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# TREATY BODIES IN THE SPHERE OF HUMAN RIGHTS PROTECTION

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## **Abstract**

The article is devoted to the activities of one of outstanding universal international mechanisms for the protection of human rights and freedoms – functioning of ‘treaty’ bodies. As both the structure and the main powers have similar character, the work of these bodies is estimated in general. At present the human rights functions are fulfilled already by ten treaty bodies (Committees) founded on the basis of a number of international human rights treaties. The article analyzes three main functions of the Committees paying the greatest attention to a function of consideration of individual communications on alleged violations of the rights of the individual from the State. Relating to this power the conditions of acceptability of individual communications, proceedings of appeal and consideration of complaints with references to the concrete considered cases are considered. In the conclusion, the author estimates the operational efficiency of treaty bodies for the protection of human rights and notes that it is higher in practice than from the scientists-theorists’ points of view, and also mentions the ways which could raise their operational efficiency.

*Keywords:* Treaty bodies, protection, human rights, individual complaints

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## **1. Introduction**

‘Treaty bodies’, founded on the basis of a number of international treaties of human rights, accepted under the aegis of the UN, are of great importance in the international mechanism of the protection of human rights and freedoms. Treaty bodies take a peculiar place in the United Nations Organization system (the UN). They are not actually bodies of the UN, created under its Charter or decisions of authorized Charter bodies namely as a body of the UN, they are not specialized agencies of the UN, etc. Each of the considered bodies has been created on the basis of the respective multipartite international treaty, hence their general name – treaty bodies – occurs, which originally appeared in conversational practice in order to somehow denote a total of these bodies. Later this denomination was included into the official documents, though without its formal definition, and today is already used as a generally accepted official term.

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In total, the functions of control of keeping international human rights treaties are fulfilled by ten bodies:

- 1) The Human Rights Committee (1976) created on the basis of the International Covenant on Civil and Political Rights and First Optional Protocol to it of 1966;
- 2) The Committee on the Elimination of Racial Discrimination (1970) created on the basis of the International Convention on the Elimination of All Forms of Racial Discrimination of 1965;
- 3) The Committee on the Elimination of Discrimination against Women (1982) created on the basis of the Convention on the Elimination of All Forms of Discrimination Against Women of 1979;
- 4) The Committee Against Torture (1988) created on the basis of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment of 1984;
- 5) The Committee on the Rights of the Child (1990) created on the basis of the Convention on the Rights of the Child of 1989;
- 6) The Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (2004) created on the basis of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990;
- 7) The Subcommittee on the Prevention of Torture (2007) created on the basis of the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment of 1984;
- 8) The Committee on the Rights of Persons with Disabilities (2008) created on the basis of the UN Convention on the Rights of Persons with Disabilities of 2006 and the Optional Protocol to it;
- 9) The Committee on Enforced Disappearance (2010) established under the International UN Convention on the Protection of All Persons from Enforced Disappearance of 2006;
- 10) Committee on Economic, Social and Cultural Rights (1987).

The latter is an exception of the bodies created on the basis of the respective international treaties. The Covenant on Economic, Social and Cultural Rights stipulates in Article 16 only that the State Parties must present “reports on the measures, taken by them, and on progress on the way to achievement of observance of the rights recognized in this Covenant” for consideration of the UN Economic and Social Council. For this ECOSOC, the special Working group was established, and in 1985 [Resolution of 1985/17. *Review of structure, organization and administrative actions of the Sessional Working group of government experts in implementation of the International Covenant on Economic, Social and Cultural Rights*, ECOSOC of the UN, accepted on May 28, 1985 at the 22<sup>nd</sup> plenary session of ECOSOC of the UN, <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/664/67/IMG/NR066467.pdf?OpenElement>, accessed 10.10.2014], without amending the Covenant, the Committee, which since 1987 has considered the reports of the States, was established by the Resolution of ECOSOC. In 2008 the Optional Protocol to the Covenant on

Economic, Social and Cultural Rights, including granting the Committee the right to discuss complaints of the States against each other about non-fulfilment of the obligations under the Covenant by them, and also communications of the private individuals, was accepted. At present this Committee is the only treaty body, a legal ground for formation of which is the resolution of ECOSOC but not the actual provisions of the respective international multipartite treaty.

