
Geography, Politics and Culture in the United Nations Human Rights Committee

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Abstract

The United Nations Human Rights Committee, the monitoring treaty body of the International Covenant on Civil and Political Rights, is one of the most important and highly regarded international human rights institutions. This article seeks to explore if geographical, political and cultural considerations influence the votes of committee members in decisions on individual communications. This article introduces an original dataset of the votes and backgrounds of committee members (CMs), hand coded by the author. The method used in the article is an empirical-quantitative analysis of the votes of CMs. The article finds that certain geopolitical voting patterns do exist in the votes of CMs. Evidence for cultural voting patterns is more limited. However, the article finds that usually voting patterns of individual CMs do not influence the final decision of the committee and that the decisions of the committee should be generally regarded as unbiased.

1 Introduction

Since the end of the Cold War, there has been a constant increase in the number of international institutions.¹ However, there are a surprisingly small number of empirical studies on decision making and procedure in these institutions. The decision-making process in the United Nations (UN) Human Rights Committee (HRC) is of special interest for researchers since the HRC is the treaty body in charge of overseeing the implementation of one of the most widely ratified human rights treaties – the

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¹ J. Alvarez, *International Organizations as Law Makers* (2006), at 23–24; Alter, ‘The Multiplication of International Courts and Tribunals after the End of the Cold War’, in C. Romano, K. Alter and Y. Shany (eds), *International Adjudication* (2014) 63.

International Covenant on Civil and Political Rights (ICCPR).² Additionally, human rights are traditionally seen as fundamental and universal, but, at the same time, the broad definition of human rights in the ICCPR leaves much room for interpretation. Therefore, critics claim that the decision-making process of interpreting human rights treaties cannot be objective and that those entrusted with the interpretation are very prone to geopolitical and cultural influences.

This article explores if, and to what extent, committee members (CMs) of the HRC vote according to geographical, political and cultural patterns. In order to answer this question, I created an original dataset of the votes of CMs in decisions on individual communication filed to the HRC. The dataset also contains variables regarding the geographical, political and cultural characteristics of the countries against which the communications were filed and the countries from which the CMs came. The main hypothesis of the article is that CMs tend to vote in favour of countries that are close geographically, politically and culturally to their country of origin. A quantitative-empirical analysis finds evidence for certain geopolitical voting patterns in the votes of CMs. Evidence for cultural voting patterns is more limited. However, the article suggests that the impact of these voting patterns is not very significant in most cases and that the decisions of the HRC as a whole are not biased. These findings contribute to our understanding of human rights, international judicial and quasi-judicial institutions and international decision making.

The article proceeds as follows. The first section of the article gives a general introduction to the ICCPR and the procedures of work in the HRC in light of possible geographical, political and cultural influences. The second section identifies relevant voting patterns that were found in studies on judicial behaviour in international tribunals and the UN human rights system. The third and fourth sections, which comprise the main parts of the article, perform the empirical analysis of the votes of individual CMs. The fifth section discusses which inferences could be drawn from the results presented.

2 The UN HRC

A *The HRC and the First Optional Protocol: General Background*

The ICCPR codifies the civil and political rights recognized in the Universal Declaration of Human Rights.³ The ICCPR guarantees a very wide range of the most basic rights to people from all over the world. Currently, 169 countries are members to the ICCPR.⁴ Geographical, political and cultural debates have been part of the UN human rights system, and specifically part of the ICCPR, from the beginning. The drafting of the ICCPR was a long process, giving rise to complex political negotiations.⁵ However, as

² International Covenant on Civil and Political Rights (ICCPR) 1966, 999 UNTS 171.

³ Universal Declaration of Human Rights, GA Res. 217, 10 December 1948.

⁴ *International Covenant on Civil and Political Rights, Status of Ratification*, available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=en.

⁵ S. Egan, *The UN Human Rights Treaty System: Law and Procedure* (2011), at 254.

expected, even when the text of the ICCPR had finally been adopted, the geopolitical and cultural debates did not cease to accompany it. It seems that currently one of the most prominent debates in the human rights world is between Western and non-Western (or 'Northern and Southern') countries.⁶ While Western countries are more supportive of a universalist narrative in the context of human rights, the non-Western countries claim that the values protected by international human rights treaties, including the ICCPR, are too Western oriented and that the interpretation of those rights should be more accommodating to non-Western cultures and practices.⁷

Following the political and cultural complexities in the field of human rights, one of the questions that stood before the eyes of the ICCPR drafters was the question of ensuring the effective implementation of the treaty.⁸ Therefore, the UN HRC was established under Part IV of the ICCPR. The jurisdiction to review individual communications regarding alleged violations of rights guaranteed in the ICCPR was one of the most important tools given to the HRC for supervising the implementation of the Covenant in member states.⁹ Individuals are allowed to file communications only against states that have joined the First Optional Protocol to the ICCPR.¹⁰ Currently, out of the 169 states parties to the ICCPR, 115 are parties to the First Optional Protocol.¹¹

The procedure of individual communications is judicial by nature,¹² and, therefore, it is the only procedure of the HRC in which CMs are allowed to add their own individual opinions.¹³ Currently, over one-third of the decisions on the merits have at least one individual opinion. Individual opinions provide a window into the diversity and versatility of opinions among the members of the HRC and allow us to track possible geographical, political and cultural patterns in their votes.¹⁴ For this reason, this article focuses on the decision making in individual communications.

⁶ S. Joseph and M. Castan, *International Covenant on Civil and Political Rights: Cases, Materials and Commentary* (3rd edn, 2013), at 44–47.

⁷ Donoho, 'Autonomy, Self-Governance, and the Margin of Appreciation: Developing a Jurisprudence of Diversity within Universal human Rights', 15 *Emory International Law Review* (2001) 391; Kausikan, 'Asia's Different Standard', 92 *Foreign Policy* (1993) 24; A. Sen, 'Human Rights and Asian Values', *The New Republic* (14–21 July 1997), at 33–34, 38–40; An-Na'im, 'Human Rights in the Muslim World', 3 *Harvard Human Rights Journal* (1990) 13, at 42.

⁸ Egan, *supra* note 5, at 254.

⁹ *Ibid.*, at 253.

¹⁰ Optional Protocol to the International Covenant on Civil and Political Rights (Optional Protocol) 1976, 999 UNTS 302, Art. 1.

¹¹ *Optional Protocol to the International Covenant on Civil and Political Rights, Status of Ratification*, available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-5&chapter=4&clang=_en.

¹² Medina, 'The Role of International Tribunals: Law-Making or Creative Interpretation?', in D. Shelton (ed.), *Oxford Handbook of International Human Rights Law* (2013) 649, at 657.

¹³ United Nations Human Rights Committee (HRC), Rules of Procedure, UN Doc. CCPR/C/3/Rev.10, 11 January 2012, Rule 104.

¹⁴ See also Steiner, 'Individual Claims in a World of Massive Violations: What Roles for the Human Rights Committee?', in P. Alston and J. Crawford (eds), *The Future of UN Human Rights Treaty Monitoring* (2000) 15, at 66.

