Implementing the UN Racial Convention—some Procedural Aspects

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Introduction

Over thirty years ago the Charter of the United Nations reversed the notion that human rights are solely a matter of domestic jurisdiction, when it assigned as one of the basic purposes of the organisation the promotion of universal respect for human rights and fundamental freedoms.[1] Since 1945 a substantial body of international law has been built up, including over forty treaties, to give effect to the Charter's concern for human rights.[2]

Among those treaties is the International Convention on the Elimination of All Forms of Racial Discrimination (1965)[3] which requires 104 States parties[4] to undertake a series of measures, guaranteeing to everyone, without distinction as to race, complete equality before the law.[5] It

1. Articles 1, 55 and 56 of the United Nations Charter.
2. The general principles in the Charter have also been spelt out by general declarations (eg the 1963 Declaration on the Elimination of All Forms of Racial Discrimination); by United Nations concern with specific human rights situations (eg Resolution 31/124, 'Protection of Human Rights in Chile', adopted on 16 December 1976); and by bilateral action (eg recently there has been an easing in the USSR's policy on the emigration of Soviet Jews, in the hope it would be granted 'most-favoured-nation' status (for trade purposes) by the Carter Administration: see *Time*, 7 May 1979, p 30).
3. 660 UNTS 195. The literature on procedural aspects of the Convention includes, in chronological order: Schwelb, 'The International Convention on the Elimination of All Forms of Racial Discrimination' (1966) 15 ICLQ 996; Newman, 'The New International Tribunal' (1968) 56 Cal L Rev 1559; Das, 'Measures of Implementation of the International Convention on the Elimination of Racial Discrimination with Special Reference to the Provisions concerning Reports from States Parties to the Convention' (1974) 4 RDH 213; Keith, *International Implications of Race Relations in New Zealand* (1972), pp 7-17; Schwelb, 'The Implementation of the International Convention on the Elimination of All Forms of Racial Discrimination' in ILA, *Report of the Committee on Human Rights* (New York Conference, 1972) pp 544-549, 585-608; Sohn and Buergenthal, *International Protection of Human Rights* (1973) pp 856-912; *International Protection of Human Rights*, Hearings before the Subcomm on Int'l Organisations and Movements of the Comm on Foreign Affairs, 93d Cong, 1st Sess 6 (USGPO, 1973); *Study on the Work of the Committee on Elimination of Racial Discrimination and Progress towards the Achievement of the Objectives of the International Convention on the Elimination of All Forms of Racial Discrimination*, UN Doc A/Conf. 92/8 (1978).
4. As at 17 August 1979, there had been 104 ratifications or accessions to the Convention. See Annex I to the *Report of the Committee on the Elimination of Racial Discrimination* GAOR (XXXIV), Suppl No 18 A/34/18(1979), pp 114-116, for a list of States parties. A comparison of the number of parties to other human rights treaties shows that the Racial Discrimination Convention is the most widely accepted. See *Human Rights International Instruments: Signatures, Ratifications and Accessions as at 1 January 1979* in ST/HR/4IRev. 1(1979), pp 12-13.
5. For the New Zealand legislative enactment promoting most of those measures, see the Race Relations Act 1971 (NZ).

lists specifically the rights and freedoms whose enjoyment must be guaranteed to all,[6] and prescribes that they be protected and enforced by competent national tribunals.[7] States parties are also required to prevent all propaganda advocating racial intolerance and to take effective measures to combat racial prejudice in the fields of culture and education.[8]

The Convention is one of the first United Nations treaties in the human rights area which provides specific machinery for verifying whether States are fulfilling the obligations they have assumed. The first component of this machiney is the reporting procedure. A committee (named the Committee on the Elimination of Racial Discrimination[9]) consisting of eighteen individuals, serving in their personal capacity and expert on racial discrimination,[10] has the function of promoting and ensuring the observance of the various substantive provisions of the Convention. States parties are required to submit reports to the Committee at regular intervals, setting out the legislative, judicial, administrative and other measures adopted by them to give effect to the provisions of the Convention.[11] After examining the reports, the Committee has the power to make suggestions and general recommendations to the States parties and has to report on its activities to the General Assembly of the United Nations.[12] Supplementing the main implementation procedure of the reporting system are:

—an interstate complaints procedure;[13]

—an individual right of petition to the Committee, if a State party agrees that the Committee shall be competent to receive petitions;[14]

—a procedure for cooperation between the Committee and competent UN organs in matters of petitions from and reports concerning non-self-governing territories;[15]

—in the case of a dispute between two or more States parties over the interpretation or application of the Convention, any of the parties to the dispute may refer the matter to the International Court of Justice for decision.[16]

These procedures are given further consideration in part IV of this paper.

The inclusion of implementation machinery in the Convention is significant for two reasons. First, such procedures could not have been established unless States had accepted that they would be necessary if the substantive provisions of the Convention were to have any real effect in

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6. 660 UNTS 195 Article 5.
7. Ibid, Article 6.
8. Ibid, Articles 4 and 7.
9. Hereinafter it will simply be referred to as 'the Committee' or 'CERD'.
10. 660 UNTS 195, Article 8.
11. Ibid, Article 9, para 1.
12. Ibid, Article 9, para 2.
13. Ibid, Articles 11-13.
14. Ibid, Article 14.
15. Ibid, Article 15.
16. Ibid, Article 22.

practice. In this context, it seems States have come to accept Frankfurter J's evaluation of procedure:[17]

> '. . . the history of liberty has largely been the history of observance of procedural safeguards.'

Indeed, without measures of implementation, the Convention might have been no more effective than a multilateral declaration.[18] Secondly, it counters the tendency of governments, even after the adoption of the United Nations Charter, to shelter behind the doctrine of non-interference in each other's affairs. Effective machinery for the enforcement of human rights has only been made possible because of the recent acceptance of the idea that gross violations of human rights are a matter of international concern.

Ten years have passed since the Convention's entry into force on 4 January 1969. So, now is an appropriate time to review the success of the procedures that the General Assembly built into the Convention and to examine the way in which the rules and practice of the Committee have developed. Particular attention will be paid to how the procedures in the Convention and the Committee's methods of work have affected New Zealand's implementation of the Convention.

A further reason for focusing on the procedures and practices adopted by the Committee during the first ten years of using its powers, interpreting the obligations of States parties and solving awkward procedural problems, is that they may be of value to committees of a similar nature, notably the Human Rights Committee. This autonomous body—made up of eighteen individuals serving in their personal capacity and expert on human rights—was established under the Covenant on Civil and Political Rights[19] in September 1976 and had its first meeting in March 1977. So far, none of the members elected to the Human Rights Committee serve concurrently on the Committee on the Elimination of Racial Discrimination. The former's function is to 'study' the reports that the States parties must submit to it on the 'measures they have adopted which give effect to the rights recognised [in the Covenant] and on the progress made in the enjoyment of those rights.'[20] The Committee has the power to address 'general comments' to the States parties dealing with their reports.[21] Since the powers and composition of the Human Rights Committee are similar to those of the Committee on the Elimination of Racial Discrimination, the developing procedural practice of the latter committee 'as a pioneer

17. *McNabb v United States* 318 US 332, 347 (1942).
18. The final preambular paragraph to the Convention is directed to this point: '[The States Parties to this Convention] . . . *Desiring* to implement the principles embodied in the United Nations Declaration on the Elimination of All Forms of Racial Discrimination and to secure the earliest adoption of practical measures to that end . . .' See also the discussion on this point in Keith, op cit, pp 7-9.
19. Adopted by General Assembly Resolution 2200 of 16 December 1966, GAOR (XXI), Suppl No 16 A/6316, p 49. For the major New Zealand legislative enactment promoting the objectives of the Covenant on Civil and Political Rights, see the Human Rights Commission Act 1977.
20. Covenant, Article 40, paras 1 and 2.
21. Ibid, Article 40, para 4.

in the field of implementation of human rights instruments'[22] has assumed some importance.

A major characteristic which runs through a study of this kind is the tensions that exist in the machinery in the Convention and in the Committee's procedures for monitoring implementation. Probably the most important tension is that between international concern and domestic jurisdiction. The debates in the Third Committee of the General Assembly during the drafting of the Convention demonstrate that the aim was to strike a balance between the requirements of effective implementation machinery and those of safeguarding sovereignty.[23] The Committee, too, has had to reconcile these conflicting requirements. Should it interpret its mandate liberally in order to supervise more effectively the national implementation of the Convention? Or should it interpret its mandate strictly so as to respect the sovereignty of a State over its territory? Related tensions that have emerged are between general and specific examination of reports; between expertise and political considerations; and between the Committee adopting a co-operative or coercive attitude to State parties. One of the major purposes of this paper is to outline where tensions in the Convention and the Committee's procedures occur, investigate their nature, and follow the Committee's attempts at resolving them.

The Independence and Impartiality of Committee Members

Laid down in the Convention are criteria to guide the selection of suitable Committee members and provisions for their nomination and election. Article 8 stipulates that the Committee shall consist of:[24]

> '. . . eighteen experts of high moral standing and acknowledged impartiality elected by States Parties from among their nationals, who shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilisation as well as the principal legal systems.'

These provisions attempt to strike a balance between depoliticising a human rights structure and turning it into a technical body, and maintaining a certain amount of political involvement. On the one hand, the criteria for the election of the members stress their personal qualities. On the other hand, geographic and ideological considerations are to be

22. Per Mr Van Boven (Director, UN Secretariat Division of Human Rights) in A/C.3/32/SR.28 (1977), para 57.
23. A comparison of the statements made by two delegations exemplifies the tension that was present in the drafting debates of the Convention: 'Mr Garcia (Philippines) . . . the Convention would acquire meaning and substance only if it was accompanied by effective measures of implementation; such measures were the very core of the instrument and without them it would remain a dead letter.' A/C.3/1344 (1965), para 27; 'Mr Murugesu (Malaysia) . . . both the Philippine and Ghanaian drafts contained clauses which would allow interference by one State Party in the affairs of another. Such provisions were morally wrong and contrary to the principles of the United Nations Charter. They might cause endless dissension among States if they were not deleted entirely.' A/C.3/1345 (1965), para 38.
24. 660 UNTS 195, Article 8.

weighed in the selection of Committee members, the assessment of the qualifications of the candidates is solely at the discretion of governments (members of the Committee are elected by States parties from a list of persons nominated by governments and each government may nominate one person from among its own nationals),[25] and finally, there is no requirement in the Convention that members be elected 'regardless of their nationality'.[26]

K J Partsch, in describing the practical consequences of each member of the Committee owing his election in 1969 to his government, stated:[27]

> 'Almost one-half of the members of the Committee elected in 1969 are members of the diplomatic service of their State and, in this capacity, are certainly not independent and impartial. Thus they are actually required to split their personality: as members of the Committee they have to work as independent experts; at the same time, in their main profession, they have to implement instructions . . .'

While this may happen elsewhere, eg in the International Law Commission, one important difference is that the potential for a conflict of interest and duty is much greater in the Committee, because it has to consider reports from particular countries. The present day composition of the Committee still symbolises the tension present in Article 8 of the Convention. More than half of the members are currently employed in the diplomatic service of their State.[28] This fact caused the early closure of the seventeenth session in April 1978 when several members departed in order to attend conferences on their government's behalf and there were insufficient members left to constitute a quorum.[29] Further evidence of the continuing tension between the political and the expert is the recent participation by some members, as representatives of States, in the Third

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25. Ibid, Article 8, para 2. In contrast with this method of election, judges of the International Court of Justice are nominated by national groups in the Permanent Court of Arbitration, instead of being nominated directly by their governments. See the Statute of the International Court of Justice, Article 4, para 1. Clearly this procedure permits less opportunity for political involvement by governments in the electoral process.
26. Once again the Statute of the International Court of Justice provides a good contrast. By Article 2, 'The Court shall be composed of a body of independent judges, *elected regardless of their nationality* from among persons of high moral character . . .' (emphasis added).
27. Partsch, 'Die Konvention zur Beseitigung der Rassendiskriminierung' (1971) 19 Vereinte Nationen (Bonn) issues 1 and 2, quoted in ILA, *Report of the Committee on Human Rights*, op cit, p 590.
28. The primary occupations of the eighteen 1979 members of CERD were as follows: two were judicial officers, five were academics, eleven were diplomatic servants. Four members had no legal qualifications. Source: information supplied by the Ministry of Foreign Affairs, Wellington.
29. CERD/C/SR.388 (1978). Rule 35 of the Provisional Rules of Procedure requires that: 'A majority of the members of the Committee shall constitute a quorum. The presence of two thirds of the members of the Committee is, however, required for a decision to be taken.' See the *Provisional Rules of Procedure Adopted by the Committee at its First and Second Sessions* (embodying amendments and additions adopted by the Committee at its fourth, fifth, seventh and seventeenth sessions) in CERD/C/35 (1978), p 7.

