  |
|  | (0.0336) |  |
| Vote General | 7.095\*\*\* |  |
|  | (0.294) |  |
| Votes of CMs | 8,390 | 1,254 |
| Number decisions |  | 83 |

**Table 6 – Regional Groups with Vote in Combined as Dependent Variable:**

|  |  |  |
| --- | --- | --- |
|  | (1) | (2) |
|  | Logit Model | FE Model |
|  |  |  |
| Western | 1.277\*\*\* | 1.173\*\*\* |
|  | (0.311) | (0.296) |
| Latin | -1.095\*\* | -1.055 |
|  | (0.463) | (0.664) |
| Eastern Europe | -0.903\*\*\* | -1.209 |
|  | (0.347) | (1.481) |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
| Asia | 0.240 | 0.191 |
|  | (0.637) | (0.578) |
| Africa | 1.175\*\* | 1.974\*\*\* |
|  | (0.496) | (0.588) |
| Respondent Western | 2.455\*\*\* |  |
|  | (0.508) |  |
| CM Western | 0.269 | 0.433 |
|  | (0.305) | (0.273) |
| Respondent Latin | 0.957\*\* |  |
|  | (0.448) |  |
| CM Latin | -0.300 | -0.187 |
|  | (0.363) | (0.293) |
| Respondent Eastern | 1.646\*\*\* |  |
| Europe | (0.507) |  |
| CM Eastern | 0.639\*\* | 0.813\*\* |
| Europe | (0.266) | (0.383) |
| CM Asia | 1.287\*\* | 1.705\*\*\* |
|  | (0.507) | (0.266) |
| Respondent Asia | 0.991\*\* |  |
|  | (0.396) |  |
| Respondent Africa | 1.357\*\* |  |
|  | (0.631) |  |
| Year decide | 0.0145 |  |
|  | (0.0309) |  |
| Vote General | 6.631\*\*\* |  |
|  | (0.274) |  |
| Votes CMs | 8,390 | 1,733 |
| Decisions |  | 115 |
|  |  |  |

As can be seen from the tables above, the most statistically significant coefficients are Western and African – meaning that CMs from the Western and African regional groups tend to vote statistically significantly more in favor of their regional group. The coefficients of mutual membership in the Latin and Eastern European groups are negative, meaning that CMs from these countries tend to vote against countries from their region. The Eastern European variable was significant both in the logit regression with vote in favor and with vote combined as dependent variables, however did not reach statistical significance in the FE models. The Latin coefficient reached statistical significance only in the logit model with vote combined as a dependent variable. The coefficient of mutual membership in the Asian group is positive, but did not reach statistical significance in any of the models.

Another very important question, beyond the statistical significance of certain coefficients, is the likelihood of a CM to vote according to a certain pattern. For this purpose the article uses the marginal effect at the means (“MEM”) measure for the variables whose coefficients reached the highest statistical significance in the different models. The MEM for the variables of regional group and polity were taken from the first model, the MEM for OECD was taken from the fifth model, and the MEM for Western was taken from the specification with vote in favor as a dependent variable. All of the variables are from the logit models that do not use FE.

**Figure 6 – Marginal Effects at the Means:**

The MEMs from the five variables the coefficients of which were most statistically significant, demonstrate that in practice the chances that the background of a CM affects her decision are not high. The highest MEMs are in cases in which the CMs belong to the same regional group or cases in which both the CM and the respondent country belong to the Western group. These two variables make, other variables held at the means, that a CM only 4.5 percent more likely to vote in favor of the respondent country. The second biggest MEM is mutual OECD membership, which is only 3.4 percent, other things being equal. Therefore, although many of the variable coefficients are indeed statistically significant, it is wrong to conclude that CMs vote in a biased way. Rather, it is more accurate to say that CMs do not vote according to geopolitical and cultural interests most of the time.

1. Discussion

This article wanted to explore the existence of three types of voting patterns – geographical, political and cultural. The general hypothesis was that CMs would prefer to vote in favor of countries that are similar to their country of origin. Previous research on judicial behavior found evidence for certain political and cultural voting patterns and the literature on the United Nations found that there is strong evidence for regional voting blocs and some evidence for political voting patterns.

The analysis of the votes in the HRC indicates that the hypothesis which was reinforced the most was the one on geographical voting patterns. As demonstrated, there is a very strong tendency of CMs to vote in favor of their regional group. This might indicate that the HRC follows the footsteps of other United Nations institutions by promoting the interests of regional blocs. However, a closer examination inside the regional voting groups reveals a more complex pattern. The pattern of voting in favor of the regional group was very significant in the Western and African group of countries. Also, CMs from Asian countries tended to vote in favor of their region, but not on a statistically significant level. However, CMs from the Eastern European and Latin groups tended to vote against countries from their regional group. This might reflect special awareness to problems of implementation of human rights by governments in regions that are trying to restore democracy and rule of law after years of totalitarian regimes. On the other hand, CMs from democratic countries might be more trusting of municipal governments since they do not have personal experience with repressing regimes and therefore tend to vote in their favor.

 Also, there is some evidence for political biases. Mutual membership in OECD, as well as a similarity in the political regime and wealth, increases significantly the probability of voting in favor of a respondent state. Therefore, to a certain degree CMs could be seen as following their country of origin’s foreign policy on the HRC. Such a voting pattern might be seen as especially problematic for two reasons. First, although representation of different traditions and cultures is recognized as a consideration in electing CMs to the HRC, nothing is said about representing political and economical interests. Second, CMs are not supposed to represent their governments (and being “diplomats in robes”), and the interests of certain regions might be overrepresented on the HRC since the distribution of CMs by region is not equal.

