

Voting Patterns and Diversity of Backgrounds in the United Nations Human Rights Committee

The United Nations Human Rights Committee (HRC), the monitoring treaty body of the International Covenant on Civil and Political Rights, is one of the most important and highly regarded international human rights institutions. This article explores empirically whether the status of specific human rights in the home state of a given Human Rights Committee Member (CM) influences his or her voting patterns on those rights in the HRC. In general, I find no strong evidence that the status of the rights in the CM's states influences his or her voting patterns on those rights. However, the most noticeable exception to this is that CMs from OECD states are more likely to vote in favor of states in immigration and asylum cases. Also, CMs from OECD states are more likely to vote in general in favor of states. This might indicate that at times, the votes of CMs are influenced by their own life experience, and perhaps reflect their roles as agents protecting their state's interests.

Key words: UN Human Rights Committee, international human rights, decision-making in international institutions, UN human rights system, international law.

Introduction

It is well accepted that judges and decision-makers are influenced, at least to some extent, by their backgrounds (such as gender, ethnicity and political affiliation). The empirical literature about judicial decision-making in national courts, especially in the US,

is widely developed.¹ In recent years, there has also been an increase in research about decision-making in international courts, especially the International Court of Justice (ICJ), and the European Court of Human Rights (ECtHR).²

In the international context, the main decision-making components that have been studied are how geopolitics and gender influence the decisions of judges. However, as far as I am aware, there have been no studies about whether the status of human rights in the state of origin does (or does not) influence the decisions of decision-makers in international judicial institutions, on subjects related to those rights. For instance, whether a decision-maker coming from a state with a good record of women's rights would be more likely to promote women's rights in the international sphere? Or perhaps the opposite should be expected, and a decision-maker coming from a state with a problematic women's rights record would be the one more willing to promote this right in the international sphere?

The decision-making behavior in this regard might be influenced by two major theories – personal experience with being protected (or not being protected) by human rights,³ and decision-makers acting as state-agents promoting the human rights understandings of their home states.⁴ These theories of course do not necessarily exclude

¹ See, J. Rachlinski and A. Wistrich, 'Judging the Judiciary by the Numbers: Empirical Research on Judges' (2017) 13 *Annual Review of Law and Social Science* 203.

² See part 1 *Infra*

³ See, for example, C. L. Boyd et al, 'Untangling the Causal Effects of Sex on Judging', (2010) 54 *American Journal of Political Science* 389 (discussing how personal experience might affect judicial decisions in the context of gender).

⁴ See discussion in footnotes 10-13, *infra*.

one another. The first theory suggests that the personal experience of decision-makers with human rights might influence the way in which they vote. On the one hand, having a positive experience with being protected by a certain human right might influence the decision-maker to vote in a way that promotes that right. On the other hand, perhaps the decision-maker who had a personal experience of being denied a certain right is the one who would be more likely to promote it in the international sphere.

The second theory suggests that, at least in certain cases, international judges act as agents of the states that appointed them, and not merely as trustees. Therefore, international judges (as well as other decision-makers in the international sphere) might want to promote the human rights culture of their home states. Namely, they might be more willing to vote in favor of rights in which their home states have a good record.

In order to test my hypotheses, I use the United Nations Human Rights Committee (HRC) as a case study. The decision-making process in the HRC is of special interest for researchers since the HRC is the treaty body in charge of overseeing the implementation of one of the most widely ratified human rights treaties – the International Covenant on Civil and Political Rights (ICCPR).⁵ The rights that I look into in this paper are political rights,⁶ freedom of assembly and association, freedom of speech, freedom of religion thought and conscience, women's rights, due process and migrant rights (including asylum and refugees).

⁵ 1966 International Covenant on Civil and Political Rights, Art. 28(1) 1966, 999 UNTS 180 [ICCPR].

⁶ Cases involving political opposition to the government and enforced disappearances.

Understanding the ways in which the home state status of human rights might influence a CM's votes can give us a deeper insight into the institutional design and functioning of the HRC.⁷ This is of special importance, since the HRC is one of the major players in interpreting international human rights law and setting global standards in this regard. From an institutional point of view, it can also shed light on the practical importance of diversifying the composition of the HRC.

In general, I find no strong evidence that the background of rights in the home state of a given CM influences his or her voting patterns. However, there are a few exceptions. Most notably, CMs from economically developed states (OECD states) are more likely to protect the interests of states in immigration and asylum cases, and on the other hand CMs from states with high judicial independence are more likely to vote in favor of applicants in judicial due process cases. Also, CMs from OECD states are somewhat more likely to vote in favor of states on all subject-matters, and not only immigration. Therefore, there is relatively limited evidence that the life experience of CMs with human rights influences their voting patterns, and CMs do not act most of the time like agents of their states in this regard.

The article proceeds as follows. The first section discusses previous research about judicial behavior in national and international courts. The second section gives a general introduction to the ICCPR, the rights which it protects, and the composition of the HRC.

⁷ See, for example, B. Koremenos, 'Contracting Around International Uncertainty', (2005) 99 *American Political Science Review* 549; Jonas Tallberg et al., 'Explaining the Transnational Design of International Organizations', (2014) 68 *International Organizations* 741; A. I. Johnston, 'Treating International Institutions as Social Environments', (2002) 45 *International Studies Quarterly* 487.

The third section presents the hypotheses and performs the empirical analysis of the votes of individual CMs. The fourth section discusses which inferences could be drawn from the results presented.

1. Judicial behavior in international courts

The international community interested not only in establishing international judicial and quasi-judicial institutions, but also in the backgrounds of the decision-makers appointed to those institutions. Therefore, the statutes of many international judicial institutions include clauses that determine the backgrounds from which the decision-makers should come. Diversity in the composition of international judicial institutions is regarded as important both because it is assumed to influence the process of decision-making, and because it promotes the legitimacy of the international institutions.⁸ Currently, the most common diversity criteria found in the statutes of international courts are geographical origin, gender, legal system of the state of origin, and professional background.⁹ In recent years, diversity criteria have been gaining increased attention in the international community amid claims that decision-makers in international judicial

⁸ N. Grossman, 'Legitimacy and International Adjudicative Bodies', (2009) 41 *George Washington International Law Review* 107, at 140; N. Grossman, 'The Normative Legitimacy of International Courts', (2013) 86 *Temple Law Review* 61.

⁹ R. Mackenzie et al., *Selecting International Judges: Principle, Process and Politics* (2010), 24. [hereinafter Mackenzie et al., *Selecting International Judges*]; R. Mackenzie, 'The Selection of International Judges', in C. Romano, K. J. Alter and Y. Shany (eds.), *International Adjudication* (2014), 737, at 743–7 [hereinafter Mackenzie, *Selection of International Judges*].

institutions do not come from diverse backgrounds and not represent the international community as a whole.

In parallel to this, there is a discussion in the literature about whether international judges are (and should) be agents representing the interests of their governments, or whether international judges are (and should be) trustees that are expected to have almost complete autonomy in the legal sphere.¹⁰ On the one hand, some scholars argue that independence establishes the legitimacy and effectiveness of international courts. Therefore, judges should be seen as trustees and have autonomy in their decision-making.¹¹ On the other hand, due to the political nature and problems of implementation in international law, others argue that it is better that international judges are seen and act as more direct agents promoting the interests of their states and the allies of their states.¹² In

¹⁰ E. Voeten, 'International Judicial Behavior', in C. Romano, K. J. Alter and Y. Shany (eds.), *International Adjudication* (2014), 550, at 555-6 [hereinafter *Voeten 2014*]; E. Voeten, 'International Judicial Independence', in J. L. Dunoff and M. A. Pollack (eds.), *Interdisciplinary Perspectives on International Law and International Relations* (2013), 421, at 427, 429 [hereinafter *Voeten 2013*]; L. R. Helfer and A. Slaughter, 'Toward a Theory of Effective Supranational Adjudication', (1997) 107 *Yale Law Journal* 273; E. A. Posner and J. C. Yoo, 'Judicial Independence in International Tribunals', (2005) 93 *California Law Review* hereinafter: *Posner and Yoo I*]; L. R. Helfer and A. Slaughter, 'Why States Create International Tribunals: A Response to Professors Posner and Yoo', (2005) 93 *California Law Review* 899; E. A. Posner and J. C. Yoo, 'Reply to Helfer and Slaughter', (2005) 93 *California Law Review* [hereinafter: *Posner and Yoo II*].