Committee's consideration of the Racial Committee's annual report.[30] While the Convention does not expressly prohibit this practice, such an action would seem to compromise the independent position of the members of the Committee.

Since 1969 the Committee has strongly emphasised in its rules and practice the requirement of independence laid down in Article 8 and played down the compromise nature of Article 8. So, the provisional rules of procedure adopted in 1970 require each member to make a solemn declaration that he will carry out his duties honourably, faithfully, impartially and conscientiously.[31] In addition, there has been a change in attitude on the part of some Committee members as to their role in the consideration of reports submitted by their own country. During the formative years (1970-1974), some of the members saw themselves as to some extent representing the country of which they were nationals, and they felt obliged to defend their government's report.[32] More recently, members have seldom participated in the consideration of reports submitted by their own country and then only to provide useful background information.[33]

In 1970 and 1973, the Committee had the difficult task of interpreting Article 8 of the Convention in order to determine the degree of independence required of Committee members.[34] The difficulty arose in both years from a proposal to the effect that, when a member of the Committee could not attend the whole or part of a session, he might (subject to the approval of the Committee) designate an alternate to take part in the work of the Committee. Once again, there can be seen in the debates of the Committee a tension between two conflicting positions. On the one hand, there were those members who wished to enchance the effectiveness of

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30. For example, in 1976 Mrs Warzazi represented Morocco in the Third Committee of the General Assembly during its consideration of CERD's annual report; at the same time she was a member of CERD.
31. Rule 14 of the Provisional Rules of Procedure states: 'Upon assuming his duties, each member of the Committee shall make the following solemn declaration in open Committee: "I solemnly declare that I will perform my duties and exercise my powers as a member of the Committee on the Elimination of Racial Discrimination honourably, faithfully, impartially and conscientiously." '
32. See for example the exchange between Mr Ortiz-Martin (Costa Rica) and Mr Partsch (Federal Republic of Germany): 'Mr Ortiz-Martin . . . in giving a brief history of the Indian minority in Costa Rica, said that this was not a minority being denied its rights, and the Government of Costa Rica was working hard to integrate this group with the rest of the population.
Mr Partsch . . . said the members of the Committee should realise that their role was not to serve as defenders of their Governments but as experts in their individual capacity.
The Chairman . . . concurred with Mr Partsch that the members . . . were experts who were not called upon to defend the reports of their own countries.' *United Nations Press Release—Human Rights*, No 600 (1971), p 4, quoted in Keith, op cit, p 11.
33. See eg Mr Sayegh's contribution to the debate in CERD/C/SR.280 (1976), p 144.
34. *Report of the Committee on the Elimination of Racial Discrimination* GAOR (XXV), Suppl No. 27 A/8207 (1970), para 14 and *Report of the Committee on the Elimination of Racial Discrimination* GAOR (XXVIII), Suppl No 18 A/9018 (1973), paras 19-23.

the Committee—they argued that nothing in Article 8 prohibited the proposed amendment to the rules of procedure. On the other hand, there were those who were concerned that the nature of the Committee would be altered if alternates were appointed (for more probably than not they would be chosen from among the staff of diplomatic missions) and the prestige of the Committee would diminish. So, they argued that it was clear from Article 8 that the General Assembly had not wished to provide for the temporary replacement of members of the Committee, but only for the cases of casual vacancies mentioned in Article 8(5)(b). By rejecting the proposal, the Committee has resolved the conflict inherent in Article 8 in favour of the independent position of Committee members. Another important lesson to be gained from the procedural discussion is that the Committee firmly believes it is not empowered to modify a substantive provision of the Convention by a rule of procedure.

In the circumstances of the first casual vacancy, the Committee was presented with a resignation, not from a Committee member, but from his government.[35] Here is another instance of the tension between governmental involvement in the election of Committee members and the need for the the Committee to remain autonomous.[36] The Committee reacted by criticising the way in which the resignation had reached it.[37] Subsequently, it amended rule 13 of its provisional rules of procedure in order to clarify the requirement that members personally resign.[38] In the case of recent vacancies, this amended rule has been faithfully observed.[39] The lesson to be taken from all these developments in the Committee's rules is clear. Whenever it is faced with a tension between two competing requirements in the Convention, the Committee is concerned to ensure that the part of the provision in the Convention in favour of the expert

35. The Permanent Mission of the USSR to the United Nations informed the Secretary-General that Mr N K Tarassov, 'the USSR expert on the Committee on the Elimination of Racial Discrimination will be unable, because of transfer to other work, to continue to discharge his functions' in the Committee. See the *Report of the Committee on the Elimination of Racial Discrimination* GAOR (XXVII), Suppl No 18 A/8718 (1972), para 4.

36. A similar problem has arisen in the election of judges to the International Court of Justice. Who should be allowed to withdraw the nomination of a candidate? The Secretary-General has taken the view that, as nominations are made by the national groups in the Permanent Court of Arbitration, withdrawals too should be made only by the national groups and not by governments. See Rosenne, 'Elections of Members of the International Court of Justice: Late Nominations and Withdrawals of Candidacies' (1976)70 AJIL 543, at pp 548-549.

37. *1972 Report*, para 5.

38. Decision 2 (VII) of 16 April 1973, *1973 Report*, p103. The amendment to Rule 13 of the Provisional Rules of Procedure reads as follows:
'3. Except in the case of a vacancy arising from a member's death or disability, the Secretary-General and the committee shall act in accordance with the provisions of paragraphs 1 and 2 of the present rule only after receiving from the member concerned, written notification of his decision to cease to function as a member of the Committee.'

39. *Report of the Committee on the Elimination of Racial Discrimination* GAOR (XXXII), Suppl No 18 A/32/18 (1977), para 3, and *1979 Report*, para 6.

character and personal independence of the members does not become a nullity.

Although political and ideological conflict cannot be completely disposed of from the work of treaty organs such as the Committee on the Elimination of Racial Discrimination,[40] the measure of independence and impartiality that has been achieved has led one very knowledgable member to make this comparison.[41]

> 'As representatives of their States, they had the duty to represent certain political views (in the Commission on Human Rights) in an atmosphere of tension and controversy—often very energetically. The atmosphere in the Committee has been entirely different. Experts appearing in their personal capacity behave differently from representatives of States.'

The Committee has striven for a position of relative impartiality and independence. If it had not done so, if it had not followed the procedures that have been referred to, it is difficult to see how it could ever have won the confidence and respect of governments which it now enjoys.[42]

The Reporting System

A. *Sources of Information*

The quality of the Committee's work is determined largely by the quality and quantity of the material placed before it, and the amount of trust and goodwill that exists between the Committee and States parties. It is worth spending some time, then, analysing the relevant provisions of the Convention and the development of the Committee's practice and procedure in this area. As mentioned previously, the basic implementation procedure incorporated into the Convention is the reporting system. Article 9, the mainstay of that system, provides:[43]

> '1. States parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted and which give effect to the provisions of this Convention: (a) within one year after the entry into force of the Convention for the State concerned; and (b)

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40. There have been several instances where, due to a political or ideological conflict, doubts have been raised about the impartiality of a member by another member, eg Mr Safronchuk's comment (CERD/C/SR 247 (1975), p 8) that:
> '. . .whereas Mr Soler's views concerning Cuba were personal and clearly biased views, his own earlier comments concerning Chile were shared by the United Nations as a whole . . .'.

41. Partsch, op cit, ILA Report, p 591.

42. See for example the view of the United Kingdom in the Third Committee:
> 'Lady Gaitskell said . . . the Committee . . . had been on the whole successful in its endeavours to promote and protect human rights; that could be attributed partly to the impartial approach which the independent experts could take and to the relationship of trust and goodwill which that approach had made it possible to establish between the Committee and the State Parties.' A/C. 3/32/SR. 28 (1977), para 70.

43. 666 UNTS 195.

thereafter every two years and whenever the Committee so requests. The Committee may request further information from the States Parties.

2. The Committee shall report annually, through the Secretary-General, to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of the reports and information received from the States Parties. Such suggestions and general recommendations shall be reported to the General Assembly together with comments, if any, from States Parties.'

A whole range of questions are raised by the generality of the functions and powers contained in Article 9. Among the more important:

—on a general level, what is the Committee looking for when it examines State reports?

—is the Committee bound to consider a report submitted by a State party in accordance with Article 9?

—how has it treated reports that state no legislation was necessary in the country concerned to give effect to the Convention, because racial discrimination did not exist there?

—what does the Committee look for in biennial as opposed to initial reports?

—how has the Committee coped with the flow of information from States parties?

—what is the Committee's reaction when States are tardy in submitting reports?

—in what circumstances has the Committee used its power to request supplementary reports?

—what significance has the Committee's power to request additional information assumed?

—can the Committee create additional procedures to those set out in Article 9 in order to improve the working of the reporting system?

In this part of the paper on the reporting system, these questions will be discussed in order to evaluate how effectively and objectively the Committee performs its functions under Article 9.

1. *Reports*

In view of the fact that only brief reports were submitted at its first session in 1970, the Committee drew up a communication specifying the types of information which it required in order to carry out its functions under Article 9.[44] Basically, the communication draws attention to the various substantive articles in the Convention. It is interesting to note that the communication has no express legal basis in the Convention. The Committee drew up the guidelines neither as a suggestion nor a general recommendation. However it follows from United Nations case law (in

44. *Guidelines Adopted by the Committee on the Elimination of Racial Discrimination* in CERD/C/R 12 (1970) and in Annex III-A to the *1970 Report*, pp 32-34 and in CERD/C/36 (1978), pp 3-5.

particular the *Reparations* case[45]) that as the Committee has been set up to receive and assess reports, it has the implied power to indicate what kinds of reports it requires. In practice, compliance with the guidelines has facilitated the systematic arrangement of information and its evaluation by the Committee. One of the reasons that New Zealand's reports have won praise is that they follow the guidelines closely.[46] By way of contrast, a large number of governments that have not followed the guidelines have usually produced reports that are either incomplete or too general.[47]

The Committee has recognised in the past that newly independent States cannot be expected to submit initial reports that are as complete and well-constructed as those which countries with a longer experience are in a position to supply. Here again, the provisions of the Convention have given rise to some tension. The Convention seems to impose an absolute obligation on States parties to submit complete reports and oblige the Committee to judge the completeness of reports by the same standard. On the other hand, there is a need for it to be flexible in order to encourage cooperation in its relations with States parties. The Committee has tried to resolve this tension by making some allowance for the difficulties of such States. But it has always proceeded to draw attention to gaps it has found in deficient reports by requesting that further information, filling those gaps, be included in the next periodic report.[48] Recently submitted initial reports take advantage of the experience gained by the Committee, by replying to most of the questions which the Committee has put on the subject of other initial reports,[49] and it can be

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45. *Reparation for Injuries Suffered in the Service of the United Nations* ICJ Rep 1949, p 182:
    'Under international law, the Organisation must be deemed to have those powers which, though not expressly provided in the Charter, are conferred upon it by necessary implication as being essential to the performance of its duties.'
46. As an example, Mr Kapteyn commented during the consideration of New Zealand's initial report that 'he considered New Zealand's initial report entirely satisfactory. It was full and precise and followed the Committee's guidelines closely.' CERD/C/SR. 181 (1974), p 108.
47. The problem is discussed in A/Conf 92/8 (1978), para 90-107 and has been described as a 'challenge' to the Committee since its first session.
48. A good example occurred in 1979 when Ethiopia submitted its initial report (CERD/C/31). Mr Brin Martinez summed up accurately the reactions of other members by saying:
    '. . . the initial document submitted by Ethiopia was a positive one, in view of the fact that the country in question was currently setting up new structures. It was to be hoped that the next report would remedy the omissions noted by most of the speakers—lack of a Constitution and lack of data concerning the implementation of articles 4 and 6 of the Convention, in particular.' CERD/C/SR. 410 (1979), para 35.
49. For a contrast to current practice, see the introductory statement of Jordan's representative to the Committee:
    'Mr Sadi (Jordan) said that his Government's initial report was brief and incomplete, because the Jordanian authorities had not been aware of the extent of the information required by the Committee.' CERD/C/SR. 289 (1976), p 250.

hoped that difficulties will diminish as States become familiar with the Committee's procedures and requirements as to substance.

A much debated question is whether the Committee is bound under the terms of the Convention to consider a report submitted by a State party in accordance with Article 9. When Chile submitted its third periodic report,[50] it was proposed, under rule 9 of the provisional rules of procedure,[51] that the Committee's consideration 'should be deferred until such time as the international community could feel that the Chilean Government was supporting its efforts to ensure the protection of human rights and the elimination of racial discrimination.'[52] The Committee rejected this attempt to use the rules of procedure for purely political reasons, by reasoning that it would be contrary to the provisions of Article 9 to decide that governments have to submit reports to the Committee, but that it need not examine them. It was also conscious of the fact that unless it had a substantial reason for deciding to defer consideration of a particular report, the Committee could lay itself open to a charge of discrimination against the reporting State.

