3

UN Treaty Bodies' 'Sufficiently Substantiated' Admissibility Requirement

Endorsement or Distortion of the Prima Facie Threshold?

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3.1 Introduction

Each of the eight United Nations human rights treaty bodies (UNTBs) currently authorised to receive individual complaints[1] requires that such complaints be 'sufficiently substantiated', 'not manifestly unfounded' or 'not manifestly ill-founded', to be deemed admissible.[2] In this chapter,

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[1] See Table 1.2.

[2] Human Rights Committee (HRC), Rules of Procedure (CCPR/C/3/Rev.12), 4 January 2021, Rule 99; Committee against Torture, Rules of Procedure (CAT/C/3/Rev.6), 1 September 2014, Rule 113; Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW-OP), New York, 10 December 1999, in force 22 December 2000, 2131 UNTS 83, Art. 4; International Convention for the Protection of All Persons from Enforced Disappearance (CED), New York, 6 February 2007, in force 23 December 2010, 2716 UNTS 3, Art. 31; Optional Protocol to the Convention on the Rights of Persons with Disabilities (CRPD-OP), New York, 30 March 2007, in force 3 May 2008, 2518 UNTS 283, Art. 2 (e); Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR-OP), New York, 24 September 2009, in force 5 May 2013, 2922 UNTS 29, Art. 3; Optional Protocol to the Convention on the Rights of the Child on a communications procedure (CRC-OP3), New York, 28 February 2012, in force 14 April 2014, 2983 UNTS 135, Art. 7 (f). The Committee on the Rights of Migrant Workers has not adopted rules on its individual complaint procedure, which has not yet entered into force, but its founding instrument

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I refer to these admissibility criteria, together, as the substantiation requirement. This requirement contributes to the high rate of rejection due to inadmissibility, which is the final outcome for as many as 65 per cent of registered complaints.[3] Despite its enormous impact, the substantiation requirement is clouded in confusion: the UNTBs have neither clearly nor consistently defined the criterion. In any human rights complaint proceedings, a lower standard of proof necessarily applies at admissibility, when the complainant is merely introducing the complaint that they will later be required to prove in the merits stage. The UNTB complaint procedures were envisioned as directly accessible to all individuals, without the need for legal counsel, and although time and practicalities have prompted increased formality and rigidity, the admissibility criteria should not be interpreted to improperly impede access to justice at the United Nations. This chapter accordingly aims at reviewing and making sense of the enduringly amorphous substantiation requirement,[4] thereby hopefully helping complainants to navigate it and UNTBs to uniformly implement it.

The analysis offered in this chapter is based on an extensive review of admissibility decisions published between 1977 and 2023 by the eight treaty bodies referred to above. The general difficulties in searching UNTB case law have inevitably complicated the research.[5] Understanding decisions concerning substantiation is additionally challenging because UNTBs

does not contain a substantiation requirement. The Committee on the Elimination of Racial Discrimination, which has not revised its relevant rules of procedure since 1986, has asserted a substantiation requirement in its decisions, although none appears in its founding instrument or rules. See, e.g., *Jallow* v. *Denmark*, CERD/C/108/D/62/2018, 1 December 2022, paras. 6.3–6.5.

[3] See Report of the Human Rights Committee (A/76/40), 2021, para. 21.

See also C. P. R. Romano, 'The Rule of Prior Exhaustion of Domestic Remedies: Theory and Practice in International Human Rights Procedures', in N. Boschiero, T. Scovazzi, C. Pitea and C. Ragni (eds.), *International Courts and the Development of International Law: Essays in Honour of Tullio Treves* (The Hague: Springer, 2013) pp. 555–566, 574, 579 (citing Y. Tyagi, *The UN Human Rights Committee: Practice and Procedure* (Cambridge: Cambridge University Press, 2011), p. 498; J. Th. Möller and A. M. De Zayas, *The United Nations Human Rights Committee Case Law 1977–2008: A Handbook* (Kehl am Rhein: Engel, 2009) p. 91.

[4] See, e.g., *Morael* v. *France*, CCPR/C/OP/3, 10 July 1987; *Loor Chila* v. *Spain*, E/C.12/70/D/102/2019, 12 October 2021, para. 6.6; *Aden and Hassan* v. *Denmark*, CCPR/C/126/D/2531/2015, 25 July 2019, para. 9.8.

[5] As highlighted in both Chapters 1 and 11 of this volume. For example, the WorldCourts database contains decisions from seven UN human rights treaty bodies, but the most recent cases in the database are from between 2016 and 2019. As of 20 November 2023, the JURIS database of the OHCHR contains 460 decisions tagged as concerning

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publish neither the parties' submissions nor any explanation of their rejection of complaints in the registration stage (including for lack of substantiation).[6] Their admissibility decisions often merely conclude that the complainant has or has not adequately supported their factual or legal claims, without explaining why.[7] All in all, I have read more than 400 admissibility decisions concerning substantiation.[8] My analysis of these decisions reveals that, although UNTBs frequently invoke the prima facie evidentiary threshold, they often require complainants' claims to be probable or even convincing – when weighed against the state's submissions – to satisfy the substantiation requirement at admissibility.

The text is organised as follows: having clarified when the substantiation requirement applies, Section 3.2 reviews the evolution and status of the corresponding treaty body rules. Section 3.3 compares descriptions of the substantiation requirement to the commonly accepted legal meaning of the prima facie threshold. Section 3.4 examines the first distortion of prima facie by identifying five reasons UNTBs often find claims insufficiently substantiated, which appear reasonable but have allowed UNTBs to reject claims for lacking convincing (rather than plausible) legal or evidentiary support. Section 3.5 addresses prima facie's second distortion, which arises when treaty bodies weigh states' arguments and evidence against those of the complainant in their assessment of substantiation. This often results in a claim being declared inadmissible because the state's official determinations and documentation are presumed to be credible, while the complainant does not benefit from the same presumption. Section 3.6 outlines six scenarios when treaty bodies may apply a low standard of proof or partially shift the burden of proof onto the state, thereby making it easier for the complainant to satisfy the substantiation requirement. UNTBs' occasional and exceptional use of a lower evidentiary standard further throws into relief the elevated

'substantiation of claims', but only one from prior to 2002 and many that do not actually involve substantiation.

[6] See, e.g., HRC, Rules 89 (3), 111.

[7] See, e.g., OHCHR, UN Human Rights Report 2021, 2 June 2022, p. 441 (indicating 86% of complaints are rejected at registration); I. Jelić and L. Mührel, 'The Human Rights Committee: Challenges and Prospects for Enhanced Effectiveness and Integration', *Journal of Human Rights Practice* 14 (2022): 17–43.

[8] In addition to using the databases mentioned above, I have reviewed decisions available in the UN Treaty Body Database, Bayefsky.com, University of Minnesota Human Rights Library and the UNTBs' compilations of select decisions not included in the UN Treaty Body Database.

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requirement more typically applied and constitutes a third distortion of the prima facie threshold, as commonly understood. In its final section (3.7), the chapter urges the treaty bodies to harmonise their approach to the substantiation requirement in a way that respects prima facie's etymological meaning.

3.2 Origins and Formalisation of the Substantiation Requirement

Before discussing the meaning of the substantiation requirement, it is important to clarify when it applies. In short, substantiation is assessed both at the registration stage and, if the complaint is registered, again at the admissibility stage. At the registration stage, treaty bodies weed out more than eighty percent of incoming complaints based on an initial assessment of admissibility, without a reasoned decision.[9] At admissibility, UNTBs again assess substantiation, alongside other criteria that require at least some evaluation of the substance of the complaint. These include whether the named victim has been personally affected by the alleged violation or has been 'clear[ly]' disadvantaged[10] and whether the kind of violation alleged falls within the UNTB's jurisdiction *ratione materiae*.[11]

Over time, UNTBs have rejected an increasing number of complaints for lack of substantiation.[12] This may be partly explained by the constant

[9] See, e.g., United Nations Human Rights Report 2021, p. 441. Treaty bodies' practices vary, with some delegating registration decisions to the Secretariat staff and others assigning a Rapporteur or Working Group to make registration decisions.

[10] *Sacchi et al.* v. *Argentina,* CRC/C/88/D/104/2019, 22 September 2021, paras. 10.1ff (discussing jurisdiction and victim status); *A.W.P.* v. *Denmark*, CCPR/C/109/D/1879/2009, 1 November 2013 (Individual opinion of Yuval Shany, Fabian Omar Salvioli and Victor Manuel Rodriguez-Rescia), para. 2; Art. 4 OP-ICESCR (allowing rejection of a complaint if it does not show 'the author has suffered a clear disadvantage').