It should be noted that the decisions of the HRC are only quasi-judicial and, therefore, differ from ‘regular’ decisions of international courts in several important regards.¹⁵ First, the HRC does not hold oral hearings, and the whole process is conducted in writing.¹⁶ Also, all of the sessions in which individual communications are discussed are held behind closed doors. This is a much more confidential and less transparent procedure than that found in international courts.¹⁷ Finally, there is a debate regarding the normative status of decisions under the First Optional Protocol. While the HRC attempts to promote those decisions as de facto binding upon the states,¹⁸ many states prefer to see them as mere recommendations.¹⁹

B Committee Members and the Process of Their Election to the HRC

The HRC consists of 18 CMs elected by the state parties to the ICCPR.²⁰ The CMs serve for a term of four years and are eligible for re-election.²¹ The HRC is supposed to be a professional body of impartial experts. Therefore, the ICCPR states that CMs serve in their personal capacity, meaning that they should not represent the state that nominated them.²² The CMs have to be nationals of a country party to the ICCPR,²³ and the Committee may not include more than one national of the same country.²⁴ However, the country nominating the CM is not required to be a party to the First Optional Protocol.

Article 31 of the ICCPR states that ‘[i]n the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems’. Hence, the ICCPR itself implicitly assumes that different geographical and cultural understandings of human rights exist, and that the nominated CMs should represent those understandings. This provision also attempts to prevent the domination of the HRC by one social system and add international legitimacy to the decisions of the HRC.²⁵

The CMs have to be nominated by their own country of nationality,²⁶ and the way that each state party nominates its candidates is a matter of internal affairs.²⁷ In

¹⁵ Y. Tyagi, *The UN Human Rights Committee* (2011), at 550.

¹⁶ See Optional Protocol, *supra* note 10, Art. 5.

¹⁷ Tyagi, *supra* note 15, at 547–548.

¹⁸ HRC, General Comment 33: The Obligations of States Parties under the Optional Protocol to the International Covenant on Civil and Political Rights, Doc. CCPR/C/GC/33, 5 November 2008.

¹⁹ Egan, *supra* note 5, at 262.

²⁰ ICCPR, *supra* note 2, Art. 28.

²¹ *Ibid.*, Art. 32.

²² *Ibid.*, Art. 28(3).

²³ *Ibid.*, Art. 28(2).

²⁴ *Ibid.*, Art. 31(1).

²⁵ Tyagi, *supra* note 15, at 76.

²⁶ ICCPR, *supra* note 2, Art. 29(2).

²⁷ Tyagi, *supra* note 15, at 81. It should be noted that the High Commissioner of Human Rights in her report draws general guidelines according to which countries should appoint nominees. However, it is unclear if countries have actually implemented these recommendations. See High Commissioner of Human Rights, *Strengthening the United Nations Human Rights Treaty Body System* (2012), at 75–79.

practice, the proximity of the nominee to the government often plays an important role in the decision to nominate him or her.²⁸ Therefore, although it is expected that no country shall nominate a person who is not in a position to act independently because of national or international commitments, not many state parties fulfil this expectation in practice.²⁹ It is also important to note that a CM can be re-elected indefinitely. Furthermore, due to the fact that at a given time only a small fraction of countries have their nationals on the Committee, countries are expected to be interested in promoting candidates from countries with similar interests and understandings of human rights, even if they are not their own nationals.

The ICCPR establishes a rule according to which the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of states parties present and voting.³⁰ However, the political process accompanying this rule is more complex, and vote trading between and within UN regional groups for nominating experts to different UN bodies is very common.³¹ The UN has five regional voting groups – African; Asian-Pacific (Asian); Eastern European; Latin American and Caribbean (GRULAC or Latin) and Western European and Others (WEOG or Western).³² Every regional group tries to lobby for its candidates to be elected to as many UN bodies as possible, including the HRC.³³ Therefore, the elected candidates are often those who were promoted by the regional group itself. Although the voting itself is secret, countries usually vote for candidates from their regional groups.

It should also be noted that, as in the elections process to many international courts under the auspices of the UN,³⁴ CMs often run campaigns in order to be elected (or re-elected) to the HRC. During these campaigns, the CMs meet with representatives from different countries and try to convince them to support their candidacy. Some international judges pointed out that the process of campaigning might harm impartiality.³⁵

²⁸ Tyagi, *supra* note 15, at 81; see also D. Terris *et al.*, *The International Judge: An introduction to the Men and Women Who Decide the World's Cases* (2007), at 15.

²⁹ Tyagi, *supra* note 15, at 85; Evatt, 'The Future of the United Nations Human Rights Treaty System: Forging Recommendations', in A. Bayefsky (ed.), *The UN Human Rights Treaty System in the 21st Century* (2000) 287, at 289.

³⁰ ICCPR, *supra* note 2, Art. 30(4).

³¹ Crawford, 'The UN Human Rights Treaty System: A System in Crisis?', in P. Alston and J. Crawford (eds), *The Future of UN Human Rights Treaty Monitoring* (2000) 1, at 9; see also Clapham, 'UN Human Rights Reporting Procedures: An NGO Perspective', in P. Alston and J. Crawford (eds), *The Future of UN Human Rights Treaty Monitoring* (2000) 188.

³² This group also includes Canada, New Zealand, Australia and Israel. The USA is not a member of any regional group but attends meetings of the Western Group as an observer and is considered to be a member of that group for electoral purposes. See *United Nations Regional Groups of Member States*, available at www.un.org/depts/DGACM/RegionalGroups.shtml.

³³ Tyagi, *supra* note 15, at 88–89; Terris, *supra* note 28, at 154; Crawford, *supra* note 31, at 9.

³⁴ Terris, *supra* note 28, at 154.

³⁵ *Ibid.*, at 154–155.

C Measures Undertaken by the HRC to Increase the Independence of CMs

The HRC itself acknowledged the possibility of a bias and introduced relevant provisions into its Rules of Procedure to ensure that the CMs indeed serve in their personal capacity.³⁶ First, according to Rule 90(1), a CM is not allowed to take part in the examination of a communication if the state on behalf of which he was elected is a party to it. Additionally, according to Rules 90(1)(b) and (c), a CM may not take part in the examination of a communication if she has a personal interest in the case or if the member has participated in any capacity in the making of any decision on the case covered by the communication. In addition, in 1985, the HRC decided to introduce additional internal guidelines to regulate the independence of its members. These guidelines state that '[t]he independence of members of the committee is essential', and they point out that it is important that a CM shall not be removable during his terms of office and not subject to external pressures.³⁷ Finally, the guidelines state that the impartiality of CMs should not be affected by their connections to governments.³⁸

Despite the rules dictated by the rules of procedure and by the guidelines, the question of impartiality of the CMs (as well as of the members of other treaty bodies) was a constant concern.³⁹ The High Commissioner for Human Rights, in her report on the strengthening of the UN human rights treaty body system, recommended that the treaty bodies draft clear and up-to-date rules regarding the impartiality of CMs.⁴⁰ She also recommended drafting clear guidelines regarding the nominations of candidates by member states and limiting the number of terms that a CM can serve.⁴¹

After a process of consultation in various forums in 2012, the chairpersons of the UN committees met at Addis Ababa and together drafted a document of Guidelines on the Independence and Impartiality of Members of the Human Rights Treaty Bodies (Addis Ababa Guidelines).⁴² According to these guidelines, 'treaty body members shall not only be independent and impartial, but shall also be seen by a reasonable observer to be so'.⁴³ The Addis Ababa Guidelines further state that a CM might have a conflict of interest if his country of nationality has an interest in the case (even if it is not a side to the specific communication).⁴⁴ Finally, the Addis Ababa Guidelines point out that CMs may not be influenced or receive directions from anyone⁴⁵ and that CMs should avoid functions and activities that might be incompatible with their impartiality.⁴⁶ However,

³⁶ Rules of Procedure, *supra* note 13.