The decision in favour of examining Chile's third periodic report is illustrative of the way in which the Committee interprets its obligations, in that the procedural discussion was based on a careful regard for the provisions in the Convention and general legal considerations. Mr Hollist, in his contribution to the debate, typifies the spirit of that quasi-judicial approach:[53]

> 'It was clear from the Convention that the Committee had an obligation to examine all reports submitted to it. The Committee's first task was to determine whether there was any element of racial discrimination in the violations of human rights that had been alleged. Guilt in that direction should not be presumed until it had been proved. The report of the Chilean Government should be examined carefully with a view to establishing the facts.'

The Committee has had no difficulty in ascertaining its competence to act whenever a government reports that the information mentioned in the Committee's communication of 28 January 1970[54] need not be supplied because no racial discrimination exists on its territory. In response to such a statement by Madagascar in 1972,[55] the Committee decided to adopt General Recommendation II.[56] Briefly, the recommendation states that in so far as the guidelines laid down by the Committee were merely a recapitulation of the provisions of the Convention which were applicable to all States parties, they were intended for all States parties without

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50. CERD/C/R 88/Add 7 (1976).
51. Rule 9 of the Provisional Rules of Procedure provides: 'During a session, the Committee may revise the agenda and may, as appropriate, add, defer or delete items.'
52. CERD/C/SR 317 (1977), para 3.
53. Ibid, para 33.
54. See above, fn 44.
55. *1972 Report*, para 86.
56. Decision 4 (v) of 24 February 1972, ibid, p 38.

distinction, whether or not racial discrimination existed in their territories. Notwithstanding the fact that the recommendation was addressed to all States parties, the Committee has had to remind several governments that a statement that there was no racial discrimination within their respective territories in no way diminished the obligations imposed on them under the Convention.[57] Even then, some of the subsequent periodic reports from such governments are no more comprehensive than earlier ones.[58]

A related question has been raised by statements in reports on the mandatory nature of Article 4 (which requires States to prohibit the dissemination of ideas based on racial superiority and to prohibit organisations which promote and incite racial discrimination), such as: 'laws containing the substance of articles 4(a) and 4(b) have not been enacted'.[59] Often the reason given for such a statement is that racial discrimination does not exist on the territory of the State party concerned and therefore legislation is unnecessary. That reason is implicit in New Zealand's decision not to prohibit the types of organisations contemplated by Article 4(b):[60]

> 'It was accepted that some curtailment of recognised freedoms was required in order to implement the provisions but considered that the extent of the problem in New Zealand did not warrant imposing restrictions—particularly on the freedom of association . . .'

Members of the Committee have pointed out that New Zealand's failure to make racist organisations illegal was not in accord with Article 4(b) of the Convention, which categorically states that States parties 'shall declare illegal and prohibit organisations . . . which promote and incite racial discrimination.'[61] They have also referred to General Recommendation I,[62] which stresses the mandatory nature of Article 4 and recommends that States parties consider supplementing their legislation with provisions conforming to the requirements of Article 4(a) and 4(b).[63]

Implicit in New Zealand's response to this criticism[64] is an acknowledgement of the imperfection in our race relations legislation and an attitude that each country should develop its own approach to the question of racial discrimination. This attitude is a fairly prevalent response to the Committee's examination of State reports. In many cases States do

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57. See eg CERD/C/SR 289 (1976), p 251.
58. See eg the failure of Bolivia in 1976 (CERD/C/R. 78/Add 3) and then in 1978 (CERD/C/R. 100/Add 1) to fulfil its obligation under Article 9 to report. The Committee has discussed the inadequacies of these two reports on two occasions—CERD/C/SR. 270 (1976) and CERD/C/SR. 368 (1978).
59. *1972 Report*, para 79.
60. Third periodic report of New Zealand—CERD/C/37 (1978), para 67.
61. 660 UNTS 195, p 220.
62. Decision 3(v) of 24 February 1972, *1972 Report*, p 37.
63. In 1979 several members of the Committee pointed out that New Zealand needed to bring its legislation into line with the requirements of Article 4. See CERD/C/SR.414 (1979), paras 59, 67 and CERD/C/SR.415 (1979), paras 4, 16.
64. Per Mr Ross in CERD/C/SR.283 (1976), p 175. In 1979 Mr Caffin was unable to reply to that question: CERD/C/SR.415 (1979), para 26.

not accept members' suggestions that modifications are needed in their legislation, and if they do there is generally a considerable delay before implementation of the Committee's suggestions is achieved.

What does the Committee look for in subsequent reports? It likes periodic reports to concentrate on recent important events.[65] In the case of reports which have repeated the contents of earlier reports and/or have not indicated clearly what new measures have been adopted, the Committee has found it difficult to see what progress in implementation has been made in a State party.[66] To aid its evaluation process, it has been suggested by some members that reporting countries make a clear division between data relating to new provisions adopted since submission of the previous report and the information provided in response to questions raised by the Committee.[67]

In its early days the Committee welcomed as much information as a State party could provide. That way it would have a complete picture of the racial situation and would be able to make a well-informed analysis of the facts. Problems have since arisen, when a country such as New Zealand submits a mass of supplementary material. On occasions such material may have been more useful to the Committee's discussions than the periodic report itself.[68] Seeing that it is technically impossible for the Secretariat of the United Nations to provide translations of all the supplementary documentation into all the working languages, the question has arisen as to how the Committee can deal adequately with the increasing volume of information.

The tension present in the Convention and in the Committee's practice between pressures for greater effectiveness and the need to respect a State's right to submit the information it wants to has resulted in two conflicting suggestions. On the one hand, there was a proposal that the Secretariat or a member of the Committee should select certain portions of the material for translation. On the other hand, it was suggested that it was for governments to select the material which they wished to be considered by the Committee. The procedure it decided to adopt favours deference to State sovereignty, yet has solved partially the problem of coping with an increasing flow of documentation. Now, States parties are asked to incorporate in their periodic reports all elements which are

65. Mr Dayal's criticism of Poland's fourth periodic report reflects the views of other members on the receipt of information on recent events. He considered that: 'Practically every paragraph in the fourth periodic report had been reproduced from a previous report and contained no new information. Without such further information, the dialogue between the Committee and States parties became a one-sided exercise.' CERD/C/SR.297 (1976), para 17.

66. At its eleventh session (1975) the Committee considered making a general recommendation to draw attention to this deficiency in some State reports. It decided not to because of the rapid growth in the number of its requests for information and general recommendations. Instead it drew attention to the matter in its annual report: *Report of the Committee on the Elimination of Racial Discrimination* GAOR (XXX) Suppl No 18 A/10018 (1975), paras 185-187.

67. See eg CERD/C/SR.295 (1976), para 16.

68. In New Zealand's case, instance the Reports of the Race Relations Conciliator.

essential to the Committee's discussions. If a large volume of documentation is submitted, the Secretariat requests the State party concerned to identify the main passages and these are then translated into all the working languages.[69]

On an overall analysis, the Committee has been successful in setting up standards for the drafting of State reports, which in a growing number of cases has resulted in the supplying of more comprehensive information. It also realises that its dialogue with a number of States is unproductive because some of the procedures used to guide States parties in the preparation of their reports are of 'dubious efficacy'.[70]

With this problem in mind, the Committee decided in March 1978 to request the Secretary-General to attach to the reminders to States parties regarding their next periodic report a copy of the part of the Committee's annual report in which its consideration of the previous report of the State concerned is summarised.[71] The purpose of this procedure is to remind States of the more important questions that need to be traversed in some detail in their forthcoming periodic report. Even more recently, the Committee commissioned one of its members to prepare a working paper that would contain a consolidation of its communications to governments in a clearer and more succinct form.[72] Furthermore, the Committee is currently debating a proposal to provide a number of human rights training scholarships for government officials (particularly in developing countries) responsible for the formulation of initial and biennial reports.[73]

A sizable number of States fail each year to submit their periodic reports on time. In general, the Committee normally authorises the Secretary-General to send reminders to the governments of the States parties whose reports are overdue and reports annually to the General Assembly on the non-receipt of reports.[74] Table 1 gives an indication of the number of reminders sent out each year on account of overdue reports.

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69. CERD/C/SR.277 (1976), p 178.
70. Per Mr Nabavi, CERD/C/SR.388 (1978), para 10.
71. CERD/C/SR.379 (1978), para 18.
72. CERD/C/SR.383 (1978), paras 17-31; and *1979 Report*, paras 465-481.
73. CERD/C/SR.382 (1978), especially para 30.
74. Under Rule 66 of the Provisional Rules of Procedure:
    '1. At each session, the Secretary-General shall notify the Committee of all cases of non-receipt of reports or additional information, as the case may be, provided for under article 9 of the Convention. The Committee, in such cases, may transmit to the State party concerned, through the Secretary-General, a reminder concerning the submission of the report or additional information.
    2. If even after the reminder, referred to in paragraph 1 of this rule, the State Party does not submit the report or additional information required under Article 9 of the Convention, the Committee shal include a reference to this effect in its annual report to the General Assembly.'

Table 1. The number of reminders issued each year to States parties concerning the submission of late reports[75]

1970	6 reminders	1975	38
1971	5	1976	41
1972	6	1977	49
1973	9	1978	62
1974	15		

Usually after this procedure has been utilised, a late report is transmitted to the Committee. In a limited number of cases, no replies are received to the repeated reminders of the Committee. How has the Committee interpreted its powers in order to handle the situation? Both the Convention and the provisional rules of procedure adopted in 1970 do not specifically cover this eventuality. The Committee has had to proceed carefully, lest in its anxiety to be more effective at supervising the presentation of reports and to increase its dialogue with States parties, it coerces rather than cooperates with them.

Initially, it tried applying a very mild and informal pressure on States parties responsible for tardy reports. In 1975, the Chairman invited the Permanent Missions of five States parties—the United Republic of Tanzania, the Central African Republic, Lesotho, Peru and Togo—to a private meeting to discuss with them the reasons for the failure of their governments to submit two or more periodic reports.[76] A reasonable amount of success was achieved by this informal procedure. Two representatives attended the meeting and undertook to urge their governments to submit the reports in question as soon as possible. Subsequently, the first four governments submitted reports during the period from late 1975 until early 1976.

A second method was initiated in 1978 to try to speed up the submission of overdue reports.[77] Instead of a routine reminder, the Committee decided to address a special communication to the governments of the seven States parties[78] from which two or more reports were overdue, inviting them to send representatives to meet with it. Once again, the Committee has been careful, in devising this refinement to its procedures, not to depend on coercion in order to achieve more effective monitoring of the implementation of the Convention. To date the response to its communication has been encouraging,[79] partly because of the tactful emphasis the Committee places on cooperation with States parties.

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75. A/Conf 92/8 (1978), para 84.
76. CERD/C/SR.252 (1975), p 69.
77. *Report of the Committee on the Elimination of Racial Discrimination* GAOR (XXXIII), Suppl No 18 A/33/18 (1978), paras 69-72 and Annex IV.
78. Costa Rica, Fiji, Ivory Coast, Lebanon, Sierra Leone, Togo and Zambia.
79. One State party replied by submitting a report and the representatives of three other States parties assured the Committee that their reports would be submitted as soon as possible. See CERD/C/SR.385 (1978) and CERD/C/SR.408 (1979).

2. *Requests for further information*

In addition to periodic reports, Article 9, paragraph 1, provides that States parties shall submit additional reports 'whenever the Committee so requests', and it also authorises the Committee to 'request further information from the States Parties'. These two provisions have assumed a vital importance in the Committee's work, bearing in mind that the quality and quantity of the material placed before it determines the quality of its scrutiny. The power to request a supplementary report has been reserved for totally inadequate reports.[80] In practice, as more States report more fully on their activities, the Committee has tended to use the power less often than in its formative years.[81]

In comparison to the power to request an additional report, the provision enabling the Committee to request further information has achieved much greater significance in its day to day work. One consequence of the way in which the power to request further information has been interpreted is a change in the types of information requested by the Committee. As more and more countries have reached the stage of submitting third and fourth periodic reports, the Committee expects States parties to have enacted the necessary legislation required by Article 2(1)(d).[82] The focus of its requests for further information has shifted from legislative to practical measures in order to ensure that real implementation of the Convention is being achieved.