[11] Secretary-General, Comparative Summary of Existing Communications and Inquiry Procedures and Practices under International Human Rights Instruments and under the Charter of the United Nations (E/CN.6/1997/4), 21 January 1997, para. 24. See also OHCHR, Reporting under the International Covenant on Civil and Political Rights: Training Guide (New York and Geneva: United Nations Publications, 2021), p. 108; *Wasitha Ranawaka* v. *Australia*, CAT/C/68/D/855/2017, 5 December 2019, para. 8.3 (distinguishing jurisdiction *ratione materiae* from substantiation); *H.S.* v. *Australia*, CCPR/C/113/D/2015/2010, 30 March 2015, paras. 8.3–8.12; Y. Shany, *Questions of Jurisdiction and Admissibility before International Courts* (Cambridge: Cambridge University Press, 2016), p. 1.

[12] As of 18 January 2023, the JURIS Database contained 382 decisions tagged as pertaining to 'substantiation of claims'. Of these, 16 (4%) were decided between 2002 and 2008; 32

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growth of their case load which,[13] coupled with their generally inadequate resourcing, has prompted a search for efficiency in the treaty bodies' operations.[14] That the admissibility requirements have become more demanding through the years is confirmed by an analysis of the governing texts.[15]

The Human Rights Committee (HRC or Committee) was the first treaty body to consider how to interpret and apply the admissibility requirements. When it discussed its initial draft rules of procedure in 1977, there was apparently no mention of substantiation or well-foundedness with respect to admissibility.[16] However, the HRC began assessing the evidentiary support for individuals' claims at the admissibility stage as early as 1978.[17] It soon explicitly asserted a 'sufficiently substantiated' admissibility criterion, based on the requirement found in the Optional Protocol that authors 'claim' that a state party to the ICCPR has violated their rights.[18] For example, in its 1985 views concerning *J.H.* v. *Canada*, the Committee stated that an author 'must himself claim, in a substantiated manner, that he is or has been a victim of a violation'.[19] In a private meeting in 1989, the HRC formally revised its Rules to add this admissibility requirement.[20]

(8%) were decided between 2009 and 2013; 124 (32%) were decided between 2014 and 2018; and 209 (55%) were decided between January 2019 and December 2022.

[13] See, e.g., Secretary-General, Status of the UN Human Rights Treaty Body System (A/71/118), 18 July 2016, paras. 4, 20, 21; P. Alston, Effective Implementation of International Instruments on Human Rights, Including Reporting Obligations under International Instruments on Human Rights (A/ 44/ 668), 8 November 1989, paras. 13, 19; United Nations Human Rights Report 2021, p. 441.

[14] See, e.g., Secretary-General, Report on the Process of the Consideration of the State of the United Nations Human Rights Treaty Body System (A/75/601, Annex), 17 November 2020, para. 21. See also Jelić and Mührel, 'The Human Rights Committee', 17.

[15] See, e.g., M. Langford, B. Porter, R. Brown and J. Rossi (eds.), *The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights: A Commentary* (Pretoria: Pretoria University Law Press, 2016), pp. 7–8, 75.

[16] Report of the Human Rights Committee (A/32/44), 30 September 1977.

[17] *Z.Z.* v. *Canada*, 18 July 1978, in United Nations, Human Rights Committee: Selected Decisions under the Optional Protocol (2nd to 16th Session) (1985), p. 19.

[18] Arts. 1, 2 of the Optional Protocol to the ICCPR; Report of the Human Rights Committee (A/39/40/SUPP), 20 September 1984, para. 588.

[19] *J.H.* v. *Canada*, CCPR/C/24/D/187/1985, 12 April 1985, para. 4.1.

[20] Rules of Procedure of the Human Rights Committee, CCPR/C/3/Rev.2 (1989), Rule 90 (b), cited in K. A. Young, *The Law and Process of the U.N. Human Rights Committee* (Ardsley: Transnational Publishers, 2002), p. 156, n. 81.

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The HRC's two closest contemporaries took different approaches. By the late 1990s, both the Committee on the Elimination of Racial Discrimination (CERD) and the Committee against Torture (CAT) had begun to expressly require substantiation in the admissibility analysis they provided in their decisions.[21] However, CERD, whose complaint process became operational in 1982,[22] has never included a substantiation requirement in its Rules.[23] By contrast, when CAT revised its Rules in 2002, it added an admissibility requirement to the effect that communications not be 'manifestly unfounded'.[24]

In 1999, states began to include a substantiation requirement when creating new individual complaint processes. That year, states adopted the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which became the first UN human rights instrument to include a substantiation requirement – namely that complaints not be 'manifestly ill-founded'.[25] The four UN treaty-based individual complaint processes created since 2006 – those of the Committee on Economic, Social and Cultural Rights (CESCR); Committee on the Rights of the Child (CRC); Committee on the Rights of Persons with Disabilities (CRPD); and the Committee on Enforced Disappearances (CED) – each reference one or both standards (not manifestly unfounded or ill-founded, and sufficiently substantiated) in their respective treaties or optional protocols, as well as in their rules.[26] While each treaty body is unique in whether and how its founding instrument or rules explicitly require substantiation, treaty bodies and their secretariat staff in the Office of the High Commissioner for Human Rights (OHCHR) have generally treated this as a uniform requirement for all UNTB individual complaint processes, albeit without having consistently defined it.[27]

[21] See, e.g., *S and Y* v. *Netherlands*, CAT/C/15/D/31/1995, 20 November 1995, para. 4.2; *Barbaro* v. *Australia*, CERD/C/51/D/7/1995, 14 August 1997, para. 10.2.

[22] UN Treaty Collection, 'ICERD'. Website, n. 35. https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&clang=_en#35.

[23] CERD, Rules of Procedure (CERD/C/35/Rev.3), 23 May 2025.

[24] CAT, Rules of Procedure, Rule 107 (b). *See also* CAT, Report of the Committee against Torture (A/57/44/SUPP), 2002, para. 199. *Compare* United Nations, Compilation of Rules of Procedure Adopted by the Human Rights Treaty Bodies (HRI/GEN/3), 6 June 2001. At the time, four treaty bodies – the HRC, CERD, CAT and CEDAW Committee – had active individual complaint processes.

[25] Arts 2, 4, CEDAW-OP.

[26] Art. 31 CED; Arts. 1, 2 CRPD-OP; Art. 3 ICESCR-OP; Arts. 5, 7 CRC-OP3.

[27] See, e.g., OHCHR. 'Individual Communications'. www.ohchr.org/en/treaty-bodies/individual-communications. ('Is the complaint sufficiently substantiated? If the relevant

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3.3 Behind a Confusing Variety of Labels: Understanding the Prima Facie Threshold

In their decisions, the treaty bodies have offered differing explanations of the nature and stringency of the standard of proof by which they assess the substantiation or foundedness of the complainant's allegation at the admissibility stage. They have varyingly stated that the complainant must 'establish' the relevant facts, provide 'convincing arguments' of a violation or 'adequately explain' the allegations, but also, merely, 'raise the possibility of a violation'.[28]

Nonetheless treaty bodies, states and scholars have identified a common legal standard for assessing substantiation at admissibility: prima facie.[29] The Latin term prima facie is commonly translated as 'at first appearance' or 'on the face of it'.[30] In UNTB decisions and scholarship, it appears repeatedly as a stand-in for 'not manifestly unfounded' and 'sufficiently substantiated'. Rather than bringing clarity, however, invoking this legal term poses two primary problems: first, the different

Committee considers, in the light of the information before it, that the complainant has not sufficiently presented/ described the facts and arguments for a violation of the Covenant, it may reject the case as insufficiently substantiated, and thus inadmissible').

[28] *B.M.* v. *Switzerland*, CEDAW/C/83/D/132/2018, 17 October 2022, para. 12.8 ('establish'); *Alger* v. *Australia*, CCPR/C/120/D/2237/2013, 13 July 2017, para. 6.5 ('convincing arguments'); *P.T.* v. *Denmark*, CCPR/C/113/D/2272/2013, 1 April 2015, para. 6.4 ('adequately explained … with plausible arguments'); *P.S.B.* v. *Canada*, CAT/C/55/D/505/2012, 18 August 2015, para. 7.2 ('sufficiently detailed'); *I.D.G.* v. *Spain*, E/C.12/55/D/2/2014, 17 June 2015, para. 9.7 ('raises the possibility of a violation'); *A.B.H.* v. *Denmark*, CCPR/C/126/D/2603/2015, 8 July 2019, para. 8.4 ('adequately explain').

[29] See, e.g., *S.M.* v. *Denmark*, CRPD/C/29/D/61/2019, 25 August 2023, para. 6.5 (State's argument); *Acosta Martínez and Amaghnouge* v. *Spain*, E/C.12/73/D/213/2021, 27 February 2023, para. 6.2; *Jallow* v. *Denmark*, CERD/C/108/D/62/2018, paras. 4.4, 6.2; *K.Y.M.* v. *Denmark*, CRC/C/77/D/3/2016, 25 January 2018, para. 4.7 (State's argument); *S.O.* v. *Canada*, CEDAW/C/59/D/49/2013, 27 October 2014, para. 9.5; *H.J.H.* v. *Netherlands*, CCPR/C/43/D/448/1991, 7 November 1991, para. 4.2. See also letter on individual communications from 42 states to high commissioner Michelle Bachelet, 30 May 2022, www.ohchr.org/sites/default/files/2022-05/EN_Treaty-Body-Letter-on-Individual-Communications-30May2022.pdf (describing the substantiation criterion as requiring 'sufficient documentation to substantiate the case on a *prima facie* basis'); M. Gillett, Y. Karukaya and M. Marzotto, 'Reconciling the Dual-Faceted Mandates of Quasi-Judicial Human Rights Bodies: The Working Group on Arbitrary Detention's Prima Facie Approach to Evidence', *Human Rights Law Review* 24 (2024) 1–25.