## **2. Main part**

The Committees consist of experts who are citizens of the State Parties of the respective international treaty. The requirements, imposed to the experts of the Committees, are also standard. They are elected by ballot, for, as a rule, four years and must have: high morality; recognized competence of the sphere of human rights; legal experience.

They serve in their personal capacity and not as representatives of the States. When assuming office they take testimony that they will execute their duties impartially and honestly.

The quantitative composition of treaty bodies fluctuates from 10 (for example, in the Committee Against Torture) to 25 experts (in the Subcommittee on the Prevention of Torture).

According to the rules of proceedings, a member of the Committee must not take part in consideration of a communication by the Committee if:

- a member of the Committee has any personal interest in the case;
- a member of the Committee participated in decision-making on the case, concerning this communication, in any way.

The mentioned control bodies, if to mean the generalized characteristic, carry out supervision over fulfilment of the obligations under the treaties by the State Parties with the help of three powers.

### ***2.1. Consideration of reports of the States (except the Subcommittee on the Prevention of Torture)***

In principle, this is a main function as the control over fulfilment of the obligations under the respective convention by the State Parties is carried out in such a way. To fulfil this function the State Parties are obliged to submit reports to the Committees: initial report and then periodic ones. Periodicity of submission of reports on each multipartite international treaty is from 2 to 5 years. Some Committees may also request submission of an extraordinary report.

These reports must consist of two parts. The first part must contain a short description of the general legal framework within which the civil, political and other rights are protected in the country submitting a report. In the second part there is information on each of the rights attached to the Convention. In this information, according to the provisions of each Article, it should be reported:

- legislative, administrative and other measures relating to each right;

- any limitations, imposed by the law or in practice, or otherwise on use of the rights;
- any other factors or limitations influencing exercise of the rights by the persons within jurisdiction of the State;
- any other information on the progress made in use of the rights

The Committee informs the State Parties in advance of opening date, duration and location of the session at which their reports will be considered.

Before the beginning of each session of the Committee, a special working group prepares a list of questions arising from the report which is then approved by the Committee. These written questions are forwarded to the respective States in advance in order that they could prepare the detailed and full answers to them. Discussion of the report takes the form of extensive dialogue between members of the Committee and the representative of the State whose report is considered. In this dialogue members of the Committee rely on a plenty of sources of information.

These are reports of other UN bodies in the sphere of human rights and conclusions drawn by them, the arguments of the UN rapporteurs on specific matters of human rights or on the situation in one or another country, information of the UN specialized institutions and also reports of the international non-governmental organizations and private groups.

After discussion of the report, the members of the Committees accept their final comments in which the positive aspects (where progress of the country in implementation of the Rules of one or another convention is noted) and also the problems, causing concern, are especially allocated. Thus, the Committees give recommendations to a State Party (in particular, on inclusion of the rules of the respective convention in the national law of the country, adoption of implementation laws, withdrawal of reservations, ensuring implementation of the rules of the convention, etc.).

Though the main function is, certainly, the first one, its fulfilment allows speaking about some gaps in the very system of submitting reports operating in the international community.

First of all, the disadvantages of fulfilling this function are connected with restrictive interpretation of the international human rights treaties and recommendations of the General Assembly on the basis of which the Committees were obliged to be content only with that information which was submitted by the States. Such interpretation, certainly, gave a chance to embellish a true situation and this made make changes to the proceedings of consideration of reports. So, the Committee Against Torture makes provisions in the Rules of proceedings that “it can offer the specialized institutions, interested bodies of the UN, intergovernmental regional organizations and non-governmental organizations with consultative status at ECOSOC to submit it information, documentation and written statements, relating to the activities of the Committee” (Rule 62) [General Assembly: Official reports, The forty-third session, Add. 46/A/43/46/, New York, 1988].

Another block of problems is caused by failure to submit reports by the participants by the specified time. This matter was rather effectively resolved by the Committee on the Elimination of Racial Discrimination Committee at its 39 session – it was declared to the States, not having submitted the reports by the specified time, that since the fortieth session the Committee will consider situations in these countries on the basis of their last reports [General Assembly, Official reports, The forty-sixth session, Add. 18/A/46/18/, New York, 1991].