This shift can be detected in relation to New Zealand's reports. At the conclusion of the Committee's consideration of New Zealand's second periodic report,[83] it congratulated New Zealand for improving its legislation and expressed a desire for more information on how the practical measures which it was pursuing were working out.[84] New Zealand's third periodic report,[85] in response to those requests, provided a mass of information on the policies adopted and executed by the government in the preceding two years—for instance, there is information on the working of the Department of Labour's Industrial Service which trains Polynesian workers in work-related skills and in handling supervisory jobs.

Linked to this shift in emphasis is a concomitant emphasis on States

80. See Tonga's initial report for an example of a totally inadequate report:
'His Majesty's Government is pleased to report to the Secretary-General of the United Nations that it considers that there are no legislative, judicial, administrative or other measures in force in the Kingdom which are contrary to the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination nor has His Majesty's Government found it necessary to introduce any special legislative, judicial, administrative or other measures to combat racial discrimination within the Kingdom.' CERD/C/R.50/Add.1 (1973).

81. Note that in 1979 four supplementary reports were received by the Committee—all of which were submitted at the initiative of the States parties concerned.

82. Article 2, para 1(d) states:
'Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organisation . . .'.

83. CERD/C/R.77/Add.7 (1976).

84. CERD/C/SR.283 (1976).

85. CERD/C/37(1978).

providing specific, detailed information. The fact that detailed information is not readily supplied, thus making the monitoring of any human rights convention difficult, has been referred to by Niall McDermott, Secretary-General of the International Commission of Jurists:[86]

> 'On the whole there is a great reluctance to discuss individual situations, particular situations . . .'

In the early 1970s, a measure of that reluctance manifested itself in State reports, the Committee's requests for further information and the response of States parties to those requests. For instance, in that early period, the Committee's approach was to make general rather than specific requests for further information when considering a State report eg 'in order to enable the Committee to carry out its task in a satisfactory manner, further information would be needed with regard to the implementation of Articles 2,4,5,6 and 7 of the Convention.'

In the last five years, the Committee has tried to persuade States parties to send reports which contain comprehensive information, such as the actual texts of legislative provisions rather than summaries. When this happens the Committee is able to gain a much clearer insight into the situation in a State party regarding implementation of the Convention. To give some idea of this growing emphasis on requesting information on particular aspects of implementation and on discussing specific situations in depth, it is useful to consider and contrast the Committee's examination of Argentina's second[87] and fifth periodic reports.[88] In 1973 the Committee's analysis of the second periodic report centred on the inadequacy of the information provided. To assist Argentina in the preparation of its next report the Committee's members asked general questions such as whether any measures had been adopted to implement Article 7.[89]

In 1978 the fifth periodic report was given a much more detailed study.[90] The following are a selection of the type of questions asked—were the characteristics of 'aboriginal' persons enumerated in the report considered to be essential prerequisites for the enjoyment of the benefits of special measures adopted in their favour? What were the institutions responsible for applying those measures, and what were the sources of their financing? A feature, then, of the Committee's consideration of State reports is the frequency of requests for more detailed information so that it can properly assess the extent to which a government is complying with its obligations under the provisions of the Convention.

The usefulness of the work of the Committee on the Elimination of Racial Discrimination depends largely on its ability to get individual States to respond to its requests for further information. 'Intensification of the exchange of questions and answers could lead to frank and realistic

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86. *International Protection of Human Rights*, Hearings before the Subcomm on Int'l Organisations and Movements of the Comm on Foreign Affairs, op cit, fn 3, p 15.
87. CERD/C/R. 30/Add 2 (1972).
88. CERD/C/20/Add 7 (1978).
89. CERD/C/SR. 126-127 (1973).
90. CERD/C/SR. 390-391 (1978)

communications with Governments.'[91] Has the Committee been able to develop such a dialogue with States parties? Putting aside (for later discussion) the question of the role of governmental representatives, it seems the Committee has achieved a fair measure of success. Some 1978 periodic reports (among them was New Zealand's) attempt to answer all the questions put during the consideration of their preceding periodic report.

It is worth noting in relation to New Zealand's reports that the Committee appreciates the frankness of the replies to its question.[92] This quality, seldom present in many governmental responses to requests for further information, facilitates the Committee's task of gaining a clear picture of the situation as regards implementation of the Convention. Of course, as the New Zealand experience suggests, once this type of open dialogue is established it continues to expand because the more information that is provided, the more questions members of the Committee will be able to ask. Unfortunately, the Committee's effectiveness in this sphere has been tempered by the lack of cooperation received from a number of countries. When a country such as Bolivia[93] or Venezuela[94] fails to answer every query put during the Committee's discussion of its previous periodic report, a 'dialogue of the deaf' results.

An extremely delicate point is the question of the Committee's competence to request certain types of additional information. The ambiguity present in Articles 4(a), 4(b) and 5 and the lack of precision in Articles 3 and 7 has compelled the Committee to answer the question, 'Where should the dividing line be drawn between what falls within the scope of the Convention and what falls within the internal affairs of a State?'[95] By examining one question of interpretation (namely, whether the Convention applies to the external relations of States parties) it is hoped to illustrate a number of points about the approach adopted by the Committee.

In 1972, Canada submitted in its initial report information about the measures taken to implement resolutions of the UN General Assembly concerning relations with South Africa.[96] In the same year a draft general

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91. Per Mr Van Walsum (Netherlands) in A/C 3/SR. 2036 (1973), para 26.
92. For an example of the Committee's appreciativeness see Mr Videla Escalada's comment 'that the New Zealand report was a model of its kind, frankly drawing attention to instances of racial disharmony where they existed.' CERD/C/SR. 415 (1979), para 20.
93. CERD/C/SR. 368 (1978), paras 28-54.
94. CERD/C/SR. 284 (1976), p 191. Some States, finding themselves in this position, fall back on the excuse of having a heavy burden in complying with their obligation to submit reports on various subjects to a large number of UN bodies.
95. The meaning and scope of Article 5 (which lists the rights and freedoms whose enjoyment must be guaranteed to all) raises two particularly thorny questions of interpretation—is it an exhaustive list, and if not, does it exclude the possibility of the Committee considering violations of other rights? These questions were the subject of extensive discussions at the Committee's eighth session. See CERD/C/SR 147-151, 164 (1973).
96. *1972 Report*, supra fn 35, para 53.

recommendation, stemming from Canada's initiative, embodied a proposal that the Committee should be able to request further information from all States parties on their relations with southern Africa.[97] This draft recommendation immediately raised the problem of the Committee's competence. A preliminary point taken in the debates was that only the States parties, and not the Committee, were competent to interpret the Convention. However, the majority of members were agreed that the Committee must interpret the Convention in order to ascertain if its provisions are being complied with, but such interpretations would not be binding on States parties.

From a strictly legal viewpoint, it was argued that the Convention contains no provisions specifically authorising the Committee to deal with the foreign relations of States parties. In support of that argument, it was pointed out that Article 3 stipulates that States parties shall prevent, prohibit and eradicate apartheid in territories *under their own jurisdiction.* Another major argument in favour of a restrictive view of the Convention was the belief that the Committee is a technical body, set up under the Convention in order to secure its implementation, and this limits its authority in political matters, especially in relation to problems normally dealt with by other specialised UN organs.

On the other side, it was argued that the Convention applies to the external relations of States parties. Reference was made to the tenth preambular paragraph to the Convention, which reads:[98]

> '[The States Parties to this Convention] . . . *Resolved* to adopt all necessary measures for speedily eliminating racial discrimination in all its forms and manifestations, and to prevent and combat racist doctrines and practices in order to promote understanding between races and to build an international community free from all forms of racial segregation and racial discrimination . . .'

It was reasoned that while the preamble does not lay down binding legal commitments, it serves as a guide to the interpretation of the Convention. Accordingly, it was said that the application of Article 3 should not be limited solely to the territory of a State party.

The solution to this perplexing question raises the issue of the proper approach to the interpretation of the Convention. Should the Committee interpret the Convention so as to give the words their literal meaning? Or should it be willing to imply from the purposes of the Convention a power to broaden the function of overseeing implementation of the Convention into the field of apartheid? When the Committee formulated General Recommendation III it adopted a fairly liberal approach to the Convention, but at the same time it was careful to qualify its competence by stating:[99]

> 'The Committee welcomes the inclusion in the reports submitted under article 9, paragraph 1, of the Convention, *by any State Party*

97. CERD/C/SR. 98 (1972).
98. 660 UNTS 195, p 214.
99. Decision 1 (VI) of 18 August 1972, *1972 Report*, p 39.

> *which chooses to do so*, of information regarding the status of its diplomatic, economic and other relations with the racist régimes in southern Africa.' (emphasis added)

This paragraph, from General Recommendation III, sums up the halfway house which the Committee decided on, rather than adopting a very general or a very restrictive approach to the Convention.

In practice, as the southern Africa question has become a centre of international attention, the Committee has tended not to let the matter rest entirely within the discretion of the individual State party. The Committee's insistence on requesting further information from certain governments[1] on their relations with southern Africa has caused some States to protest that the Committee has exceeded its competence. Here, in its eagerness to be effective in helping the struggle against racial discrimination, the Committee seems to have undermined to a certain degree the confidence and respect in which it is held by a number of countries.

3. *Representation of States parties before the Committee*

During the third session (1971), the Permanent Representative of Pakistan requested that his delegation 'be able to present its comments on the observations made in the Committee covering the report presented by Pakistan under Article 9, paragraph 1'.[2] The main reason given for rejecting the request was that the terms of the Convention provided for States furnishing information only in the form of reports and for the right to comment on any of the Committee's suggestions or general recommendations. After considering the Committee's annual report for 1971, the General Assembly expressed the view that 'the work of the Committee on the Elimination of Racial Discrimination would be facilitated . . . if the Committee invited States parties to be present at its meetings when their reports are examined.'[3]

As a response to the General Assembly's view and to notions of basic fairness, and as a means by which the Committee might improve its knowledge of the facts, the Committee decided at its fifth session in 1972 that:[4]

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1. In the Committee's annual report for 1978 the United Kingdom features as a prominent example:
   > 'The representative of the United Kingdom reaffirmed his Government's position in that regard: that "article 9 of the Convention did not impose an obligation to report on relations with the régimes of the countries of southern Africa . . ." The Chairman said that the Committee would continue to invite States parties to provide such information, and urged the Government of the United Kingdom to reconsider its position and provide information on that subject in its next report.'

   1978 Report, para 346.
2. *Report of the Committee on the Elimination of Racial Discrimination* GAOR (XXVI), Suppl No 18 A/8418 (1971), para 84.
3. Adopted as General Assembly Resolution 2783 (XXVI) of 6 December 1971, GAOR (XXVI), Suppl No 29 A/8429 (1971), pp 78-79. This is the first and only time that the General Assembly itself has suggested a new procedure to the Committee: cp fn 94 below.
4. Decision 1 (v) of 17 February 1972. Rule 64-A of the Provisional Rules of Procedure,

> 'Representatives of the States Parties may be present at the meetings of the Committee when their reports are examined. The Committee may also inform a State Party from which it decides to seek further information that it may authorise its representative to be present at a specified meeting. Such a representative should be able to answer questions which may be put to him by the Committee and make statements on reports already submitted by his State, and may also submit additional information from his State.'

The Committee's decision to add a procedure to those set out in the Convention leaves unanswered a basic question about the proper approach to the interpretation of the Convention. Should the Committee interpret the Convention literally or should it be willing to imply from the purposes of the Convention a power to create additional procedures for supervising its implementation? Obviously, the Committee has usually favoured the latter interpretation. Since the General Assembly has given the highest priority to the achievement of the elimination of racial discrimination in the Convention and in its resolutions,[5] the Committee considered that improving the functioning of the reporting system (if need be, by creating new procedures) would contribute to that object.

In principle, the presence of representatives seems a useful innovation, but has it worked out that way in practice? On the positive side, States parties have cooperated with the Committee by ensuring that a representative is present during the examination of their reports. The data in Table 2 demonstrates the willingness of most States parties to be represented at the Committee's meetings.

Table 2. Attendance of State representatives at the Committee's meetings[6]

Year	*Session*	*Location*	*Number of Reports Considered*	*Number of States Parties Represented*
1972	6th	UNHQ*	5	5
1973	7th	UNHQ	32	32
1973	8th	UNHQ	9	8
1974	9th	UNHQ	28	25
1974	10th	Geneva	22	13

1972 Report, p 37 or see CERD/C/35 (1978), p 13.

5. For example, in Resolution 2919 (XXVII), on the Decade for Action to Combat Racism and Racial Discrimination, the General Assembly again expressed the conviction that racial discrimination was a negation of the Charter and an obstacle to the achievement of peace and justice throughout the world. See GAOR (XXVII), Suppl No 30 A/8730 (1972), p 62.
6. Source: annual reports of CERD.

