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Jan Lhotský

Human Rights Treaty Body Review 2020

Towards an Integrated Treaty Body System

EMA, The European Master's Programme in Human Rights and Democratisation

EIUC
European Inter-University Centre for Human Rights and Democratisation

JAN LHOTSKÝ

HUMAN RIGHTS TREATY BODY REVIEW 2020. TOWARDS AN INTEGRATED TREATY BODY SYSTEM

FOREWORD

The European Master's Degree in Human Rights and Democratisation (EMA) is a one-year intensive programme launched in 1997 as a joint initiative of universities in all EU Member States with support from the European Commission. Based on an action- and policy-oriented approach to learning, it combines legal, political, historical, anthropological, and philosophical perspectives on the study of human rights and democracy with targeted skill-building activities. The aim from the outset was to prepare young professionals to respond to the requirements and challenges of work in international organisations, field operations, governmental and non-governmental bodies, and academia. As a measure of its success, EMA has served as a model of inspiration for the establishment of six other EU-sponsored regional master's programmes in the area of human rights and democratisation in different parts of the world. These programmes cooperate closely in the framework of the Global Campus of Human Rights, which is coordinated and managed by the European Inter-University Centre for Human Rights and Democratisation (EIUC), based in Venice, Italy.

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Like past editions, the selected theses demonstrate the richness and diversity of the EMA programme and the outstanding quality of the work performed by its students. On behalf of the Governing Bodies of EIUC and EMA and of all participating universities, we congratulate the authors.

Prof. Manfred NOWAK
EIUC Secretary General

Prof. Ria WOLLESWINKEL
EMA Chairperson

Prof. George ULRICH
EMA Programme Director

This publication includes the thesis *Human Rights Treaty Body Review 2020. Towards an Integrated Treaty Body System* by Jan Lhotský and supervised by Gerd Oberleitner, University of Graz.

BIOGRAPHY

Jan is a lawyer who worked in academia, a law firm and the European External Action Service in Brussels. He holds a PhD in international law and after the E.MA programme he worked as a Visiting Professional at the International Criminal Court in The Hague. Within international law he focusses mainly on human rights and international criminal justice.

ABSTRACT

The thesis contributes to the debate on the efficient functioning of the human rights mechanisms at the universal level that were established by different human rights treaties – the treaty bodies. The system suffers from a number of deficiencies and in fact has been in need of a reform for the last thirty years. In 2014, several measures aimed at improving its functioning were adopted by the UN General Assembly. Within the thesis the major long-term problems of the treaty body system are identified. Furthermore, the extent to which the measures adopted in 2014 addressed the real problems of the system is assessed. It is concluded that out of nine issues, only one was properly addressed. As the General Assembly expects a review of the system in 2020, the thesis argues for a genuine reform of the system. It suggests that an Integrated Treaty Body System (ITBS) should be established that would not require an amendment of the current treaties and it would enable effective functioning of the system under its permanent growth. The main features of the proposal consist in transforming the Human Rights Committee into a permanent body monitoring both covenants on human rights, while the specialised committees would interact with the Human Rights Committee within regular post-sessional meetings. In addition, concrete measures are presented in order to reduce or eliminate the identified problems of the system.

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I first learned about the mechanisms for human rights protection at the universal level in the lectures of Professor Jiří Malenovský at Masaryk University. His engaging way of explaining international law triggered my deep interest in this field.

With regard to the need to improve the human rights treaty bodies, I greatly value the vision of Professor Manfred Nowak, with whose writings on the topic I became familiar well before we had met during my studies at the EIUC in Venice.

During my stay at the University of Graz, I had the privilege of working on my thesis at the Institute of International Law and International Relations. I would very much like to thank Dr. Lisa Heschl and Professor Gerd Oberleitner for supervising my work. There is no doubt that their helpful comments and suggestions made my work better. At the same time, I would like to thank Bernadette Knauder, as well as Professor Wolfgang Benedek for how kindly they welcomed us in Graz.

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In addition, I greatly appreciate having the opportunity to discuss the problems of the treaty body system with a number of Human Rights Committee members, OHCHR staff members and representatives of academia during my research trip in Geneva in March 2017.

My biggest thanks by far belong to my parents who have always supported me in all my endeavours, dreams and adventures.