³⁷ Human Rights Committee, Guidelines for the Exercise of Their Functions by Members of the Human Rights Committee, UN Doc. A/53/40, 15 September 1988, para. 1.

³⁸ *Ibid.*, para. 9.

³⁹ Geneva Academy, *The Independence of UN Human Rights Treaty Body Members* (2012), at 29–33.

⁴⁰ High Commissioner of Human Rights, *supra* note 27, at 74.

⁴¹ *Ibid.*, at 75.

⁴² Guidelines on the Independence and Impartiality of Members of the Human Rights Treaty Bodies, UN Doc. A/67/222, 29 June 2012, para. 1.

⁴³ *Ibid.*, para. 2.

⁴⁴ *Ibid.*, para. 3.

⁴⁵ *Ibid.*, para. 5.

⁴⁶ *Ibid.*, para. 9.

in reality, it is unclear to what extent, and if at all, states and CMs adhere to all of these guidelines and recommendations.

3 Voting Patterns in International Courts and the UN Human Rights System

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

A Voting Patterns in International Courts

Judicial independence allows judges to develop legal opinions without being constrained by other actors.⁴⁷ There is considerable literature on judicial decision making in national courts. This literature acknowledges the fact that judges do not make decisions on purely legal grounds but are sometimes influenced by extra-legal considerations.⁴⁸ In the international sphere, there is a debate about whether international judges are (and should be) agents representing the interests of their countries or whether judges are (and should be) trustees that are expected to have almost complete autonomy in the legal sphere.⁴⁹ On the one hand, some scholars argue that judicial independence establishes the legitimacy and effectiveness of international courts and, therefore, that international judges should be seen as trustees.⁵⁰ Therefore, international judges are more likely to be biased and should rather be seen as direct agents.⁵¹

As mentioned, this article focuses on three sorts of voting patterns – geographical, political and cultural. The most obvious voting pattern that was found in empirical studies was a preference of voting in favour of the state of nationality. This preference was very robust both in studies on the International Court of Justice (ICJ) as well as in studies on the European Court of Human Rights (ECtHR).⁵² Interestingly, Eric Voeten found that in the ECtHR judges from former socialist Eastern European countries

⁴⁷ Voeten, 'International Judicial Independence', in J.L. Dunoff and M.M.A. Pollack (eds), *Interdisciplinary Perspectives on International Law and International Relations* (2013) 421, at 422.

⁴⁸ See, e.g., R.A. Posner, *How Judges Think* (2008); L. Epstein et al., *The Behavior of Federal Judges: A Theoretical and Empirical Study of Rational Choice* (2013).

⁴⁹ Voeten, 'International Judicial Behavior', in Romano, Alter and Shany, *supra* note 1, 550, at 555–556; Voeten, *supra* note 47, at 421–422; Helfer and Slaughter, 'Toward a Theory of Effective Supranational Adjudication', 107 *Yale Law Journal* (1997) 273; Posner and Yoo, 'Judicial Independence in International Tribunals', 93 *California Law Review (CLR)* (2005) 1; Helfer and Slaughter, 'Why States Create International Tribunals: A Response to Professors Posner and Yoo', 93 *CLR* (2005) 899; Posner and Yoo, 'Reply to Helfer and Slaughter', 93 *CLR* (2005) 957.

⁵⁰ Voeten, *supra* note 47, at 436–437; Helfer and Slaughter, *supra* note 50, at 905–910.

⁵¹ Voeten, *supra* note 47, at 436–437; Posner and Yoo, 'Judicial Independence', *supra* note 50; Posner and Yoo, 'Reply to Helfer and Slaughter', *supra* note 50.

⁵² Voeten, *supra* note 49, at 615.

are more likely to vote against their states of nationality than their colleagues from Western Europe.⁵³ According to the rules of the HRC, a CM may not take part in the examination of a communication that his state of nationality is party to, so this very strong bias is eliminated from the ground up.⁵⁴

As for wider geographical and political biases, the picture is somewhat more complicated. In the context of the ICJ, Eric Posner and Miguel de Figueiredo found that judges prefer to vote in favour of countries with a similar wealth level and political regimes as their own country of nationality.⁵⁵ However, in the context of the ECtHR and the ad hoc international criminal tribunals, no significant geographical and political biases were found.⁵⁶ In contrast, Voeten found that the judges from former socialist countries are significantly less likely to vote in favour of other former socialist countries.⁵⁷ Another study conducted on the very limited data available on the decisions of the International Criminal Court found that the more African judges sitting on the panel, the more likely the court was to vote against the defendants – all of whom were African.⁵⁸ Therefore, this tendency for reverse biases might be typical for judges from areas with newly established democracies.⁵⁹ Finally, Susan Franck, in a study about investment arbitration, did not find a statistically significant correlation between the development status of the respondent state, the development status of the arbitrator and the outcome of the investment arbitration.⁶⁰

Evidence for cultural voting patterns in decisions of international judges is somewhat moderate.⁶¹ In the case of the ICJ, some evidence of cultural patterns was found, based on language and religion.⁶² In addition, although Nina-Louisa Arold had the impression from interviews he conducted with ECtHR judges that judges from former communist countries might perceive human rights slightly differently,⁶³ Voeten did not find evidence for cultural voting patterns in the ECtHR.⁶⁴ It should be noted, that quantitative-empirical studies about biases in international courts have been

⁵³ Voeten, 'The Impartiality of International Judges: Evidence from the European Court of Human Rights', 102 *American Political Science Review* (2008) 417, at 427.

⁵⁴ Rules of Procedure, *supra* note 13, Rule 90(1)(a).

⁵⁵ Posner and de Figueiredo, 'Is the International Court of Justice Biased?', 34 *Journal of Legal Studies* (2004) 599, at 620–621.

⁵⁶ Voeten, *supra* note 53, at 428–430; Meernik *et al.*, 'Judicial Decision Making and International Tribunals: Assessing the Impact of Individual, National, and International Factors', 86 *Social Science Quarterly* (2005) 683.

⁵⁷ Voeten, *supra* note 53, at 427–428.

⁵⁸ Chandrachud, 'Diversity and the International Criminal Court: Does Geographic Background Impact Decision Making?', 38 *Brooklyn Journal of International Law* (2013) 487, at 488.

⁵⁹ Voeten, 'The Politics of International Judicial Appointments: Evidence from the European Court of Human Rights', 61 *International Organizations (IO)* (2007) 669.

⁶⁰ Franck, 'Development and Outcomes of Investment Treaty Arbitration', 50 *Harvard International Law Journal* (2009) 435.

⁶¹ Voeten, 'Politics, Judicial Behavior, and Institutional Design', in J. Chritoffersen and M. Rask Madsen (eds), *The European Court of Human Rights between Law and Politics* (2011) 61, at 63.

⁶² Posner and de Figueiredo, *supra* note 55, at 621–622.

⁶³ N.-L. Arold, *The Legal Culture of the European Court of Human Rights* (2007), at 70, 79.