Year	*Session*	*Location*	*Number of Reports Considered*	*Number of States Parties Represented*
1975	11th	UNHQ	15	15
1975	12th	UNHQ	10	10
1976	13th	Geneva	28	19
1976	14th	UNHQ	16	15
1977	15th	Vienna	18	18
1977	16th	UNHQ	12	12
1978	17th	UNHQ	15	15
1978	18th	UNHQ	20	18
1979	19th	Paris	26	23
1979	20th	UNHQ	17	17

* United Nations Headquarters, New York

One of the disadvantages that has been noted by New Zealand's representatives is that the Committee members have been tempted to increase the number of questions they ask. The fast and regular flow of detailed questions, plus the presence of representatives who have not been fully prepared for such an eventuality has often resulted in incomplete and generalised answers being supplied. These factors caused members of the Committee to give largely negative evaluations of this procedure when it was in its infancy. For instance, Mr Ancel commented two years after State representatives first appeared before the Committee:[7]

> 'Although the purpose of the innovation had been to establish a dialogue, the procedure had in fact led to a kind of double monologue; the real dialogue was established in writing, when States Parties understood the Committee's requirements and complied with them in a spirit of cooperation.'

While there is a lot of truth in this kind of criticism, the participation of the representatives of reporting States has been useful in providing the Committee with additional information, which brings members up to date on the current situation.[8] Another disadvantage flowing from this additional procedure has been the reliance placed by some States on their representative (and not their report) supplying the information the Committee requires. Consequently, the Committee has had to stress on several occasions that, while the information provided by State representatives is most welcome, it is no substitute for a well presented and correctly submitted report.[9]

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7. CERD/C/SR.216 (1974), p 169.
8. On this point see A/Conf 92/8 (1978), para 110.
9. See eg CERD/C/SR.368 (1978), para 41.

When the Committee adopted rule 64-A of the provisional rules of procedure in 1972 it envisaged the representative of the reporting State participating in the Committee's examination of their reports by answering questions as fully as possible. Since 1974 there has been a substantial improvement in the standard of replies received from representatives under questioning. However, a large number of States parties are still not sending representatives capable of performing the function expected of them—either they are unfamiliar with the subject, or they have been inadequately briefed or they lack a legal background.[10] New Zealand would seem to once have been in that position, if one judges by the performance of its representative[11] in the course of the consideration of New Zealand's third periodic report at UNESCO headquarters, Paris, in March of 1979.

Almost all of the questions directed to him were of a legal or quasi-legal nature. Only two issues of a political nature came up—sporting contacts with South Africa and the position of the National Socialist Party.[12] The rest of the questions were less easy for New Zealand's representative to answer in a satisfactory manner as he was not a qualified jurist. Questions he had difficulty with concerned the lack of a legislative prohibition of racist organisations (see the previous discussion of Article 4); the relationship between the Race Relations Conciliator and the Human Rights Conciliator; the role of the Equal Opportunities Tribunal; and requests for more specific information on action taken, either by the Conciliator, or by the police, in respect of complaints about discrimination. In some cases he simply stated that the points made by members would be drawn to the attention of his government for clarification.[13]

On the other hand, in 1974 the New Zealand government sent two representatives, one of whom was a legal expert, to introduce New Zealand's initial report.[14] In addition, in 1976 New Zealand's representative was able to deal fairly fully with the points raised by members—chiefly because he was invited to continue his oral statement to the Committee on the next day. Thus he had a period of time to ponder the specific legal questions that had arisen from the report and to plan out his replies.[15]

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10. A survey of the responses given by State representatives at the 1978 sessions shows that nine out of the thirty-three representatives were able to answer only one or two of the questions posed by Committee members.
11. CERD/C/SR.414-415 (1979).
12. CERD/C/SR.414 (1979), para 67 and CERD/C/SR.415 (1979), paras 2-4.
13. The New Zealand representative said that 'since he was not a legal expert, he would not attempt to reply to points of detail but would deal with the more general questions that had been raised, and would refer the more technical points to his Government for clarification.' CERD/C/SR.415 (1979), para 25.
14. CERD/C/R.50/Add 8 (1974).
15. CERD/C/SR.283 (1976), pp 175-176.

4. *Other sources of information*

To what extent do the words of Article 9 restrict the competence of the Committee to use information not supplied by States parties? In 1972, it was proposed that the rules of procedure should be amended so that the Committee could go beyond information provided by States parties, and use the knowledge of conditions in a State party which individual members may have acquired. Rule 14A, proposed by Sir Herbert Marchant, would have read:[16]

> 'In the consideration of reports submitted to the Committee pursuant to article 9, or of petitions and reports received pursuant to article 15, members of the Committee may raise any matter relevant to the situation described in the documents before the Committee or related to the implementation of the convention in the territory of the State Party concerned.'

The simple argument in favour of such a change was that the members, who were experts, as provided in the Convention, should not be expected to put aside their expertise and merely confine themselves to a discussion of the information placed before them.

The opposing interpretation of Article 9 was that it restricted members to reports and additional information provided by States parties as sources of information. Some members postulated that to go beyond the provisions of the Convention would be to enlarge the competence of the Committee. During the discussion of the proposed amendment the Committee was very careful about the question of competence for it realised that to go beyond the reports to challenge the veracity of statements made in them might be an unwarranted interference in the parties' internal affairs. Also, it was implicit in the debates on this amendment that the Convention should be interpreted in a way that would be acceptable to the largest possible number of States parties. After the withdrawal of the amendment because of lack of support, the practice has evolved over the years of basing the Committee's work on 'the reports submitted by Governments, on information published officially by Governments or by United Nations bodies and on parliamentary material.'[17] It is important to note that often the Committee prefers a process of evolution through practice to a precise formulation, through its rules of procedure, of the intent of the Convention. That way it is able to maintain flexibility in its working methods.

A fair criticism of State reports is that the information provided tends to emphasise positive rather than negative developments. In order to counteract that tendency, the Committee has arranged for a two way flow of information with the International Labour Organisation (ILO) and the United Nations Educational, Scientific and Cultural Organisation (UNESCO).[18] Although such a procedure of cooperation was not explicitly provided for in the Convention, the Committee has recognised that

16. *1972 Report*, para 27.
17. Per the Chairman, CERD/C/SR.296 (1976), para 57.
18. Decision 2(VI) of 21 August 1972, *1972 Report*, p 39.

it is implicit throughout the Convention that the Committee should be organically linked to the United Nations, eg the Convention itself was drafted, adopted and opened for signature and ratification by the General Assembly; the secretariat of the Committee is provided by the UN Secretary-General; the Committee's meetings are normally held at the Headquarters of the United Nations; and the UN pays a large share of the Committee's expenses.[19]

Most of the information that is supplied from this source does not focus on particular countries. Over the last five years the ILO has provided information on its 1958 Convention on Discrimination (in Employment and Occupation)[20] and on the principles, mandate and methods of work of the ILO Committee of Experts on the Application of Conventions and Recommendations. UNESCO has provided information of a more diverse kind, including information on the substance and procedures for implementation of its 1960 Convention and Recommendation Against Discrimination in Education,[21] and a series of reports on the effects of discriminatory policies in southern Africa.

The Committee sought to improve the relationship of cooperation between itself and UNESCO in 1977 by requesting that organisation to assist in the formulation of guidelines for helping States parties to implement Article 7.[22] States are required by Article 7 to adopt measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudice and promoting understanding, tolerance and friendship among nations and racial or ethnic groups. One year later, UNESCO submitted some information to the Committee,[23] but little of it was of direct relevance to the formulation of guidelines for Article 7. In summing up the Committee's evaluation of this ad hoc procedure of cooperation, the Chairman entered a general caveat. He said that while the Committee appreciated UNESCO's contribution, in the form of

19. The question of the links between CERD and the United Nations is an important one. It arose as early as 1969 when the Director, Division of Human Rights, requested an opinion from the Office of Legal Affairs of the UN Secretariat on the status, privileges and immunities of the members of CERD. Its opinion was that members of CERD were to be considered experts on missions for the UN, and therefore they were covered by the Convention on the Privileges and Immunities of the United Nations. The view that CERD should be considered an organ of the UN was inferred from the mode of its creation, the nature of its functions, and the continuing administrative and financial ties which bind it to the UN. (See the *United Nations Juridical Handbook* 1969, p 208.) In 1976, an opinion on a related question clarified the basis of the 1969 opinion by stating that CERD was not a subsidiary organ of the General Assembly. Instead, 'it falls into a special category of "treaty organs of the United Nations", which are organs whose establishment is provided for in a treaty, for the purpose of carrying out its provisions, but are so closely linked with the United Nations that they are considered organs of the Organisation'. (*Juridical Handbook* 1976, p 200).
20. As at 1 January 1979, the ILO had 161 member States, of which 96 had ratified its non-discrimination convention.
21. As at 25 April 1979, UNESCO had 146 member States, of which 68 had ratified its discrimination in education convention. Source: UNESCO Library, Wellington.
22. CERD/C/SR.388 (1977)
23. Contained in CERD/C/13 (1978) and eight supporting documents furnished by UNESCO.

annual reports, the Committee would not allow UNESCO to take over the function of overseeing the implementation of Article 7. In that connection, he stressed that the Committee must remain responsible for interpreting the Convention and making recommendations, for 'the Committee could not delegate its functions to any other organisation . . .'[24]

Four States parties have over the past nine years informed the Committee in at least one of their periodic reports that racial discrimination was being practised on a part of its territory by a State that was not a party to the Convention.[25] The receivability and the manner in which this information should be acted on has led to differences of opinion among members over the Committee's competence. The focus of the Committee's debates can be viewed in the light of an attempt to reconcile requirements of effectiveness with those of impartiality. On the one hand, the argument was that since the Committee could not ignore reported practices of racial discrimination on the territory of States parties to the Convention, it must take some kind of meaningful action. The contrary opinion was that the political disputes leading to the occupation of the territories in question lay outside the competence of the Committee. To take action on such information, then, would constitute an interference in the political dispute and would undermine the Committee's position of impartiality.

From the tenth session (1974) a consensus has been reached on how such information should be handled. Since that time the Committee has confined itself to receiving the information, expressing a general regret at the situation and expressing a hope that the situation will be normalised as soon as possible.[26] In its annual report it brings the General Assembly's attention to the information provided by the State party in question. 'Occupying' States have frequently alleged that the Committee has not adhered to its impartial role as laid down in the Convention, but has been utilised to present complaints against States that were not parties to it, a role which was not envisaged by the Convention.[27] In connection with that interpretation of the situation, the Committee has replied that what is important is that a reporting State, complying with its obligations under Article 9 of the Convention, was informing the Committee that it could not fully apply the Convention because part of its territory was occupied by another State. Despite the protests of 'occupying' States, the Com-

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24. CERD/C/SR.381 (1978), para 43.
25. Cyprus in 1975, 1976, 1977 and 1978; Jordan in 1977; Panama in 1971, 1973, 1974; and Syria in 1971, 1973, 1974 and 1977. For fuller references see the table in A/Conf 92/8 (1978), para 136.
26. See, for an example of the Committee's careful attitude in this area, Decision 3(XI) of 8 April 1975. It read in part:
    '*The Committee on the Elimination of Racial Discrimination,*
    1. *Expresses its concern* at the information laid before the Committee and its hope for a speedy normalisation of conditions in Cyprus;
    2. *Invites* the Government of Cyprus to provide it with such additional information as may be available to it for consideration by the Committee at its twelfth session.'
27. See for an example of this type of complaint A/C3/SR.1848 (1971), para 15.

mittee has been fairly careful in setting out its position to consider the information exclusively within the scope of the Convention, without referring to a wider political context. A good example of that careful attitude towards political situations is the Committee's rejection of the view that the 1978 report of Cyprus (which alleged that the Turkish occupation of Cyprus constituted an obstacle to the implementation of the Convention) should be examined within the context of Article 15, because 'Article 15 did not apply to part of a territory occupied by a foreign Power.'[28]

B. *The Nature of the Analysis of State Reports*

1. *Ratio of reports to meetings*

Does the Committee spend sufficient time on the State reports to give them detailed consideration? On a broad overview, the Committee does not have enough time to give them a thorough going over. Each year it meets for two three week sessions—one in April, one in August. Its agenda is a full one, principally because of the 50 or so reports it has to consider each year. Usually, the only way it disposes of the examination of State reports is to defer either some of the less pressing agenda items or some of the reports to the next session.

A little more information on this question can be deduced from the data compiled in Tables 3 and 4.