## ***2.2. Consideration of appeals of one State with a complaint against another one claiming about alleged violation of the treaty obligations by the latter***

Complaints of the States against each other about non-fulfilment of the assumed obligations under the international human rights treaties by them were not widely spread in the international community, what is connected with the optional nature of proceedings and its conciliatory purpose (the States would prefer to resolve similar matters in the ‘narrower’ circle). As A.B. Mezyaev notes, proceedings of inter-State complaints has not been still used in practice to one of the international convention committees operating today [1].

The proceedings, provided for fulfilment of this function, are standard. For example, under the International UN Convention on the Protection of All Persons from Enforced Disappearance of 2007 (Articles 32-34) any State Party of the present Convention can declare at any time, that it recognizes the competence of the Committee to receive and consider communications, in which one State Party claims that another State Party does not fulfil its obligations under the present Convention.

The Committee does not accept any communications concerning the State Parties, which have not made such a statement, as well as communications, submitted by the State Parties, which have not made a statement.

The Committee can, after holding consultations with the respective State Party, apply with request to one or several members to visit this State and to submit it the relevant information urgently. The Committee is obliged to warn the interested State about such a visit, having specified the delegation composition and purpose of its visit. The State is obliged to give a response during the reasonable period of time. The State has the right to ask about adjourning of visit or about its cancelling.

Following the results of the visit the Committee sends its comments and recommendations to the respective State Party.

If the Committee receives information which, in its opinion, contains rather reasonable evidence that in the territory, which is under the jurisdiction of any State Party, enforced disappearance is widely or systematically practiced, it can, having requested all the relevant information on the situation in this sphere from the respective State Party in advance, urgently bring this matter to the attention of the General Assembly of the United Nations Organization through the Secretary-General.

Some Committees have additional powers, so the Committee Against Torture can pursue confidential investigations. If the Committee receives reliable information which, in its opinion, contains rather reasonable facts about the systematic use of torture in the territory of any State Party, it offers this State to cooperate in consideration of this information and for this purpose to submit its comments concerning this information. Taking into account any comments, which can be submitted by the respective State Party and also any other relevant information, being at the Committee's disposal, the Committee can, if it considers it expedient, appoint one or several its members for pursuing confidential investigation and urgent submission of the corresponding report to the Committee. Investigation can include visit of the territory of the State Party.

### ***2.3. Consideration of the private individuals' communications of alleged violation of their rights in their State***

The individual complaints are provided by the optional proceedings – it means that the State independently resolves a matter of that whether it will grant the citizens such right or not. The Optional Protocol to the Convention on the Rights of the Child, providing jurisdiction of the appropriate Committee on consideration of individual communications, has not come into force yet, it has been ratified by an insufficient number of the States. There is a similar situation with Article 77 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families which provides powers of the Committee on the Rights of All Migrant Workers to consider individual communications.

Thus, from 9 treaty bodies which, in principle, may have the right to consider individual communications, only 7 have the respective jurisdiction yet, though not concerning all the State Parties of multipartite international treaties.

### ***2.4. Proceedings of appeal***

It is supposed that individual communications (complaints, petitions) may be forwarded by any person independently and there is no need to be a lawyer for this purpose; to help the applicants the model individual communications are put on the Website of The Office of the High Commissioner for Human Rights [Official Website of the High Commissioner for Human Rights, <http://www.ohchr.org/RU/Pages/WelcomePage.aspx>, accessed 10.10.2014]. However, the help from a professional lawyer, in particular, having experience with treaty bodies, is not so much welcomed as it is recommended strongly by any international instance. Complaints are not composed by charges or duties as, however, all proceedings of consideration of appeal (except for necessary expenses and work of a lawyer). Petitions are accepted only in official languages of the UN: English, Arabic, Spanish, Chinese, Russian or French.

An individual communication must be written legibly, best of all it must be printed. In the communication events are described and facts are stated in chronological order, it is necessarily specified in what violation of the multipartite international treaty consists; as proving documents only the copies are attached – the very complaints are not returned to the applicant. The individual communication without annexes must not exceed 50 pages, and in the case when it exceeds 20 pages it must contain the main theses at the beginning of the text in abstract (to 5 paragraphs).

The complaint, made to the Committees, must correspond to the certain conditions, the so-called conditions of ‘acceptability’. These conditions are traditional for the international legal institution of consideration of individual communications and represent the following rules.

1. The complaint must be made from a person being under jurisdiction of the State Party of the respective treaty and respective optional proceedings.