[30] Prima facie, J. Law and E. A. Martin (eds.), *A Dictionary of Law* (Oxford: Oxford University Press, 2009); Prima facie, *Black's Law Dictionary*, 2nd ed. (West Publishing, 1910).

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formulations of the substantiation requirement do not necessarily share the same meaning; and second, prima facie itself is a debated term.

The criterion of 'not manifestly ill-founded' (or 'not manifestly unfounded') and 'not insufficiently substantiated' appear as separate and distinct grounds of inadmissibility in treaty body rules. The two conditions are not synonymous. Potentially, there is a vast difference between making a claim that is *clearly* false or *obviously* unsupported and making one that is not *fully* convincing. It follows that, even if either 'sufficiently substantiated' *or* 'not manifestly ill-founded' could be understood to be interchangeable with the term 'prima facie', both cannot be. Yet, CAT, for example, has 'found claims to be manifestly unfounded where the author of the communication has failed to present an arguable case, that is, to submit substantiated arguments ... in such a way that they establish a prima facie case for the purpose of admissibility of the complaint'.[31] This statement seems to conflate the two distinct terms and to equate them with the prima facie threshold.

Separately, there appears to be confusion around the meaning of prima facie itself. The CESCR recently noted that 'even where a communication appears prima facie to be admissible because the initial submission is sufficiently substantiated for purposes of registration, nothing prevents the Committee from concluding, after further examination and on the basis of the information on admissibility provided by both parties, that the communication is inadmissible for want of sufficient substantiation'.[32] This implies that at least some of the CESCR members believe the purportedly prima facie threshold applied at registration is lower than the (unspecified) standard applied at admissibility. Scholars' explanations reflect the UNTBs' various interpretations of these terms. Tom Zwart has proposed that the prima facie standard means that '[f]or purposes of admissibility, the author of a complaint ... has only to make a reasonable effort to adequately substantiate his allegations' before a UNTB.[33] Taking a slightly different view, Thomas Buergenthal asserted that the prima facie standard means 'that the communication must contain allegations which, if proved, would amount to a violation'.[34]

[31] *S.B.M.* v. *Sweden*, CAT /C/77/D/1011/2020, 10 July 2023, para. 8.8.
[32] *Stitou and Ben Hmdou* v. *Spain*, CE/C.12/72/D/86/2018, 10 October 2022, para. 6.5.
[33] T. Zwart, *The Admissibility of Human Rights Petitions: The Case Law of the European Commission of Human Rights and the Human Rights Committee* (Dordrecht: Martinus Nijhoff Publishers, 1994), p. 11.
[34] T. Buergenthal, 'The U.N. Human Rights Committee', in J. A. Frowein and R. Wolfrum (eds.), *Max Planck Yearbook of United Nations Law* 5 (2001): 341–98, 380.

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For Kirsten Young, however, 'even if the facts alleged by the author would, if proved to be true, amount to a violation of the Covenant, the claim will still be inadmissible . . . if the [treaty body] finds that the facts have not been 'sufficiently substantiated'.[35] Each of these explanations describes a different conception of the substantiation requirement and of the term prima facie. Indeed, Frans Viljoen has observed that the substantiation requirement has not always been interpreted in the same way by UNTBs: 'In some instances this has been set as a prima facie standard, in others merely as providing some substantiation.'[36]

Other international tribunals have grappled with contradictory interpretations of prima facie, as well. For example, the International Criminal Tribunal for the former Yugoslavia has asserted, on different occasions, that the prima facie threshold requires either the presentation of evidence that would be sufficient for a conviction if not contradicted, or – merely – a pleading that sets out a credible case.[37] The European Court of Human Rights' not 'manifestly ill-founded' admissibility requirement has commonly been described as 'tantamount' or 'analogous' to the minimal prima facie substantiation threshold found in the UNTB procedural rules.[38] However, scholars and practitioners have criticised the Court for applying a higher standard in practice.[39] Regarding World Trade Organization dispute settlement processes, it has been observed that prima facie is incoherently and unsatisfactorily used in at least three different ways,[40] namely as: (1) an evidentiary threshold that the complainant, alone, must satisfy in order for the dispute to be considered; (2) a rebuttable presumption of truth, whereby the complainant's coherent complaint is taken as true unless and until rebutted by the other party; or

[35] K. A. Young, *The Law and Process of the U.N. Human Rights Committee*, p. 157.

[36] F. Viljoen, 'Fact-Finding by UN Human Rights Complaints Bodies: Analysis and Suggested Reforms', in A. von Bogdandy and R. Wolfrum (eds.), *Max Planck Yearbook of United Nations Law* 8 (2004): 49–100, 65 (internal citations omitted).

[37] *Prosecutor* v. *Slobodan Milosevic*, ICTY, Decision on Review of Indictment, 22 November 2001, paras. 11–15.

[38] M. O'Boyle, 'Proof: European Court of Human Rights', *Max Planck Encyclopedia of International Procedural Law* (last updated August 2018); OHCHR. 'Complaints Procedures under the Human Rights Treaties'.

[39] *Ukraine and Netherlands* v. *Russia*, ECtHR, 8019/16, 43800/14 and 28525/20, Decision, 25 January 2023, paras. 449–451. M.-B. Dembour, 'Introduction: The Evidentiary System of the European Court of Human Rights in Critical Perspective', *European Convention on Human Rights Law Review* 4.4 (2023): 363–374, 367.

[40] J. G. Devaney, *Fact-Finding before the International Court of Justice* (Cambridge: Cambridge University Press, 2016), p. 161.

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(3) the evidentiary standard that the complainant must satisfy on the merits, based on consideration of all the available evidence.[41] This diversity of approaches at the international level mirrors the various interpretations found in national legal systems, where, for example, prima facie can refer either to a minimal standard of proof (meaning, evidence sufficient, at first sight, to avoid summary dismissal so that the case can proceed to the merits), or as a threshold which impacts the burden of proof (by requiring a decision on the merits in the complainant's favour unless the other party presents stronger evidence).[42]

Despite these differing explanations, there does appear to be a prevailing understanding of prima facie in international law. In line with its colloquial meaning, prima facie is most commonly understood as a low standard of proof – a requirement to present an initial claim that is cognizable, but that need not (yet) be convincing nor more persuasive than the other party's submissions. Case law from international tribunals often suggests that the prima facie threshold requires, first, that the complainant's submissions alone be examined (without attention given to the submissions of the other party) and, second, that the alleged treaty violation appear to be plausible at the preliminary stage.[43] Thus, the Inter-American Commission on Human Rights describes its assessment of whether a petitioner's claim is 'colorable' and therefore not manifestly groundless, for purposes of admissibility, as 'a prima facie analysis of the substance ("*caracterización*") of the allegations' 'to determine whether the petition establishes the legal grounds for a possible or potential violation of a right'.[44] The European Court of Human Rights most often equates the prima facie burden with a plausibility standard when deciding requests for interim measures.[45] The African Commission on Human and Peoples' Rights has described the prima facie threshold as requiring

[41] J. G. Devaney, *Fact-Finding before the International Court of Justice*, p. 161.

[42] See, e.g., G. N. Herlitz, 'The Meaning of the Term Prima Facie', *Louisiana Law Review* 55 (1994–1995): 391–408.

[43] R. Wolfrum and M. Möldner, 'International Courts and Tribunals, Evidence', *Max Planck Encyclopedia of International Law*, para. 79 (last updated August 2013). In addition to the examples given below, see WTO Panel Report, 'China: Countervailing and Anti-Dumping Duties on Gran Oriented Flat-Rolled Electrical Steel from the United States' (WT/DS414/R), 15 June 2012, para. 7.637.

[44] IACHR, 'Digest of the IACHR on Its Admissibility and Competence Criteria' (2020), paras. 2, 242.

[45] H. Keller and C. Marti, 'Interim Relief Compared: Use of Interim Measures by the UN Human Rights Committee and the European Court of Human Rights', *Heidelberg Journal of International Law* 73 (2013): 325–372, 334.