⁶⁴ Voeten, *supra* note 53, at 429.

criticized, among others, for not taking into account relevant factors such as the merits of the cases themselves and the choice of narrow and irrelevant criteria for evaluating 'biases'. For instance, it was argued that being a conservative or a liberal, or believing in a certain method of interpreting international law, mattered much more to the decision making of a judge than the characteristics of his home country.⁶⁵

One of the main reasons for voting patterns in international tribunals might be the will of a judge to be re-elected to the tribunal on which he sits, to be appointed to another international tribunal or institution or to receive a prestigious position in his home country.⁶⁶ Judges might have two main incentives to be elected to an international tribunal. First, being elected to an international tribunal is considered very prestigious in the legal world and gives the person a rare opportunity to take part in the shaping of international legal norms. Second, the salaries of international judges and officials tend to be high and, in the case of judges from non-Western states, much higher than the salaries they would receive in their home countries.⁶⁷

Although, currently, members of the HRC are not paid salaries, the nomination to the HRC is regarded as being very prestigious in the legal world. Moreover, since international judges (and other decision makers) tend to be reappointed to other international institutions, the nomination to the HRC gives the CM an opportunity to be appointed to other prestigious international positions that pay high salaries.⁶⁸ Since the election to other international tribunals also depends many times on the decision of the same regional group, it is expected that a CM who wants to be re-elected, or elected to another tribunal, shall vote in line with the expectations of his regional group. Finally, it should not be excluded that a CM (or a judge) might vote in a certain way because he truly believes in the way that his country of nationality, or the culture from which he comes, sees human rights and not because he expects to receive a personal benefit for his vote.

B Voting Patterns in the UN Human Rights System

Although the HRC is a quasi-judicial body established by a treaty, it is also a part of the larger UN human rights system. The bodies reviewed in this part are the so-called 'Charter-based' human rights mechanisms: the United Nations Commission on Human Rights (Commission); the United Nations Human Rights Council (Council), which is the successor of the Commission, and the United Nations General Assembly (General Assembly). Since the Commission was established, the targeting of specific countries and elections to the Commission itself has been seen as being heavily

⁶⁵ Rosalyn Higgins, 'Remarks', 99 *American Society of International Law Proceedings* (2005) 135.

⁶⁶ Swigart and Terris, 'Who Are International Judges', in C. Romano, K. Alter and Y. Shany (eds), *International Adjudication* (2014) 619, at 628–630; Voeten, *supra* note 53, at 421; Meron, 'Judicial Independence and Impartiality in International Criminal Tribunals', 99 *American Journal of International Law* (2005) 359, at 361.

⁶⁷ Bruinsma, 'The Room at the Top: Separate Opinions in the Grand Chambers of the ECHR (1998–2006)', *Ancilla Iuris* (2008) 32, at 40.

⁶⁸ Swigart and Terris, *supra* note 66, at 30.

politically biased and not connected directly to the goal of promoting human rights. In general, in non-democratic regions, there seems to be no connection between the human rights record of a country and its prospect of being elected to the Commission.⁶⁹ Moreover, the Commission has tended to target specific countries that were relatively isolated in the global politics⁷⁰ and has focused disproportionately on the Israeli-Arab conflict.⁷¹ Although more scrutinized research showed that the Commission was more politically biased during the Cold War than it was after it, regional blocs existed even following the end of the Cold War.⁷² The political biases in the Commission had been heavily criticized, and, as a consequence, the Commission was dissolved and replaced by the Council in 2006.⁷³ However, as of today, the reconstruction of the Commission into the Council has not improved the evident political biases, and some argue that the biases have even gotten stronger.⁷⁴

Finally, some research has also been conducted on votes in the General Assembly on human rights issues. Voeten has found that countries tend to vote on human rights issues according to geopolitical blocs and that the type of regime in a country influences its voting pattern.⁷⁵ Bernard Boockman and Axel Dreher also found strong evidence for geopolitical voting blocs and demonstrated that democracies were more likely to support human rights resolutions than non-democracies.⁷⁶ Additionally, they found that the wealth of a country influences its voting preferences.⁷⁷ Another interesting finding uncovered by Boockman and Dreher is that, when controlling for voting blocs, the human rights situation in a country is irrelevant to the voting pattern in favour of human rights resolutions.⁷⁸ Although the HRC is a body established under the auspices of the UN human rights system, it is expected to be less biased than the charter-based bodies. This is mainly because, while the charter-based bodies are diplomatic forums, the HRC is supposed to be a professional committee of human rights experts.

⁶⁹ Edwards *et al.*, 'Sins of Commission? Understanding Membership Patterns on the United Nations Human Rights Commission', 61 *Political Research Quarterly* (2008) 390.

⁷⁰ Ghanea, 'From UN Commission on Human Rights to UN Human Rights Council: One Step Forwards or Two Steps Sideways', 55 *International and Comparative Law Quarterly* (2006) 695, at 697.

⁷¹ Seligman, 'Politics and Principle at the UN Human Rights Commission and Council (1992–2008)', 17 *Israel Affairs* (2011) 520; Besant and Malo, 'Dim Prospects for the United Nations Human Rights Council', 2 *Yale Journal of International Affairs* (2009) 144, at 145.

⁷² Lebovic and Voeten, 'The Politics of Shame: The Condemnation of Country Human Rights Practices in the UNCHR', 50 *International Studies Quarterly* (2008) 861, at 881.

⁷³ GA Res. 60/251, 15 March 2006.

⁷⁴ Hug, 'Targets and Perpetrators: Resolutions and Voting in the UNCHR and UNHRC', Paper prepared for presentation at the Annual Conference of the European Political Science Association, 9 June 2014, available at www.unige.ch/ses/spo/static/simonhug/tap/tap.pdf.

⁷⁵ Voeten, 'Clashes in the Assembly', 54 *IO* (2000) 185.

⁷⁶ Boockman and Dreher, 'Do Human Rights Offenders Oppose Human Rights Resolutions in the United Nations?', 146 *Public Choice* (2011) 443, at 462.

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

C Hypotheses and Variables

1 Hypotheses

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

(a) Geography

As discussed above, geographical biases are very evident in the UN system. Since the renomination of CMs is somewhat dependent on the regional group to which their countries belong, it is expected that the CMs vote in favour of their region to secure their renomination. Additionally, geographical regions often share common history, heritage and culture. Therefore, a CM might be more inclined to vote in favour of human rights practices in his geographical region for reasons of loyalty. On the other hand, the CM might also feel special empathy to the victims of human rights violation from his region, which might lead him to be more critical of those countries. However, not all geographical groups are identical. For instance, whereas one might see more homogeneity in the Western group, the Asian group of countries is very diverse and without much mutual identity.

(b) Politics

Although the HRC is not seen as a diplomatic forum, it is expected that CMs follow the policy of their governments in the political sphere. This can be the case both because the CMs feel obligation towards their governments and sincerely believe in the political culture of the region and because they may be nominated for election (and re-election) only by their country of nationality. Therefore, it is expected that the CMs follow the line of their countries and governments in the field of international policy and favour their countries' political allies.

(c) Culture

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

2 Data and Variables

I collected the data from all 571 decisions on the merits issued by the HRC between 1997 and 2013 (Sessions 59–109). Older decisions were not included since, until the fifty-ninth session, it was not indicated in the decisions who were the CMs that

participated in the discussion on the communication.⁷⁹ The texts of the decisions were taken from the Bayefsky database⁸⁰ and supplemented by the United Nations Treaty Body database (for decisions published after 27 July 2012).⁸¹ Each observation in the database is a vote of a CM in a specific decision ($N = 8,390$).

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

In order to examine the hypotheses regarding geographical, political and cultural biases, the following independent variables were used.