¹¹ Voeten 2013, *supra* note 10, at 436-7; L. R. Helfer and A. Slaughter, 'Why States Create International Tribunals: A Response to Professors Posner and Yoo', (2005) 93 *California Law Review* 899.

¹² Voeten 2013, *supra* note 10, at 436-7; Posner & Yoo I, *supra* note 10; Posner & Yoo II, *supra* note 10.

this case we can also expect international judges to be agents of certain interests, values and traditions related to their states.¹³

On the practical level, it has been well documented in research on national and international institutions, that both the geopolitical background of the decision-maker, as well as his or her personal life story, experiences and beliefs, might influence the decisions that she or he makes.¹⁴ This goes against the traditional legalist perception of judges as professionals who apply the law without regard to life experience, external considerations or influences.¹⁵ This can also contradict, to some extent, the theory that international judges are merely trustees of the international community.

There are two main ways in which the background of the judge can influence the voting patterns – general influence, and influence regarding voting patterns on specific subject-matters. The best example regarding *general* voting patterns (which are not

¹³ T. Dannenbaum, ‘Nationality and the International Judge: The Nationalist Presumption Governing the International Judiciary and Why it Must be Reversed’, (2013) 45 *Cornell International Law Journal* 77; Voeten 2014, *supra* note 10.

¹⁴ L. Epstein et al., *The Behavior of Federal Judges: A Theoretical and Empirical Study of Rational Choice* (2013), 77–89; C. Berdojo, ‘It’s the Journey, Not the Destination: Judicial Preferences and the Decision-Making Process’, (2012) 51 *University of Louisville Law Review*; S. A. Ifill, ‘Racial Diversity on the Bench: Beyond Role Models and Public Confidence’, (2000) 57 *Washington & Lee Law Review* 405; J. L. Peresie, ‘Female Judges Matter: Gender and Collegial Decision Making in the Federal Appellate Courts’, (2005) 114 *Yale Law Journal* 1759; J. J. Rachlinski et al., ‘Does Unconscious Racial Bias Affect Trial Judges?’, (2009) 84 *Notre Dame Law Review* 1195; *But see* M. J. Gerhardt, ‘How a Judge Thinks’, (2009) 93 *Minnesota Law Review* 2185 (suggesting a more legalist point of view).

¹⁵ R. A. Posner, *How Judges Think* (2010), 5.

necessarily connected to the specific subject-matters of the cases themselves) in international courts is the literature about geopolitical voting patterns. These patterns may also suggest that at times international judges act as agents of their states. The most prevalent influence of the background of the decision-maker on his voting in international courts is the preference to vote in favor of the state of nationality. This was found to be true both for the International Court of Justice Judges, and for the Judges of the European Court of Human Rights.¹⁶ A study about international arbitration also found a bias in favor of the appointing state.¹⁷ However, a study about the ECtHR found that judges from former socialist states have a reverse bias – they are more likely to vote *against* their states of nationality.¹⁸ Finally, a qualitative research about decision-making in the ECtHR suggests that judges coming from former socialist states tend to have a somewhat different understanding of the nature of human rights.¹⁹

There is also certain evidence that judges in international courts might be influenced by geopolitical and cultural biases. For instance, Posner and de Figueiredo found that judges prefer to vote in favor of states with a similar wealth level and political regimes as their own state of nationality.²⁰ They also found some evidence of cultural

¹⁶ Voeten, *supra* note 14, at 615.

¹⁷ S. Puig and A. Strezhnev, ‘Affiliation Bias in Arbitration: an Experimental Approach’, (2017) 46 *Journal of Legal Studies* 371.

¹⁸ E. Voeten, ‘The Impartiality of International Judges: Evidence from the European Court of Human Rights’, (2008) 102 *American Political Science Review* 427, at 417.

¹⁹ N. L. Arold, *The Legal Culture of the European Court of Human Rights* (2007), 70, 79.

²⁰ E. Posner and M. de Figueiredo, ‘Is the International Court of Justice Biased?’, (2004) 34 *Journal of Legal Studies* 599, 620–1.

patterns, based on language and religion.²¹ Whereas in the context of the ECtHR, Voeten did not find any evidence for geopolitical biases, he did find that judges from former socialist states are significantly less likely to vote in favor of other former socialist states.²² Finally, whereas no geopolitical biases have been found in the ad hoc international criminal tribunals, a study conducted on the very limited data of the International Criminal Court, found that the more African judges sitting on the panel, the more likely the court was to vote against the defendants – all of whom were African.²³

The international law literature about *subject-matter* specific voting patterns is less developed. Probably the best example for evidence about subject-matter voting patterns is gender. This voting pattern reflects how certain life-experience may influence the decision-making process. Studies that have been conducted on this question in national courts suggest that women tend to vote differently only in very specific cases, mainly on issues that are of special relevance to women.²⁴ Evidence of different voting patterns of women

²¹ *Ibid.*; See also X. Ma and S. Guo, ‘An Empirical Study of the Voting Pattern of Judges of the International Court of Justice (2005-2016)’, (2017) 10 *Erasmus Law Review* 163.

²² Voeten, *supra* note 18, at 427–8.

²³ A. Chandrachud, ‘Diversity and the International Criminal Court: Does Geographic Background Impact Decision Making?’, (2013) 38 *Brooklyn Journal of International Law* 487, 488, 490–502, 488.

²⁴ See L. Boyd et al., ‘Untangling the Casual Effects of Sex on Judging’, (2010) 54 *American Journal of Political Science* 403 (finding that women vote differently only in sex discrimination cases); P. Collins et. al., ‘Gender, Critical Mass, and Judicial Decision Making’, (2010) 32 *Journal of Legal Policy* 260 (finding that the most significant differences between men and women were in criminal cases); S. Davis, S. Haire and D. R. Songer, ‘Voting Behavior and Gender on the U.S. Courts of Appeals’, (1993) 77 *Judicature* 129, 131–2 (finding that the votes of women circuit court judges in employment discrimination and search and seizure

in international judicial institutions is very scarce, among others because of the traditionally small number of women in international courts. In the context of the ECtHR, Voeten finds that women judges are more likely to support discrimination claims filed by women.²⁵ King and Greening conducted one of the first studies in the field about the International Criminal Tribunal for the Former Yugoslavia ('ICTY').²⁶ This study demonstrated that women judges sanctioned defendants who assaulted women more severely; however, in general, there was no evidence that women voted differently to men.²⁷ Navanethem Pillay, the only female judge in the Akayesu case before the International Criminal Tribunal for Rwanda, took the initiative to question witnesses about sexual violence.²⁸ Pillay herself said that 'rape has been classified as a war crime for decades, but it was never successfully

cases differ from those of their male counterparts); Peresie, *supra* note 14, at 1768-9 (finding that women tend to vote more in favor of plaintiffs in Title VII cases); D. R. Songer, S. Davis and S. Haire, 'A Reappraisal of Diversification in the Federal Courts: Gender Effects in the Courts of Appeals', (1994) 56 *Journal of Policy* 425, 432-7 (finding no difference between male and female judges in obscenity or criminal search and seizure cases. However, in employment discrimination cases, female judges were significantly more liberal than their male colleagues).