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'preliminary evidence indicative of a violation', implying that only the complainant's submissions are considered.[46] Its counterpart Court has specified that a prima facie finding of jurisdiction is based on a factual assessment 'at a glance'.[47] Moving away from the human rights field, the International Centre for Settlement of Investment Disputes (ICSID) tribunal has stated that its responsibility under a prima facie standard is to assess whether the 'the facts alleged *by the Claimants* . . . are capable of coming within . . . the Treaty's provisions, [and] the Claimants' allegations [are not] incoherent and conclusory'.[48] In these contexts, the tribunals may accept the complainant's factual allegations as true – unless manifestly untrue – and do not attempt to ascertain whether the complainant will be able to conclusively prove them to be true.[49] Thus, on the basis of the most persuasive discussions, I view the proper normative understanding of prima facie to be consistent with a plausibility standard of proof, assessed on the basis of the complainant's submissions alone.

The UN treaty bodies' interpretation of the substantiation requirement appears – at least at times – to be at odds with the prevailing understanding of the prima facie threshold. In light of the dominant legal interpretation of prima facie, and the preliminary procedural stage when the substantiation requirement applies, such an understanding is regrettable. Plausibility at first glance is all that should be required for the purpose of admissibility (even if the UNTBs are admittedly not alone in invoking the

[46] *Al-Asad* v. *Djibouti*, ACmHPR, 383/10, Decision, May 2014, para. 143. See also *Southern Africa Human Rights NGO Network and Others* v. *Tanzania*, ACmHPR, 333/06, Decision, May 2010, para. 51.

[47] *Michelot Yogogombaye* v. *Senegal*, ACtHPR, 001/2008, Judgment, 15 December 2009, para. 40.

[48] *Strabag SE et al.* v. *Poland*, ICSID Case No. ADHOC/15/1, Partial Award on Jurisdiction, 2 March 2020, para. 3.2. But see *SGS* v. *Paraguay*, ICSID Case No. ARB/07/29, Decision on Jurisdiction, 12 February 2010, paras. 47–58 (indicating prima facie is a higher standard).

[49] See, e.g., *Ramiro Ibarra Rubi* (United States of America), IACHR, 13.829, Admissibility and Merits, 31 December 2021, para. 43. See also C. Miles, 'Provisional Measures and the "New" Plausibility in the Jurisprudence of the International Court of Justice', *British Yearbook of International Law* 34 (2018), https://academic.oup.com/bybil/advance-article/doi/10.1093/bybil/bry011/5066610. But see M. Potestà and M. Sobat, 'Frivolous Claims in International Adjudication: A Study of ICSID Rule 41(5) and of Procedures of Other Courts and Tribunals to Dismiss Claims Summarily', *Journal of International Dispute Settlement* 3 (2012): 137–168, 155–158.

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prima facie threshold and then requiring that the allegation be convincing, rather than merely plausible).[50]

3.4 The First Distortion of Prima Facie: The Application of Too High a Standard

Turning from abstract descriptions of the substantiation requirement and its relationship to the prima facie standard, this section analyses how the UNTBs interpret and apply the evidentiary standard in the particular circumstances of actual admissibility decisions. UNTBs may find a complaint insufficiently substantiated for lack of detailed factual explanation, legal argument, or supporting documentation. The cases discussed indicate that treaty bodies sometimes require the complainant's claim to be convincing, however, suggesting a distortion of the prima facie standard. More specifically, rejections for insufficient substantiation tend to fall into one the following five categories: (1) the complainant provides evidence which is deemed not to sufficiently support their factual allegations; (2) the complainant fails to provide evidence pertaining to each element of the applicable legal standard or test; (3) the complainant provides inadequate proof of the individual harm the alleged violation caused them; (4) the complainant fails to provide official documentation – or, alternatively, the state has provided official documentation that contradicts their claim; and (5) the treaty body is unconvinced of the legal existence of the right allegedly violated. Each of these categories will be briefly described in turn, along with examples of how the application of seemingly straightforward grounds for rejection can result in an evidentiary standard that is higher than prima facie.

3.4.1 Unsupported Factual Allegations

First, when a complaint asserts a violation of the relevant treaty without describing the factual circumstances in detail or without providing

[50] See, e.g., *R.S.* v. *Denmark*, CAT/C/32/D/225/2003, 19 May 2004, paras. 6.2, 6.3; M.-B. Dembour, 'Beyond Reasonable Doubt at Its Worst – But Also at Its Potential Best: Dissecting Ireland v the United Kingdom's No-Torture Finding', *European Convention on Human Rights Law Review* 4.4 (2023): 375–425, Part 4.1.2; M. A. Jimoh, 'A Critique of the Seizure of the African Commission on Human and Peoples' Rights', *African Human Rights Law Journal* 22 (2022): 362–378; J. Gerards, 'Inadmissibility Decisions of the European Court of Human Rights: A Critique of the Lack of Reasoning', *Human Rights Law Review* 14 (2014): 148–158.

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evidentiary support for the factual claims, a treaty body will likely find a lack of substantiation.[51] However, UNTBs have rejected allegations for these reasons even when the only evidence available to the complainant is their own memory of events. For example, the HRC '[took] into account the absence of further information and supporting evidence' when rejecting an author's claim that he had not been provided with legal assistance after having been charged with a crime; his narrative recitation was considered insufficient to satisfy the substantiation requirement.[52] The Committee seemed to have wanted the author to prove a negative (that he was not informed of his right to counsel), and to provide documentary evidence of an oral exchange between himself and the authorities. Similarly, the HRC rejected a protester's allegations that Uzbek authorities had denied her legal counsel, not provided her with Russian translations of police reports, and held court hearings in her absence. This was on the grounds that she had 'provided no specific arguments', apparently indicating the HRC required additional details, possibly dates.[53] Given that the summary of the author's allegations was arguably quite detailed, one nonetheless wonders what exactly the Committee expected her to submit.

3.4.2 *Inadequately Supported Legal Claim*

Second, complainants must provide substantiation for each legal conclusion necessary to find a violation, for every claim within the complaint.[54] In one case, the HRC rejected an alleged violation of the right to freedom of assembly as insufficiently substantiated because the complainant was the only person who had participated in the protest and 'one-person protests normally do not fall under. . .the right of peaceful assembly', but are rather analysed under the right to freedom of expression.[55] In other instances, treaty bodies have drawn unfavourable legal conclusions when

[51] See, e.g., *Werenbeck* v. *Australia*, 27 March 1997, para. 9.6, in Report of the Human Rights Committee (Vol. II), A/52/40[VOL.II](SUPP), Annex VII, p. 256.

[52] See, e.g., *Tikhonov* v. *Kazakhstan*, CCPR/C/130/D/2551/2015, 5 November 2020, paras. 5.4, 9.4.

[53] *Kim* v. *Uzbekistan*, CCPR/C/122/D/2175/2012, 4 April 2018, para. 12.6.

[54] See, e.g., *al-Sayed and Mangisto* v. *Palestine*, CRPD/C/28/D/67/2019, paras. 7.8, 7.9 (rejecting some alleged violations where the complainant did not provide separate support specific to those claims).

[55] *Baydildayeva* v. *Kazakhstan*, CCPR/C/137/D/2545/2015, 10 March 2023, para. 7.4.

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they considered a complainant to have 'made no link between the alleged facts and the violation'.[56]

When a complainant asserts a legal claim that requires the UNTB to apply a specific test or a particular standard of proof on the merits, treaty bodies have sometimes interpreted the substantiation requirement to require evidentiary support that satisfies the elements of that particular legal claim, sometimes seeming to address the merits fully and directly.[57] For example, in cases involving allegedly unfair domestic proceedings, complainants must show that the domestic process was manifestly or clearly unfair or arbitrary, and treaty bodies have required specific – and convincing – evidence as to these points.[58] In such a case, the HRC seemed to demand *conclusive* evidence when it found the individual's claim unsubstantiated, stating that it '[could not] conclude, on the basis of the materials at its disposal, that in deciding the author's case the domestic courts [had] acted in a clearly arbitrary or manifestly erroneous manner'.[59] The individual alleged that the state had violated his privacy rights by, inter alia, using evidence against him obtained through covert surveillance. He alleged that this did not satisfy the requirements of international human rights law as it lacked safeguards and its parameters were secret or vague.[60] A faithful application of the prima facie standard would have assessed the plausibility of his claim (whether as to the conventionality of the surveillance or the domestic courts' conduct), rather than requiring convincing evidence that domestic courts clearly erred.

UNTBs have also sometimes conflated the substantiation requirement with the standard of proof on the merits in discrimination cases, when the complainant must (only) make a prima facie showing in order for the

[56] *M.C.* v. *Denmark*, CEDAW/C/62/D/56/2013, para. 9.4. See also *K.Y.M.* v. *Denmark*, CRC/C/77/D/3/2016, 25 January 2018, para. 10.

[57] See, e.g., *Alger* v. *Australia*, CCPR/C/120/D/2237/2013, 13 July 2017, para. 6.5; *A.M.* v. *Switzerland*, CAT/C/25/D/144/1999, 14 November 2000, para. 6.7; *H.S.V.* v. *Sweden*, CAT/C/32/D/229/2003, 12 May 2004, para. 8.3; *R.T.* v. *Switzerland*, CAT/C/35/D/242/2003, 24 November 2005, para. 6.2.