As for the hypothesis on cultural voting patterns, the picture tends to be more complicated. The descriptive statistics indicated that similarities in regional treaties and religion increase the probability of voting in favor of a country. However, when controlling in a regression for these variables by adding the human rights record of countries, majority vote and year of decision, the coefficient of the regional treaty variable did not reach statistical significance in any specification. Moreover, the coefficient of the religion variable became negative and statistically significant in the FE models. Also, contrary to the descriptive statistics, similarity in legal systems increases the probability of voting in favor of a country, but not on a statistically significant level. It is important to notice that voting in favor of a regional group can also be seen as driven by a cultural pattern, since countries in the same region usually have a shared culture. Therefore, the article does not find conclusive evidence as to the existence of significant cultural patterns in the votes of the CMs.

The finding that the cultural variables are not statistically significant also casts certain doubt on the claim that human rights are a new form of Western colonialism. If human rights were as culture specific as some claim, we would expect to see much more difference in the votes of CMs from Western and non-Western countries in a tribunal as multicultural as the HRC than we actually see. The fact that such a difference was not found suggests that perhaps a universal notion of human rights indeed exists. However, this conclusion should also be taken with a grain of salt, since eventually the CMs are only interpreting the ICCPR, and there are certain limits as to how the interpreter can stretch the limits of interpretation even if he has somewhat different cultural ideas about human rights. Additionally, it could also be argued that many of the non-Western CMs received parts of their legal education in Western countries and therefore influenced by Western traditions. Also, perhaps the non-Western countries prefer to nominate more Western-oriented CMs because other countries are more likely to vote in favor of their election to the Committee. Hence, the votes of Non-Western CMs might not reflect entirely the understanding of the human rights in their home countries.

As was mentioned in the beginning, the common understanding is that currently the debate on human rights is between the “North and the South.” This can indeed be supported, to some degree, by the fact that the coefficients of the OECD, Western, polity and GDP variables are statistically significant. Most of the countries belonging to OECD and Western groups belong to the geopolitical “North” and have common interests. For instance, they tend to be more conservative in immigration cases (especially in cases where there are asylum seekers from non-Western countries), and perhaps they have more progressive views about the positive obligations of countries in promoting civil and political rights.

The next question is what drives the CMs to vote according to geopolitical and cultural interests – should this necessarily be attributed to personal interests to be reelected or perhaps these are just reflections of a genuine understanding of human rights? The author finds that this article cannot answer this question conclusively. Since the strongest statistical results were in cases of similarity between regional voting groups, one might think that this is a strong indicator that personal interests drive the CMs. However, in order to reach this conclusion on stronger grounds, perhaps additional research is needed - for example, a research that examines whether the CM wanted to be reelected to the HRC or was expected to be nominated to another international tribunal at the time of the decision.[[132]](#footnote-132) Another caveat to easily reaching such a conclusion is that CMs from Latin and Eastern European groups tend to vote against countries in their regional group, even though they probably have the same interest to be reelected as their colleagues. An alternative view could be that the CMs truly hold the geopolitical and cultural point of view of their regions, and therefore vote in favor of those countries. Therefore, the conclusions in this regard should be treated cautiously.

Although the results suggest that there is evidence for voting patterns in the decisions of the CMs, a very important question is whether these patterns can actually change the decisions in a given case. From the descriptive statistics we saw that the largest effect was in the case of a regional group – this was for cases of match in the regional group, which made a CM only 15 percent more likely to vote in favor of a country from her region. Moreover, when we use MEM that allows us to control for additional important variables, the MEMs of the five most statistically significant variables are 4.5 percent or less. Also, in 65.5 percent of the communications decided on the merits, the decision is reached by consensus (without separate opinions), and only in less than 4 percent of the communications do five or more CMs write a separate opinion.

Moreover, as indicated above in the descriptive statistics section, most of the groups do not have over half of the votes in the HRC. Therefore, there is a good reason to believe that even if a CM indeed votes according to a certain pattern, he is not likely to change the decision in the case. This is supported by the finding that there is a very strong and positive correlation between the human rights protection score in a country, and the probability of a CM to vote in its favor. The MEMs indicate that voting patterns probably exist only in highly controversial cases, and usually the decision is made based on an unbiased legal interpretation of the ICCPR. Therefore, whereas the article did find certain indicators for patterns in the votes of individual CMs, it is wrong to reach the conclusion that the decisions of the HRC as a whole are biased, and probably the contrary is true.

This leads us to the final questions – can the HRC be regarded as a success story?

Has the United Nations succeeded in creating a tribunal that can truly be seen as legitimate and impartial? These are very important questions, since the various bodies under the United Nations are criticized constantly for using human rights rhetoric as lip service in order to achieve purely political goals.

 On the one hand, this article suggests that the answer to this question is positive. The analyses of the data shows that in most cases the CMs do not vote in a biased way, and it is safe to assume that they are voting in accordance with legal considerations. Therefore, perhaps even some of the concerns that led to the introduction of the 2012 Addis Ababa Guidelines were unfounded. Moreover, in those contentious cases that the CMs do vote according to certain patterns one might consider certain “extra-legal” consideration as legitimate. This is because contentious cases are often those in which there is no clear legal answer, and therefore CMs are expected to look for extra legal considerations in order to reach a decision. Hence, CMs could look for the ways in which their home countries and regions see certain matters and vote accordingly. After all, perhaps it is exactly for these cases that the ICCPR (and later United Nations resolutions) insisted on having a diverse panel of experts.