²⁵ E. Voeten, 'Gender and Judging: Evidence from the European Court of Human Rights', (2021) 28 *Journal of European Public Policy* 1453.

²⁶ K. L. King and M. Greening, 'Gender Justice or Just Gender? The Role of Gender in Sexual Assault Decisions at the International Criminal Tribunal for the Former Yugoslavia', (2007) 88 *Social Science Quarterly* 1049.

²⁷ *Ibid.* at 1061-6.

²⁸ N. Grossman, 'Sex on the Bench: Do Women Judges Matter to the Legitimacy of International Courts?', (2012) 12 *Chicago Journal of International Law* 647, 656-7.

prosecuted until women started to play a role in the International Criminal Tribunals.²⁹ Finally, Meernik and his colleagues did not find a connection between gender, general sentencing, and verdict on the ICTY.³⁰

Another possible example of specific voting patterns on the international level which might be connected to a certain life experience is enforced disappearances. It has been suggested that the judges of the Inter-American Court of Human Rights (IAtHR), together with members of the Inter-American Commission, have played a very important role in defining enforced disappearance as a human rights violation.³¹ Enforced disappearances was a common government practice in many Latin-American states in the 1970s and 1980s. When the cases of victims of enforced disappearances had been brought before the IAtHR, they posed two unique problems to the court.³² First and foremost, from the evidential point of view it is very hard to prove in such cases that the state is responsible for the disappearance. Second, strictly speaking, there was no relevant treaty article at the time prohibiting enforced disappearances. However, it is argued that since the judges (who themselves came from Latin-American states) had been aware of the extent of the problem,

²⁹ N. Pillay, 'Equal Justice for Women: A Personal Journey', (2008) 50 *Arizona Law Review* 657, 666 ;) see also D. Terris et al., *The International Judge: An Introduction to the Men and Women Who Decide the World's Cases* (2007), 44–5.

³⁰ J. Meernik et al., 'Judicial Decision Making and International Tribunals: Assessing the Impact of Individual, National, and International Factors', (2005) 86 *Social Science Quarterly* 683, 696, 699.

³¹ *Ibid.*

³² S. M. Witten, 'Velásquez Rodríguez Case', (1989) 83 *American Journal of International Law* 361; C. Medina, 'The Case of Valasquez Rodriguez v. Honduras', (1988) 6 *Netherlands Human Rights Quarterly* 68.

they showed readiness to develop special jurisprudence that could overcome these problems.³³ In the landmark case of *Velásquez Rodríguez v. Honduras*,³⁴ the IAtHR held that when there was evidence that a systematic pattern of disappearances was carried out or tolerated by a certain state, and the state refused to investigate those cases in due diligence, then the court may establish a violation of such rights as the right to life.

To summarize this section, there seem to be some evidence that the decision-making process of international judges is affected both by certain geopolitical biases affecting mostly general voting patterns (which might indicate that that in the context of those studies at times judges are acting as agents of their states), and there is also some evidence for subject-matter specific voting patterns (which are probably more affected by certain life experiences). However, as mentioned above, no systematic research has been conducted on the question of how the status of the rights in the decision-maker's home state effects the way that he or she vote on those specific rights. In the next chapter I introduce the United Nations HRC, which I use as a case study for exploring this question.

2. The United Nations Human Rights Committee

2.1 General introduction to the HRC

The International Covenant on Civil and Political Rights (ICCPR)³⁵ codifies the civil and political rights recognized in the Universal Declaration of Human Rights.³⁶ The ICCPR

³³ Meernik, *supra* note 30.

³⁴ *Velásquez Rodríguez v. Honduras*, series C. No. 4, 28 ILM 291 (1989) Inter-American Court of Human Rights, July 29, 1988.

³⁵ ICCPR, *supra* note 5.

³⁶ G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948).

guarantees a wide range of the most basic rights to people from all over the world. Currently, 173 states are parties to the ICCPR,³⁷ making it the most widely ratified legally binding document granting a range of civil and political rights. The ICCPR protects rights such as the right to life,³⁸ freedom from torture,³⁹ freedom of religion,⁴⁰ freedom of expression,⁴¹ gender equality,⁴² judicial due process,⁴³ and equal protection of the law.⁴⁴

Since there are many difficulties in enforcing a treaty that guarantees the rights of an individual against a state, the ICCPR drafting committee decided to establish a committee that would interpret the treaty and monitor its implementation in the member States.⁴⁵ Therefore, the HRC was established under Chapter IV of the ICCPR. The HRC is composed of 18 CMs that come from states that are members of the ICCPR.⁴⁶ The CMs serve for a term of four years and are eligible for re-election.⁴⁷

³⁷International Covenant on Civil and Political Rights - Ratification, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=_en.

³⁸ ICCPR, *supra* note 5, art. 6.

³⁹ *Ibid.* Art. 7

⁴⁰ *Ibid.* Art. 18

⁴¹ *Ibid.* Art. 19

⁴² *Ibid.* Arts. 3, 23

⁴³ *Ibid.* Art. 14

⁴⁴ *Ibid.* Art. 26

⁴⁵ *Ibid.* At 254

⁴⁶ *Ibid.* Art. 28.

⁴⁷ *Ibid.* Art. 32.

Some argue that the nomination and appointment of CMs to the HRC are political and not necessarily reflecting the qualification of the candidate.⁴⁸ Although the ICCPR expressly states that CMs serve in their personal capacity and should not represent the interests of their respective states,⁴⁹ they can be nominated only by their states of nationality.⁵⁰ Also, in the process of the election of CMs at the international level, the UN regional groups used to play an important part in promoting their candidates (however today the regional groups are less dominant in the process).⁵¹

As part of their role in supervising the implementation of the ICCPR in the member states, the HRC has three main roles. The first role is to review periodical reports of states regarding ‘the measures they have adopted to give effect to the rights recognized’ in the ICCPR, as well as ‘the progress made in the enjoyment of those rights.’⁵² The second role is to publish general comments on the ICCPR in order to provide general guidance to the

⁴⁸ J. Crawford, ‘The UN Human Rights Treaty System: A System in Crisis?’, in P. Alston and J. Crawford (eds.), *The Future of UN Human Rights Treaty Monitoring* (2000), 9; see also A. Clapham, ‘UN Human Rights Reporting Procedures: An NGO Perspective’, in P. Alston and J. Crawford (eds.), *The Future of UN Human Rights Treaty Monitoring* (2000), 188. For a more detailed account of the nomination process to the HRC, see V. Shikhelman, ‘Geopolitics and Culture in the United Nations Human Rights Committee’, (2017) 28 *European Journal of International Law* 845.

⁴⁹ ICCPR, *supra* note 5, Art. 28(3).

⁵⁰ *Ibid.* Art. 29(2).

⁵¹ Crawford, *supra* note 48, at 9.

⁵² See ICCPR, *supra* note 5, art. 40; Rules of Procedure of the Human Rights Committee, Rule 66, ICCPR, CCPR/C/3/Rev.10 (11 January 2012) [hereinafter: Rules of Procedure].

states on their obligations under the ICCPR.⁵³ 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.⁵⁴ In this function, the HRC acts as a quasi-judicial tribunal.