[58] See, e.g., *L.O. et al.* v. *Switzerland*, CEDAW/C/76/D/124/2018, 6 July 2020, para. 6.8; *G.I.* v. *Denmark*, CAT/C/61/D/625/2014, 10 August 2017, para. 8.4. See also *S* v. *Australia*, CCPR/C/137/D/2999/2017, 21 March 2023, joint opinion of Committee members Farid Ahmadov, Carlos Gómez Martínez, Laurence R. Helfer, Marcia V. J. Kran, Kobauyah Tchamdja Kpatcha and Teraya Koji (dissenting)), para. 4.

[59] *G.A.P.* v. *Romania*, CCPR/C/137/D/3662/2019, 23 March 2023, para. 8.5.

[60] *G.A.P.* (HRC), paras. 3.2, 3.3.

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state to be required to provide an acceptable explanation.[61] In a 2015 dissent concerning an allegedly discriminatory compensation regime, three HRC members called the majority to task for their apparent 'confusion [regarding the difference] between the absence of a prima facie violation and manifestly ill-founded nature of the claim'[62] when rejecting a complaint for insufficient substantiation. They wrote, '[w]hile the existence of a violation might not be clearly apparent at first sight, that does not mean that the lack of a violation itself is clear or that the evidence provided by the author to substantiate his claim is so unconvincing that the claim must be declared manifestly ill-founded. However, in this case, the Committee is basing itself on this prima facie assessment to put a stop to the proceedings.'[63] These objections imply that in this particular case, the HRC majority interpreted the substantiation requirement to mean the alleged violation must be 'clearly apparent' rather than plausible, and required the complainant to meet the standard of proof applicable to the merits of the claim.[64] Expecting the complainant to conclusively prove the merits of the claim in order to survive admissibility appears to conflate these two procedural phases and their evidentiary standards.

3.4.3 *No Demonstration of Specific Personal Disadvantage*

Third, a treaty body may find a complaint insufficiently substantiated if the author does not demonstrate how they have been affected individually. For example, when a complainant alleged the state violated its positive obligation to prosecute hate speech, but 'failed to establish that [public officials' Islamophobic] statements had specific consequences for him or that the specific consequences of the statements were imminent and would personally affect him', the HRC declared his complaint inadmissible for lack of substantiation.[65] The HRC also found his

[61] Non-refoulement cases present a similar problem. See CAT, General Comment No. 4 on the implementation of Article 3 of the Convention in the context of Article 22 (CAT/C/GC/4), 4 September 2018, para. 31.

[62] *X* v. *Czech Republic*, CCPR/C/113/D/1961/2010, 2 April 2015, partly dissenting opinion of Olivier de Frouville, Mauro Politi and Víctor Manuel Rodríguez-Rescia, para. 4.

[63] *X* v. *Czech Republic* (HRC).

[64] Interestingly, the HRC's Rules refer only to a requirement that the complaint be sufficiently substantiated, but the dissenting Committee members refer to 'not manifestly unfounded' as the relevant standard.

[65] *A.W.P.* (HRC), paras. 6.4, 6.5. See also *V.B.* v. *Czech Republic*, CCPR/C/108/D/1809/2008, 24 July 2013, para. 7.4.

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claim regarding lack of an effective remedy insufficiently substantiated because he 'has not been able to prove that he was a direct victim of such violations'.[66]

Some cases in this category illustrate the difficulty of distinguishing between general conditions and individualised harm.[67] In a case concerning conditions in a labour camp in Turkmenistan, which the HRC had previously found to be incompatible with the ICCPR, member Hélène Tigroudja dissented from the Committee's inadmissibility determination, pointing out that the Committee already knew of the conditions in this particular camp and the difficulties for detainees to present complaints to authorities.[68] She asserted: 'It is therefore reasonable to infer from this previously established jurisprudence of the Committee that the objective conditions of detention in the labour camp are incompatible with the Covenant,' making it 'odd to require the authors to demonstrate having been "personally" subjected to such conditions, given that this extreme and unhealthy environment is imposed on all the detainees'.[69] Even leaving aside the HRC's own prior findings, one could argue that the detainees' claim that the camp conditions violated their rights would easily pass a prima facie or plausibility standard based on their individual accounts of beatings in addition to their description of the general conditions documented in independent reports.[70] Yet, the HRC referred to 'the absence of detailed explanations' in rejecting the claim as insufficiently substantiated.[71]

3.4.4 *Supportive Official Documentation Not Provided*

Fourth, when an event would ordinarily generate official documentation, treaty bodies appear to expect the applicant to provide this documentation in order to satisfy the substantiation requirement. For example, when a complainant alleged he had been convicted twice for the same crime, but 'failed to provide any documents, such as copies of arrest warrants, court decisions or imprisonment records', the HRC found his

[66] *A.W.P.* (HRC), para. 6.5.
[67] *A.W.P.* (HRC), individual opinion by Committee members Mr. Yuval Shany, Mr. Fabian Omar Salvioli and Mr. Victor Manuel Rodríguez-Rescia (concurring).
[68] *Nazarov* v. *Turkmenistan*, CCPR/C/126/D/2302/2013, 25 July 2019, dissenting opinion of Hélène Tigroudja.
[69] *Nazarov* (HRC).
[70] *Nazarov* (HRC), paras. 3.3, 3.4, 3.5.
[71] *Nazarov* (HRC), para. 6.4.

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allegation insufficiently substantiated.[72] This practice is related to treaty bodies' general view that 'official documentation' provided by the state should be treated as credible,[73] and their deference to national authorities' fact-finding.[74] In an interesting contrast, though, treaty bodies typically do not appear to take official notice of relevant documents that are publicly available or generated by the UN treaty bodies themselves, unless those are submitted by the parties themselves.[75] Relatedly, where a state contests the complainant's allegations, the treaty body may not consider a complaint sufficiently substantiated unless the complainant can provide relevant official documentation. For example, in a case where a migrant alleged he had been subjected to inhumane treatment by Italian immigration authorities, but Italy claimed to have no record of his detention, the CAT did not accept the complainant's allegations alone. CAT required that he present 'documentary evidence of his travel, his stay at the detention facility in Lampedusa or on a boat in Palermo, or his return to Tunisia', or that he satisfactorily explain why he could not produce that evidence.[76] This approach diverges from the prevailing understanding of prima facie by requiring that the complainant's allegations be convincing, rather than merely plausible or credible.

3.4.5 *Unclear Existence of the Claimed Right*

Fifth, in arguably more legally nuanced or novel cases, treaty bodies have sometimes rejected complaints as insufficiently substantiated when the committee members find the legal argument (rather than the factual allegations) to be unconvincing.[77] For example, the CEDAW Committee

[72] *Nazarov* (HRC), para. 6.5.

[73] See, e.g., *D.K.N.* v. *Spain*, CRC/C/80/D/15/2017, 1 February 2019, para. 11.5. See also *Y.M.* v. *Spain*, CRC/C/78/D/8/2016, 31 May 2018, para. 8.2.

[74] *E.W.* v. *Denmark*, CEDAW/C/66/D/54/2013, 28 February 2017, paras. 11.2–12.

[75] See, e.g., *S* v. *Australia*, joint opinion (dissenting), para. 4. In contrast, the CAT does sometimes take notice of material not submitted by the parties, at least on the merits. See *J.L.L.* v. *Switzerland*, CAT/C/48/D/364/2008, 18 May 2012, para. 8.5; *Aemei and His Family* v. *Switzerland*, CAT/C/18/D/34/1995, 9 May 1997, para. 9.9. See also B. Çalı, C. Costello and S. Cunningham, 'Hard Protection through Soft Courts?: Non-refoulement before the United Nations Treaty Bodies', *German Law Journal* 21 (2020): 355–384, 378–379 (discussing CAT's varying approach to fact-finding and review of the state's findings of fact).

[76] *B.R.* v. *Italy*, CAT/C/57/D/598/2014, 29 April 2016, para. 6.2. See also *T.N.* v. *Denmark*, CEDAW/C/59/D/37/2012, 3 November 2014, para. 12.7.

[77] See, e.g., *M.S.* v. *Philippines*, CEDAW/C/58/D/30/2011, 16 July 2014, para. 6.5. See also *A.P.* v. *Russia*, CCPR/C/107/D/1857/2008, 28 March 2013; *J.A.B.S.* v. *Costa Rica*, CRC/C/

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rejected, on substantiation grounds, a woman's complaint that the Philippines violated its CEDAW obligations when the Supreme Court repeatedly relied on discriminatory gender stereotypes in deciding her sexual harassment complaint.[78] The Committee noted that 'even if it could be argued that some aspects of gender-based stereotypes may appear to be indicated in the Court's decision, they do not suffice, per se, to demonstrate that they have negatively affected the Court's assessment of the facts and the outcome of the trial, or to corroborate the author's claims of a violation of ... the Convention for purposes of admissibility'.[79] CEDAW Committee member Patricia Schulz wrote in dissent: 'for admissibility purposes, the author has brought sufficient elements to substantiate her claim' based on the text of the judgment and other information, which the state failed to address in its submissions.[80] In declaring the author's claim unsubstantiated, the CEDAW Committee majority seemed to reject the argument that judicial reliance on gender stereotypes, in and of itself, could constitute a violation of CEDAW, rather than concluding that the allegations were unclear or unsupported.