(a) Regional groups

The United Nations has five regional voting groups.⁸² These groups were formed according to the geopolitical and cultural interests of the states and have corresponded to the main global political alliances for much of the UN’s history.⁸³ Even though these groups reflect to a certain degree pre-Cold War geopolitics, they are still used in the UN, among others, in order to ensure equitable geographical representation in different UN institutions.⁸⁴ CMs are expected to vote in favour of the countries that belong to the same regional group as their own country of origin – both because they want to secure their re-election and because these countries are more likely to share common interests and values with their countries of origin.

(b) Organisation for Economic Co-operation and Development

The Organisation for Economic Co-operation and Development (OECD) is an inter-governmental organization serving as a forum for governments to share experiences and seek solutions to common problems in the sphere of economic and social well-being.⁸⁵ Currently, 34 countries are members of the OECD, and most of them are regarded as

⁷⁹ According to Rule 37 of the Rules of Procedure, *supra* note 13, 12 committee members (CMs) constitute a forum. Therefore, most of the decisions of the HRC on the communications are not taken by all of the CMs.

⁸⁰ *United Nations Human Rights Treaties – CCPR – Jurisprudence*, available at www.bayefsky.com/docs.php/area/jurisprudence/treaty/ccpr/opt/0/node/5/type/all.

⁸¹ *United Nations Human Rights – Treaty Bodies Search*, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en.

⁸² *United Nations Regional Groups of Member States*, available at <http://www.un.org/depts/DGACM/RegionalGroups.shtml>.

⁸³ Peterson, ‘General Assembly’, in T. Weiss and S. Daws (eds), *Oxford Handbook on the United Nations* (2007) 98, at 107.

⁸⁴ See, e.g., United Nations, *United Nations at a Glance* (2013), at 24; Konthari, ‘From Commission to Council’, in Shelton, *supra* note 12, 587, at 593.

⁸⁵ *OECD Home*, available at www.oecd.org/; P. Carroll and A. Carroll, *OECD: A Study of Organisational Adaptation* (2011), at 1–10.

developed countries with commitment to democracy. CMs from OECD countries are expected to vote in favour of other OECD countries.

(c) Treaties

Regional human rights treaties reflect common cultural understandings as to what human rights are. The differences in the human rights protected by regional treaties are seen as reflecting cultural particularities.⁸⁶ Therefore, CMs are expected to favour human rights practices in countries that are signatories to the same regional human rights treaties as their country of origin.

(d) North Atlantic Treaty Organization

North Atlantic Treaty Organization (NATO) promotes political and military cooperation between its member states. Currently, NATO consists of 28 countries that are both committed to democratic values and belong to the geopolitical 'North'.⁸⁷ CMs from NATO countries are expected to vote in favour of the respondent countries that are members of NATO.

(e) Religion

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

(f) Polity

The polity score measures the regime in a country, and it ranges from 10 for strongly democratic countries to -10 for strongly autocratic countries.⁸⁸ The variable used is the absolute value of the difference between the polity score of the respondent country and the polity score of the CM's country. CMs are expected to vote in favour of countries that have a similar regime to their own country of origin.

(g) Gross domestic product

It is expected that countries on a similar wealth level have common interests and understandings regarding human rights – for instance, how many resources should the government invest to protect human rights. The variable measures the absolute value of the difference of the natural logarithm of the gross domestic product per capita in the respondent country and the CM's country.⁸⁹ CMs are expected to vote in favour of countries whose level of wealth is close to their country of origin.

⁸⁶ Cerna, 'Universality of Human Rights and Cultural Diversity: Implementation of Human Rights in Different Socio-Cultural Contexts', 16 *Human Rights Quarterly* (1994) 749, at 749–750.

⁸⁷ North Atlantic Treaty Organization, *What Is NATO?*, available at www.nato.int/nato-welcome/index.html.

⁸⁸ *Polity IV Project*, available at www.systemicpeace.org/polityproject.html.

⁸⁹ *International Monetary Fund – Data*, available at www.imf.org/external/data.htm.

(h) Human rights

This variable is used as a control variable and measures what was the human rights protection score of the respondent country two years prior to the decision in the communication.⁹⁰

3 Descriptive Statistics

Before quantitatively analysing the data, some descriptive statistics should be given. Between Session 1 and Session 109, individual communications were decided against 86 countries. Therefore, there are no decisions on individual communications against 25 per cent of the countries parties to the First Optional Protocol. In the period relevant to this article (Sessions 59–109), the countries against which most of the communications were decided on the merits were Jamaica (56), Belarus (45), Uzbekistan (32), Spain (29) and Czech Republic (27), and Russia tied with Australia (26 each). When decisions on admissibility are also included in the descriptive statistics, the picture is slightly different: Spain (96), Canada (62), Jamaica (59), Belarus (53), and Czech Republic tied Australia (50 each).

It is also important to describe the distribution of communications decided by the HRC by the regions to which the respondent countries belonged. For Sessions 59–109, the proportion of the communications decided by UN voting regions was as follows: Western (26.62 per cent), Eastern Europe (22.42 per cent), Latin (20.49 per cent), Asia (19.26 per cent) and Africa (11.21 per cent). When we look at the distributions of the regions from which CMs were appointed to the HRC, it is somewhat different: Western (42.11 per cent), Africa (21.05 per cent), Latin (19.3 per cent), Asia (10.53 per cent), and Eastern Europe (7.02 per cent).⁹¹ These statistics demonstrate that there is no necessary connection between the number of communications filed against a region and how many CMs from that region serve on the HRC (see [Figure 1](#)). For instance, whereas the number of communications against Eastern European countries was second only to the number of communications against Western countries, Eastern Europe was the group least represented on the HRC.

In order to understand the connection between the background of the CMs and the respondent countries in the decisions analysed in the article, it is helpful to also present the following descriptive statistics on the distribution of geopolitical and cultural variables of the HRC docket and the HRC composition (see [Figures 2, 3 and 4](#)).

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

⁹⁰ C. Farris, *Latent Human Rights Protection Scores Version 2* (2014), available at <http://thedata.harvard.edu/dvn/dv/HumanRightsScores/faces/study/StudyPage.xhtml?globalId=doi:10.7910/DVN/24872>.

⁹¹ This data includes both communications that were decided on the merits and communications that were decided only on admissibility grounds.