Table 3. Percentage of the Committee's meetings spent on reports[29]

Year	*Total Number of Meetings*	*Number of Meetings Spent on Reports*	*Percentage*
1970	39	10	25.6%
1971	43	27	62.8%
1972	37	15	40.5%
1973	52	28	53.9%
1974	53	33	62.3%
1975	43	26	60.5%
1976	48	32	66.7%
1977	47	32	68.1%
1978	44	26	59.1%
1979	49	34	69.4%

Table 4. Amount of Committee time devoted to each State report[30]

Year	*Number of Meetings Spent on Reports*	*Number of Reports*	*Ratio of Meetings to Reports*
1970	10	11	0.9
1971	27	47	0.6
1972	15	10	1.5
1973	28	41	0.7

28. Per Mr Nabavi, CERD/C/SR.400 (1978), para 41.
29. Source: annual reports of CERD.
30. Ibid.

Year	*Number of Meetings Spent on Reports*	*Number of Reports*	*Ratio of Meetings to Reports*
1974	33	50	0.7
1975	26	25	1.0
1976	32	30	1.1
1977	32	30	1.1
1978	26	35	0.7
1979	34	43	0.8

It appears that each year the Committee spends roughly sixty percent of its time on the reports submitted in accordance with Article 9, but this figure is subject to fluctuation. Even more fluctuation can be detected in the ratio of reports to the number of meetings devoted to studying them. In some sessions, one and a half meetings on average have been spent on each report, whereas in other sessions just over half a meeting has been spent on each report. What produces these inconsistent figures? Variations are produced by the number of items on the agenda in a particular year, the amount of time devoted to procedural questions,[31] the delay in the receipt of reports before the commencement of a session, and the degree of preparation of each Committee member. One of the most significant variables is the quality of the various State reports submitted by Governments under Article 9 of the Convention. Over the past nine years, there has been a tendency to spend more time on comprehensive, well-written reports than ones that are brief and poorly organised.[32]

By way of illustration, both New Zealand[33] and Jamaica[34] submitted their second periodic reports in 1976. New Zealand's report contained fifteen pages and had a large amount of supplementary material appended to it. The Committee's consideration of it occupies twelve pages of the summary records.[35] In contrast, six pages of the summary records report the Committee's examination of Jamaica's second periodic report[36]—partly owing to Jamaica submitting the same information on two previous occasions. This one example could be followed by others which demonstrate that the Committee tends to neglect those States who are not cooperating with it by providing full reports.

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31. Even now the Committee spends a moderate amount of time discussing its procedures, chiefly because it wishes to evaluate their usefulness and refine them if necessary. For instance in 1979 the Committee devoted two meetings to a consideration of proposals relating to the revision of the general guidelines for State reports. See CERD/C/SR.427, 451 (1979).
32. The nature of this practice has been referred to by Mr Ancel in one of the Committee's procedural discussions:
    '. . . there was a certain inequality in the manner in which various reports were treated; in the case of comprehensive reports, members' curiosity tended to be aroused, giving rise to detailed investigation but where the reports were summary, there was a temptation to draw inferences which were not justified by the text.' CERD/C/SR.216 (1974), p 169.
33. CERD/C/R.77/Add 7 (1976).
34. CERD/C/R.65/Add 6 (1976).
35. CERD/C/SR.282-283 (1976).
36. CERD/C/SR.274 (1976).

In criticising this situation, it has been argued that it is unfair to countries which provide really detailed reports that they should be subjected to serious discussion and criticism in the Committee, when countries which submit virtual non-reports are regarded no less highly because of their indifference or negligence. However, with the advent of some countries reporting relatively full implementation of the provisions of the Convention, the Committee has begun to devote more time in the last two years to those countries which still have some way to go.

As the number of States parties have increased dramatically in recent years,[37] one would expect the Committee to experience some difficulty in dealing with all the reports submitted to it in any given year. This led to a suggestion in the General Assembly's Third Committee in 1977 that the 'de facto division of work' which had come into being more or less spontaneously within the Committee might profitably be extended and formalised in order to facilitate speedier consideration of a larger number of reports submitted by States parties.[38] Subsequently the Committee considered the suggestion and rejected it on the basis that up to the present it had been able to consider all reports from States parties without the need for a division of work.[39] The summary records reflect a strongly held view that group work would not in fact save time, since it would interfere with the work of the plenary Committee and would tend to prolong rather than shorten sessions. Nevertheless, the Committee left open the possibility of updating its procedures should its volume of work increase substantially. This matter is given further consideration in the next section of this paper.

2. *Thoroughness of the analysis of reports*

The discussion in the previous section centred on quantitative aspects of the Committee's work. What developments, if any, have there been on the qualitative side of the Committee's work? In 1974 the Committee studied the question of how best to effect a detailed examination of the reports, thus performing its function more effectively. Mr Ancel pointed to the underlying reason for the procedural discussion:[40]

> 'Although the Committee was to be commended for the serious way in which it examined the reports and for its desire to leave nothing unexplored and to request further information complying more closely with the requirements of the Convention . . . the examination of many of the reports had become routine, impersonal, haphazard and repetitious, thus detracting from the value of the debates.'

Most of the suggested solutions included the idea of assigning reports to working groups who, after examining the reports, would appoint one member to introduce them orally to the plenary Committee. The reasons that were applied to rebutting the proposed solutions demonstrate several

37. From 38 States parties in 1969 to 104 in 1979. An increase of sixty-six in ten years.
38. Per Mr Heinemann (Netherlands) in A/C 3/32/SR. 29 (1977), paras 34-35.
39. CERD/C/SR. 378-379 (1978).
40. CERD/C/SR. 216 (1974), p 169.

facets of the Committee's understanding of the Convention and the nature of its working methods.

Firstly, it was said that the danger with working groups is that members of the Committee would lose interest in reports for which they were not personally responsible. A second cogent reason was that while every member of the Committee could not be fully conversant with every piece of information received, unity was much more important than the 'fragmentation of the Committee's collective responsibility'.[41] Another powerful reason advanced against working groups was that the composition of the Committee as established under Article 8 provided that the members should be experts acting in their personal capacity and representing different types of civilisations and legal systems, so as to ensure a broad and balanced attitude would be brought to bear to the consideration of reports submitted by States parties. Although no decision on working groups was reached, one useful outcome of the procedural discussion was that the extent of repetition in the Committee's debates was brought home to members. This realisation has caused members to be more thoughtful about the questions they direct to State representatives.[42]

One of the features of the Committee's thoroughness is the particular attention it attaches to initial reports. They represent the background against which all subsequent reports will be considered. In the case of New Zealand, that thoroughness has been carried over to the consideration of its biennial reports. Following up on the initial report, the Committee's members have asked pertinent questions. One of New Zealand's Race Relations Conciliators, who helped in the preparation of the second periodic report, has reported that:[43]

> 'the transcript of the proceedings of the Committee showed that members had analysed it (the report) most carefully and directed a number of searching questions to the New Zealand representative.'

When biennial reports began to arrive in 1972, the Committee found it difficult to make a comparative evaluation of the progress achieved in the implementation of the Convention, because it did not have before it copies of the relevant initial reports. This problem was accentuated by the election of new members in 1972 and 1974, replacing some of the original members of the Committee.[44] It was not until 1974 that a special library was established containing all the reports of each State party, for members to consult when necessary.

A second noteworthy feature is the relatively objective and impartial atmosphere in which reports are discussed. Although the Committee likes

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41. Ibid, p 170.
42. See eg Mr Pahr's comment that 'since Mr Valencia Rodriguez had already dealt with the various aspects of the report, he would merely draw attention to one problem he saw in the country's legislation.' CERD/C/SR. 299 (1976), para 45.
43. *Report of the Race Relations Conciliator for the year ended 31 March 1976*, Vol II of the 1976 Appendices to the Journals of the New Zealand House of Representatives (E17), at p 15.
44. To date thirty-nine people have been elected to the Committee and served as experts.

to probe into various aspects of implementation of the Convention, it has never purported to claim the right to analyse the different political and legal systems of States parties. For instance, Article 5 obliges States parties to guarantee to all equality, without distinction as to race, in the exercise of their political and civil rights and economic, cultural and social rights. Acting within its sphere of competence, the Committee has refrained from discussing subjects such as freedom of expression in a State party unless (1) that right is in fact guaranteed to all and (2) that right has been interfered with in a racial discrimination context. One factor contributing to that stance is the view that to act otherwise would in certain circumstances constitute an interference in the work of the Human Rights Committee.

A third feature of the Committee's thoroughness has been a move from unhelpful scrutiny to constructive appraisal, in an effort to improve its dialogue with States parties.[45] This trend is reflected in the more recent comments of representatives who have appeared before the Committee:[46]

> 'Mr Robinson (Jamaica) . . . expressed gratitude to the members of the Committee for the cordial and constructive spirit in which they had made their comments.'

The Committee has interpreted its responsiblity as being to assess a country's performance in implementing the provisions of the Convention, not by using purely formal criteria, but by taking into account the special geographic, demographic, economic, social and other conditions which exist in certain countries. For instance, the Committee has acknowledged, in connection with the 1976 report of Tonga,[47] that it should be taken into account that Tonga was a very small country with a fairly homogeneous population.[48]

In the course of examining State reports, the Committee's thorough analysis has been impeded if a State party has made a reservation when it ratified or acceded to the Convention.[49] Difficulties relating to the legal effects of reservations, declarations and statements of interpretation have arisen on several occasions in the last ten years[50] and prompted doubts about the Committee's competence. An opinion obtained from the UN

45. For an example of the Committee's tendency to be less destructive, consider Mr Syegh's remarks on one of Sierra Leone's periodic reports:
> 'The Committee's purpose was not to create ill-will or pronounce judgment on any State, but to advise States parties on the best ways of making their legislation more effective in combating racial discrimination. In the case at issue, the Committee would not be doing its duty if it failed to point out that effective implementation of the Convention was conditional on the removal of the discrepancy (in Sierra Leone's legislation).' CERD/C/SR. 204 (1974), p 44.

46. CERD/C/SR. 387 (1978), para 27.
47. CERD/C/5 (1976).
48. See CERD/C/SR 278 (1976).
49. Article 20 of the Convention sets out the procedure to be followed for the making of reservations.
50. See the difficulties created by the United Kingdom report in the *1975 Report*, para 144; Jamaica in the *Report of the Committee on the Elimination of Racial Discrimination* GAOR (XXXI) Suppl No 18 A/31/18 (1976), paras 60, 62; Barbados ibid, para 49; Tonga ibid, para 82; and the Bahamas in the *1977 Report*, para 310.

Office of Legal Affairs in 1976 clarified a number of questions about the legal effect of reservations, declarations and statements of interpretation:[51]

(a) the Committee must take the reservations made by States parties at the time of ratification or accession into account for it has no authority to do otherwise. A decision—even a unanimous decision—by the Committee that a reservation is unacceptable could not have any legal effect;
(b) a reservation made at the time of signature has to be confirmed at the time of ratification, otherwise it is considered as not having been maintained; and
(c) declarations other than reservations have no legal effect at all on the obligations of the declaring State under the Convention.

In fact, few of the reservations made by the States parties at the time of ratification or accession should impede the Committee's analysis of the situation as regards implementation of the Convention in a particular country. Of the reservations made by thirty States parties, twenty-four related to Article 22 (which provides for the compulsory jurisdiction of the International Court of Justice in any dispute between States parties over the interpretation of the Convention); only five—made by the Bahamas, Barbados, Fiji, Jamaica and Tonga—refer to the substantive articles of the convention, notably Articles 5 and 6.[52]

3. *Decisions, suggestions and general recommendations*

The Convention, by necessary implication,[53] authorises the Committee to make decisions. Decisions only apply to the Committee's internal affairs. Take for instance the decision no longer to classify reports submitted by States parties as satisfactory or unsatisfactory.[54] Originally the Committee's practice was to use a process of classification in order to decide which reports did or did not contain the information required, as set out in the Committee's guidelines for the submission of reports.[55] Without that power of decision the committee would never have been able to scrutinise effectively the reports before it.

Misunderstandings arose because that classification was thought by some governments to apply to the extent of compliance with the anti-discrimination requirement laid down in Articles 2 to 7 of the Convention. These misunderstandings increased as many of the reports became fuller and the focus of the Committee's examination changed from a formal

51. Op cit, pp 220-221.
52. *Multilateral Treaties in respect of which the Secretary-General Performs Depositary Functions: List of Ratifications, Accessions etc as at 31 December 1978*, ST/LEG/SER D/12 (1979), pp 91-98.
53. For authority for this proposition see above pp 242 et seq.
54. CERD/C/SR. 216 (1974).
55. The consideration of New Zealand's initial report in 1974 provides an example of tne original practice:

> 'The Chairman suggested that the Committee should consider New Zealand's initial report to be satisfactory, on the understanding that any additional information that was not immediately available would be given in the next report from New Zealand.' CERD/C/SR. 181 (1974), p 122.

evaluation to an evaluation of the legislative, judicial, administrative and other measures which gave, or equally important, failed to give effect to the anti-discrimination articles of the Convention. To eliminate this confusion the Committee decided during its tenth session (1974) to drop its practice of classifying reports.[56] Once again, without the power of decision to improve its internal functioning, the Committee would have become incapable of properly overseeing the implementation of the Convention as circumstances changed.