TABLE OF ABBREVIATIONS

ACHR	American Convention on Human Rights
ASIL	American Society of International Law Proceedings
CAT	Committee against Torture
CED	Committee on Enforced Disappearances
CEDAW	Committee on the Elimination of Discrimination against Women
CERD	Committee on the Elimination of Racial Discrimination
CMW	Committee on the Protection of the Rights of All Migrant Workers andMembers of Their Families
CRC	Committee on the Rights of the Child
CRPD	Committee on the Rights of Persons with Disabilities
CUP	Cambridge University Press
CYIL	Czech Yearbook of Public & Private International Law
DSA	Daily subsistence allowance
ECHR	European Convention on Human Rights
ECOSOC	UN Economic and Social Council
E&IA	Ethics & International Affairs
GA	UN General Assembly
HRC	UN Human Rights Council
HRLR	Human Rights Law Review

ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
ILO	International Labour Organization
ITBS	Integrated Treaty Body System
LOIPR	List of Issues Prior to Reporting
NGO	Non-governmental organisation
NHRI	National human rights institution
NILR	Netherlands International Law Review
NMRF	National Mechanisms for Reporting and Follow-up
OHCHR	Office of the UN High Commissioner for Human Rights
OLA	UN Office of Legal Affairs
SG	UN Secretary-General
SPT	Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
UN	United Nations
UPR	Universal Periodic Review
USTB	Unified Standing Treaty Body
WG	Working group

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The treaty body system is surviving because of the dedication of the experts, who are unpaid volunteers, the support of staff in OHCHR and States' non compliance with reporting obligations. However, at a time when human rights claims are increasing in all parts of the world, it is unacceptable that the system can only function because of non-compliance.[1]

Navi Pillay
UN High Commissioner for Human Rights (2008–2014)

[1] Strengthening the United Nations Treaty Body System. A report by the United Nations High Commissioner for Human Rights. OHCHR report, A/66/860, 22 June 2012, 9.

INTRODUCTION

Not long ago the international community realised that international law can play an important role in protecting human dignity and safeguarding fundamental human rights. With regard to domestic law, this was the case in certain countries already several centuries ago;[2] however, within the international arena states started to set common standards in the area of human rights only after the end of the Second World War, in the late 1940s.[3]

Different international legal instruments can be distinguished with regard to their territorial application. First, there are the regional mechanisms – after the creation of the European human rights system, similar mechanisms were established in America and later in Africa.[4] Second, human rights instruments emerged at the universal level that should serve all countries of the world, or better put – their individuals.

There are a number of human rights instruments at the universal level that were created by particular international treaties, and they aim to protect different human rights. The treaties usually set up a committee (a treaty body) as a monitoring mechanism. These committees (treaty bodies) then monitor the compliance of states with the respective human rights, and they are also equipped with particular powers to improve the compliance of states with their human rights obligations.

[2] For example, the English Bill of Rights of 1689, the US Bill of Rights consisting of the first ten amendments to the US constitution ratified in 1791 or the French Declaration of the Rights of Man and of the Citizen adopted in 1789.

[3] The American Declaration of the Rights and Duties of Man was adopted in April 1948 and the Universal Declaration of Human Rights in December 1948.

[4] Although the American Declaration of the Rights and Duties of Man was adopted before the European Convention on Human Rights (signed in 1950), the monitoring mechanisms of the Inter-American human rights system such as the Inter-American Commission on Human Rights and the Inter-American Court of Human rights were created later (the commission in 1959 and the court in 1979). Based on an African Charter on Human and Peoples' Rights signed in 1981 and its protocol, a similar system with a commission and a court was later established in Africa.

This thesis deals with the human rights treaty bodies: a system of treaty-based human rights mechanisms at the universal level.

At the end of the 1980s, it started to be clear that the system was facing a number of problems. These included a lack of cooperation of the states, a high work load on especially smaller states in preparing different reports, a backlog of the treaty bodies, growth of the system in relation to insufficient funding, the quality of the selection of treaty body members, a very low awareness of the system or thematic overlapping and a lack of cooperation between different committees. These problems were dealt with in a 'Treaty Body Strengthening' process that took place from 2009 until 2014.[5]

The weaknesses of the treaty body system, as identified within the treaty body strengthening process, were addressed by UN General Assembly (GA) resolution 68/268 in April 2014.[6] Based on this resolution, several improvements were adopted for implementation. In addition, the resolution expects a further review of the treaty body system in 2020.[7]

Within this thesis, the reform efforts and the current state of the system will be analysed. Based on the analysis, the extent to which the adopted outcome contributed to eliminating the weaknesses of the system will be evaluated. Drawing on the conclusions, it is necessary to identify the current needs of the system before the review planned for 2020 will be prepared.