Article 1 of the First Optional Protocol to the ICCPR (OP) permits an individual to file a communication for a violation of a right guaranteed to him or her by the ICCPR. Although the OP is considered a separate treaty, only states that are parties to the ICCPR are allowed to join it.⁵⁵ Currently, out of the 173 states who are parties to the ICCPR, 117 are parties to the OP.⁵⁶ The role of the individual communications is to provide a remedy in case of a specific violation, as well as to give guidance to member states regarding the proper implementation of the ICCPR.

In the individual communications procedure, the applicant files a communication that includes the facts of the case and legal arguments. This starts an adversarial procedure;

⁵³ The HRC interpreted its authority to issue General Comments from ICCPR article 40(4), which provides that the HRC may transmit ‘such general comments as it may consider appropriate.’ See Office of the U.N. High Comm’r for Human Rights, Civil and Political Rights, *The Human Rights Committee Fact Sheet 24*, UNITED NATIONS (last visited Feb. 8, 2017); <http://www.ohchr.org/Documents/Publications/FactSheet15rev.1en.pdf>; Office of the U.N. High Comm’r for Human Rights, *Human Rights Treaty Bodies—General Comments*, UNITED NATIONS (last visited Feb. 8, 2017). <http://www.ohchr.org/EN/HRBodies/Pages/TBGeneralComments.aspx>.

⁵⁴ Optional Protocol to the International Covenant on Civil and Political Rights art. 23, *opened for signature* 16 December 1966, 999 UNTS 171 [hereinafter Optional Protocol].

⁵⁵ *Ibid.* At. 1.

⁵⁶ See generally Optional Protocol, *supra* note 54.

following that, the member State is given a chance to provide an answer in its defense.⁵⁷

After receiving and reviewing the communication and the answer from the member state, the HRC issues one of the following three decisions—inadmissible, violation (of one or more of the treaty articles), or no violation by the state. The HRC also indicates the remedies that the state should undertake in order to compensate the individual for the violation of the human right (if it indeed occurred).

Since the individual communications procedure is quasi-judicial, it is the only procedure in which CMs are allowed to write separate opinions.⁵⁸ Therefore, we can best study how the background of a given CM influences his or her voting pattern through these decisions (as opposed to the general comments and periodical reviews of states where individual opinions are not published). The HRC is not divided into chambers or panels, meaning that under usual circumstances all 18 CMs participate in the decisions on all individual communications.

One of the problems with the individual communications mechanism is that the normative status of this mechanism is unclear, and therefore states are not always implementing the decisions in the communications. Originally, the decisions under the OP were not supposed to be legally binding on the member states. Rather, they were intended to serve a similar function to advisory opinions in other international tribunals.⁵⁹ However,

⁵⁷ *Ibid.* Art. 4.

⁵⁸ Rules of Procedure, *supra* note 52, rule 104.

⁵⁹ S. Egan, *The UN Human Rights Treaty system: Law and Procedure* (2011), 262. For earlier discussions on the legal status of the decisions of the HRC, see D. McGoldrick, *The Human Rights Committee: Its Role in the Development of the International Covenant on Civil and Political Rights* (1991), 54.

over time the HRC has promoted the idea that its views should *de facto* be binding on the state parties, and states have become somewhat more open to implement decisions against them.⁶⁰ In General Comment 33 issued by the HRC in 2008,⁶¹ the HRC pointed out that its decisions are arrived at in a ‘judicial spirit,’ and that the decisions are of a determinative character.⁶² Moreover, the General Comment States that, ‘[T]he views of the Committee under the Optional Protocol represent an authoritative determination by the organ established under the Covenant itself charged with the interpretation of that instrument,’⁶³ and it reminds the states that they have an obligation to act in good faith to fulfill their obligations under the OP and the ICCPR.⁶⁴

Regardless of the measures that the HRC takes to ensure implementation of its decisions, many states refuse to recognize its decisions on individual communications as binding, and the status of implementation appears unsatisfactory. In a 2011 study by Open Society Initiative based on the reports of the HRC itself, it was found that only 12.27% of the HRC decisions had been fully implemented.⁶⁵ A more recent research, found that

⁶⁰ Y. Tyagi, *The UN Human Rights Committee* (2011), 587–92; H. J. Steiner, *Individual Claims in a World of Massive Violations: What Roles for the Human Rights Committee?*, in P. Alston and J. Crawford (eds.), *The Future of UN Human Rights Treaty Monitoring* (2000), 15, 28.

⁶¹ ICCPR, General Comment 33–The Obligations of States Parties under the Optional Protocol to the International Covenant on Civil and Political Rights, CCPR/C/GC/33 (5 November 2008) [hereinafter General Comment 33].

⁶² *Ibid.* Para. 11.

⁶³ *Ibid.* Para. 13.

⁶⁴ *Ibid.* Para. 14; see also Egan, *supra* note 59, at 262–3.

⁶⁵ Open Society Justice Initiative, *From Judgment to Justice—Implementing International and Regional*

16.67% of the HRC decisions are implemented on a level defined by the HRC as ‘Reply/action largely satisfactory.’⁶⁶ Both of these figures indicate a relatively low implementation rate when compared to other national and even international tribunals.⁶⁷

2.2 Composition of the HRC

Article 31 of the ICCPR states that in the process of the election of CMs ‘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.’ Also, Article 28 of the ICCPR states that CMs ‘shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.’ Hence, the

Human Rights Decision (2011), 119, <https://www.opensocietyfoundations.org/sites/default/files/from-judgment-to-justice-20101122.pdf> [hereinafter FROM JUDGMENT TO JUSTICE] (defining ‘satisfactory’ Responses as ‘the willingness of the State party to implement the Committee’s recommendations or to offer the complainant an appropriate remedy’); see also Y. Shany, *The Effectiveness of the Human Rights Committee and the Treaty Body Reform* (Hebrew Univ. Jerusalem Int’l L. Forum, Working Paper No. 02-13, 2013), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2223298.

⁶⁶ V. Shikhelm, ‘Implementing Decisions of International Human Rights Institutions – Evidence from the United Nations Human Rights Committee’, (2019) 30 *European Journal of international Law* 753.

⁶⁷ Compliance with judgments of the International Court of Justice is around sixty-eight percent. See T. Ginsburg and R. H. McAdams, ‘Adjudicating in Anarchy: An Expressive Theory of International Dispute Resolution’, (2004) 45 *William and Mary Law Review* 1229, 1315. For data on implementation of judgments in the European Court of Human Rights and the Inter-American Court of Human Rights, see generally From Judgment to Justice, *supra* note 65.

ICCPR itself might implicitly assume that different geographical and cultural understandings of human rights exist, and might be reflected in the decision-making process. Also, these provisions attempt to prevent the domination of the HRC by one social system and add international legitimacy to the decisions of the HRC.⁶⁸

Over the years the most important criteria of nomination to the HRC has probably been the geographical origin of the nominee.⁶⁹ As mentioned above, the UN 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).⁷⁰ The elections are seen as political, and every regional group tries to lobby for its candidates to be elected to as many UN bodies as possible, including the HRC.⁷¹ As in many other international institutions, Western CMs have served on the HRC disproportionately more than CMs from other regions (42.22%). There is no apparent evidence that diversity criteria such as gender, former occupation, or even legal systems (the latter two being officially mentioned in the ICCPR) have been taken seriously into account when states nominate and elect candidates, although things are gradually changing in recent years.

⁶⁸ Tyagi, *supra* note 60, at 76.

⁶⁹ See Crawford, *supra* note 48, at 9 (discussing the political nature of nominations to the HRC).

⁷⁰ This group also includes 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 United Nations Department for General Assembly and Conference Management, United Nations Regional Groups of Member States, <http://www.un.org/depts/DGACM/RegionalGroups.shtml>.

⁷¹ Tyagi *supra* note 60, at 88–89; Crawford, *supra* note 48, at 9.