The complaint must concern violation of the rights of a particular person but not state an author’s point of view on legislation not well enough in principle. In other words, the Committees do not consider complaints *actio popularis*, their task consists in finding out whether violation in a concrete case took place [Opinion of the Human Rights Committee concerning the case of *MacIsaac v. Canada*, The Human Rights Committee, *MacIsaac v. Canada*. Communication N 55/1979, CCPR/C/17/D/55/1979, p. 10, <http://www1.umn.edu/humanrts/undocs/newscans/55-1979.html>, accessed 10.10.2014]. Also the situations, when the Committees admit as victims persons whom certain provisions of the law either their application, or following certain politics, or steady practice of government bodies or officials put under continuous threat at any time to appear the victims of violation of their rights attached in the multipartite international treaties, meet. For example, in the case ‘The Jewish community of Oslo, etc. against Norway’, the Committee on the Elimination of Racial Discrimination agreed that the applicants, both acting in an individual order and the persons, included in the organizations-applicants, in the result of the decision of the Supreme Court of Norway risk to become the victims of consequences of spread of ideas of racial superiority and instigation to racial hatred, without having remedies, what is confirmed by the concrete incidents with use of violence [Views and general comments of the UN Committee on the Elimination of Racial Discrimination, Official Website of the UN Committee on the Elimination of Racial Discrimination, <http://www2.ohchr.org/english/bodies/cerd/jurisprudence.htm>, accessed 10.10.2014].

2. All the domestic remedies must be exhausted by the individual. Estimating exhaustion of all remedies by the individual the Committees demand the detailed instruction on what remedies were used and were available to a petitioner and how much they were effective. Each Committee has the right to give interpretation to these conditions in application to its proceedings.

In the question of exhaustion of all available domestic remedies it is necessary to touch upon one more aspect. The very list of ‘domestic remedies’ is established by the national law of the State independently and in each particular case assumes appeal to the certain legal authority.

The situation is not quite clear when this rule may not be applied.

The matter is that the international treaties, establishing the similar rule, formulate it variously – the rule of necessity of exhaustion of all domestic remedies is not valid in the cases when the use of such remedies:

- 1) “is unreasonably prolonged” (p. 2 ‘b’ of Art. 5 of the Optional Protocol to the Covenant on Civil and Political Rights);
- 2) “is excessively prolonged” (p. 7 ‘a’ of Art. 14 of the International Convention on the Elimination of All Forms of Racial Discrimination);
- 3) “is unreasonably prolonged or will hardly give effective help to a person which is a victim” (p. 5 ‘b’ of Art. 22 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment).

What should it be understood as ‘unreasonable’ or ‘excessive’ prolonging in the legal sense? Whether it is a failure to meet the terms of consideration of dispute or giving a response to the complaint or reluctance of a judicial or administrative authority to consider complex legal problems?

Certainly, the failure to meet the terms of proceedings in any situation is a ground for direct appeal to the international body. As for the second case, it can mean a deadlock for the individual in consideration of his problem as externally consideration of the matter seems relevant legal norms and to prove “unreasonable prolonging”, which lasts for years, if it is expressed in a kind of ‘throwing’ of the dispute, for example, from the first judicial instance to the second one and back, is almost impossible.

In this regard, the formulation, which allows to avoid the obviously useless attempts of resolving a matter, for example, when the courts are affected by the local authorities, is the most successful.

Unlike the European Court of Human Rights, the universal treaty bodies do not provide limitation of terms for submission of appeals. Nevertheless, in paragraph 2a of Article 3 of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights it is regulated that the Committee declares the communication unacceptable if it is not submitted within one year after exhaustion of domestic remedies, except for the cases when the author can show impossibility of submission of the communication within the specified term. The similar rule is established by the Article 7h of the Optional Protocol to the Convention on the Rights of the Child.