 However, the picture might not be as optimistic as could be seen from first sight. In a 2011 study by Open Society Initiative, which was based on the reports of the HRC itself, it was found that only 12.27 percent of the HRC decisions were implemented.[[133]](#footnote-133) This is a very low figure compared with other national and even international courts.[[134]](#footnote-134) Therefore, whereas the United Nations might have succeeded in creating an impartial and reliable human rights institution, it is far from clear that this institution has an actual impact on the implementation of human rights worldwide.

1. Conclusion

The article suggested that certain geopolitical and cultural patterns might influence the decisions of CMs. However, it is not very likely that those patterns influence the final decision of the HRC. Moreover, the probability that the existence of a common background actually influences the decision of a CM is not high. Rather, it is more accurate to say that voting patterns are probably evident and influential only in highly controversial cases. Therefore, the results demonstrate that “most of the CMs act in their personal capacity most of the time.”

An important point on which the article does not take a stand is the question of whether the existence of biases assists or undermines achieving the goals of the HRC (and other international institutions in general). As mentioned above, there is a debate in the legal literature about the relationship between the independence of international tribunals and their efficiency and how desirable is independence of international judges.[[135]](#footnote-135) Therefore, it is an open question whether the fact that certain CMs sometimes promote the interests of their countries and regions is good for the institution as a whole. This also should be taken into account together with the fact that, once again, the compliance rate with the decisions under the OP is very low. Therefore, perhaps the HRC does something wrong in this regard – either countries see it as too detached from their interests and therefore prefer not to implement its decisions, or the countries see it as another over politicized international institution that incompliance with its decisions bares no substantial cost.

**Appendix:**

|  |  |  |
| --- | --- | --- |
| **Variable** | **Description** | **Hypotheses** |
| Regional Group | Do the respondent country and the country of the CM belong to the same regional UN group? | CMs are more likely to vote in favor of their regional group (**Geography, politics, culture**). |
| Africa | Are both the respondent country and the country of the CM members of the African regional group? | CMs are more likely to vote in favor of their regional group (**Geography, politics, culture**). |
| Asian | Are both the respondent country and the country of the CM members of the Asian regional group? | CMs are more likely to vote in favor of their regional group (**Geography, politics, culture**). |
| Eastern Europe | Are both the respondent country and the country of the CM members of the Eastern European regional group? | CMs are more likely to vote in favor of their regional group (**Geography, politics, culture**). |
| Latin | Are both the respondent country and the country of the CM members of the LATIN regional group? | CMs are more likely to vote in favor of their regional group (**Geography, politics, culture)** |
| Western | Are both the respondent country and the country of the CM members of the WESTERN regional group? | CMs are more likely to vote in favor of their regional group (**Geography, politics, culture)** |
| OECD | Are both the respondent country and the country of the CM members of the OECD? | CMs that come from OECD countries are more likely to vote in favor of OECD countries because of shared socioeconomic interests and culture (**politics, culture**).  |
| Treaty  | Are the respondent country and the country of the CM signatories to the same regional treaty? | CMs are more likely to vote in favor of countries that are members to the same regional treaty as their countries because they share the same cultural values (**culture** and to lesser degree also **geography**). |
| Legal System | Do the respondent country and the country of the CM have the same legal system? | CMs are more likely to vote in favor of countries which share a similar legal system with their country of origin. Legal systems may indicate similarity of legal traditions and culture, partially because of shared colonial heritage (**culture**). |
| NATO | Are both the respondent country and the country of the CM members of NATO? | CMs that come from NATO countries are more likely to vote in favor of other NATO countries to promote their country’s foreign policy interests (**politics**).  |
| Religion | Do the respondent country and the country of the CM have the same religion? | CMs are more likely to vote in favor of countries which share a similar religion with their country, since it might indicate common understanding and interpretation of human rights (**culture**). |
| Polity | Absolute value of the difference between the polity score of the respondent country and the polity score of the CM country. | The polity score measures the regime in countries on a numerical scale between countries that are complete autocracies and countries that are complete democracies.A smaller difference in the polity score indicates similarity of political regimes. CMs are expected to be more supportive of regimes that are similar to their country’s regimes (**politics**). |
| GDP | Absolute value of the difference between the GDP per capita of the respondent country and the GDP per capita of the CM country. | Similarity in the wealth of countries can indicate common interests – both in the general political sphere and perhaps also regarding the importance of certain human rights over others (**politics, culture**). |
| Human Rights | What was the human rights protection score of the respondent country two years prior to the decision?[[136]](#footnote-136) | Control variable. |
| Vote | How did the majority vote in the communication? | Control variable. |
| Year Decide | What is the year in which the decision was reached? | Control variable. |

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2. *See,* *e.g.*, Karen Alter, *The Multiplication of International Courts and Tribunals after the End of the Cold War*, *in* International Adjudication 63 (Cesare PR Romano, Karen J. Alter & Yuval Shany eds., 2014); Adam Chilton & Dustin Tingley, *The Doctrinal Paradox & International Law*, 34 Penn J. Int’l L. 67, 67 (2012); Jonathan R. Charny, *The Impact on the International Legal System of the Growth of International Courts and Tribunals*, 31 Int’l L. & Pol. 697 (1999); Yuval Shany, *Assessing the Effectiveness of International Courts: A Goal-Based Approach*, 106 Am. J. Int’l L. 225 (2012) (discussing how to evaluate whether an international court is effective). *See also* William W. Burke-White, *International Legal Pluralism*, 25 Mich. J. Int’l L. 963 (2004) (arguing that the increasing number of international tribunals caused fragmentation of international law); Yuval Shany, *No Longer a Weak Department of Power? Reflections on the Emergence of a New International Judiciary*, 20 Eur. J. Int’l L. 73 (2009) (discussing the new role of international judiciary); Erik Voeten, *Borrowing and Nonborrowing among International Courts* 39 J. Legal Stud. 547 (2010) (discussing whether and how international courts cite each other); Karen J. Alter, *Private Litigants and the New International Courts*, 39 Comp. Pol. Stud. 22 (2006) (discussing the circumstances in which the newly established courts are granted access by individuals).