The rationale of the research project consists in the fact that in 2014 the outcome of the treaty body strengthening process according to GA resolution 68/268 was adopted, and the resolution anticipates the adoption of further measures in 2020. Therefore, pursuing such research halfway between these dates, in 2017, is very timely, as it can draw on experience from the implementation, and based on the information obtained it can provide recommendations for future improvements.

With regard to the topic, the two following research questions were posed:

Did the implementation of GA resolution 68/268 of 2014 substantially improve the functioning of the treaty bodies?

What measures should be supported for implementation after 2020, in order to streamline the functioning of the treaty body system?

[5] For more information see Treaty Body Strengthening, OHCHR <www.ohchr.org/EN/HRBodies/HRTD/Pages/TBStrengthening.aspx> accessed 1 July 2017.

[6] Strengthening and enhancing the effective functioning of the human rights treaty body system, GA Res. 68/268, 9 April 2014.

[7] ibid para 41.

The research will not deal with particular human rights defined in the relevant treaties in terms of their content, nor will it focus on the functioning of one particular committee. As a number of treaties established treaty bodies as their monitoring mechanisms,[8] the focus of the work will be on the treaty body system as a whole and its quality as a human rights mechanism at a universal level. Due to my background in international law, the thesis will be approached from a legal point of view. In this regard, one of the main concerns will be to evaluate how ambitious reform proposals can be without the necessity to amend the treaties currently in place. Furthermore, the efficiency of the mechanisms, the level of compliance of the States Parties with the treaty bodies, as well as the level of the enforcement of the rights defined in the treaties will be taken into consideration.

In my research, I will draw on information from UN reports and statistics, as well as from relevant academic sources. Within the treaty body strengthening process of 2009–2014, a good number of books and articles dealt with the problems of treaty bodies and possible ways to improve their functioning.[9] However, since GA resolution 68/268 of 2014 was adopted and implemented, there has been a lack of literature analysing the current functioning of the system.

A historical analysis will be performed in order to describe and explain the reasons for the treaty body strengthening process and its development. Afterwards, a comparative analysis of the situation 'before and after' the implementation of GA resolution 68/268 will follow in order to obtain information on the effects of the strengthening process. As well as describing different reform proposals, inductive methods will be used in order to draw some general conclusions from the specific characteristics of the mechanisms. Furthermore, deductive methods will also be used to clarify concrete phenomena based on general characteristics of the treaty bodies. Through a synthesis of the acquired information, specific conclusions and recommendations for future development will be reached.

[8] There are nine such committees – Human Rights Committee, Committee on Economic, Social and Cultural Rights, Committee on the Elimination of Racial Discrimination, Committee on the Elimination of Discrimination against Women, Committee against Torture, Committee on the Rights of the Child, Committee on Migrant Workers, Committee on the Rights of Persons with Disabilities and Committee on Enforced Disappearances. In addition, a Subcommittee on Prevention of Torture has also been established with more preventive functions.

[9] For example, M. Cherif Bassiouni and William A. Schabas (eds), *New Challenges for the UN Human Rights Machinery* (Intersentia 2011); furthermore, Catarina Krause and Martin Scheinin (eds), *International Protection of Human Rights: A Textbook* (Åbo Akademi University 2009); Hellen Keller and Geir Ulfstein (eds), *UN Human Rights Treaty Bodies: Law and Legitimacy* (CUP 2012).

The theoretical findings are supported by information gathered within empirical research at the 119th session of the Human Rights Committee in Geneva and at the Office of the High Commissioner for Human Rights (OHCHR). During this research trip, I conducted a number of interviews with practitioners and experts on the treaty body system, eg Human Rights Committee members, staff members of the Human Rights Treaties Division of the OHCHR, as well as representatives of academia.[10] The purpose of these interviews was to enquire about direct experience of the system's deficiencies from the experts involved, in addition to the academic research.

The structure of the thesis will be as follows: in the first chapter the work will explain the creation of the human rights treaty body system and its development, as well as the first signs of its problems. The second chapter will deal with the first reform proposals that, however, did not receive support. The third chapter will explain the main weaknesses of the treaty body system that should be focused on through reforms. The fourth chapter deals with the treaty body strengthening process (2009–2014) that was concluded by passing GA resolution 68/268 in 2014. The adopted strengthening measures will also be presented.

The reason for explaining the former reform proposals, which did not receive sufficient support at the time, is that a number of them might be relevant for the review planned in 2020. In the fifth chapter, the current functioning of the treaty bodies following implementation of the measures according to the GA resolution will be assessed. Based on a comparison of the two situations, a conclusion on the sufficiency of the measures adopted in 2014 will be detailed.