At last, also the situation, in which the individual is, is considered. Thus, the Committee Against Torture in its legal positions spoke rather clearly out: “The Committee has already declared that the Convention does not demand submission of the official complaint in the national judicial authorities from a victim in case of torture or cruel, inhuman or degrading treatment and there is enough of that the facts were brought to the attention of the State authorities [Official website of the UN, The page of the Committee Against Torture,



[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=ru&TreatyID=1&DocTypeID=11](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=ru&TreatyID=1&DocTypeID=11), accessed 10.10.2014; Communication N 6/1990, *Una Henri Parot v. Spain*, Decision of May 2, 1995; and N 59/1996, *Encarnación Blanco Abad v. Spain*, Decision of May 14, 1998]. In this regard the Committee believes that participation of the author of the communication (and/or another family member) as a party of proceedings was not an indispensable condition for fulfilment of the obligation of the State Party under Article 12 and that the obligation to make investigation if it is suspected of cruel treatment has absolute nature according to the Convention and is imposed on the State on business” [[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=ru&TreatyID=1&DocTypeID=11](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=ru&TreatyID=1&DocTypeID=11); p. 10.6 of the Decision of November 25, 2011 on the case of *Fatou Sonko v. Spain*].

3. The complaint must not be already considered or be considered at the present time according to the rules of other international proceedings. In the question of that by what proceedings the individual’s case must be considered, to recognize it unacceptable by this reason, the Human Rights Committee made some special explanations:

- 1) consideration of a question is not prevented by its discussion within proceedings of The Human Rights Council of the UN where the individual complaint serves only as an evidence of rough and mass human rights violations [Human Rights Committee, *Selected Decisions*, 1983, vol.1, p. 17];
- 2) study of the human rights situation in the given country by the inter-State organization, or human rights issues of global nature, or proceedings within the international non-governmental organization [Human Rights Committee, *Report*, 1985, Annex, Para. 9-1] is not a matter considered according to other international proceedings (paragraph 2 of Article 5 of the *Optional Protocol*).

4. The complaint must not represent abuse of the right for submitting communications or be incompatible with the provisions of the respective treaty. The Committees use the second formula most often – for example, in case N 53/1979 (*K.B. v. Norway*), the Human Rights Committee made a response that “the right for possession of property is not protected by the *International Covenant on Civil and Political Rights*”.

A.S. Avtonomov, the Chairman of the UN Committee on the Elimination of Racial Discrimination, notes that due to interlacing of many human rights, under the certain circumstances the treaty body can recognize the individual communication acceptable, in which the complaint of indirect violation of the subjective right, provided by the appropriate multipartite international body, in the result of violation of another subjective right, directly not specified in the given multipartite international treaty, contains.

For example, the *International Convention on the Elimination of All Forms of Racial Discrimination* among the grounds for such discrimination does not contain religion and individual communications which contain complaints of discrimination, based on religion, are recognized unacceptable by the given

Committee; but if in the concrete State one or another religion is practised by the representatives of only one ethnic group the Committee may recognize the individual communication, which contains the complaint of violation of the rights connected with religious confession of a representative (representatives) of such ethnic group, acceptable. In particular, in consideration of Communication N 27/2002 ('*Quereshi v. Denmark*') the UN Committee on the Elimination of Racial Discrimination has not only recognized the complaint of anti-Muslim statements of the delegates of the conference of one of the parties and of insufficient domestic remedies from similar racist statements acceptable but has also stated violations of a number of Articles of the International Convention on the Elimination of All Forms of Racial Discrimination [2].

According to Rule 96 'c' of Rules of proceedings of the Human Rights Committee, the delay of submission of the individual communication is not abuse of the right of appeal automatically, but submission of the communication may be recognized as abuse of such right if the individual communication is submitted after 5 years from the date of exhaustion of domestic remedies by the applicant or after 3 years from completion of other proceedings of the international investigation or settlement in case of applicability to the given case if the reasons, explaining delay, are not given.

5. The complaint must not be anonymous.

Proceedings of consideration. The forwarded complaint is checked for compliance to the requirements for registration and for the enclosed documents and is registered in the secretariat of the respective committee. Then the complaint is forwarded to the interested State and after obtaining its response it is forwarded to the applicant for acquaintance and claiming for additional information or comments. Most Committees gives the State six months for response to the complaint. At the same time, if the State disputes the acceptability of the individual communication for consideration by the Committee, it must give its views on it during the first two of the specified six months. The case is considered ready for consideration after obtaining all responses from the State and from the applicant.

In case of no response from the interested State, despite numerous reminders from the secretariat, the Committee shall render its own decision on the case, relying on information received from the applicant.