Similarly, in a case concerning an alleged violation of the right of unconditional access to shelter, the HRC found the claim unsubstantiated because the complainant could have chosen to stay in a shelter if he had cooperated in his own deportation. Hélène Tigroudja again dissented, arguing that the Committee 'ignored the regional and universal criticisms' of the shelter available to irregular migrants in the country and failed to explain its conclusion concerning what she considered to be a clear and substantiated 'breach of the enjoyment and exercise of a right that is supposed to be absolute'.[81]

In another instance, the HRC rejected a challenge to Moldova's restrictions on foreign nationals' practice of law, ostensibly because the complainant had failed 'to substantiate, for purposes of admissibility, that the differentiation in treatment based on nationality was not based on

74/D/5/2016, 17 January 2017, para. 4.2. Cf. *Pérez Guartambel* v. *Ecuador*, CERD/C/100/D/61/2017, 4 December 2019, para. 6.7.

[78] *M.S.* (CEDAW) .

[79] *M.S.* (CEDAW), para. 6.5.

[80] *M.S.* (CEDAW), individual opinion of Committee member Patricia Shulz (dissenting), para. 2.

[81] *A.D.-N.* v. *Netherlands*, CCPR/C/137/D/2894/2016, 22 March 2023, individual opinion of Committee member Hélène Tigroudja (dissenting)).

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reasonable and objective criteria and in pursuit of a legitimate aim'.[82] However, the complainant had presented arguments as to the illegitimacy of the state's aim and, rather than addressing these, the HRC grounded its decision in the complainant's failure to factually demonstrate that he could not overcome the restrictions by meeting the additional requirements imposed on non-nationals. In each of these examples, the UNTB appeared to be questioning the legal significance of the factual allegations, rather than finding those allegations to be implausible or lacking evidentiary support. In addition to directly and decisively engaging in the legal merits of the claim in their admissibility analysis, in these cases UNTBs required the complainant's (legal and factual) claim to be persuasive at this preliminary procedural stage.

While the above review suggests that treaty bodies have identified some seemingly straightforward criteria for assessing substantiation, these same criteria can be invoked to set a high evidentiary bar. Sometimes, beyond requiring detailed allegations, UNTBs require a reliable and convincing account of the facts and wholly persuasive legal arguments. They sometimes expect documentary evidence to support the complainant's allegation, and will find a lack of substantiation in its absence. In these ways, UNTBs have demanded more than a colourable claim or plausible allegation, diverging from the prima facie standard.

3.5 The Second Distortion of Prima Facie: UNTBs' Premature Regard for State Submissions

In addition to sometimes requiring that complainants present claims that are convincing on their own, UNTBs have often raised the evidentiary bar even higher by critically assessing those claims, including in light of the state's submissions. For purposes of substantiation, UNTBs do not generally accept complainants' allegations as true even when the state has not refuted them and they are not implausible.[83] Going further, while UNTBs will accept some inconsistencies in the complainant's allegations or evidence,[84] they often require the complainant to explain discrepancies that arise out of the state's presentation of a different version of events or contradicting evidence, already at the admissibility

[82] *S.T.* v. *Moldova*, CCPR/C/135/D/3050/2017, 24 July 2017, para. 6.7.
[83] *Nazarov* (HRC), para. 6.4.
[84] *N.P.* v. *Australia*, CAT/C/22/D/106/1998, 6 May 1999, para. 6.6.

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stage.[85] For example, in the covert surveillance case mentioned in Section 3.4, the HRC seemed to accept the state's assertion that the surveillance regime satisfied the treaty requirements, therefore expecting the complainant to present a more convincing rebuttal.[86] This is all rather incongruent with what prima facie is classically understood to entail. As explained in Section 3.3, the prima facie threshold is defined as a preliminary assessment of the plausibility of the allegations based on the complainants' submissions alone.

In contrast, treaty bodies routinely consider *all* the information submitted by *both* parties when evaluating substantiation for purposes of admissibility. This is not following any explicit legal prescription, but may be the unintended consequence of three types of procedural rules and practices. First, some treaty body rules require that the state's views on admissibility be considered before a treaty body can declare a complaint admissible (as opposed to inadmissible),[87] or allow treaty bodies to revoke an admissibility decision made before receiving the state's submissions.[88] Second, some rules require treaty bodies to consider 'all the information before [them]' when deciding on the merits.[89] Despite the reference to the merits stage, treaty bodies have sometimes interpreted this as an obligation to consider both parties' submissions even when assessing admissibility, and to do so with regard to each admissibility criterion.[90] For example, in 2013, the HRC asserted that the substantiation requirement means 'authors must provide sufficiently detailed information to allow the Committee to make a well-founded decision

[85] *Tikhonov* v. *Kazakhstan*, CCPR/C/130/D/2551/2015, para. 9.4. See also *Loor Chila* v. *Spain*, E/C.12/70/D/102/2019, para. 6.6; *J.S.* v. *Netherlands*, CCPR/C/137/D/3210/2018, 22 March 2023, para. 7.6.

[86] *G.A.P.* v. *Romania* (HRC), paras. 8.5, 6.7.

[87] For example, the CAT's Rule 115 (8) states, 'A complaint may not be declared admissible unless the State party concerned has received its text and has been given an opportunity to furnish information or observations . . .'

[88] CEDAW Committee, Rules of Procedure, Rule 71 (2).

[89] See, e.g., CEDAW Committee, Rule 72 (1); HRC, Rule 102 (1).

[90] Compare Secretary-General, Comparative Summary of Existing Communications and Inquiry Procedures and Practices under International Human Rights Instruments and under the Charter of the United Nations (E/CN.6/1997/4), 21 January 1997 with *A.P.* v. *Russia* (HRC), para. 10.7 and *N.U.* v. *Finland*, CAT /C/76/D/1044/2020, 21 April 2023, para. 7.3. See also *S.S.R.* v. *Spain*, E/C.12/66/D/51/2018, 11 October 2019, para. 8; *T.N.* v. *Denmark*, CEDAW/C/59/D/37/2012, para. 12.8; *Goekce* v. *Austria*, CEDAW/C/39/D/5/2005, 6 August 2007, para. 11.1.

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on the merits of the claim'[91] Third, treaty bodies increasingly decide on admissibility and merits simultaneously, in the interest of efficiency.[92]

Consequently, treaty bodies' practice is to give equal consideration to the state's arguments and evidence when deciding substantiation, a practice that is difficult to reconcile with their obligation to ascertain whether 'the *individual claims*, in a manner sufficiently substantiated, to be a victim of a violation'.[93] In other words, by considering the state's arguments and evidence at this stage, the treaty body is no longer simply determining whether the individual has provided support for their allegations; instead, it ventures into assessing the *relative* credibility and persuasiveness of their evidence. This approach risks improperly simplifying the analysis treaty bodies would have undertaken if only they had weighed the evidence at the merits stage, with the possible result of prematurely rejecting a complaint that could have been successful on the merits. It also may entail a potentially unfair allocation of the burden of proof, as we shall now see.

3.6 The Third Distortion of Prima Facie: Inconsistent Allocation of Burden of Proof

As observed above, the substantiation requirement in practice often entails more than minimal support for a claim. This is problematic not only as a possibly erroneous interpretation of the procedural requirements, but also as a potentially unfair allocation of the burden of proof. There are, however, cases in which treaty bodies may excuse the complainant from having to substantiate a claim for purposes of admissibility to the generally expected (if arguably too high) degree. UNTBs have come closer to applying a prima facie standard in a handful of the many cases that fall into the following six categories: (1) the complainant lacks legal representation; (2) the complainant is in detention; (3) relevant documentation is in the state's sole possession or control; (4) the complainant faces difficulty obtaining documentation because of prevailing conditions; (5) the complainant is suffering from trauma related to the

[91] *A.P.* v. *Russia* (HRC), para. 10.7. See also *S.O.* v. *Canada*, CEDAW/C/59/D/49/2013, 27 October 2014, para. 9.5. Cf. Report of the Human Rights Committee, Volume I (A767/40), 2012, para. 137: '[A]lthough an author does not need to prove the alleged violation at the admissibility stage, he or she must submit sufficient material substantiating the allegation for purposes of admissibility'.

[92] See, e.g., OHCHR, Individual Complaint Procedures, Fact Sheet No.7/Rev.2 (2013), p. 10.

[93] See, e.g., HRC, Rules of Procedure, Rule 99 (b).