In the sixth chapter, based on the analysis of the whole research, recommendations will be presented on the measures that should be supported for implementation, with the aim of improving the functioning of the treaty body system. The main purpose of this thesis is, in fact, to perform a critical assessment of the status quo and based on that to propose concrete reform measures to be adopted in 2020.

[10] In total, eight semi-structured interviews, as well as four open interviews were conducted.

1.

HUMAN RIGHTS MECHANISMS AT THE UNIVERSAL LEVEL

With regard to the international human rights instruments that are aimed at all countries in the world, ie at a global or universal level, we distinguish two types of mechanisms according to their legal basis.[11] First, there are the bodies whose legal basis lies in the UN Charter and as such they involve all states. These are mainly the UN Human Rights Council in Geneva and its mechanisms like the Universal Periodic Review (UPR).[12] As members of the Human Rights Council are representatives of states, it serves as a forum for dialogue on thematic issues on all human rights. In addition, the Office of the High Commissioner for Human Rights (OHCHR) is in this group, the purpose of which is to promote and protect the enjoyment of human rights and to carry out tasks assigned to it by other bodies of the UN.[13] However, the functioning of these organs will not be focused on in this thesis.

Second, there are also human rights monitoring mechanisms not based on the UN Charter, but on particular human rights treaties (eg a Human Rights Committee was created by the International Covenant on Civil and Political Rights). This means that not all countries take

[11] A good overview has been described by Françoise J. Hampson 'An Overview of the Reform of the UN Human Rights Machinery' (2007) 7 (1) HRLR 7–27.

[12] In 2006, the UN GA created the Human Rights Council as its subsidiary organ, by which it replaced a Commission on Human Rights (Human Rights Council, GA Res. 60/251, 3 April 2006). In this resolution, the GA decided that the Human Rights Council would undertake a Universal Periodic Review of the fulfilment of human rights obligations by each state. The details of the functioning of the Human Rights Council including the UPR are defined in HRC Res. 5/1, 18 June 2007.

[13] The OHCHR was created in 1993 based on GA Res. 48/141, 20 December 1993 and in addition GA Res. A/51/950, 14 July 1997, para 79.

part in the system. Only states that have ratified or acceded to the particular treaty are part of the instrument, and the treaty is legally binding for them only. The presented thesis focuses on this treaty-based group of international human rights mechanisms.

As members of the treaty bodies are independent human rights experts, the mechanism holds a crucial role in monitoring the compliance of different states concerning their human rights obligations. In order to analyse the current functioning of the treaty body system and its quality, it is necessary to understand how the different committees came into existence.

1.1 From non-binding to legally binding instruments

Within the structures of the UN that have been established since the Second World War, a Commission on Human Rights was also set up in 1946.[14] Chaired by Eleanor Roosevelt, the Commission's first task was to draft a universal human rights catalogue.

Apart from the fact that among the Commission members it was not easy to agree on what particular rights should be included, there was also the practical question of whether the text should be drafted as a non-binding declaration or a binding international treaty. Within the negotiations, the opinion prevailed that in the first stage it would be drafted as a declaration in order to get the widest possible support for its adoption. Relevant international treaties would be elaborated at a later stage.[15]

After only two years of work, in December 1948, the Universal Declaration of Human Rights was adopted by the UN GA with strong international support – 48 states voted in favour, six states abstained, and no state voted against.[16] The final text included civil and political, as well as economic, social and cultural rights. Although GA resolutions are not legally binding and they operate rather as soft

[14] The Commission was formally a subsidiary body of the Economic and Social Council (ECOSOC), established in accordance with Article 68 of the UN Charter.

[15] Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting and Intent* (University of Pennsylvania Press 1999) 9–11.

[16] GA Res. 217 A (III), 10 December 1948.

law, the text of the Universal Declaration of Human Rights became an inspiration for a number of national human rights catalogues and as such its adoption became one of the most significant milestones in the development of international human rights protection.

However, after the adoption, the post-war optimism declined and the first signs of what would later be known as a Cold War emerged. The Commission on Human Rights worked further on specifying and transforming the text of the declaration into a binding document. During this time negotiations became more difficult because the West was putting emphasis on civil and political rights, whereas the Soviet Block was promoting rather economic, social and cultural rights.[17] In general, many countries shared the view that only civil and political rights are directly applicable, whereas economic, social and cultural rights can only be implemented progressively.

Two different documents were thus drafted – the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).[18] It took 18 years for these Covenants to be adopted, in 1966. Together with the Universal Declaration of Human Rights, the two Covenants are sometimes referred to as the International Bill of Human Rights.