Some treaty bodies at any stage of consideration of the case can accept the appeal to the State of acceptance of interim measures (which are similar to the provisional measures in the courts in adversary proceedings) without anticipating their subsequent decisions on the acceptability of the individual communication by such appeal and also their decisions on the essence of matter.

Usually such appeal is forwarded to the State Party when it is a question of act of omission concerning the victim which could not be turned back: for example, when it is a question of delay in execution of the sentence, providing the death penalty, or of adjournment of expulsion of a person to the country in which he may be subjected to tortures. Such situation arose, for example, when considering the case in the Human Rights Committee concerning the sentenced

to death in Jamaica [The case of Pratt and Morgan v. Jamaica, Report of the Human Rights Committee, General Assembly UN, The forty-fourth session, 1989, p. 228].

When receiving the complaint, the Committee, working group or a special rapporteur may request additional information from the author and then – from the State.

The first stage of consideration of the communication consists in estimation of its acceptability. Analyzing the matter, A.S. Avtonomov, in addition to the traditional conditions of the acceptability of complaints, allocates several situations in which the complaint is recognized unacceptable:

- treaty bodies do not have competence to restate the facts, which have been already stated by the courts of the State Parties, to consider matters of guilt or innocence of persons, to investigate matters of determining the civil, administrative and criminal liability. In other words, the Committees have no right to act as appeal or cassational instances in relation to the national courts. Due to this the complaints, constructed mainly on disputing the facts, evidence and legal qualifications of the acts, containing in the decisions of the courts of the State Parties, are unacceptable but the applicant's position about violation of the rights, guaranteed by the respective multipartite international treaty, is not explained and is not justified. The estimation of interpretation of the national legislation by the national courts is not included in the competence of treaty bodies, except for cases when the made decisions are obviously arbitrary or are otherwise equivalent to refusal in justice;

- the individual communication is acceptable if it is not prevented by reservations made by the State Party to the respective multipartite international treaty. However, in some cases treaty bodies recognized individual communications acceptable even if reservations contradicting, it should seem, it, were available, proceeding from the fact that in some concrete cases refusal in consideration of the complaint would mean a consent with lack of validity of the treaty in general, what would contradict eventually the will of the State Parties of the treaty having given obligatoriness to such treaty by their actions (ratification, accession, etc.) [2].

Only after the complaint is recognized meeting all the necessary requirements, the Committee will consider the essence of it.

The communication is considered in a closed session where all the written information, received from a person and interested State Party, is estimated. The parties, which in some cases have rights to submit their written and oral remarks, and a representative of the interested State are present in the session.

As a rule, treaty bodies use written procedure of consideration of individual communications (in other words, they are limited to studying of exclusively written case papers, without hearing of the parties). The documents, submitted by the parties, do not become engrossed in reading – the experts of the Committees make acquaintance of them in advance. As a rule, the Committees, when pronouncing their decisions, rely on information, submitted by the parties, without independent searches of additional information. However, proceedings

of the Committee Against Torture have absolutely justified specifics in this regard. The Committee Against Torture requests information not only from the interested State but also from “the specialized institutions, interested bodies of the UN, intergovernmental regional organizations and non-governmental organizations with consultative status at ECOSOC” (Rule of proceedings 62). “The Committee holds consideration ... of additional proofs expedient, taking into account the fact that though medical reports of forensic scientists are usually important for statement of the fact of commission of acts of torture, often they are insufficient and it is necessary to compare them with other sources of information” [[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=ru&TreatyID=1&DocTypeID=11](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=ru&TreatyID=1&DocTypeID=11), Communication N 59/1996, *Blanco Abad v. Spain*, Decision of May 14, 1998, Paragraph 8.8.; General Comment N 32 (2007) of the Human Rights Committee on the Right to Equality before Courts and Tribunals and to a Fair Trial, Article 14 of the Covenant; Paragraph 7.3 of the Decision of May 23, 2012 on the case of *Oskarts Galyastekh Sodup v. Spain*; Views and general comments of the Human Rights Committee, <http://www.ohchr.org/EN/HRBodies/CCPR/Pages/CCPRIndex.aspx>, accessed 10.10.2014].