Regarding the professional backgrounds of the CMs, the leading backgrounds were academia and government. Out of the fifty-seven CMs, thirty CMs (52.63%) had a prior career in academia before being nominated to the HRC (including both CMs with ‘pure’ academic careers as well as CMs who also served as judges or government officials). The second most common professional background is working for the government.⁷² Fifteen CMs (26.31%) held a position in the government or in politics before they were elected to the HRC (two of them held this position together with a position in academia). Finally, thirteen CMs (22.8%) served as judges prior to their appointment to the HRC.⁷³

It is also interesting to point out that women are very much underrepresented in the HRC, as they are in many other international tribunals. During the time period under research, only twelve women served on the HRC (21.05%), as compared to forty-five men (78.95%). However, recently the member States have become more aware of gender balance, and as of 2022, seven out of the eighteen CMs (38.88%) are women.

The problem of lack of diversity of CMs has been addressed by the UN several times. Two resolutions on this subject were adopted. The UN Economic and Social Council adopted the first resolution in 2001,⁷⁴ and the UN General Assembly adopted the second resolution in 2009.⁷⁵ Also, a 2012 on strengthening the UN Treaty Bodies written by the UN High Commissioner for Human Rights, she referred generally to the lack of diversity

⁷² It should be noted that I included here CMs who had a political career prior to their election.

⁷³ V. Shikhelman, ‘Diversity and Decision-Making in International Judicial Institutions: the United Nations Human Rights Committee as a Case Study’, (2018) 36 *Berkley Journal of International Law* 61, 91.

⁷⁴ Economic and Social Council Res. 2001/275 (24 July 2001).

⁷⁵ G.A. Res. 64/173, U.N. Doc. A/RES/64/173 (18 December 2009).

in the treaty bodies, writing that ‘[there is a] need to carefully review the qualifications of each candidate, and select the best candidates giving consideration to gender, geography, professional fields and legal systems in determining the final composition.’⁷⁶

Studies conducted regarding geopolitical and cultural biases in the HRC found that certain geopolitical voting patterns do exist in the votes of CMs. Evidence for cultural voting patterns is more limited. However, usually voting patterns of individual CMs do not influence the final decision of the committee.⁷⁷ Also, it was found that CMs coming from a government or diplomatic background are less likely to vote in favor of states, and that CMs from the Latin American and Eastern-European states are less likely to vote in favor of states.⁷⁸

3. Hypotheses and hypotheses testing

3.1 Hypotheses and case studies

In order to test how the background of the CM influences the way that he or she votes on specific subject-matters, I test the following hypotheses:

Table 1: Hypotheses

⁷⁶ N. Pillay (U.N. High Comm’r of Human Rights), *Strengthening the United Nations Human Rights Treaty Body System* (2012), 78.

⁷⁷ V. Shikhelman, ‘Geography, Politics and Culture in the United Nations Human Rights Committee’, (2017) 28 *European Journal of International Law* 845.

⁷⁸ *Ibid.*

Hypothesis	Description	Variables
Political	CMs from states with a high score of physical integrity ⁷⁹ are more or less likely to vote in favor of states in political rights cases. ⁸⁰	Interaction variable – physical integrity (CIRI) * political rights case
Freedom of Assembly and Association	CMs from states with a high score of freedom of assembly and association are more or less likely to vote in favor of states on this subject.	Interaction variable - freedom of assembly and association (CIRI) * freedom of assembly case
Freedom of Speech	CMs from states with a high score of freedom of speech are more or less likely to vote in favor of states on this subject.	Interaction variable - freedom of speech (CIRI) * freedom of speech case
Freedom of Religion	CMs from states with a high score of freedom of religion are more or less likely to vote in favor of states on this subject. ⁸¹	Interaction variable - freedom of religion (CIRI) * freedom of religion case

⁷⁹ This is an additive index constructed from the Torture, Extrajudicial Killing, Political Imprisonment, and Disappearance CIRI indicators

⁸⁰ Cases involving political opposition to the government and enforced disappearances.

⁸¹ Includes cases of religion, freedom of thought, and conscience.

Women's rights	CMs from states with a high women's political score are more or less likely to vote in favor of states on women's rights	Interaction variable - Women's political rights (CIRI) * women's rights case
Due Process	CMs from states with high independence of judiciary score are more or less likely to vote against states in due process cases	Interaction variable - Independence of the judiciary (CIRI) * due process case
Immigration	CMs from OECD developed states are more or less to vote in favor of states on the subject of immigration ⁸²	Interaction variable – OECD membership * immigration case

⁸² Immigration cases include immigration, asylum and refugee cases.

Before turning to the empirical part of the article, it is interesting to present two examples of case studies in which the background and personal experience of a CM might have influenced his or her vote in the case. In the case of *Hoyos*, the applicant argued that Spain violated her right for equality as guaranteed by Article 26 of the ICCPR. This was because according to Spanish legislation only men could inherit nobility titles.⁸³ The communication was declared inadmissible, since HRC decided that it had no jurisdiction to review it.⁸⁴ However, Ruth Wedgwood, the American CM who sat on the Committee at the time, chose to write a separate opinion.⁸⁵ Wedgwood, perhaps influenced both by her gender and coming from a state with a relatively good record on women's rights (and no nobility titles), pointed out that the Spanish legislation discriminated against women and violated international human rights norms.⁸⁶ She also wrote that the scope of the Committee's decision should be narrowed in this case, and due regard should be given to the fact that the nobility title itself is devoid of material or financial content.⁸⁷

Another interesting example concerns immigration. In the case of *Shakeel*, Canada refused to grant asylum to a Pakistani Christian priest.⁸⁸ The applicant claimed that he was persecuted in Pakistan due to his faith, but the Canadian authorities did not believe his

⁸³ *Hoyos Martinez de Irujo v. Spain*, Comm. 1008/2001, U.N. Doc. A/59/40, Vol. II, at 472 (HRC. 30 March 2004),

http://www.worldcourts.com/hrc/eng/decisions/2004.03.30_Hoyos_y_Martinez_de_Irujo_v_Spain.htm.

⁸⁴ *Ibid.* Para. 7.

⁸⁵ *Ibid.* at Annex.

⁸⁶ *Ibid.*

⁸⁷ *Ibid.* It should be noted that two men CMs also wrote separate opinions in the case.

⁸⁸ *Shakeel v. Canada*, Comm. 1881/2009, U.N. Doc. CCPR/C/108/D/1881/2009 (ICCPR June 24, 2013).

version of events and decided to deport him back to Pakistan.⁸⁹ The applicant argued before the HRC that his deportation to Pakistan would constitute, among others, a breach of Article 6 – the right to life, and of Article 7 – the right not to be tortured.⁹⁰ The majority of CMs found that if the applicant were to be deported to Canada, his rights under Articles 6 and 7 would indeed be violated.⁹¹ However, seven CMs contested this decision, six of whom came from OECD states.⁹² The dissenting CMs argued that since in this case the author of the communication was unable to prove any irregularities in the decision of Canadian authorities, or to show that the procedure was unreasonable or arbitrary, the HRC should not have found a violation.⁹³

The examples above may indicate that the background of the CMs, and specifically the human rights culture and understanding in the states from which they come, might have some influence on the way in which they vote. However, there might obviously be many other factors that influence the decision-maker – both legal and extra-legal, and it is not always easy to differentiate those factors by reading the cases themselves.

3.2 Data

This article uses data that I collected from all 571 decisions on the merits issued by the HRC between 1997 and 2013 (sessions 59–109). I did not include older decisions because

⁸⁹ *Ibid.* Para. 2.1–2.10.