At the same time, the Optional Protocol to the ICCPR was also adopted, setting up a procedure for individuals to claim their rights.[19] After receiving 35 ratifications, all three treaties came into effect in 1976. As a result of this, in the relevant states the provisions of the Universal Declaration on Human Rights transformed into these treaties became legally binding.

[17] Manfred Nowak 'Comments on the UN High Commissioner's Proposals Aimed at Strengthening the UN Human Rights Treaty Body System' (2013) 31 (1) NQHR 3–8, 3.

[18] For both, see the GA Res. 2200A (XXI), 16 December 1966.

[19] In contrast to the adoption of the Optional Protocol to the ICCPR, no Optional Protocol to the ICESCR has been adopted. This was due to a prevailing opinion at that time that only civil and political rights are directly applicable. An Optional Protocol to the ICESCR was adopted only in 2008 and entered into force in 2013. As a result, in the relevant states, access of the individual to the respective committee was enabled also with regard to economic, social and cultural rights. See GA Res. 63/117, 10 December 2008.

1.2 The functions of human rights treaty bodies

Taking the ICCPR as an example, the treaty creates a committee to monitor the compliance of the States Parties with the provisions of the treaty.[20] In fact, as it focuses on civil and political rights, the correct name should be 'Committee on Civil and Political Rights'. However, the name of the body is the Human Rights Committee.

The ICESCR entrusted the role of the body to monitor the compliance to the UN Economic and Social Council (ECOSOC).[21] However, the ECOSOC later created a Committee on Economic, Social and Cultural Rights to take over this role.[22]

The Human Rights Committee and the Committee on Economic, Social and Cultural Rights have two main functions. First, they receive and examine state reports.[23] Each state party is obliged to submit initial and then periodic reports on compliance with the provisions of the respective human rights treaty. The committee examines the report, directly discusses particular human rights issues with the delegation of the state, and based on the report, dialogue, and external information the committee issues *concluding observations*.[24] In this report, it publishes recommendations for the state to implement in the following period.

Second, if the state ratifies an optional protocol to a treaty or submits a relevant declaration, it also allows individuals who feel that their human rights have been violated to lodge an individual complaint to the relevant committee – a *communication*. In order for the communication to be accepted, all available domestic remedies must be exhausted. The committee considers the complaint and issues a decision (*view*) stating whether the right in question has been violated.[25]

Although the committees decide on violations of human rights in individual cases, the treaty bodies are not a court, and therefore, their

[20] Article 28 of the ICCPR.
[21] Article 16 of the ICESCR.
[22] ECOSOC Res. 1985/17, 28 May 1985.
[23] Article 40 of the ICCPR and Article 16 of the ICESCR.
[24] With regard to the Human Rights Committee, this is regulated by Rule 71 para 3 of its Rules of Procedure. For more on Concluding observations, see Michael O'Flaherty 'The Concluding Observations of United Nations Human Rights Treaty Bodies' (2006) 6 (1) HRLR 27–52.
[25] With regard to the Human Rights Committee, see arts 1, 2 and 5 of the Optional Protocol to the ICCPR.

decisions are not legally binding from a formal point of view. However, as they decide whether a particular human right has been violated in individual cases, their powers are often described as quasi-judicial.[26]

Following the two Covenants, a number of more specific human rights treaties were adopted.[27] These either aimed at protection of a particular vulnerable group (eg rights of women, rights of children) or a specific abuse of rights (eg torture, racial discrimination).[28] Each of these treaties created a special committee as a monitoring mechanism with powers similar to the two mentioned above – examining state reports and considering individual complaints.

Apart from these two functions, a number of treaty bodies can also conduct inquiries. However, not all treaty bodies have this competence, and this procedure is confidential.[29] Furthermore, the Committee on Enforced Disappearances (CED) can also consider *urgent action* with the objective of finding a disappeared person.[30] In addition, all committees may accept complaints by states. However, this is more of a theoretical authorisation, as inter-state complaints have never been used.[31] This thesis will therefore not focus on the latter two authorisations.

Until today, nine treaty bodies have been created by different treaties, each dealing with the rights defined in the relevant convention.[32] Although they have slight differences, they are all entrusted with similar

[26] For more on the discussion on the legal nature of the decisions of treaty bodies with regard to communications, see William A. Schabas 'On the Binding Nature of the Findings of the Treaty Bodies' in M. Cherif Bassiouni and William A. Schabas (eds), *New Challenges for the UN Human Rights Machinery* (Intersentia 2011) 105–106; furthermore, Martin Scheinin 'International Mechanisms and Procedures for Monitoring' in Catarina Krause and Martin Scheinin (eds), *International Protection of Human Rights: A Textbook* (Åbo Akademi University 2009) 617.