The burden of proof is distributed taking into account the moment that the individual and the State do not have equal opportunities in submitting proofs. The burden of proof cannot be allocated solely to the author of the communication, especially because the author and the State Party have equal access to the proofs not always and quite often only the State Party has the relevant information [<http://www.ohchr.org/EN/HRBodies/CCPR/Pages/CCPRIndex.aspx>, See Communication N 1782/2008, *Abufayed v. Libya*, Views accepted on March 21, 2012, Paragraph 7.4; Communication N 1422/2005, *El Hussy v. the Libyan Arab Jamahiriya*, Views accepted on October 24, 2007, Paragraph 6.7; and Communication N 1297/2004, *Mejnoun v. Algeria*, Views accepted on July 14, 2006, Paragraph 8.3].

In the session of the Committee a rapporteur of individual communications states the essence of matter in brief, expresses his opinion on the acceptability or unacceptability and if it is recognized acceptable by the Committee, he brings the project of the final substantive judgment (he can sometimes offer two alternative versions of the decision). The rapporteur's position or the working group's one does not predetermine decisions of the Committee, neither concerning the acceptability of the individual communication nor concerning the decision on the essence.

Rules of the Committees stipulate a possibility of carrying out oral hearings, but in practice it is an extremely rare variant which is met not in the all Committees. In particular, the UN Committee Against Torture has carried out the first oral hearings quite recently – on May 8, 2012 at the request of the State Party during consideration of Communication N 444/2010 (*Abdusamatov and 28 other applicants v. Kazakhstan* [Opinion of the Committee Against Torture under Article 22 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment concerning Communication N 444/2010,

[http://www2.ohchr.org/english/bodies/cat/docs/jurisprudence/CAT-C-48-D-444-2010\\_ru.pdf](http://www2.ohchr.org/english/bodies/cat/docs/jurisprudence/CAT-C-48-D-444-2010_ru.pdf), accessed 10.10.2014]).

The documents, which the Committees use in their work, have especially confidential nature. The Committee can make a decision by consensus but if no consensus is formed, the decision shall be made by majority vote. One or several members of the Committee, discordant with the decision of the Committee, have the right to present a dissenting opinion (dissenting opinions), which is (are) published later together with the decision of the Committee.

Having made the decision on whether there was human rights violation, the Committee states it to the interested parties, that is to the individual and the State.

### **3. Conclusions**

Resolutions of the Committees – ‘decisions’ on individual petitions are called ‘views or opinions’ what already from the sense of the English term points out to the right of the Committees only to express ‘opinion’.

The fulfilment of resolutions of the Committees by the States testifies to the legal possibility of such bodies to provide already now and also in the future the rights and freedoms of the individual. And though activities of the international bodies are estimated as an indicator, revealing disadvantages of functioning of the legal system, it is impossible to deny the objective facts – even ‘views’ of the Committees are a legislative ground for changes in legislation and law enforcement practice for some States.

It is thought that though this function of activities of ‘treaty’ bodies has not been estimated by theorists adequately, in practice it bears much more significant ‘fruits’.

Firstly, certainly, the result, concerning the appealing person, is achieved. This result bears both the legal (recognition of requirements reasonable) and, what is sometimes more important, political loading – the real power of the international law and order appears in the official declaration of the State that it is a violator of the treaty (in a sense, it is similar to the declaratory decision of the International Court of Justice, the efficiency of which has been repeatedly confirmed).

Secondly, often, except moral satisfaction, a victim of violation of the rights receives the monetary compensation or a possibility of application of *restitutio in integrum* from the State-violator. And, that is important, the authority of the international bodies has such powerful value for the States that sometimes the compensation is paid in honour of the body, considering the case, even at non-compliance with its opinion.

Thirdly, the decision of the international body, passed in favour of the natural person, is in certain cases a ‘guide to action’ for the State concerning changes in the legislation and law enforcement practice.

Nevertheless, the operational efficiency of ‘treaty’ bodies began to cause blames in the international community. In 2009, on the basis of data on work of the Human Rights Committee during one year, the analysis was conducted. From 546 submitted petitions only 67 were specified as ‘satisfied’. In 67 cases of ‘satisfied’ requirements the cases which are defined as “willingness of the State to implement recommendations of the Committee or to offer the appropriate remedies to the claimant” are included and it makes 12.27% of total of petitions [3].

Certainly, to raise the operational efficiency of the universal control mechanism first of all it is necessary to give these bodies the right of pronouncing the decisions with concrete recommendations, obligatory for the States, concerning their regulatory practice and legislation.

## References

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