 [↑](#footnote-ref-2)
3. International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S 171[hereinafter: *ICCPR*]. [↑](#footnote-ref-3)
4. Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948). [↑](#footnote-ref-4)
5. *See* ICCPR, *supra* note 2 art. 6. [↑](#footnote-ref-5)
6. *Id*. at art. 7. [↑](#footnote-ref-6)
7. *Id*. at art. 14. [↑](#footnote-ref-7)
8. International Covenant on Civil and Political Rights – Status of ratification <https://treaties.un.org/pages/viewdetails.aspx?chapter=4&src=treaty&mtdsg_no=iv-4&lang=en> (last visited Jan. 11, 2015). [↑](#footnote-ref-8)
9. Suzanne Egan, The UN Human Rights Treaty system: Law and Procedure 254 (2011). [↑](#footnote-ref-9)
10. Joslin v. New Zealand(902/1999), ICCPR, A/57/40 vol. II (17 July 2002) 214(CCPR/C/75/D/902/1999). [↑](#footnote-ref-10)
11. *See, e.g.*, Kindler v. Canada (470/1991), ICCPR, CCPR/C/48/D/470/1991(July 30, 1993); Judge v. Canada (829/1998), ICCPR, CCPR/C/78/D/829/1998; ICCPR, Yin Fong v. Australia (1442/05), ICCPR, CCPR/C/97/D/1442/2005 (Nov. 23, 2009). [↑](#footnote-ref-11)
12. *See, e.g.,* Sechremelis v. Greece (1507/06), ICCPR, CCPR/C/100/D/1507/2006 (Jan. 7, 2011). [↑](#footnote-ref-12)
13. *See, e.g.,* General Comment No. 34 - Article 19: Freedom of Opinion and Expression, ICCPR, CCPR/C/GC/34 (Sept. 12, 2011); Faurisson v. France (550/93), ICCPR, CCPR/C/58/D/550/1993 (Nov. 8, 1996); Kim v. Republic of Korea (574/94) (Nov. 3, 1998). [↑](#footnote-ref-13)
14. Manfred Nowak, UN Covenant on Civil and Political Rights: CCPR Commentary xxii – xxiv (2nd ed. 2005). [↑](#footnote-ref-14)
15. Sarah Joseph & Melissa Castan, International Covenant on Civil and Political Rights: Cases, Materials and Commentary 44-47(3rd ed. 2013). [↑](#footnote-ref-15)
16. *See* Douglas Lee Donoho, *Autonomy, Self Governance, and the Margin of Appriciation: Developing a Jurisprudence of Diversity Within Universal human Rights*, 15 Emory Int'l L. Rev. 391 (2001) (arguing that the European doctrine of Margin of Appreciation should be adopted in human rights law in order to accommodate non-Western approaches to human rights); Bilahari Kausikan, *Asia’s Different Standard*, 92 Foreign Policy 24 (1993) (discussing the particularities of human rights in Asian culture); Amartya Sen, *Human Rights and Asian Values*, The New Republic 33- 34, 38- 40 (1997) (arguing that despite the differences, all cultures have a core of human rights that they agree upon); Abdulahi Ahmed An- Na’im, *Human Rights in the Muslim World*, 3 Harv. Hum. Rts. J. 13, 42 (1990) (discussing the relationship between human rights and Shari’s law); Madhavi Sunder, *Piercing the Veil*, 112 Yale L.J. 1399 (2003) (arguing that human rights should be promoted from within a cultural-religious framework). [↑](#footnote-ref-16)
17. *See, e.g*,*.* Christina M. Cerna, *Universality of Human Rights and Cultural Diversity: Implementation of Human Rights in Different Socio-Cultural Contexts* 16 Hum. Rts. Q. 749, 749-50 (1994); Christof Heyns, *The African Human Rights System:* *The African Charter* 108 Penn. St. L. Rev. 679, 686-93 (2003-2004); For instance, the African Charter promotes collective rights and duties that are not found in the ICCPR or in the other regional instruments (for example, article 27(1) states that “[e]very individual shall have duties towards his family and society […].”). [↑](#footnote-ref-17)
18. *See* Egan, *supra* note 8 at 254. [↑](#footnote-ref-18)
19. *See* ICCPR, *supra* note 2 art. 28. [↑](#footnote-ref-19)
20. *Id.* at art. 32. [↑](#footnote-ref-20)
21. *Id.* at art. 28(3). [↑](#footnote-ref-21)
22. *See generally* Kerstin Mechlem, *Treaty Bodies and the Interpretation of Human Rights*, 42 Vand. J. Transnat’l L. 905, 922 (2009). [↑](#footnote-ref-22)
23. *See* ICCPR, *supra* note 2 art. 40; Rules of Procedure of the Human Rights Committee, Rule 66, ICCPR, CCPR/C/3/Rev.10 (Jan. 11, 2012) [Hereinafter: *Rules of Procedure*]. [↑](#footnote-ref-23)
24. The HRC interpreted its authority to issue General Comments from art. 40(4) to the ICCPR which provides that the HRC may transmit “such general comments as it may consider appropriate.” *See* Human Rights – Civil and Political Rights: The Human Rights Committee, at 24 <http://www.ohchr.org/Documents/Publications/FactSheet15rev.1en.pdf> (last visited Jan. 11, 2015); Human Rights Treaty Bodies – General Comments <http://www.ohchr.org/EN/HRBodies/Pages/TBGeneralComments.aspx> (last visited Jan. 11, 2015). [↑](#footnote-ref-24)
25. Optional Protocol to the International Covenant on Civil and Political Rights, art. 1 23 March, 1976, 999 U.N.T.S. [hereinafter: *Optional Protocol*]. [↑](#footnote-ref-25)
26. *See* Optional Protocol, *supra* note 24 at art. 1. [↑](#footnote-ref-26)
27. Optional Protocol to the International Covenant on Civil and Political Rights - Status <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-5&chapter=4&lang=en> (last visited Jan. 12, 2015). [↑](#footnote-ref-27)
28. The Russian Federation and France are members to the OP, while the United States, United Kingdom and China are not members. China is not a member to the ICCPR either. [↑](#footnote-ref-28)
29. *See* Egan, *supra* note 8 at 253; while the ICCPR is not the only treaty to have a procedure enabling individual communications, it has the biggest docket and the widest spectrum of jurisprudence and decisions (Cite another source?). [↑](#footnote-ref-29)
30. *See*: Human Rights Treaty Bodies - Individual Communications:

 How to Direct Complaints to the Treaty Bodies

 <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/IndividualCommunications.aspx#contact> (Last visited Jan. 12, 2015) (Providing details about the procedure of filing an individual communication). [↑](#footnote-ref-30)
31. Note that the complainant need not necessarily be a citizen of the state. [↑](#footnote-ref-31)
32. *See* Optional Protocol, *supra* note 24 at art. 1. [↑](#footnote-ref-32)
33. *See* Yogesh Tyagi, The UN Human Rights Committee 432 (2011). [↑](#footnote-ref-33)
34. The HRC Special Rapporteur on New Communications is a member of the Human Rights Committee that is elected by the Committee Members themselves for the position (*see* Rules of Procedure, *supra* note 22 at rule 95(3); Egan, *supra* note 8 at 258). [↑](#footnote-ref-34)
35. *Id.* at rule 97. [↑](#footnote-ref-35)
36. Rules of Procedure, *supra* note 22 at rule 95(3). [↑](#footnote-ref-36)
37. *See* Tyagi, *supra* note 32 at 434. [↑](#footnote-ref-37)
38. Rules of Procedure, *supra* note 22 at rules 93, 94, 95 & 100; The practice in recent years is that the stage of reviewing admissibility and the merits are usually consolidated. [↑](#footnote-ref-38)
39. Rules of Procedure, *supra* note 22 at rule 104. [↑](#footnote-ref-39)
40. Valcada v. Uruguay (9/1977), ICCPR (Oct. 26, 1977) (separate opinion of Walter Suriname Tarnopolsky). [↑](#footnote-ref-40)
41. *See* Egan, *supra* note 8 at 308; Joseph & Castan, *supra* note 14 at 50-51; Mechlem, *supra* note 21 at 55; David Kretzmer, *Commentary on complaint processes by Human Rights Committee and Torture Committee Members – The Human Rights Committee*, *in* The UN Human Rights Treaty System in the 21st Century 163, 163 (Anne E. Bayefsy ed., 2000). [↑](#footnote-ref-41)
42. *See also* Henry J. Steiner, *Individual Claims in a World of Massive Violations: What Roles for the Human Rights Committee? in* The Future of UN Human Rights Treaty Monitoring 15, 66 (Philip Alston and James Crawford eds., 2000). [↑](#footnote-ref-42)
43. Sayadi v. Belgium (1472/2006 ), ICCPR, CCPR/C/94/D/1472/2006 (Dec. 29, 2008). [↑](#footnote-ref-43)
44. *Id*. at ¶¶3.1-3.13 [↑](#footnote-ref-44)
45. *Id*. at ¶ 4.6. [↑](#footnote-ref-45)
46. *Id*. at ¶ 6.1 [↑](#footnote-ref-46)
47. However, it should be noted that Christine Chanet, a CM who is a French National voted against Belgium and in favor of the applicants, even though France is a permanent member of the UN Security Council as well. [↑](#footnote-ref-47)
48. X v. Colombia (1361/2005), ICCPR, CCPR/C/89/D/1361/2005 (May 14, 2005). [↑](#footnote-ref-48)
49. *Id*. at ¶ 7.2. [↑](#footnote-ref-49)
50. *Id*., Dissenting opinion of Abdelfattah Amor and Ahmed Tawfik Khalil. [↑](#footnote-ref-50)
51. *See* ICCPR, *supra* note 2 at art. 28(1). [↑](#footnote-ref-51)
52. *Id.* at art. 28(2). [↑](#footnote-ref-52)
53. *Id*. atart. 31(1). [↑](#footnote-ref-53)
54. *Id*. atart. 28(3). [↑](#footnote-ref-54)
55. *See* Tyagi, *supra* note 32 at 76. [↑](#footnote-ref-55)
56. *See* ICCPR, *supra* note 2 at art. 29(2). [↑](#footnote-ref-56)
57. *See* Tyagi, *supra* note 32 at 81; It should be noted that the High Commissioner of Human Rights in her report draw general guidelines according to which countries should appoint nominees. However, it is unclear if countries have actually implemented these recommendations (*see* High Commissioner of Human Rights, *Strengthening the United Nations Human Rights Treaty Body System* 75-9 (2012)). [↑](#footnote-ref-57)
58. *See* Tyagi, *supra* note 32 at 81; *See also* Terris et al., The International Judge – An introduction to the Men and Women Who Decide the World’s Cases 15 (2007). [↑](#footnote-ref-58)