[27] In fact, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) was adopted even before the two Covenants in 1965.

[28] Apart from the ICCPR, the ICESCR and the ICERD, there is the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Rights of the Child (CRC), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), the Convention on the Rights of Persons with Disabilities (CRPD), and the Committee on Enforced Disappearances (CED).

[29] For more information see Inquiry procedure, OHCHR <www.ohchr.org/EN/HRBodies/CEDAW/Pages/InquiryProcedure.aspx> accessed 1 July 2017.

[30] CED, art 30.

[31] Javaid Rehman, *International Human Rights Law* (2nd edn, Pearson Education Limited 2010) 119–120.

[32] For more information on different treaty bodies, see Julie A. Mertus, *The United Nations and Human Rights: A Guide for a New Era* (2nd edn, Routledge 2009) 82–94.

functions. There is also a Subcommittee on Prevention of Torture (SPT), often considered as a 10th treaty body, but it has more of a preventive function and as such its powers differ from the nine treaty bodies.[33]

Until today, the following human rights treaty bodies have been created:

- Human Rights Committee
  ICCPR adopted in 1966, entry into force 1976, 169 States Parties

- Committee on Economic, Social and Cultural Rights
  ICESCR adopted in 1966, entry into force 1976, 165 States Parties

- Committee on the Elimination of Racial Discrimination
  ICERD adopted in 1965, entry into force 1969, 178 States Parties

- Committee on the Elimination of Discrimination Against Women
  CEDAW adopted in 1979, entry into force 1981, 189 States Parties

- Committee Against Torture
  CAT adopted in 1984, entry into force 1987, 161 States Parties

- Committee on the Rights of the Child
  CRC adopted in 1989, entry into force 1990, 196 States Parties

- Committee on Migrant Workers
  CMW adopted in 1990, entry into force 2003, 51 States Parties

- Committee on the Rights of Persons with Disabilities
  CRPD adopted in 2006, entry into force 2008, 173 States Parties

- Committee on Enforced Disappearances
  CED adopted in 2006, entry into force 2010, 56 States Parties

[33] The Subcommittee exercises its preventive function by undertaking visits to places where people are deprived of their liberty according to the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, GA Res. 57/199, 18 December 2002.

The committees are not full-time bodies as they hold sessions only a few times a year. With regard to their powers to review state reports and consider individual complaints, it is necessary to emphasise that the number of states allowing individuals access to a treaty body is always lower than the number of states who ratified the main treaty and thus allows the treaty body to examine the report of the state. For example, there are currently 169 States Parties of the ICCPR, but only 116 states allowed access of individuals to the committee by ratifying the relevant optional protocol. With regard to the ICESCR, out of 165 States Parties, only 22 enabled individuals access.[34] However, this is due to the fact that the Optional Protocol to the ICESCR was adopted only in 2008.

1.3 First signs of problems

After two decades from the time when the first treaty body came into being, at the end of the 1980s, already six treaty bodies had been established by different treaties. They were created one after another, dealing with different areas of human rights. However, as we know that human rights are universal, indivisible, interdependent and interrelated,[35] it started to become clear that instead of operating as separate and mutually uncoordinated organs, the treaty bodies should constitute one system.

In 1988, the UN GA requested the Secretary-General (SG) to prepare a study on long-term approaches with regard to the development of treaty bodies. The SG appointed Professor Philip Alston to carry out the study, and it was published one year later. According to this study, the treaty bodies faced a number of interrelated problems. First, states were reporting late, as there were 626 overdue reports at that time.[36] Second, the system of multiple reporting created a high burden on states. Third, there were overlapping powers of treaty bodies and therefore overlapping reporting requirements. This resulted in duplication of

[34] Data valid in July 2017. See Human Rights Treaties, UN <https://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&clang=_en> accessed 1 July 2017.

[35] Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in Vienna on 25 June 1993, para 5.