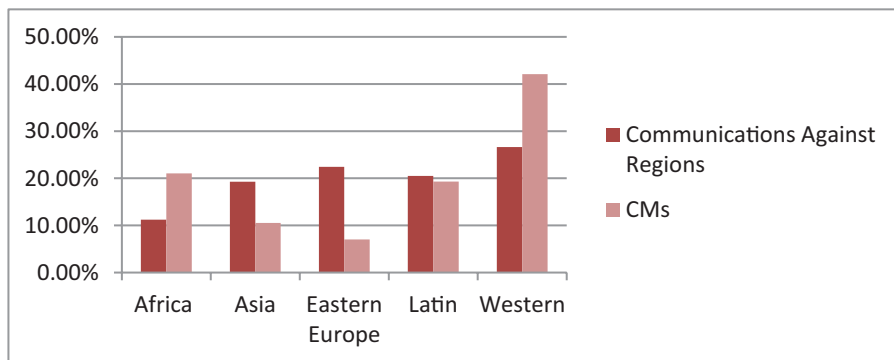


Figure 1: Geography

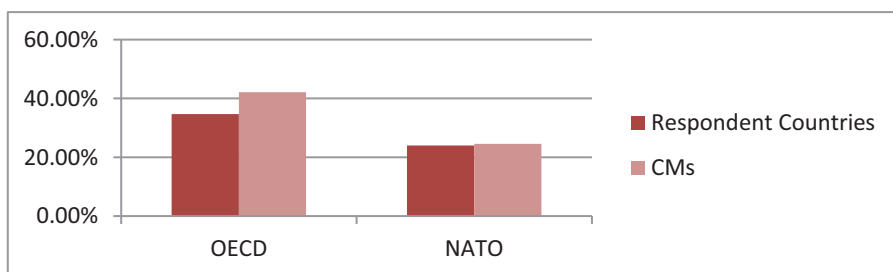


Figure 2: Membership in NATO and the OECD

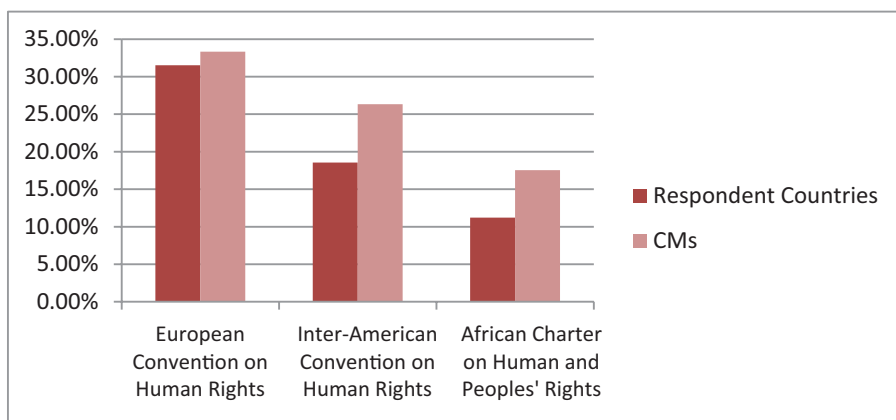


Figure 3: Membership in Regional Human Rights Treaties

4 Results

The next step is to test the hypotheses in a multivariate regression form. A multivariate regression enables us to control simultaneously for several variables that may influence the probability that a CM votes in favour of a country. Therefore, the multivariate regression used in the article controls for three important variables. The

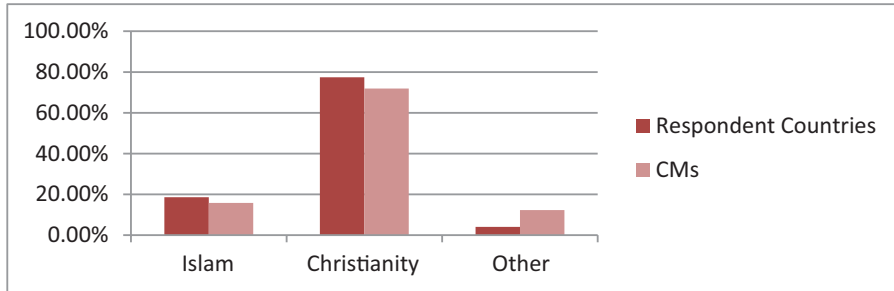


Figure 4: Religion

first control variable, named ‘human rights’, is the human rights protection score of the respondent country two years prior to the decision on the communication.⁹² It is important to control for this variable since there is an expectation for a positive correlation between the level of human rights protection in a given country and the probability that a CM votes in favour of that country. This control variable is not used in the models that use the NATO and OECD variables because there is a high correlation ($r > 0.5$) between the human rights score of a country and the probability of it being a member of NATO and the OECD.⁹³ The second control variable is named ‘vote general’, and it controls for how the majority of the HRC voted on the communication. This is a dummy variable coded in a similar way to the dependent variable. The third control variable is the year of the decision on the communication.

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

Each of the models in the statistical analysis includes variables for geographical, political and cultural patterns. Due to the high correlation between some of the independent variables, I use different models that try not to inflate (or reduce) the statistical significance because of problems of multi-collinearity (the results of the regressions are presented in [Tables 1](#) and [2](#)).

⁹² The article uses latentmean2. See Farris, *supra* note 90.

⁹³ Including both variables in a regression might lead to multicollinearity problems.

Table 1. Logit Models

| | (1) | (2) | (3) | (4) | (5) | (6) |
|-----------------|-----------------------|-----------------------|---------------------|-----------------------|-----------------------|---------------------|
| Regional group | 1.021*** (0.230) | | 0.569** (0.250) | 0.895*** (0.268) | | 1.098*** (0.257) |
| Treaty | | 0.298 (0.265) | | | 0.144 (0.269) | |
| Religion | -0.229 (0.371) | -0.107 (0.363) | -0.435 (0.357) | -0.258 (0.379) | -0.162 (0.354) | -0.281 (0.364) |
| Polity | -0.0496** (0.0252) | -0.0599** (0.0241) | -0.0125 (0.0184) | -0.0474** (0.0229) | -0.0505** (0.0210) | |
| GDP | | | | -0.172 (0.121) | -0.356*** (0.0926) | |
| OECD | | | 0.872** (0.388) | | | |
| Respondent OECD | | | 1.130*** (0.246) | | | |
| CM OECD | | | 0.270 (0.293) | | | |
| NATO | | | | | | -0.211 (0.398) |
| Respondent NATO | | | | | | 1.771*** (0.224) |
| CM NATO | | | | | | 0.454 (0.452) |
| Human Rights | 0.375*** (0.0597) | 0.427*** (0.0604) | | 0.362*** (0.0604) | 0.401*** (0.0596) | |
| Year Decision | 0.0578* (0.0346) | 0.0597* (0.0338) | 0.0381 (0.0335) | 0.0407 (0.0359) | 0.0389 (0.0348) | 0.0192 (0.0340) |
| Vote General | 6.987*** (0.286) | 6.874*** (0.290) | 7.118*** (0.283) | 7.085*** (0.294) | 7.010*** (0.300) | 7.197*** (0.284) |
| Votes of CMs | 8,341 | 8,341 | 8,341 | 8,237 | 8,237 | 8,390 |

Robust standard errors in parentheses.

*** $p < 0.01$, ** $p < 0.05$, * $p < 0.1$.

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

The results of the quantitative analysis show that the most statistically significant coefficient was belonging to the same regional group, which was positive and highly statistically significant in almost all of the specifications ($p < 0.01$ in most specifications). This means that CMs are more likely to vote in favour of a respondent country that belongs to their country's regional group. Another coefficient that was positive and highly statistically significant was the OECD ($p < 0.01$ in the logit model), indicating that CMs from OECD countries are more likely to vote in favour of other OECD respondent countries. Also, the coefficient of polity is negative and statistically significant ($p < 0.05$), showing that the larger the difference between the polity score of the respondent country and the country of the CM, the less likely the CM is to vote in

Table 2. Logit Model with Fixed Effects for Decisions

| | (1) | (2) | (3) | (4) | (5) | (6) |
|--------------------------|---------------------|-----------------------|---------------------|----------------------|----------------------|----------------------|
| Regional group | 0.873*** (0.204) | | 0.693*** (0.242) | | 0.407* (0.240) | 0.895*** (0.201) |
| Treaty | | 0.331 (0.235) | | 0.103 (0.248) | | |
| Religion | -0.497** (0.195) | -0.364* (0.192) | -0.499** (0.199) | -0.401** (0.198) | -0.645*** (0.203) | -0.629*** (0.200) |
| Polity | -0.0240 (0.0214) | -0.0471** (0.0206) | -0.0173 (0.0228) | -0.0265 (0.0227) | 0.0180 (0.0238) | |
| GDP | | | -0.218 (0.149) | -0.423*** (0.132) | | |
| OECD | | | | | 0.714* (0.428) | |
| CM OECD | | | | | 0.539 (0.333) | |
| NATO | | | | | | -0.368 (0.354) |
| CM NATO | | | | | | 0.631** (0.259) |
| Votes of CMs | 1,220 | 1,220 | 1,190 | 1,190 | 1,220 | 1,254 |
| Number of communications | 81 | 81 | 79 | 79 | 81 | 83 |

Robust standard errors in parentheses.