One point worth noting in the above example of an evolution in the Committee's procedures is the importance of change to the Committee's work. It has striven from its inception to improve its working methods, so that they are always practical and effective. Thus the decision to cease classifying reports is a sign that the Committee considers it can express its real views in a manner more precise than with the mere expression of satisfaction or dissatisfaction.

Sometimes a member will propose that a specific decision be taken on a report. For instance, at its fifteenth session (1977) a decision was taken on information supplied by Panama alleging that it had been prevented from fulfulling its obligations under the Convention in the Canal Zone.[57] What is significant about the Committee's decisions in these cases is that the Committee very rarely takes roll call votes. When there is disagreement on the appropriate decision, members usually appeal to one another not to put the matter to a vote. The feeling in the Committee is that it should try to act by consensus, since it gives more weight to its decisions. Furthermore, whenever it appears that there is no possibility of arriving at a consensus, the Committee normally postpones its discussion. In the meantime it is possible to have an informal exchange of views so as to reach a consensus. Here the practice of the Committee is directed towards reinforcing one of the basic elements in the Convention—that the procedures for scrutinising its implementation should be, and should be seen to be, effective.

Differences of opinion among Committee members over the Committee's competence to 'make suggestions and general recommendations based on the examination of reports and information received from the States Parties'[58] have been caused by the imprecise language of the Convention. A consensus has not been reached on two basic issues:

(a) Can the Committee make 'suggestions' as distinct from 'general recommendations' relating to specific situations in particular States parties? While the Convention contains a tension between specific examination and general consideration, the language of the Convention and the debates which led to the wording of Article 9 suggest that

56. The Committee's current practice is for the Chairman to sum up the discussion of a periodic report instead of adopting a decision in relation to its form or substance. For criticism of this procedure, see A/Conf 92/8 (1978), para 111-114.
57. Decision 2 (XV) of 8 April 1977, *1977 Report*, p 93. See also CERD/E/SR. 331 (1977).
58. Article 9.2.

the Committee has been within its rights in directing specific suggestions to the attention of individual State parties.[59]

(b) To what extent do the words 'based on the examination of the reports and information received from the States parties'[60] restrict the competence of the Committee to take account of information not supplied by the States parties in formulating its suggestions and general recommendations? The text of the Convention appears to mean that under the reporting procedure the Committee is not authorised to take non-governmental sources and materials into consideration. No precise formulation of the intent of the Convention in respect of Article 9 has been formally adopted by the Committee. Instead, a working compromise, which has enhanced the Committee's effectiveness, has evolved of the Committee treating government reports as its principal source of information and leaving it open for the Committee to have recourse to other sources of information. For a fuller discussion of this question see above pp 259-262.

Other Implementation Procedures

Four other procedures for monitoring implementation of the substantive provisions of the Convention were settled on by the General Assembly. Out of the four, the procedure established by Article 14 for individual or group complaints is probably the most important, seeing that this is one of the first times that individuals have been given the opportunity to petition an international human rights body.

A. *Article 14*

Under Article 14 the Committee may deal with communications by individuals or groups claiming to be the victims of a violation of the Convention committed by any State party that has recognised the right of private petition, once at least ten parties have made the necessary declaration.[61] As at 16 July 1979, seven States—Costa Rica, Ecuador, Italy, Netherlands, Norway, Sweden and Uruguay—had recognised the right of individual petition.[62] The Committee serves as a fact finder, adjudicates on the admissibility of the petition, and it may address recommendations and suggestions concerning the dispute to the petitioner and the respondent.[63] Moreover, through the Committee's annual report to the General Assembly, there is the possibility of publicity.[64]

Since the Committee has declined to adopt any rules of procedure in

59. See A/C 3/SR. 1351-1353 (1965).
60. Article 9.2.
61. 660 UNTS 195, Article 14, paras 1, 9.
62. Source: information supplied by the Legal Divison of the Ministry of Foreign Affairs, Wellington. The Head of the Legal Division indicated to the writer in an interview on 11 July 1979 that the New Zealand government considered making the declaration under Article 14 in late 1978 at the same time it was considering ratification of the Human Rights Covenants. At that time the feeling was that New Zealand should wait for the procedure to come into operation and see how it worked in practice before coming to a decision on whether to make the necessary declaration.
63. 660 UNTS 195, Article 14, paras 6, 7.
64. Ibid, Article 14, para 8.

relation to Article 14 until ten declarations are made,[65] the major procedural issue that has arisen in this area is whether the Committee is justified in appealing to States parties to accept the right of petition.[66] This has been another occasion on which a tension has surfaced between an emphasis on sovereignty (involving an argument that since the declaration was optional and not compulsory, there was no moral or legal justification for such an appeal) and a desire that the Committee make more progress in supervising the implementation of the Convention. The Committee has tried to reconcile these two positions by reasoning in two ways. First, it has said that by merely expressing a hope, which does not involve any obligation on States parties, the Committee is not interfering in the domestic affairs of States. Secondly, it has stated that the Committee is a body of lawyers and should seek to strengthen the legal framework of the Convention; but that does not mean that States must be obliged to implement Article 14.[67]

B. *Articles 11-13*

If a State party considers that another State party is not giving effect to the Convention, it may, by virtue of the procedure set out in Articles 11 to 13, bring the matter to the attention of the Committee. Once this second procedure is set in motion to settle an interstate dispute, the Committee has a number of functions to perform. Initially it acts as an intermediary,[68] and in addition it has important, but not clearly defined, fact-finding functions before the submission of the dispute to an Ad Hoc Conciliation Commission.[69] This ad hoc body, rather than the Committee, is entrusted with resolving disputes.[70] Most of the rules of procedure that were adopted in relation to Articles 11 to 13 illustrate once more the problems the Committee faces when the Convention is silent on the precise nature of the Committee's role.

The Committee's response has been to adopt interpretations of the

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65. Thus it has circumvented for the time being the legal implications of the reservations to Article 14 made by three States parties (Italy, Norway and Sweden) who are also parties to the European Convention on Human Rights. The nature of each reservation is that the government concerned recognises the competence of the Committee provided that it will not consider any communication without ascertaining that the same communication is not being examined under another procedure of international investigation: for the full text of the reservations see ST/LEG/SERD/12 (1979), p 98. When the Committee does adopt rules of procedure for Article 14, it will have to consider the need to safeguard the anonymous and confidential status of the communication and the conflicting requirement that it determine if the communication is being considered by another international body.
66. See eg its appeal to State parties in 1978:
    '. . . the Committee expresses the hope that States parties will give serious consideration to making the optional declaration envisaged in Article 14, paragraph 1 of the Convention.' A/Conf 92/8 (1978), para 205.
67. See CERD/C/SR. 377 (1978), para 73.
68. 660 UNTS 195, Article 11, paras 1-3.
69. Ibid, Article 11, paras 4, 5 and Article 12, para 1(a). See also Bailey, 'UN Fact-Finding and Human Rights Complaints' (1972) 48 International Affairs 250.
70. Ibid, Articles 12 and 13. Note that the Conciliation Commission is to adopt its own rules of procedure: cp Article 12, para 3.

Convention that enable it to work in a flexible and effective manner while retaining a position of objectivity and impartiality. For instance, the Committee decided that it shall 'examine' a matter brought before it under Article 11 'at a private meeting' and shall then transmit the communication to the State party through the Secretary-General.[71] One possible reading of Article 11, paragraph 1,[72] is that the Committee can take no action at all other than transmitting the communication. Although in this case the Committee has given itself a wider power to act than the Convention might seem to permit, it has qualified its competence so as to maintain a credible stance of objectivity. To accomplish that, it has provided that 'the Committee in examining the communication shall not consider its substance', and that 'any action at this stage by the Committee in respect of the communication shall in no way be construed as an expression of its views on the substance of the communication'.[73]

No cases have yet arisen under Article 11. The history of other international human rights instruments shows that similar interstate complaints procedures have been used sparingly.[74] Serious doubts have been expressed about the effectiveness of the procedure contained in Articles 11 to 13 for the following reasons—the Conciliation Commission's conclusions are not binding but purely recommendatory; the process of resolving a dispute is overly time consuming; the procedure is unlikely to be used by States; and, if it is, States will probably initiate complaints on the basis of whether it helps the conduct of their foreign policy, and not on the basis of the obligations they have assumed by ratifying the Convention.

C. *Article 15*

The third supplementary procedure for monitoring implementation, established under Article 15, calls for cooperation between the Committee and competent United Nations organs in matters of petitions from and reports concerning Non-Self-Governing Territories. Article 15, the result of compromises in the Third Committee, has been described by one of the most active supporters of the Convention as 'bad politics and worse law'.[75] Under it, the Committee's organic links with the United Nations are strongly emphasised. Reports, petitions and other information relating to Trust and Non-Self-Governing Territories come to the

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71. Rule 68 of the Provisional Rules of Procedure, para 1, above fn 29, p 14.
72. Article 11, para 1(a) states:
    'If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may bring the matter to the attention of the Committee. The Committee shall then transmit the communication to the State Party concerned.'
73. Rule 68 of the Provisional Rules of Procedure, para 1.
74. Only two cases have arisen under Article 26 of the ILO Constitution in twenty-eight years. Under the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, the interstate procedure (contained in Article 25) has been invoked fifteen times in twenty-nine years. Source: Council of Europe, *Yearbook of the European Convention on Human Rights* vols 1(1955)-20(1977) and 1978-1979 *Bulletin of Current Legal Developments*.
75. Per Professor MacDonald (Canada) in A/C 3/SR. 1374 (1965).

Committee for its consideration by a directive of the General Assembly and not by virtue of the provisions of the Convention; and in turn it is to the Trusteeship Council, the Committee of Twenty-Four and the General Assembly that the Committee addresses its opinions and recommendations.

Initially, the Committee appointed four working groups to examine the material which it had received. Since then the number of working groups has been reduced to three, indicating that the Committee's obligations under Article 15 have become less onerous as a result of the accession to independence of many Non-Self-Governing Territories. An important point to note is that the performance of the Committee's functions under Article 15 has been severely restricted by a dearth of reliable information. Much of the information received from UN bodies has little relevance to the implementation of the Convention. Despite appeals to the General Assembly to remedy the situation,[76] the Committee has been obliged to continue receiving material, much of it highly political in content, from United Nations bodies. The situation is usually no different if the administering State of a Non-Self-Governing Territory is a party to the Convention. In response to its communication to States parties on Article 15[77] and in accordance with their obligation to report under Article 9, such parties have supplied incomplete or generalised information about the territories in question.[78] Despite requests for further information about the territories by the Committee, no real improvement has occurred in the flow of information.[79]

D. *Article 22*

Finally, a significant provision of the Convention is Article 22, which provides for the compulsory jurisdiction of the International Court of Justice. It reads as follows:[80]

> 'Any dispute between two or more States Parties with respect to the interpretation or application of this Convention, which is not settled by negotiation or by the procedures expressly provided for in this Convention, shall, at the request of any of the parties to the dispute,

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76. See eg Resolution 32/13, 'Report of the Committee on the Elimination of Racial Discrimination' GAOR (XXXII), Suppl No 45 A/32/45 (1977), p 132, para 2.
77. Statement of the Responsibilities of the Committee Under Article 15 of the Convention Adopted at the First Session of the Committee on 29 January 1970, Annex IV to the *1970 Report*, pp 37-38.
78. See for an example of that lack of information, the Committee's examination of the situation in the Seychelles (before it achieved independence):
    > 'The Committee examined the working paper on the Seychelles (A/AC 109/L 1010) and the third periodic report of the United Kingdom (CERD/C/R. 70/Add. 34, part B) submitted under article 9 of the Convention. In spite of the fact that the society is multiracial, the Committee received no information on the measures adopted for the integration of the different racial groups.' *1975 Report*, p 58.
79. See A/Conf 92/8 (1978), para 175 and Decision 2 (VIII) of 21 August 1973, *1973 Report*, p 106.
80. 660 UNTS, p 236.

be referred to the International Court of Justice for decision, unless the disputants agree to another mode of settlement.'

The provision is significant in the sense that it shows once more that States are willing to accept a measure of effective supervision. Usually it is standard for such a procedure to require acceptance by States parties, as Article 14 of the Convention does. Here it is necessary to make a reservation in order to escape the compulsory jurisdiction of the Court. That general acceptance of effective supervision is reflected in the relatively low number of reservations to Article 22—twenty-four States had made reservations as at 31 December 1978.[81]

Publicity and the Committee's Relationship with the General Assembly

Once the Committee has finished its consideration of State reports and information concerning Trust and Non-Self-Governing Territories, and has formulated any suggestions and/or general recommendations, what is the next step it follows? According to Article 9:[82]

'2. The Committee shall report annually, through the Secretary-General, to the General Assembly of the United Nations on its activities . . .'