[36] Initial report on enhancing the long-term effectiveness of the United Nations human rights treaty system, by the independent expert, Mr. Philip Alston, GA report, A/44/668, 8 November 1989, para 34.

reporting on the same issues to different treaty bodies.[37]

As a possible 'radical' future option, the study *inter alia* mentioned the possibility of consolidating the system into a single treaty body. For such a move, a Committee of Experts on the Application of Conventions and Recommendations of the International Labour Organization (ILO) could be a model, as it monitors compliance of some 170 ILO treaties.[38]

In a 1993 interim report, Alston stated that one of the options to consider in the long-term would be to encourage states to produce a single 'global' report to be submitted to all relevant treaty bodies.[39] With regard to the overlapping powers of different committees, the interim report mentioned that different treaty bodies pay very little attention to one another's 'jurisprudence' and thus cooperation should be supported.[40]

In his 1997 final report, Alston stated that principal characteristics of the situation had not changed. The number of ratifications grew by 26% since the interim report, and the number of overdue reports increased by 34%. At the same time, treaty bodies had considerable backlogs, as it took almost three years until a submitted report was examined. There was a similar situation with regard to the quasi-judicial authority – the number of communications increased greatly and also backlogs of the treaty bodies were unacceptably high.[41]

Later that year, a meeting of chairpersons of different treaty bodies took place, in which they took the reports of the independent expert into consideration and stated that the treaty bodies as a whole were facing two major problems – many States Parties reported late and thus already some 1000 reports were overdue; and even when reports were submitted, it took the treaty bodies two or three years to examine them, which made the data in the reports obsolete.[42]

[37] Initial report on enhancing the long-term effectiveness of the United Nations human rights treaty system, by the independent expert, Mr. Philip Alston, GA report, A/44/668, 8 November 1989, paras 3–6 and 34–53.

[38] ibid paras 179–183.

[39] Interim report on enhancing the long-term effectiveness of the United Nations human rights treaty system, by the independent expert, Mr. Philip Alston, GA report, A/CONF.157/PC/62/Add.11/Rev.1, 22 April 1993, paras 27 (ii) and 167–173.

[40] ibid para 36.

[41] Final report on enhancing the long-term effectiveness of the United Nations human rights treaty system, by the independent expert, Mr. Philip Alston, ECOSOC report, E/CN.4/1997/74, 27 March 1997, para 7.

[42] Views of the Treaty Body Chairpersons on the report of the Independent Expert, GA report, A/52/507, 21 October 1997, para 32.

1.4 Conclusions

The first human rights treaty bodies emerged in the 1970s as bodies whose purpose was to monitor the compliance of states with their human rights obligations according to legally binding treaties. However, the language of the treaties in relation to the powers of these committees is very soft. With regard to the state reporting procedures, they issue *concluding observations* that contain recommendations for a state to implement. With regard to communications (individual complaints), they issue *views* that are not formally legally binding. As the first treaty bodies emerged as a result of a compromise following negotiations between the East and the West during the 1950s and 1960s, they are a product of the Cold War. Therefore, it should be no surprise that their powers to monitor and improve the human rights situation in the respective countries are rather low.

Apart from the 'legally weak status', a number of problems started to emerge as a result of the fact that the creation of treaty bodies was a step-by-step process without any deeper consideration of their long-term functioning. As such, different treaty bodies started to be created for different human rights areas as if they were entirely unrelated. A number of new treaty bodies dealt with the same issues as an already existing committee. Treaty bodies were being created *ad hoc*, without any reflection on the need to form one compact system.

As the results of this short-term approach started to become clear, independent expert Philip Alston was appointed to pursue studies on the functioning of the treaty bodies with regard to a long-term perspective. Among the major problems identified was the lack of cooperation of states with regard to their reporting obligations, backlogs on the part of the treaty bodies, as well as overlapping powers of different committees resulting in multiple reporting on the same issues, by which the system created a high burden on the states.

2.

REFORM PROPOSALS NOT RECEIVING SUPPORT

At the beginning of the new millennium, based on the thorough studies and reports prepared by Professor Philip Alston, there was a clear need for improvement of the functioning of the treaty bodies. One of the most pressing problems to focus on was the high burden that the system was imposing on states due to their multiple reporting obligations.

2.1 The single report proposal

In 2002, a report of the UN SG entitled *Strengthening of the United Nations: an agenda for future change* was published.[43] Here the SG cited the report of an independent expert: 'Non-reporting has reached chronic proportions…States…either do not report at all, or report long after the due date'.[44] The SG suggested two measures. First, the varied reporting requirements for different committees should be standardised. Second, each state should be allowed to produce a single report summarising its adherence to the full range of human rights treaties to which it is a party.[45]

The plan to lower the burden on states by introducing a single report was initiated by consultations supported by the OHCHR.[46] It was stated that according to the independent expert, there was no legal

[43] SG report, A/57/387, 9 September 2002.
[44] ibid para 53.
[45] ibid para 54.
[46] Management review of the Office of the United Nations High Commissioner for Human Rights, SG report, A/57/488, 21 October 2002.