*** $p < 0.01$, ** $p < 0.05$, * $p < 0.1$.

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

favour of that country. In some of the specifications, the coefficient of the GDP variable was negative and highly statistically significant ($p < 0.01$), showing that CMs are less likely to vote in favour of a country the GDP of which is different from their country of origin. Finally, contrary to the hypothesis, the coefficient of religion was negative and even reached statistical significance in the FE model, meaning that CMs are less likely to vote in favour of countries that share a religion with their country of origin. All the other coefficients did not reach statistical significance.

In addition, a very important finding is that the human rights variable coefficient is positive and highly statistically significant in all the models. Therefore, the human rights score of a country is a very strong predictor of the probability of a CM to vote in favour of a country, regardless of the CM's country of origin. This might indicate that, although mutual characteristics of countries can cause the CM to vote according to a certain pattern, in general CMs do not vote in a biased way.

Since the regional group coefficient is highly statistically significant in all of the models, it is also interesting to look inside of this variable and see whether we can discover different patterns in different regions. In order to gain a more accurate picture of the regional voting patterns, this article uses two types of dependent variables. The

first dependent variable is the probability of voting in favour of a country, which was used in the previous analysis as well. The second dependent variable is named 'vote combined'. Vote combined is coded as '1' if the CM voted in favour of a country or wrote a separate opinion in favour of a country and coded as '0' otherwise. The article uses this additional variable for two main reasons. First, it increases the variance and, therefore, allowed us to have a more accurate picture of the voting patterns of CMs from regions that have less communications against them. Second, CMs from regions with problematic human rights scores are less likely to vote that the respondent country did not violate any right listed in the communication. However, they might view the violation as being less severe than CMs from other regions and write a separate opinion in favour of that region. Such a separate opinion can argue that although the respondent country did violate the rights of the complainant, it violated less treaty articles than the majority recognized. Finally, I had to leave the Asian group out of the statistical analysis because of perfect multicollinearity problems (the results of the regressions are presented in [Tables 3 and 4](#)).⁹⁴

The results indicate that the most statistically significant coefficients are Western and African, meaning that CMs from the Western and African regional groups tend to vote statistically significantly more in favour of their regional group. The coefficients of mutual membership in the Latin and Eastern European groups are negative, therefore CMs from these countries tend to vote more often against countries from their region. The Eastern European variable was significant in the logit regressions, however, it did not reach statistical significance in the FE models. The Latin coefficient reached statistical significance only in the logit model with vote combined as a dependent variable.

Finally, in order to test whether the determinant variable is geography or geopolitics, I tried to look into the question whether CMs tend to vote in favour of states from their geographical regions when a region is defined merely geographically and not geopolitically. For this, I used the UN geographical classification of countries (and not the UN regional voting groups).⁹⁵ The coefficient of belonging to the same regional group remained positive, however, and did not reach statistical significance in most of the specifications. Therefore, it seems that what drives the voting patterns is geopolitics and not just shared geography.

Another very important question, which is beyond the statistical significance of certain coefficients, is the likelihood of a CM to vote according to a certain pattern. For this purpose, the article uses the marginal effect at the means (MEM) measure for the variables whose coefficients reached the highest statistical significance in the different models. The MEM for the variables of regional group and polity were taken from the first model, the MEM for the OECD was taken from the fifth model, and the MEM for

⁹⁴ I chose the Asian group because it is the most diverse group.

⁹⁵ United Nations Statistics Division, *Composition of Macro Geographical (Continental) Regions*, available at <http://unstats.un.org/unsd/methods/m49/m49regin.htm>.

Table 3. Regional Groups with Vote in Favour as Dependent Variable

| | (1) | (2) |
|--------------------------|----------------------|----------------------|
| | Logit | FE |
| Western | 1.173*** (0.333) | 0.971*** (0.351) |
| Latin | -0.271 (0.550) | -0.550 (0.728) |
| Eastern | -1.316*** (0.419) | -1.462 (1.559) |
| Africa | 1.192** (0.527) | 15.05 (438.6) |
| Respondent | 1.600*** (0.329) | |
| Western | | |
| CM Western | -0.933* (0.553) | -1.154*** (0.321) |
| Respondent | -0.172 (0.511) | |
| Latin | | |
| CM Latin | -1.728*** (0.612) | -2.015*** (0.340) |
| Respondent | 0.819** (0.342) | |
| Eastern | | |
| CM Eastern | -0.126 (0.601) | -0.449 (0.413) |
| Respondent | -0.0221 (0.376) | |
| Africa | | |
| CM Africa | -1.093* (0.581) | -1.476*** (0.294) |
| Year decide | 0.0199 (0.0323) | |
| Vote General | 7.090*** (0.294) | |
| Constant | -43.97 (65.25) | |
| Votes of CMs | 8,390 | 1,254 |
| Number of communications | | 83 |

Robust standard errors in parentheses.

*** $p < 0.01$, ** $p < 0.05$, * $p < 0.1$.

Western was taken from the specification with a vote in favour as a dependent variable (see [Figure 5](#)). All of the variables were from the logit models that did not use FE.

The MEMs from the five variables, for which the coefficients were most statistically significant, demonstrate that in practice the chances that the background of a CM will affect her decision are not high. The highest MEMs are in cases in which the CMs belong to the same regional group or in cases in which both the CM and the respondent country belong to the Western group. These two variables make a CM only 4.5

Table 4. Regional Groups with Vote in Combined as Dependent Variable

| | (1) | (2) |
|--------------------------|----------------------|----------------------|
| | Logit Model | FE Model |
| Western | 1.284*** (0.300) | 1.187*** (0.293) |
| Latin | -1.187** (0.479) | -1.057 (0.665) |
| Eastern Europe | -0.896** (0.355) | -1.208 (1.483) |
| Africa | 1.196** (0.492) | 1.980*** (0.587) |
| Respondent | 1.394*** (0.317) | |
| Western | | |
| CM Western | -1.063* (0.558) | -1.302*** (0.245) |
| Respondent | 0.405 (0.377) | |
| Latin | | |
| CM Latin | -1.611*** (0.617) | -1.914*** (0.288) |
| Respondent | 0.612** (0.294) | |
| Eastern | | |
| CM Eastern | -0.672 (0.573) | -0.915** (0.371) |
| CM Africa | -1.331** (0.560) | -1.728*** (0.256) |
| Respondent | 0.306 (0.444) | |
| Africa | | |
| Year decide | 0.00422 (0.0302) | |
| Vote General | 6.577*** (0.274) | |
| Votes of CMs | 8,390 | 1,733 |
| Number of communications | | 115 |

Robust standard errors in parentheses.