59. *See* Tyagi, *supra* note 32 at 85; Elizabeth Evatt, *The Future of the United Nations Human Rights Treaty System: A System in Crisis?*, *in* The UN Human Rights Treaty System in the 21st Century(Anne F. Bayefsky ed., 2000). [↑](#footnote-ref-59)
60. In recent years the Western group of countries has an unofficial agreement not to nominate the same candidate for more than two terms. However, it is unclear how strict this agreement is and the countries having a permanent sit on the Security Council do not see themselves bound by it. [↑](#footnote-ref-60)
61. *See* ICCPR, *supra* note 2 at art. 30(4) [↑](#footnote-ref-61)
62. *See* James Crawford, *The UN Human Rights Treaty System: A system in Crisis?* *in* The Future of UN Human Rights Treaty Monitoring 9 (Philip Alston & James Crawford eds., 2000); *See also* A. Clapham, *UN Human Rights Reporting Procedures: an NGO Perspective*, *in* The Future of UN Human Rights Treaty Monitoring 188 (Philip Alston & James Crawford eds., 2000). [↑](#footnote-ref-62)
63. This group includes also Canada, New Zealand, Australia and Israel. The United States of America is not a member of any regional group, but attends meetings of the Western Group as an observer and is considered to be a member of that group for electoral purposes. *See* <http://www.un.int/wcm/webdav/site/gmun/shared/documents/GA_regionalgrps_Web.pdf> [↑](#footnote-ref-63)
64. *See* Tyagi, *supra* note 32 at 88-9; Terris, *supra* note 57 at 154; James Crawford, *The UN Human Rights Treaty System: A System in Crisis?*, *in* The Future of UN Human Rights Treaty Monitoring 1, 9 (Philip Alston and James Crawford eds., 2000). [↑](#footnote-ref-64)
65. Human Rights Committee - Membership <http://www.ohchr.org/EN/HRBodies/CCPR/Pages/Membership.aspx> (last visited Jan. 14, 2015). [↑](#footnote-ref-65)
66. *See* Terris, *supra* note 57 at 154. [↑](#footnote-ref-66)
67. *Id.* at 154-5. [↑](#footnote-ref-67)
68. Report of the Human Rights Committee, ¶ 1, U.N. Doc. A/53/40 (Sep. 15, 1988). [↑](#footnote-ref-68)
69. *Id.* at ¶ 2. [↑](#footnote-ref-69)
70. *Id.* at ¶ 9. [↑](#footnote-ref-70)
71. Geneva Academy, *The Independence of UN Human Rights Treaty Body Members* 29-33 (Dec. 2012) (Academy in Brief No. 1). [↑](#footnote-ref-71)
72. *Id.* at 74. [↑](#footnote-ref-72)
73. *Id.* at 75. [↑](#footnote-ref-73)
74. Guidelines on the Independence and Impartiality of Members of the Human Rights Treaty Bodies, ¶ 1, U.N. Doc. A/67/222 (June 29, 2012). [↑](#footnote-ref-74)
75. *Id.* at ¶ 2. [↑](#footnote-ref-75)
76. *Id.* at ¶ 3. [↑](#footnote-ref-76)
77. *Id.* at ¶ 5. [↑](#footnote-ref-77)
78. *Id.* at ¶ 9. [↑](#footnote-ref-78)
79. Erik Voeten, *International Judicial Independence*, *in* Interdisciplinary Perspectives on International Law and International Relations 421, 422 (Jeffrey L. Dunoff & Mark A. Pollack eds., 2013) [hereinafter: *Voeten 2013*]. [↑](#footnote-ref-79)
80. *See, e.g.*, Richard A. Posner, How Judges Think (2008); Lee Epstein et. al., The Behavior of Federal Judges – a Theoretical and Empirical Study of Rational Choice (2013). [↑](#footnote-ref-80)
81. Erik Voeten, *International Judicial Behavior*, *in* International Adjudication 550 , 555-6 (Cesare PR Romano, Karen J. Alter & Yuval Shany eds., 2014) [hereinafter: *Voeten 2014*]; Voeten 2013, *supra* note 78 at 421-22;; Laurence R. Helfer, Anne-Marie Slaughter, *Toward a Theory of Effective Supranational Adjudication*, 107 Yale L.J. 273 (1997); Eric A. Posner and John C. Yoo, *Judicial Independence in International Tribunals* 93 Cal. L. Rev. 1 (2005) [hereinafter: *Posner and Yoo I*]; Laurence R. Helfer and Anne-Marie Slaughter, *Why States Create International Tribunals: A Response to Professors Posner and Yoo* 93 Cal.L.Rev. 899 (2005); Eric A. Posner & John C. Yoo, *Reply to Helfer and Slaughter*, 93 Cal. L. Rev. 957 (2005) [hereinafter: *Posner and Yoo II*]. [↑](#footnote-ref-81)