In this part of the paper an outline will be given of the developments in the relationship between the General Assembly and the Committee—a relationship that had its origins in the obligation on the Committee to report annually. But first, some consideration will be given to a related topic, namely the question of publicity for the Committee's activities.

A. *Summary Records and Other Committee Documents*

The distribution of all the Committee's documents was exclusively covered by its provisional rules of procedure in 1970:[83]

'Rule 34: 1. The records of public meetings in their final form shall be distributed to the members of the Committee and to the States parties to the Convention and made available to other persons and bodies as may be determined by the Committee.

2. The records of private meetings shall be distributed to the members of the Committee and may be made available to others upon decision of the Committee at such time and under such conditions as the Committee may decide.

3. The Committee shall also determine when and under what conditions the records may be consulted by the public.

Rule 62: The texts of reports, formal decisions and other official documents of the Committee and its subsidiary bodies shall be distributed by the Secretariat to all members of the Committee, to all States Parties to the Convention and, as may be determined by the Committee, to others directly concerned.'

The restrictiveness of these rules caused comments in the General Assembly on the need for ensuring adequate publicity for the work of the

81. ST/LEG/SER. D/12 (1979), pp 91-98.
82. 660 UNTS 195, p 224.
83. See Annex II to the *1970 Report*, pp 22,27.

Committee, to expose instances of racial discrimination and to mobilise public opinion and support for action to end abuses to human rights.[84] While the Committee acknowledged the need for wider distribution of State reports and its summary records, some members questioned whether the words of the Convention permitted the Committee to publicise its activities, outside reporting to the General Assembly. This objection has been dismissed by a majority of the Committee's members. Instead they have been willing to imply from the purposes of the Convention a power to use additional procedures for furthering the monitoring of implementation of the Convention.

1974 marked a half-way house in the move to gain greater publicity for the work of the Committee and to derestrict State reports and the Committee's records. Then, it was decided that from the tenth session (1974) onwards its summary records would be given general distribution, and distribution of State reports would only be effected when a State so requested.[85] Under this procedure certain illogicalities arose. Reports submitted by States parties were classified as documents for restricted distribution—in spite of the fact that those reports were considered by the Committee at public meetings; that the summary records of those meetings were given general distribution; and that the substance of the Committee's deliberations were included in the Committee's annual reports, which were generally available as General Assembly documents. These illogicalities were eliminated by a decision of the Committee at its sixteenth session (1977) to give public distribution to all State reports unless a State requests otherwise.[86]

On one occasion, a resolution of the General Assembly designed to streamline the procedures for issuing the summary records of its subsidiary organs,[87] was automatically applied to the Committee without any prior warning. The effect of the resolution on the Committee's work was that instead of having a provisional summary record to be followed by a final summary record, the Committee would have a final record which in effect would be the provisional record plus a single consolidated fascicle containing all the corrections.

The mixed reactions of Committee members can be traced to the potential conflict between paragraphs 1 and 3 of Article 10 which provide respectively:[88]

> '1. The Committee shall adopt its own rules of procedure.
>
> 3. The secretariat of the Committee shall be provided by the Secretary-General of the United Nations.'

Since the Secretary-General is bound by the decisions of the General Assembly, problems would arise if a decision reached by the General

84. A/C 3/SR.2036-2037 (1973).
85. Decision 1 (IX) of 12 April 1974, *Report of the Committee on the Elimination of Racial Discrimination* GAOR (XXIX), Suppl No 18 A/9618 (1974), para 21-30 and p 81.
86. Decision 2 (XVI) of 9 August 1977, *1977 Report*, para 331-333.
87. Resolution 3415 (XXX), 'Meeting Records of United Nations Bodies' GAOR (XXX), Suppl No 34 A/10034 (1975), p 128.
88. 660 UNTS, p 226.

Assembly with regard to the issuing of records conflicted with decisions of the Committee as documented in its rules of procedure.

Thus some Committee members were jealous of the Committee's autonomous status:[89]

> 'The Committee must preserve the special status it had been given because of the special task entrusted to it.'

Others were more concerned about the fact that the Committee was dependent on the Secretary-General and should try to 'find a way of reconciling its objectives and activities with the Secretary-General's endeavours to reduce administrative costs.'[90]

After a round of discussions, the Committee came to the conclusion that the General Assembly's decision did not apply to the Committee, since it was not a body directly subordinate to the Assembly. A number of practical and legal considerations helped the Committee in reaching that conclusion—

(a) the Committee's members were experts and not governmental representatives;
(b) the Committee's summary records were for it an essential means of communication with the States parties to the Convention;
(c) the Committee's report to the General Assembly was prepared on the basis of those summary records. Later discussions with officials at United Nations Headquarters enabled successful corrective action to be taken, thereby preventing the General Assembly encroaching on the Committee's status as a treaty body and not a subsidiary of any United Nations organ.[91]

B. *The Committee's Relationship with the General Assembly*

Throughout the last ten years the Committee has not been unconscious of its organic links with the United Nations. In 1972 it decided to initiate a dialogue with the General Assembly.[92] Part of the motive behind this procedural innovation was a desire to give more widespread publicity to the work of the Committee. Also, the Committee wished to improve its working methods by examining and acting on any worthwhile criticisms or suggestions that might be produced by the debates in the General Assembly.

Each year the Committee has followed carefully the deliberations of the Third Committee and the resolutions adopted by the General Assembly on the annual report of CERD. It has asked the Secretary-General to include an item on 'Action by the General Assembly on the

89. Per Mrs Warzazi CERD/C/SR.288 (1976), p 237.
90. Per Mr Blischencko, ibid, p 236.
91. To solve a similar situation where the provisions of the Convention and a General Assembly resolution conflicted, a subsidiary organ of the UN (the Committee on Conferences) requested an opinion from the Office of Legal Affairs on the status of CERD. The opinion confirmed that CERD falls into a special category of treaty organs of the UN and that the resolutions of the General Assembly do not override the Convention's provisions on the meetings of CERD. *Juridical Handbook* 1976, p 200.
92. CERD/C/SR.85 (1972).

Annual Report of the Committee' on the agenda of every spring session of the Committee. What is more, the extensive debate that takes place among members of the Committee during the meetings devoted to that item evidences their concern for improving the dialogue between the Third Committee and CERD.

Members of the Committee have given careful consideration to the suggestions made by representatives of member States of the Third Committee concerning the methods and procedures of CERD. If a proposal has seemed practical, and compatible with the provisions of the Convention, it has been adopted.[93] Whenever suggestions made in the Third Committee appeared to members of CERD to be unhelpful in promoting the objectives of the Convention, members have given reasons to explain their negative responses.[94]

The Committee has endeavoured over the years to improve the quality of its dialogue with the Third Committee. It has said that its annual reports should be considered separately from other items,[95] and up until 1978 the Third Committee had responded positively to that suggestion. Regrettably, the Third Committee combined the consideration of CERD's 1978 report with several other items. That decision has been described by one of the representatives of a member State in the Third Committee as:[96]

> '. . . detrimental to the fruitful discussion which had developed in recent years between the General Assembly and CERD. If the Third Committee was to be able to fulfil its task adequately, other less radical solutions should be explored, especially with regard to the reports of *ad hoc* bodies entrusted with the implementation of international conventions.'

In addition, the Committee has produced its annual report earlier so that it can be studied in greater detail by member States of the Third Committee. From the Committee's viewpoint, the results in the last few years have been depressing. As an example, in 1978 only ten States expressed any view in the Third Committee on CERD's annual report.

To increase the dialogue between the two bodies, the Committee has recommended to the General Assembly that a member appointed by

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93. Suggestions adopted by the Committee include—inviting States parties to be represented before the Committee during the consideration of their reports (1972, see above pp 255-258); wider distribution of the Committee's documents (1974); availability of not only summary records but also State reports for research purposes (1977); wider publicity for the provisions of the Convention and the work of CERD during the Decade for Action to Combat Racism and Racial Discrimination (1977); requesting the Secretary-General to attach to reminders he sends to parties regarding their next periodic report a copy of the section of CERD's annual report in which the Committee's consideration of the previous report of the State concerned is summarised (1978).

94. Suggestions rejected by the Committee include—a more detailed annual report (1973); holding its sessions alternately at Geneva and New York (1974); using information from non-governmental sources (1977); a division of the Committee's work in order to speed up the consideration of reports (1978).

95. *Report of the Committee on the Elimination of Racial Discrimination* GAOR (XXVIII), Suppl No 18 A/9018 (1973), p vii.

96. Per Miss Cao-Pinna (Italy), A/C 333/SR.21 (1978), para 40.

CERD be invited to participate in the deliberation of the Third Committee on its annual reports.[97] The Committee thought that several specific advantages would flow from such an innovation. Its representative would be able to:

(a) introduce the annual report—a duty so far performed by a representative of the Secretary-General;
(b) reply to questions raised in the discussion—under the present procedure questions do not receive an answer for a whole year;
(c) comment on the observations of member States concerning the Committee's work and;
(d) make suggestions in connexion with any controversial provisions of a draft resolution of the Third Committee concerning the Committee's report or activities.

On the one hand, a strict reading of Article 9, para 1, which stipulates that 'the Committee shall report annually, through the Secretary-General, to the General Assembly of the United Nations on its activities', would seem to indicate that the proposed procedure was of doubtful legality. As well, the Committee could not liken its position to that of the International Law Commission, the Chairman of which participates in the discussions on its annual report. The ILC prepares drafts of conventions and treaties for adoption by the General Assembly and participation is therefore fully justified, whereas the Committee does not prepare such drafts but is simply reporting on its activities.

On the other hand, the Committee saw fit to take a more liberal approach to the interpretation of the Convention. Its concern was to further the objectives of the Convention. By improving the quality of its dialogue with the Third Committee, it was hoped that the Committee would become a more effective supervisor of the States parties' struggle against racial discrimination. To date, the Third Committee of the General Assembly has not responded to CERD's proposal that it be represented during the deliberations on its annual report.

Conclusion

Any concluding statements on the procedural aspects of the implementation of the International Convention for the Elimination of All Forms of Racial Discrimination must include some answer to the question, 'How objective and how effective has the Committee been?' A judgment on this question involves a process of balancing up a large number of facets of the Convention and the Committee's work. On the positive side, the Committee has adopted and improved procedures which are conducive to establishing a position of independence and impartiality for the Committee. On the negative side, the compromise nature of Article 8 has been detrimental to the relative impartiality of the Committee's members. This is evidenced by the large number of diplomatic representatives of States that currently serve on the Committee. However, on the whole the tension present between elements of political involvement and elements

97. See CERD/C/SR.227-228, 260-261 (1975).

of expertise in the Convention and the Committee's work has resulted in a move towards impartiality and the Committee commanding increasing respect from States parties.

As for the reporting system, on the positive side the Committee has been a procedural innovator. The representation of States parties, the wide distribution of documents, the ad hoc procedures of cooperation with UNESCO and the ILO, and the dialogue with the General Assembly are all examples of procedures that have been set up outside the express terms of the Convention. Thus in its approach to the Convention, the Committee has looked not only to the words of the Convention but also to its spirit. Since the General Assembly has given the highest priority to the elimination of racial discrimination the Committee has been willing to imply from the purposes of the Convention a power to create and improve additional procedures for supervising implementation. Throughout its history the Committee has used that power to build on the solid foundations it established in 1970 by seeking ways of improving its dialogue with States parties—in particular developing countries which are inadequately staffed and need assistance in preparing detailed reports.

On the negative side of the scales, most States have not responded well to the Committee's requests for further information, its guidelines on preparing reports and the depth of its analysis. The inadequacy of the information supplied in a large number of periodic reports is a symptom of governmental resistance or indifference to the Committee's inquisitiveness and highlights the tension between general and specific consideration. In the case of New Zealand, the expertise with which its reports has been discussed has provided an incentive for it to amplify past and future reports and communications to the Committee. On the whole, notwithstanding the Committee's efforts to enrich its dialogue with States parties and ensure that real implementation of the Convention is being achieved, the net result has been a large number of incomplete or generalised reports, the presence of representatives who have been unable to answer satisfactorily most of the questions, and a widespread attitude of indifference to the Committee's requests for further information.

As for the other implementation procedures contained in the Convention, they have as yet to make any real impact on the elimination of racial discrimination. That however is not the fault of the Committee. As long as States do not take their obligations seriously or are unwilling to accept intrusive forms of international scrutiny, such as the procedure contained in Article 14, effective implementation of the Convention will not be achieved.