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alleged rights violations; and (6) the merits and admissibility of the claim are closely linked. Each situation will be reviewed in turn, with a view to identifying what these exceptions may reveal about the general rule. While these exceptional decisions hint at a path toward a lower evidentiary standard, they also underscore the current lack of an approach that is consistent and that aligns with the accepted understanding of prima facie. More significantly, some of these decisions indicate that (beyond imposing too high a standard of proof and prematurely assessing the state's submissions) UNTBs are sometimes expecting complainants to provide arguments or evidence – at admissibility – to pre-emptively counter the state's possible defences on the merits.

3.6.1 *Complainant Lacking Legal Representation*

Treaty bodies have suggested that they expect more substantiation from a complainant who is represented by counsel than from one who is not.[94] For example, the CESCR has noted that it 'understands that communications are sometimes submitted by persons who are not represented by lawyers or jurists trained in international human rights law. The CESCR must therefore, in accordance with the victim-centred approach, refrain from imposing any unnecessary formalities in order to avoid creating obstacles to the submission of communications for its consideration.'[95] By contrast, when a complainant is represented by counsel, the Committee may be less forgiving of a lack of substantiation, including because 'legal representatives have a procedural due diligence obligation in the submission and processing of communications before the Committee'.[96] The CEDAW Committee has similarly indicated that it expects greater clarity and responsiveness from complainants when they are represented by counsel.[97] This is notable because the majority of complainants before UNTBs now have legal representation.[98] Accordingly, UNTBs' consideration

[94] See, e.g., *Loor Chila* v. *Spain*, E/C.12/70/D/102/2019, para. 6.6 ('although the author is represented by counsel ... the discrepancy as to her income has not been explained'); *H.D.* v. *Denmark*, CEDAW/C/70/D/76/2014, 9 July 2018, para. 7.4.

[95] *S.S.R.* (CESCR), para. 6.4. *See also S.C. and G.P.* v. *Italy*, E/C.12/65/D/22/2017, 7 March 2019, para. 6.15.

[96] *S.S.R.* (CESCR), para. 6.4; *Acosta Martínez and Amaghnouge* v. *Spain*, E/C.12/73/D/213/2021, 27 February 2023, para. 6.2.

[97] See, e.g., *H.D.* (CEDAW), para. 7.4.

[98] For example, in cases before the CAT, authors had legal representation in 88 out of 107 decisions (82%) published between 2010 and 2015. This research was conducted by

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of whether an individual has legal representation may more often serve to raise the standard of proof, rather than lower it.

3.6.2 *Complainant in Detention*

If a complainant is in detention at the time of presenting their complaint, the treaty body may be persuaded to lighten the burden of proof. For example, the HRC has noted 'the difficulties that living in detention entails' and assessed substantiation in view of the author's 'individual circumstances'.[99] Nonetheless, UNTBs have not consistently adopted this approach in complaints presented by individuals in detention, nor have they uniformly embraced consideration of individual circumstances, more broadly, in assessing substantiation.

3.6.3 *State Controls Access to Relevant Documentation*

When a complainant's ability to substantiate their allegations depends on information or documentation in the state's sole control or possession, a treaty body may admit the complaint so long as the complainant's claim is credible in light of the limited information available. The HRC has explained, '[i]n cases where the allegations are corroborated by credible evidence submitted by the author and where further clarification depends on information exclusively in the hands of the State party, the Committee may consider the author's allegations substantiated in the absence of satisfactory evidence or explanations to the contrary presented by the State party'.[100] The CRC has similarly noted in another admissibility decision that 'the burden of proof cannot rest solely on the author of the communication, especially given that the author and the State party do not always have equal access to the evidence and that frequently the State party alone has access to the relevant information'.[101]

Nonetheless, while treaty bodies have sporadically referenced states' duty to participate in the proceedings and furnish relevant information,

the Yale Lowenstein Human Rights Project and International Justice Resource Center in 2015 (on file with author). Review of the 35 views published by the HRC in 2022 reveals that the authors had legal representation in 24 cases (69%). See OHCHR, Jurisprudence Database (search conducted 18 January 2023).

[99] *F.K.A.G. et al.* v. *Australia*, CCPR/C/108/D/2094/2011, 26 July 2013, para. 8.7

[100] *Turaeva and Kodirov* v. *Uzbekistan*, CCPR/C/97/D/1284/2004, 20 October 2009, para. 8.4. See also Çalı et alia, 'Hard Protection through Soft Courts?', p. 376.

[101] *D.D.* v. *Spain*, CRC/C/80/D/4/2016, 1 February 2019, para. 13.3.

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there is not a consistent, clear expectation that a state must provide the evidence that it has an obligation to generate; at least, there are no automatic procedural repercussions for its failure to do so.[102] The complainant will not always be excused from sufficiently substantiating their claims even when it is the state that has possession over relevant documentation or an ex officio obligation to collect it. Moreover, by allowing for the possibility that a complaint will be deemed insufficiently substantiated if the state presents contrary evidence or explanations, UNTBs again make clear that the complainant's allegations alone may be inadequate to satisfy the substantiation requirement even when 'corroborated by credible evidence'.[103]

3.6.4 *Evidentiary Inconsistencies Related to the Alleged Violation's Impact*

Treaty bodies, and particularly the CAT, may demand less substantiation from complainants who are suffering from trauma related to the alleged violations.[104] For example, the CAT has '[taken] note of the authors' assertion that [factual] inconsistencies were due in part to the trauma that they had endured' and '[concluded] that, for the purposes of admissibility, the authors have sufficiently substantiated their allegations'.[105] UNTB decisions do not, however, illustrate a broader pattern of considering the effects of trauma on fulfilment of the substantiation requirement.

3.6.5 *Country Conditions Impeding Complainant's Access to Documentation*

Similarly, when country conditions complicate a complainant's access to supporting documentation, a treaty body may lower the substantiation standard. For example, the CEDAW Committee 'consider[ed] that, even if many of the author's statements were contradictory, the threshold for

[102] Cf. *S.R.* v. *Netherlands*, CAT/C/71/D/834/2017, 22 July 2021, para. 7.5. See also K. McCall-Smith, 'Reversing the Burden of Proof in Response to States' Non-Participation: the Human Rights Committee's Evolving Case Law on Torture', Chapter 6, this volume.

[103] *Turaeva and Kodirov* (HRC), para. 8.4.

[104] See, e.g., *Alan* v. *Switzerland*, CAT/C/16/D/21/1995, 8 May 1996, para. 11.3; *J.K.* v. *Canada*, CAT/C/56/D/562/2013, 23 November 2015, para. 10.4. See also *E.T.B.* v. *Denmark*, CAT/C/28/D/146/1999, 30 April 2002, paras. 5.3, 6, 10, 11.

[105] *F. and G.* v. *Denmark*, CCPR/C/119/D/2530/2015, 16 March 2017, para. 7.5.

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admissibility should not be set too high in view of the situation in the author's country, which makes it difficult, if not impossible, for a woman to obtain documentation attesting to gender-based violence from the police, courts or medical facilities'.[106] Likewise, the CRC considered the complainants' relationship to the alleged victims sufficiently substantiated, in part, due to 'the difficulty in obtaining [identity documents and family record books] given the children's current situation [in refugee camps in a conflict zone]'.[107] These kinds of cases combine challenges related to both individual circumstances and to the accessibility of information that is, or should be, in a state's possession. As in each of those categories, UNTB decisions in this combined category are also limited and do not demonstrate a consistent practice of requiring the complainant to merely make a plausible claim for purposes of substantiation.

3.6.6 *Closely Linked Merits and Admissibility*

When the questions of substantiation and determination of the merits are very closely linked, the treaty body will sometimes defer scrutiny of the facts and admit the complaint.[108] This has occurred when the complaint raises alleged due process or judicial protection violations. For instance, when a woman alleged that domestic courts failed to appropriately consider her claim of gender-based employment discrimination, the CEDAW Committee concluded that 'the issues of admissibility of the author's claims … and the level of their substantiation in the present communication are so closely linked to the merits of the case that it would be more appropriate to determine that at the merits stage of the proceedings' and, therefore, declared the complaint sufficiently substantiated and admissible.[109] Essentially, when the treaty body must decide whether the alleged facts constitute a possible treaty violation, and the answer is unclear or depends on a nuanced legal analysis, the treaty body may decide to resolve that question on the merits.

[106] *A.M.* v. *Denmark*, CEDAW/C/67/D/77/2014, 21 July 2017, para. 7.5. See also *Abdi-Osman* v. *Switzerland*, CEDAW/C/76/D/122/2017, 6 July 2020, para. 6.7.
[107] *F.B. et al.* v. *France*, CRC/C/86/D/R.77/2019, 4 February 2021, para. 8.4.
[108] See, e.g., *R.K.B.* v. *Turkey*, CEDAW/C/51/D/28/2010, 24 February 2012, para. 7.8. See Chapter 4, this volume.
[109] *R.K.B.* (CEDAW), para. 7.8. See also, e.g., *W.K.* v. *Canada*, CCPR/C/122/D/2292/2013, 27 March 2018, para. 9.5.