82. Voeten 2013, *supra* note 78 at 436-37; Helfer & Slaughter 2005, *supra* note 80at 905-10. [↑](#footnote-ref-82)
83. Voeten 2013, *supra* note 78 at 436-37; Posner & Yoo I, *supra* note 80; Posner & Yoo II, *supra* note 80. [↑](#footnote-ref-83)
84. Voeten divides voting patterns of international judges slightly differently – he discusses home-state biases, geopolitical biases and cultural biases (*see* Voeten 2014, *supra* note 80). [↑](#footnote-ref-84)
85. Eric A. Posner and Miguel F. P. de Figueiredo, *Is the International Court of Justice Biased?*, 34 J. Legal Stud. 599 (2004). [↑](#footnote-ref-85)
86. Erik Voeten, *The Impartiality of International Judges: Evidence from the European Court of Human Rights*, 102 Am. Pol. Sci. L. Rev. 417 (2008) [hereinafter: *Voeten 2008*]; Erik Voeten, *The Politics of International Judicial Appointments: Evidence from the European Court of Human Rights*, 61 Int’l Org. 669 (2007) [hereinafter: *Voeten 2007*]; Nina-Louisa Arold, The Legal Culture of the European Court of Human Rights (2007). [↑](#footnote-ref-86)
87. As shall be elaborated later, national bias is not relevant to the HRC. [↑](#footnote-ref-87)
88. *See* Voeten 2014, *supra* note 80at 615 and [↑](#footnote-ref-88)
89. *See* Voten 2008, *supra* note 85 at 427. [↑](#footnote-ref-89)
90. *See* Rule of Procedure, *supra* note at 22 rule 90(1)(a) [↑](#footnote-ref-90)
91. *See* Posner & de Figuieredo, *supra* note 84 at 620-1. [↑](#footnote-ref-91)
92. *Id.* at 622. [↑](#footnote-ref-92)
93. *See* Voeten 2008, *supra* note 85 at 428-30. [↑](#footnote-ref-93)
94. *See* Voeten 2008, *supra* note 85at 427-28. [↑](#footnote-ref-94)
95. *See* Abhinav Chandrachud, *Diversity and the International Criminal Court: Does Geographic Background Impact Decision Making?* 38 Brook. J. Int’l L. 487, 488 (2013); however, this study should be read with caution, since the number of decisions issued by the ICC is very small and not representative. [↑](#footnote-ref-95)
96. S*ee* Voeten 2007, *supra* note 85. [↑](#footnote-ref-96)
97. Susan D. Franck, Development and Outcomes of Investment Treaty Arbitration, 50 Harv. Int'l L.J. 435 (2009) [↑](#footnote-ref-97)
98. Erik Voeten, *Politics, Judicial Behavior, and Institutional Design*, *in* The European Court of Human Rights Between Law and Politics 61, 63 (Jonas Chritoffersen & Mikael Rask Madsen eds., 2011). [↑](#footnote-ref-98)
99. *See* Arold, *supra* note 85at 70 & 79. [↑](#footnote-ref-99)
100. *See* Voeten 2008, *supra* note 85at 429. [↑](#footnote-ref-100)
101. Thomas M. Franck, *Some Psychological Factors in International Third-Party Decision-Making* 19 Stan. L. Rev. 1217, 1217-19 (1967). [↑](#footnote-ref-101)
102. Leigh Swigart & Daniel Terris, *Who are International Judges*, *in* International Adjudication 619, 628-30 (Cesare PR Romano, Karen J. Alter & Yuval Shany eds., 2014); Voeten 2008, *supra* note 85 at 421; Theodor Meron, *Judicial Independence and Impartiality in International Criminal Tribunals* 99 Am. J. Int’l L. 359, 361 (2005). [↑](#footnote-ref-102)
103. Fred J. Bruinsma, *The Room at the Top: Separate Opinions in the Grand Chambers of the ECHR (1998‐2006)* Ancilla Iuris 32, 40 (2008). [↑](#footnote-ref-103)
104. *See* Swigart & Terris, *supra* note 101 at 30. [↑](#footnote-ref-104)
105. International Court of Justice – President Rosalyn Higgins