⁹⁰ *Ibid.* Para. 3.4.

⁹¹ *Ibid.* Para. 9.

⁹² CMs Mr. Yuval Shany, Mr. Cornelis Flinterman, Mr. Walter Kälin, Sir Nigel Rodley, Ms. Anja Seibert-Fohr, Mr. Yuji Iwasawa and Mr. Konstantine Vardzelashvili dissented.

⁹³ *Ibid.* Para. 6.

until the 59th session the HRC did not indicate the CMs who participated in the discussion on the communication.⁹⁴ The texts of the decisions came from the Bayefsky database,⁹⁵ and I supplemented the texts with the UN Treaty Body Database (for decisions published after July 27, 2012).⁹⁶ Each observation in the database is a vote of a CM in a specific decision (N= 8,317).⁹⁷

This article uses the ‘vote in favor’ of a state as a dependent variable. This is a dummy variable that takes the value of ‘1’ when a CM votes in a given case that the state has not violated any of the rights claimed in the communication. Otherwise, when there was a violation of at least one of the ICCPR articles, the dependent variable takes the value of ‘0’. In the current dataset, 16.39% of the votes were in favor of the state (i.e., ruling that there was no violation of the ICCPR), and 83.61% of the votes were in favor of the applicant (i.e., ruling that at least one of the ICCPR articles has been violated). I hand-coded the data regarding the subject-matter of the communications, and the data regarding the status of the human rights in the CMs’ home-state was taken from the CIRI dataset.⁹⁸

⁹⁴ According to 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 made by all the CMs.

⁹⁵ The United Nations Human Rights Treaties, BAYEFSKY, <http://www.bayefsky.com/docs.php/area/jurisprudence/treaty/ccpr/opt/0/node/5/type/all>

⁹⁶ UN Office of the High Comm’r on Human Rights, Treaty Bodies Search, United Nations, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en.

⁹⁷ The original database included 8,341 observations, but due to lack of data regarding certain countries in the database during the research (mainly Lebanon that was in a transitional phase at the relevant time following its civil war), 24 observations have been excluded from the analysis.

⁹⁸ CIRI dataset <http://www.humanrightsdata.com/>

Before quantitatively analyzing the data, it is interesting to look into some descriptive statistics. Between session 1 and session 109, individual communications were decided against 86 states. Therefore, there are no decisions on individual communications against 25% of the states parties to the First Optional Protocol. In the period relevant to this article (Sessions 59–109), the states 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). 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).

The following table presents the percentage of the votes in cases by subject matter. As can be seen, sometimes a case can be classified by more than one subject matter – i.e. a case can be classified both as a freedom of assembly case and as a due process case.

Table 2: Distribution of subject-matters by case

Case subject-matter	Percentage of cases
Political rights	18.34%
Freedom of assembly	5.89%
Freedom of speech	12.58%
Freedom of religion	17.06%
Women's rights	1.23%
Due process	62.01%
Immigration and asylum	9.31%

Also, the next table presents data about the means and standard deviations of the variables describing the status of the rights in the home-states of the CMs:

Table 3: Description of variables

Variable	Mean	Standard deviation	Minimum	Maximum
Physical integrity	5.14	2.38	0	8
Freedom of assembly	1.48	0.7	0	2
Freedom of speech	1.23	0.6	0	2
Freedom of religion	1.4	0.78	0	2
Women's political rights	2.17	0.52	0	3
Independence of the judiciary	1.45	0.72	0	2

Also, 48.67% of the CMs in the period relevant to the research came from OECD states.

3.3 Results

The next step is to test the hypotheses in a multivariate regression form. The regressions were run using a logit model with robust standard errors. One of the major problems with running a regression which includes all the variables regarding the human rights scores of states is the problem of multicollinearity. Multicollinearity is a situation in which two (or more) independent variables are highly correlated with each other, and this high correlation can undermine the statistical significance of independent variables. In our case, for instance, a state with a high score of freedom of assembly is also likely to have a high score of freedom of speech.

Therefore, I decided to run three groups of regressions. The first group of regression (presented in table 4) analyses differently each type of cases by subject matter – i.e., it analyses separately immigration cases, women’s rights cases etc. Given that the variance in this form of analyses is significantly lower, I could not control for the identity of CMs, and some cases and variables were dropped by the regression for perfect prediction.

The second group of regressions (presented in table 5) analyses all of the cases together, but the independent variables focus only on one subject matter – for example, only whether it is a women’s rights case, whether the CM comes from a state with a high score of women’s rights, and the interaction between the two. In this groups of regressions I did control also for the identity of the CMs.

The third group of regressions (presented in table 6) analyses all the independent variables and cases together. In some of the specifications I controlled for the identity of the CMs, while in others I controlled for the way in which the majority of the HRC voted (in favor or against the state). In the last specification I also controlled for the human rights score of the respondent state.⁹⁹ It should be noted that in the third, fourth and fifth specifications, in which I control for the identity of the CMs, there is one missing observation. The reason for this is that CM Laure Moghaizel voted only once during the time period of the research, and therefore her vote was taken out for being a ‘perfect prediction.’

⁹⁹ Christopher Farris, *Latent Human Rights Protection Scores*, Version 2 (2014), available at <https://dataverse.harvard.edu/dataset.xhtml?persistentId=doi:10.7910/DVN/24872>

Table 4: Logit regressions by case type

Type of case	(1) political	(2) Freedom of assembly	(3) Freedom of religion	(4) Freedom of speech	(5) Women's rights	(6) Due process	(7) Immigration
physintstate	-0.0787 (0.0935)						
assmblystate		0.509 (0.677)					
speechstate			0.193 (0.371)				
religionstate				0.201 (0.230)			
womenstate					1.872 (1.655)		
Judicialindependence state						0.313** (0.137)	
oecdstate							1.291*** (0.337)
Majority vote	9.589*** (0.864)		6.366*** (0.454)	6.237*** (0.359)		7.171*** (0.243)	5.568*** (0.394)
Human rights	-1.112*** (0.246)		0.318** (0.158)	0.109 (0.126)		0.499*** (0.0940)	0.384* (0.228)
Respondent state	-5.409*** (0.551)	-2.623** (1.226)	-4.549*** (0.489)	-4.501*** (0.427)	-6.309 (4.083)	-4.788*** (0.260)	-4.074*** (0.534)
Constant							
Observations	1,525	16	1,046	1,419	17	5,157	774

Table 4 shows some interesting patterns. First and foremost, it shows that CMs coming from states with high judicial independence scores and OECD states are (somewhat surprisingly) more likely to vote in favor of states, and not in favor of applicants. These results reached high statistical significance ($p < .05$ and $p < .01$, respectively). Also, interestingly, the correlation between the general human rights score of a state and the vote of the CM varied between subject matters. Whereas in political cases CMs were less likely to vote in favor of states with a high human rights score ($p < .01$), in the cases of freedom of religion, due process and immigrations, CMs were more likely to vote in favor of states with a high human rights score ($p < .05$, $p < .01$ and $p < .1$, respectively).

Table 5: Logit regressions – all cases and subject matter variables (also controlling for CMs).

[illegible]

Table 5 demonstrates two sorts of patterns of interest. The first, regarding immigration cases and CMs from OECD states. The interaction variable of immigration case and OECD CM was positive and statistically significant ($p < .05$), which means that CMs from OECD states are *more likely* to vote in favor of states on those cases. Also, CMs from OECD states were *more likely* to vote in general in favor of states regardless of the subject matter of the communications ($p < .01$). Finally, CMs coming from states with a high score of physical integrity were *less likely* to vote in favor of states ($p < .05$).