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One may observe, however, that other cases illustrate a contrary practice.[110] For example, where a complainant presented information showing that national law and political realities made it very difficult for him to meet the requirements for seeking election to public office, the HRC rejected his complaint as unsubstantiated rather than proceeding to the merits. HRC members Yuval Shany and Konstantine Vardzelashvili argued that the individual's detailed allegation of an interference with the right to political participation satisfied the substantiation requirement. They found that the majority erroneously expected the complainant to prove the unreasonableness of the law rather than properly requiring the state to 'justify the restrictions found in the legal framework of the federal law' once the complainant demonstrated their prima facie incompatibility with the treaty.[111] Similarly, in *S.T.* v. *Moldova*, the HRC found the claim of discrimination based on nationality unsubstantiated because the complainant did not prove the difference in treatment was unreasonable, rather than requiring the state, on the merits, to prove that it was reasonable.[112] This inadmissibility determination stands in contrast to the HRC's merits decisions, indicating that it will find a violation of the right to non-discrimination if the state fails to meet its 'heavy burden ... to explain the reason for the differentiation' shown by the complainant.[113]

These six scenarios indicate some overlap in the reasons why a treaty body may sometimes come closer to applying a prima facie standard when assessing substantiation, particularly where the power differential between the complainant and the state is exacerbated or the state is responsible for the difficulties the complainant is experiencing in obtaining supporting documentation. Nonetheless, this small body of exceptional decisions also serves to highlight the stringency of the evidentiary standard more often imposed, including in factually similar cases. Moreover, it bears repeating that treaty bodies have not established consistent policies or lines of jurisprudence addressing the standard or burden of proof at admissibility. Outside these six scenarios (or in cases when a UNTB does not lighten the evidentiary burden even though one of these exceptions could apply), complainants must often do more than

[110] See, e.g., Chapter 7, this volume.

[111] *A.P.* (HRC), individual opinion by Committee members Mr. Yuval Shany and Mr. Konstantine Vardzelashvili (dissenting).

[112] *S.T.* v. *Moldova*, CCPR/C/135/D/3050/2017, para. 6.7.

[113] See, e.g., *Müller and Engelhard* v. *Namibia*, CCPR/C/74/D/919/2000, 26 March 2002, para. 6.7. See also, e.g., *Kavanagh* v. *Ireland*, CCRP/C/71/819/1998, 4 April 2001, para. 10.3.

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present a plausible claim supported by credible evidence. They must make out a claim that is *more* probable than the state's as to the existence of an alleged violation or, in some cases, pre-emptively counter the state's possible defence that a restriction was reasonable. In other instances, UNTBs may declare a complaint inadmissible because the complainant does not produce evidence that is within the state's control or possession. The individual's inferior access to evidence may not be considered reason enough to require only a plausible claim. The UNTBs could decide that conflicting versions of events or the complainant's lack of access to state-held evidence means there is enough to take up the merits, but they do not always do so. While UNTBs have frequently repeated the principle that the complainant should not bear the burden of proof alone, especially when the state is in possession or control of relevant information, they do not consistently apply this principle in practice.

3.7 Implications and Conclusion

This chapter has reviewed the origins, description and application of the requirement that individual complainants sufficiently substantiate their complaints for purposes of admissibility. As we have seen, the requirement originates from the HRC's practice, rather than treaty text. The term *sufficiently substantiated* is not found in other human rights systems and, perhaps because of this, has developed in a sui generis manner, despite its sporadic conflation with the terms *prima facie* and *not manifestly ill-founded*, which are used by other international tribunals. While treaty body rules of procedure have formalised the substantiation requirement – for all but the CERD – its contours remain blurry in practice. Several other takeaways are worth emphasising.

First, the variations in both the description of the substantiation requirement and its application in practice present significant challenges to a coherent explanation of this standard and, therefore, to access to justice. While at least five common grounds of insufficient substantiation can be identified, treaty bodies themselves have never specified *any* categories or common grounds of unfoundedness. Moreover, some of these categories and corresponding analysis are premised on somewhat subjective and vague concepts, such as what constitutes *specific* detail, leaving room for stringent interpretation. Most problematically, the treaty bodies have sometimes rejected a claim as unsubstantiated when they are not fully convinced of the legal existence of the asserted right, which appears to go beyond the question of whether the complaint

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provides sufficient information to allow a determination of its admissibility or, even, discussion of its merits. Similarly, while treaty bodies have sometimes expressed a willingness to lighten the evidentiary burden based on the nature of the alleged violation or the circumstances of the complainant, they do not do so in a consistent manner. Complainants have little clear guidance to help them understand the evidentiary requirements or to anticipate how a treaty body will assess the substantiation of their complaint.

Second, and relatedly, equating the substantiation requirement with a prima facie threshold is likely to be unhelpful to complainants (and to treaty body members), given the lack of a universally shared understanding of this term among UNTB members. As Stirner writes, '[the Human Rights] Committee's reference to a *prima-facie* case in the admissibility context is unnecessarily confusing. The reference to a *prima-facie* case does not provide any additional insights as to the requirements to meet the 'substantiation' threshold'.[114] In practice, UNTBs typically refer to a prima facie standard 'without indicating the procedural relevance of the *prima-facie* case or why it is referred to in this case'.[115] Fundamentally, the variations in UNTB decisions concerning substantiation illustrate that they are not applying the commonly accepted definition of this term, as requiring that the claim be plausible, without regard for the other party's submissions.

To improve access to justice before the treaty bodies, and in addition to other recommendations made in Chapter 11, the treaty bodies could: (1) adopt clear, accessible, shared definitions of the terms 'sufficiently substantiated', 'not manifestly unfounded' and 'not manifestly ill-founded'; (2) interpret the substantiation requirement to impose an evidentiary threshold that is considerably lower than the standard of proof that must be satisfied on the merits, and consistent with a plausibility standard; (3) synthesise their practice with regard to the kind of documentation required in order for a complaint to be considered sufficiently substantiated for purposes of registration and admissibility; (4) reconsider the practice of evaluating both parties' submissions on admissibility and merits when deciding on substantiation and revise their rules of procedure as necessary; and (5) remove references to a prima facie standard in OHCHR guidance and similar materials, unless accompanied by a clear definition of what this term is understood to mean.

[114] Stirner, *Procedural Law Governing Facts and Evidence*, p. 406.
[115] Stirner, *Procedural Law Governing Facts and Evidence*, p. 404.

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The UNTBs play a vital role in interpreting international human rights law, guiding states in its implementation and ensuring that individuals have access to an independent and respected process for the determination and vindication of their rights. Treaty bodies can improve both the appearance and the reality of access to justice at the UN level by clarifying the evidentiary requirements relevant to the admissibility of individual complaints. Doing so may bring an added benefit of increased efficiency by reducing the time spent on complaints that cannot be, or have not been, adequately substantiated.

Select Bibliography

Alston, P., *Effective Implementation of International Instruments on Human Rights, Including Reporting Obligations under International Instruments on Human Rights* (A/ 44/ 668), 8 November 1989.

Çalı, B., Costello, C. and Cunningham, S., 'Hard Protection through Soft Courts? Non-refoulement before the United Nations Treaty Bodies', *German Law Journal* 21 (2020): 355–384.

Jelić, I. and Mührel, L., 'The Human Rights Committee: Challenges and Prospects for Enhanced Effectiveness and Integration', *Journal of Human Rights Practice* 14 (2022): 17–43.

OHCHR, *Individual Complaint Procedures under the United Nations Human Rights Treaties*, Fact Sheet No.7/Rev.2 (2013).

Secretary-General, *Comparative Summary of Existing Communications and Inquiry Procedures and Practices under International Human Rights Instruments and under the Charter of the United Nations* (E/CN.6/1997/4), 21 January 1997.

Shany, Y., *Questions of Jurisdiction and Admissibility before International Courts* (Cambridge: Cambridge University Press, 2016).

Stirner, T., *The Procedural Law Governing Facts and Evidence in International Human Rights Proceedings: Developing a Contextualized Approach to Address Recurring Problems in the Context of Facts and Evidence* (Leiden: Koninklijke Brill NV, 2021).

Young, K. A., *The Law and Process of the U.N. Human Rights Committee* (Ardsley: Transnational Publishers, 2002).

Viljoen, F., 'Fact-Finding by UN Human Rights Complaints Bodies: Analysis and Suggested Reforms', in A. von Bogdandy and R. Wolfrum (eds.), *Max Planck Yearbook of United Nations Law*, Volume 8 (2004): 49–100.

Zwart, T., *The Admissibility of Human Rights Petitions: The Case Law of the European Commission of Human Rights and the Human Rights Committee* (Dordrecht: Martinus Nijhoff Publishers, 1994).

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