*** $p < 0.01$, ** $p < 0.05$, * $p < 0.1$.

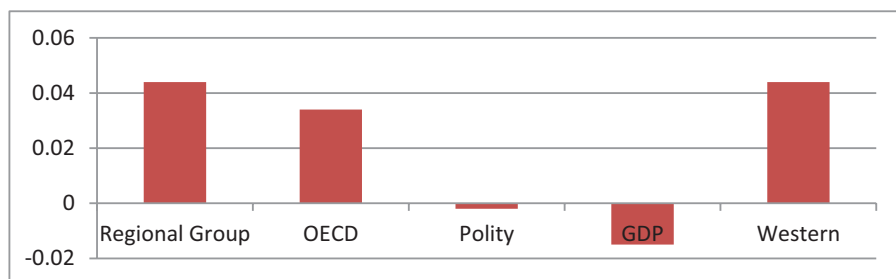


Figure 5: Marginal Effects at the Means

per cent more likely to vote in favour of the respondent country, when the other variables are held at the means. The second biggest MEM is mutual OECD membership, which is only 3.4 per cent. Therefore, although many of the variable coefficients are indeed statistically significant, it is wrong to conclude that CMs vote in a biased way. Rather, it is more accurate to say that CMs do not vote according to geographical, political and cultural interests most of the time.

5 Discussion

The general hypothesis of the article was that CMs would prefer to vote in favour of countries that are similar to their country of origin geographically, politically and culturally. Previous research on judicial behaviour found evidence for certain political and cultural voting patterns, and the literature on the UN found that there is strong evidence for regional voting blocs as well as some evidence for political voting patterns. The analysis of the votes in the HRC indicates that the hypothesis that was reinforced the most was the one on geographical, or, rather, geopolitical, voting patterns. As demonstrated, there is a very strong tendency of CMs to vote in favour of their UN regional voting group. However, the regional voting pattern is less statistically significant when the classification is merely geographical and not geopolitical. This might indicate that the HRC follows the footsteps of other United Nations institutions by promoting politics of regional blocs.

A closer examination inside the regional voting groups reveals a more complex pattern. The pattern of voting in favour of the regional group was very significant in the Western and African group of countries. However, CMs from the Eastern European and Latin groups tended to vote against countries from their regional group. This might reflect special awareness to problems of implementation of human rights by governments in regions that are trying to restore democracy and rule of law after years of totalitarian regimes. On the other hand, CMs from the Western group of countries, which tend to be more democratic, might be more trusting of municipal governments since they do not have personal experience with repressive regimes and, therefore, tend to vote in their favour. Furthermore, cases brought from democratic countries are expected to be more complex and less clear-cut than cases brought from other countries. Therefore, there is more room for different opinions in these cases and more chance for a CM to be influenced by the values of her geopolitical region.

I also found evidence for political voting patterns. Mutual membership in the OECD, a political regime and wealth significantly influence the probability of voting in favour of a respondent state. Moreover, as discussed, the UN regional groups that I used were not merely geographical but also reflect certain geopolitical interests. Therefore, to a certain degree, CMs could be seen as following their country of origin's foreign policy on the HRC. Such a voting pattern might be seen as especially problematic for two reasons. First, although representation of different traditions and cultures is recognized as a consideration in electing CMs to the HRC, nothing is said about representing political and economic interests. Second, CMs are not supposed to represent

their governments (and be 'diplomats in robes'), and the political interests of certain regions might be overrepresented on the HRC since the distribution of CMs by region is not equal.

As for the hypothesis on cultural voting patterns, the picture tends to be more complicated. The coefficient of the regional treaty variable did not reach statistical significance in any specification, and the coefficient of the religion variable was negative and statistically significant in the FE models. However, voting in favour of a regional group can also be seen as being driven by a cultural pattern since countries in the same geopolitical region usually have a shared culture. Therefore, the article does not find conclusive evidence regarding the existence of significant cultural patterns in the votes of the CMs.

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

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

One of the major critiques of empirical studies of decision making in the international context is that there are many relevant factors that those studies do not take into account. It should be pointed out that this article should not be interpreted as an attempt to build a complete model of decision making in the international context, and it does not claim that mere geopolitics can explain entirely the votes of CMs. I fully acknowledge that there might be other relevant (and irrelevant) factors in this regard. However, the article does hypothesize and suggest that geopolitics play a certain part in the process of decision making in the HRC.

The next question is what drives the CMs to vote according to geopolitical and cultural interests. Should this necessarily be attributed to personal interests in being re-elected, or perhaps these results are just reflections of a genuine understanding of human rights? I think that this article cannot answer this question conclusively. Since the strongest statistical results were found in cases of similarity between UN regional voting groups, one might think that this is a strong indicator that personal interests drive the CMs. However, in order to reach this conclusion on stronger grounds, perhaps additional research is needed – for example, research that examines whether the CM wanted to be re-elected to the HRC or was expected to be nominated to another international tribunal at the time of the decision.⁹⁶ Another caveat to easily reaching such a conclusion is that CMs from Latin and Eastern European groups tend to vote against countries from their regional group, even though they probably have the same interest in being re-elected as their colleagues. An alternative view could be that the CMs truly hold the geopolitical and cultural point of view of their regions, and, as a result, vote in favour of those countries. Therefore, the conclusions in this regard should be treated cautiously.

Although the results suggest that there is evidence for voting patterns in the decisions of CMs, a very important question is whether these patterns can actually change the decisions in a given case. When we use the MEM that allows us to control for additional important variables, the MEMs of the five most statistically significant variables are 4.5 per cent or less. Also, in 65.5 per cent of the communications decided on the merits, the decision is reached by consensus (without separate opinions), and only in less than 4 per cent of the communications do five or more CMs write a separate opinion. Moreover, as indicated above in the descriptive statistics section, most of the groups do not have over half of the votes in the HRC. Therefore, there is good reason to believe that even if a CM votes according to a certain pattern, he is not likely to change the decision in the case. This is supported by the finding that there is a very strong and positive correlation between the human rights protection score in a country and the probability of a CM to vote in its favour. The MEMs indicate that voting patterns probably exist only in highly controversial cases, and the decision is usually made based on an unbiased legal interpretation of the ICCPR. Therefore, while the article did find certain indicators for patterns in the votes of individual CMs, it is wrong to reach the conclusion that the decisions of the HRC as a whole are biased, and probably the contrary is true.

Given the above, perhaps some of the concerns that led to the introduction of the 2012 Addis Ababa Guidelines were unfounded. Moreover, in those contentious cases in which the CMs do vote according to certain patterns, one might consider certain ‘extra-legal’ consideration as being legitimate. This is because contentious cases are often those in which there is no clear legal answer, and, therefore, CMs are expected to look for extra-legal considerations in order to reach a decision. Hence, CMs could look for the ways in which their home countries, cultures and regions see certain matters and vote accordingly. After all, perhaps, it is exactly for these reasons that the drafters of the ICCPR insisted on having a diverse panel of experts.

⁹⁶ However, it should be noted that it is very hard to monitor the question whether the CM wanted to be re-elected to the HRC, another international tribunal or a position in his country of nationality.

6 Conclusion

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

An important point on which the article does not take a stand concerns the question of whether the existence of voting patterns assists or undermines achieving the goals of the HRC (and other international institutions in general). As mentioned above, there is a debate in the legal literature about the relationship between the independence of international judicial institutions and their efficiency and how desirable it is for international decision makers to be independent. Therefore, whether it is good for the institution as a whole that CMs sometimes vote according to certain patterns remains a question that cannot be easily answered.