 <http://www.icj-cij.org/court/index.php?p1=1&p2=2&p3=1&judge=6> (last visited Jan. 15, 2015). [↑](#footnote-ref-105)
106. International Court of Justice - Judge Thomas Buergenthal

 <http://www.icj-cij.org/court/?p1=1&p2=2&p3=1&judge=11> (last visited Jan. 15, 2015). [↑](#footnote-ref-106)
107. *See* Tyagi, *supra* note 32 at 81 fn 106. [↑](#footnote-ref-107)
108. Martin S. Edwards et. al., *Sins of Commission? Understanding Membership Patterns on the United Nations Human Rights Commission* 61 Pol. Res. Q 390 (2008). [↑](#footnote-ref-108)
109. Nazila Ghanea, *From UN Commission on Human Rights to UN Human Rights Council: One step forwards or two steps sideways*, 55 Int’l & Comp. L. Q. 695 (2006). [↑](#footnote-ref-109)
110. Steven Seligman, *Politics and principle at the UN Human Rights Commission and Council (1992– 2008),* 17 Israel Aff. 520 (2011); Alexander Besant, & Sebastien Malo, *Dim Prospects for the United Nations Human Rights Council*, 2 Yale J. Int’l Aff. 144, 145 (2009). [↑](#footnote-ref-110)
111. *See* James H. Lebovic and Erik Voeten, *The Politics of Shame: The Condemnation of Country Human Rights Practices in the UNCHR* 50 Int’l Stud. Q. 861, 881 (2008). [↑](#footnote-ref-111)
112. G.A. Res. 60/251, U.N. Doc. A/RES/60/251 (March 15, 2006). [↑](#footnote-ref-112)
113. Simon Hug, *Targets and Perpetrators: Resolutions and Voting in the UNCHR and UNHRC* 19 Paper prepared for presentation at the Annual Conference of the European Political Science Association (June 9, 2014) *available on* [*http://www.unige.ch/ses/spo/static/simonhug/tap/tap.pdf*](http://www.unige.ch/ses/spo/static/simonhug/tap/tap.pdf)(last visited Jan. 15, 2015). [↑](#footnote-ref-113)
114. Erik Voeten, *Clashes in the Assembly*, 54 Int’s Org. 185 (2000). [↑](#footnote-ref-114)
115. Bernhard Boockman & Axel Dreher, *Do Human Rights Offenders Oppose Human Rights Resolutions in the United Nations?*, 146 Pub. Choice 443, 462 (2011). [↑](#footnote-ref-115)
116. *Id.* [↑](#footnote-ref-116)
117. *Id.* [↑](#footnote-ref-117)
118. Dominic McGoldrrick, The Human Rights Committee: Its Role in the Development of the International Covenant on Civil and Political Rights 48 (1991). [↑](#footnote-ref-118)
119. According to the rule 37 of the Rules of Procedure, twelve CMs constitute a forum. Therefore, most of the decisions of the HRC on the communications are not taken by all the CMs. [↑](#footnote-ref-119)
120. The United Nations Human Rights Treaties – CCPR – Jurisprudence <http://www.bayefsky.com/docs.php/area/jurisprudence/treaty/ccpr/opt/0/node/5/type/all> (last visited Jan. 15, 2015). [↑](#footnote-ref-120)
121. United Nations Human Rights – Treaty Bodies Search <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en> (last visited Jan. 15, 2015). [↑](#footnote-ref-121)
122. United Nations Regional Groups of Member States <http://www.un.org/depts/DGACM/RegionalGroups.shtml> (last visited June 1, 2015). [↑](#footnote-ref-122)
123. OECD Home <http://www.oecd.org/> (last visited June 1, 2015); Peter Carroll & Aynsley Carroll, OECD: A Study of Organisational Adaptation 1-10 (2011) [↑](#footnote-ref-123)
124. *See* Rafael La Porta et al., *The Economic Consequences of Legal Origins* 46 J. Econ. Literature 285 (2008) [↑](#footnote-ref-124)
125. NATO – What is NATO? <http://www.nato.int/nato-welcome/index.html> (last visited June 1, 2015). [↑](#footnote-ref-125)
126. Polity IV Project <http://www.systemicpeace.org/inscr/p4manualv2013.pdf> (last visited June 1, 2015). [↑](#footnote-ref-126)
127. International Monetary Fund - Data <http://www.imf.org/external/data.htm> (last visited June 1, 2015). [↑](#footnote-ref-127)
128. Christopher Farris, *Latent Human Rights Protection Scores Version 2* (2014) <http://thedata.harvard.edu/dvn/dv/HumanRightsScores/faces/study/StudyPage.xhtml?globalId=doi:10.7910/DVN/24872> (last visited June 1, 2015). [↑](#footnote-ref-128)
129. This data includes both communications that were decided on the merits and communications that were decided only on admissibility grounds. [↑](#footnote-ref-129)
130. The article uses latentmean2, *see* Farris, *supra* note 127. [↑](#footnote-ref-130)
131. The author also tried to control for types of cases, however it practically did not impact the statistical significance of the variables in the different models. [↑](#footnote-ref-131)
132. However, it should be noted that it is very hard to monitor the question whether the CM wanted to be reelected to the HRC, another international tribunal or a position in his country of nationality. [↑](#footnote-ref-132)
133. Open Society Justice Initiative, From Judgment to Justice – Implementing International and Regional Human Rights Decision 119 <http://www.opensocietyfoundations.org/reports/judgment-justice-implementing-international-and-regional-human-rights-decisions> (last visited Jan. 12, 2015) (defining “satisfactory implementation as “the *willingness* of the State party to implement the Committee’s recommendations or to offer the complainant an appropriate remedy”); *See also* Yuval Shany, *The Effectiveness of the Human Rights Committee and the Treaty Body Reform* (International Law Forum The Hebrew University of Jerusalem, Working Paper No. 02-13), *available at* <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2223298>. [↑](#footnote-ref-133)
134. Compliance with judgments of the International Court of Justice is around 68% (*see* Tom Ginsburg& Richard H. McAdams, *Adjudicating in Anarchy: an Expressive Theory of International Dispute Resolution* 45 Wm. & Mary L. Rev. 1229, 1315 (2004)); For data on implementation of judgments in the European Court of Human Rights and the Inter-American Court of Human Rights *see* From Judgment to Justice, *supra* note 132. [↑](#footnote-ref-134)
135. *See* *supra* sources cited in fn.80. [↑](#footnote-ref-135)
136. I use the latentmean2 score developed by Christopher J. Fariss (Fariss, Christopher, *Latent Human Rights Protection Scores Version 2* (2014) <http://dx.doi.org/10.7910/DVN/24872> (last visited Jan. 15, 2015). [↑](#footnote-ref-136)