Table 6: Logit regressions – all cases

	(1)	(2)	(3)	(4)	(5)
Politicalcase *	0.00637	-0.0887	0.00396	-0.144	-0.170
physintstate	(0.0541)	(0.0813)	(0.0564)	(0.109)	(0.127)
Politicalcase	-1.232***	-0.424	-1.160***	-0.202	0.340
	(0.302)	(0.472)	(0.313)	(0.639)	(0.750)
physintstate	-0.0289	-0.0792*	-0.0907**	-0.207*	-0.222**
	(0.0191)	(0.0444)	(0.0458)	(0.112)	(0.111)
Assemblycase *	0.736	0.460	0.727	0.419	0.412
assmblystate	(0.518)	(0.491)	(0.523)	(0.565)	(0.575)
assemblycase	-2.346**	-1.286	-2.260**	-1.178	-1.040
	(0.946)	(0.973)	(0.954)	(1.135)	(1.161)
assmblystate	-0.0447	-0.410***	0.0268	0.0196	0.0382
	(0.0648)	(0.131)	(0.0995)	(0.227)	(0.224)
Speechstate *	-0.213	0.166	-0.205	0.159	0.154
speechcase	(0.191)	(0.472)	(0.192)	(0.470)	(0.545)
speechcase	0.772**	0.648	0.651**	0.567	0.920
	(0.303)	(0.737)	(0.303)	(0.840)	(0.914)
speechstate	0.0161	-0.222	-0.0866	-0.378	-0.442
	(0.0658)	(0.156)	(0.107)	(0.285)	(0.289)
Religionstate *	0.0601	0.138	0.0618	0.268	0.164
religioncase	(0.126)	(0.349)	(0.128)	(0.439)	(0.421)
religioncase	-0.432*	-1.243*	-0.355	-1.464	-1.612*
	(0.244)	(0.705)	(0.247)	(0.903)	(0.836)
religionstate	0.0949*	0.216*	0.126	-0.223	-0.212
	(0.0565)	(0.125)	(0.103)	(0.306)	(0.309)
Womencase*	0.0761	0.386	0.0787	0.237	0.321
womenstate	(0.412)	(0.691)	(0.415)	(0.597)	(0.783)
womencase	0.360	-0.244	0.367	0.113	-0.0149
	(0.930)	(1.455)	(0.936)	(1.461)	(1.982)
womenstate	-0.0448	0.102	-0.0185	0.647	0.702
	(0.0651)	(0.140)	(0.154)	(0.447)	(0.457)
Judicialindependence state *	-0.188**	0.0259	-0.184**	0.0762	0.134
Dueprocesscase	(0.0901)	(0.223)	(0.0910)	(0.244)	(0.244)
dueprocesscase	0.306**	-0.236	0.283*	-0.385	-0.155
	(0.148)	(0.374)	(0.149)	(0.427)	(0.423)
Judicialindependence state	-0.00622	-0.121	-0.155	-0.265	-0.378
	(0.0924)	(0.232)	(0.135)	(0.389)	(0.396)
Immigrationcase*oecdstate	0.491***	1.066**	0.514***	1.018**	1.086**
	(0.169)	(0.452)	(0.173)	(0.460)	(0.488)
immigrationcase	0.695***	0.322	0.733***	0.422	-0.198
	(0.123)	(0.342)	(0.126)	(0.364)	(0.399)
oecdstate	0.315***	1.300***	-0.130	1.026	1.095
	(0.108)	(0.246)	(0.709)	(1.162)	(1.117)
Human rights					0.544***
Respondent state					(0.0744)
Majority vote		7.179***		8.186***	8.121***
		(0.186)		(0.273)	(0.290)
Constant	-1.589***	-3.489***	-0.933*	-3.324**	
	(0.191)	(0.454)	(0.493)	(1.368)	
Observations	8,317	8,317	8,316	8,316	8,316
Controlling for majority vote	No	Yes	No	Yes	Yes
Controlling for CM	No	No	Yes	Yes	Yes

As can be seen from table 6 above, the two interaction variable coefficients which reached statistical significance are the interaction variable of judicial independence with due process case, and the interaction variable of OECD membership with an immigration case. The interaction of the judicial independence and due process coefficient was negative and significant only in the first and third specifications ($p < .05$), meaning that when the subject matter of the case is due process, judges from states with a high score of judicial independence are *less likely* to vote in favor of the state. However, it should be noted that this interaction variable was statistically significant only when there was no control for how the majority voted in the case or the human rights score of the respondent state. Moreover, in table 4 (where the cases were analysed separately for each subject matter), I received an opposite result – that CMs coming from states with a high score of judicial independence, are more likely to vote in favor of states in due process cases. Therefore, its significance might be less prominent and perhaps influenced by interaction with other variables.

On the other hand, the OECD and immigration case interaction coefficient was positive and statistically significant in all of the specifications ($p < .01$ in the first and third specifications, and $p < .05$ in the second, fourth and fifth specifications). Meaning, that CMs from OECD states are *more likely* to vote in favor of states in immigration law cases. Given that the coefficient of this interaction variable is significant in all the specifications (as well as in the previous tables), it makes it even more important.

Also, the regressions show that there are certain subject-matters on which CMs are more or less likely to vote in favor of states unrelated to the status of the rights in their own home states. The subject-matters of cases in which CMs are more likely to vote *against*

states are political cases ($p < .01$ in the first and third specifications), and freedom of assembly cases ($p < .05$ in the first and third specifications). The subject-matters of cases in which CMs are more likely to vote *in favor* of states are freedom of speech cases ($p < .05$ in the first and third specifications), due process cases ($p < .05$ and $p < .1$ in the first and third specifications respectively), and immigration cases ($p < .01$ in the first and third specifications).

Finally, interestingly, the status of the specific human rights in the CM's home-states also did not have a significant effect on his or her general voting patterns in favor or against states. The only exceptions in this regard were physical integrity rights, which had a negative coefficient ($p < .1$ in the second and fourth specifications, and $p < .05$ in the third and fifth specifications), and being a member of an OECD state, which had a positive coefficient ($p < .01$ in the first and second specifications). This is similar to the results seen in table 5 regarding these coefficient variables.

It should be noted that the finding regarding OECD CMs being more likely to vote in favor of states is somewhat surprising, since there is a high correlation between good human rights record and being a member of an OECD state. Therefore, this can show that coming from a human rights abiding environment does not necessarily impact the pattern of voting in a way that supports claims of human rights violations, and even to the contrary. However, the statistical significance disappears when we control for specific CMs in table 6 (but not in table 5). Given this finding, I also tried to see whether the general human rights score of the CMs' home state, or the square of the human rights score, were statistically significant regarding the chances to vote in favor of a state, but both did not reach statistical significance.

4. Discussion

The purpose of this article was to examine how the status of rights in the CM's home state does, or does not, influence his or her voting patterns. The assumption was that personal experience of being (or not being) protected by certain human rights might influence the way that CMs vote in that regard. Moreover, if CMs see their roles as agents of the state (unlike trustees), they might vote in a way that promotes the human rights in which their states have a better record.

Only two of the combinations of the subject matter of the communication and the background of the CM that I looked into did reach statistical significance. These interactions were judicial independence with due process cases, and the interaction of OECD membership with immigration cases. Regarding the combination of due process cases and high judicial scores, the results in the two sets of analysis (in tables 4 and 6) were somewhat contradicting. Whereas when analyzing separately voted in due process cases (in table 4) it seemed that CMs from states with high scores of judicial independence were more likely to vote in favor of other states, however when analyzing the interaction variable (in table 6) it seemed that CMs coming from states with a higher score of judicial independence are less likely to vote in favor of states in due process cases. Moreover, the statistical significance in table 6 disappears when controlling for how the majority vote, or the human rights score of the respondent state.

Regarding the interaction of a CM coming from an OECD state and immigration law cases, there might be a more interesting explanation for the positive and statistically significant correlation in all the groups of regressions in all the tables. Unlike the other variables characterizing the status of specific rights in the states from which CMs come,

the OECD variable does not necessarily stand for a specific right, but rather for economically developed states that might be more likely to be the destination states for immigration. Since almost all of the immigration cases are against OECD states and their immigration policies, the OECD variable can be seen as a certain representation of how the authorities of OECD states interpret international law related to immigration and asylum. It can be mainly relevant to the question of whether CMs act as agents promoting the interests of their states and their state's allies, and less related to personal life experience (since those CMs probably do not have a personal experience of being immigrants or asylum seekers themselves). In this regard, CMs from OECD states might be seen as representing the interests of the rich states from which they come. Therefore, they are more likely to vote in favor of the way in which economically developed destination states interpret immigration and asylum law, and not in the way that the international community as a whole interprets those rights. This can perhaps be attributed either to an honest belief in a certain legal result, or to a wish to be reappointed to the HRC or perhaps other international courts or tribunals.

When we looked into the main effect variables which indicated how CMs from a certain background of human rights voted in general, there were also no special findings besides two – CMs coming from states with a high score of physical integrity rights were more likely to vote in general *against* states, and on the other hand CMs from OECD states were more likely to vote *in favor* of states. While the first finding is more intuitive, the second, regarding the OECD CMs, is begging for more explanation. OECD states are regarded as developed states with commitment to democracy. Therefore, it can be seen at

first site as counterintuitive that CMs from those states seem to favor the side of the state in alleged violations of human rights.

In order to take a closer look into this result I also tried to run a simple regression with vote in favor as a dependent variable, and belonging to an OECD state as an independent variable. The OECD coefficient remained positive and statistically significant ($p < .01$), and it was true even when I controlled for the case being an immigration case. On the other hand, one might argue that perhaps CMs coming from rich democratic states might not have experienced themselves widespread human rights violations, and therefore perhaps they might be less likely to sympathize with victims of human rights violations. This might support the hypothesis regarding a positive connection between personally experiencing human rights violations and voting against states. However, this offers less support to the theory of CMs as agents of their states, since in general it is unlikely that human rights abiding states prefer more than other states to make the HRC a less welcoming forum for applicants. Of course, we also cannot be entirely sure that what influences the OECD CMs to vote against applicants is lack of personal experience with human rights violations, but this can be a plausible explanation. Also, this cannot explain why, in contrary to the above finding, CMs from states with high scores of physical integrity show more sympathy to petitioners.

Despite the interesting results above, it seems that in most of the cases, there is no statistically significant connection between the status of rights in the CM's state and the voting patterns on specific subject-matters. There can be a few possible explanations for these results. The first is that personal experience indeed does not necessarily reflect on the CM's votes, and CMs do not behave like agents of their states. This can support the more

‘legalistic’ approach to international law – judges should and can make decisions as trustees of the international community according to the law, and their personal backgrounds makes (and should make) little difference in this regard.

Unlike many other international human rights fora, the HRC is indeed a professional committee with CMs being appointed to it due to their professional achievements in the area of human rights. As mentioned above, many CMs had a prior career in academia before being nominated to the HRC. Moreover, many of the CMs have international experience – whether through studying abroad, teaching or practicing law in different states (usually in the Western world). Meaning, that these CMs have been very familiar with international human rights norms and their widely accepted interpretations. This may well overshadow any personal experience which they might have had with human rights, and also make them more independent from the specific views of their home states.

Another reason for not seeing too much influence, might be socialization of CMs into the HRC and specifically into the way in which the majority of the HRC usually interprets different norms. Like in many other judicial and quasi-judicial institutions, there is a relatively long deliberation between the CMs regarding each communication, and there is a general preference to reach unanimous decisions without separate opinions or dissents. In 65.5% of the communications decided on the merits, the decision is reached by consensus (without separate opinions), and only and only in less than 4% of the communications do five or more CMs write a separate opinion. This can be seen as a relatively high level of unanimity, since the decisions are usually reached by all 18 CMs.

Furthermore, a certain procedural status-quo bias might influence the decisions of the CMs and reduce possible influences by their backgrounds. When a communication is

received, it is first reviewed by the Secretariat of the Hight Commissioner for Human Rights (the ‘Secretariat’). After the initial review, it is discussed by a working group on individual communications which is composed of five CMs. Each member on this working group is assigned certain communications, becoming a rapporteur for those communications. The rapporteur works with the Secretariat on a decision draft which would then be circulated to all of the CMs during one of the HRC sessions. Therefore, given that the CMs are already presented with a certain draft of a decision, they might be prone to a status-quo bias and be less likely to vote differently than suggested in the draft. Unfortunately, the identity of the rapporteur is not disclosed to the public, and the author of this article was not able to obtain this information.

If the procedural explanation above is true (and the research itself does not provide any straight evidence for that), it might be an interesting example of how a certain design of procedural rules can have an influence on how substantive human rights norms are shaped. As far as I understood from conversations with the relevant human rights officers from the Secretariat, the main reason for giving the Secretariat and a CM rapporteur to work on a decision draft before the discussion in the HRC itself, is efficiency. Given that the HRC meets only three times a year and it has a constantly growing work-load, it is very hard to expect all the members to discuss each communication from the beginning. Therefore, the current work procedure was incorporated. However, it seems that little attention was given to the possible influence of this procedure on the substantive outcome of the communications themselves.

Moreover, a more technical explanation for the results might be the variance of the data with which this article works. As can be seen form table 3 above, many of the human

rights variables have been coded on a simple ordinal scale of 0-2 with discrete variables. Meaning, that the scale was limited to three possible values. Therefore, this might have influenced the possibility of reaching statistical significance.

Finally, it should be noted that the findings above regarding OECD CMs might have relevance to understanding the need to diversify the membership of the HRC, as well as membership in other international human rights institutions. As mentioned above, OECD CMs tend to protect the interests of their group of states in immigration cases. Also, those CMs are less open to find violations of human rights, which might indicate that lack of personal experience with human rights violations can influence the voting patterns. Given this information, it is troubling that almost half of the CMs during the relevant period have been appointed from OECD states. This shows that there is a real need to diversify the membership of the committee. Moreover, the HRC is a quasi-judicial tribunal, the decisions of which are not always regarded as binding, and with relatively low implementation rates. Therefore, diversifying the composition of the HRC and making its decisions better reflect the views of the entire international community might be one of the ways to convince states to be more open to implementing the decisions of the HRC.

Conclusion

The most interesting findings of this paper revolved around the voting patterns of CMs from OECD states. It seems that when OECD CMs vote in a way that defends rich destination states in immigration cases, they act as agents defending the interests of their own group of states. On the other hand, CMs from OECD states also have a somewhat general tendency to vote in favor of states. This can imply that decision-makers who do not have a personal experience with human rights violations, might be less likely to be

sympathetic to victims of those violations. However, most of the other hypotheses tested did not reach statistical significance.

Therefore, in many regards, the findings of this research pose more questions than provide answers. The most important of those questions is whether the lived experience of human rights indeed does not influence in most cases the ways in which CMs (or other decision-makers) vote, or whether there is something in the decision-making process of the HRC that erases those differences. I believe that the quantitative analysis cannot offer real tools to answer the question marks that the results of this research presented, and probably more qualitative research is needed in order to clarify the fine-tuning of the decision-making process. This can help us understand the extent to which identities of decision-makers and procedures in the institution may, or may not, influence the substance of international human rights law.