impediment to a state party unilaterally submitting a single report.[47] However, concerns were raised that such a 'global' report could lead to side-lining of a number of treaty-specific issues.[48]

In 2003, a 'brainstorming meeting' on treaty body reform was organised by the OHCHR and the government of Liechtenstein in Malbun. The possible developments were discussed by participants, among whom were treaty body members, representatives of states, UN entities, as well as NGOs. Here, the idea of a single report summarising the full range of human rights treaty provisions was rejected. The participants considered that the idea of a single report was closely related to the concept of a single treaty body and separate reports better enable states to fulfil their reporting obligations. Among the main points of criticism was that a single report would have to be lengthy and thus not comprehensible, and it would lead to marginalisation of specific issues.[49] Unlike the independent expert, they shared the opinion that a single report would require amendments to existing treaties.[50]

As the idea of a single report was not endorsed, harmonised guidelines for preparing states reports were later issued that distinguished two forms of documents. First, states are expected to submit a *Common core document* that would deal with the general information relating to the state (legal system, national human rights protection, etc) and is relevant for all treaty bodies. Second, states also have the obligation to submit specific reports according to the respective treaties.

The guidelines specified that the common core document should not exceed 60–80 pages, initial treaty-specific documents should not exceed 60 pages and subsequent periodic documents should be limited to 40 pages.[51] The aim of this measure was to avoid the repetition of general information that was available to all treaty bodies, and to focus the reports on specific issues. As such, the measure aimed to fulfil the first suggestion of the 2002 SG report to standardise varied reporting requirements.

[47] Background note on the Secretary-General's proposals for reform of the treaty body system, OHCHR report, HRI/ICM/2003/3, 11 April 2003, para 46. It refers to the Interim report on enhancing the long-term effectiveness of the United Nations human rights treaty system, by the independent expert, Mr. Philip Alston, GA report, A/CONF.157/PC/62/Add.11/Rev.1, 22 April 1993, para 168.

[48] OHCHR report, HRI/ICM/2003/3, 11 April 2003, para 47. Five options for further development are stated under para 59.

[49] Report of a brainstorming meeting on reform of the human rights treaty body system, Malbun, Liechtenstein, A/58/123, 8 July 2003, paras 20–28.

[50] ibid para 25. This has been commented as 'debatable' by Rachael Lorna Johnstone. See Rachael Lorna Johnstone 'Cynical Savings or Reasonable Reform? Reflections on a Single Unified UN Human Rights Treaty Body' (2007) 7 (1) HRLR 173–200, 182. For reporting periodicity of different committees, see the High Commissioner's concept paper, OHCHR report, HRI/MC/2006/2, 22 March 2006, 8, Table 2.

[51] Compilation of reporting guidelines, including the guidelines on common core documents and treaty specific reports, SG report, HRI/GEN/2/Rev.6, 3 June 2009, para 19.

2.2 Unified Standing Treaty Body

In 2005, the UN SG, Kofi Annan, published the comprehensive report *In Larger Freedom: towards development, security and human rights for all*.[52] In this report, Annan urged that the treaty bodies need to be much more effective and more responsive to human rights violations. In addition, he stated that the treaty body system remained rather unknown, and was compromised by the failure of many states to report, by the duplication of reporting requirements, as well as by the poor implementation of recommendations.[53] As an addendum to the report, an Action Plan of the OHCHR was attached that called for a consolidation of the system into one standing treaty body.[54]

Based on the Plan of Action, in 2006 the OHCHR elaborated a concept paper on the High Commissioner's proposal for a Unified Standing Treaty Body (USTB).[55] The concept paper mentions that 'many states accept the human rights treaty system on a formal level, but do not engage with it, or do so in a superficial way, either as a result of lack of capacity or lack of political will'.[56] As the growth of the system both in terms of treaties and ratifications continued, the number of overdue reports rose to 1442, and the average waiting time for a submitted report to be reviewed (backlog) was 17.4 months.[57]

The system in place supporting parallel reporting obligations enables diverging interpretations, as well as a multiplicity of recommendations emerging from different treaty bodies, and it is difficult for States Parties to obtain a comprehensive picture of their key human rights concerns in order to implement the recommendations. In general, the functioning of the treaty body system that developed on an *ad hoc* basis, and thus is not able to function as an integrated framework, is weakening the overall impact of the system.[58] This is why the concept paper proposed creating a full-time USTB that could address most of the challenges, including the low visibility of the current system by the rights holders.[59]

[52] SG report, A/59/2005, 21 March 2005.
[53] ibid para 147.
[54] In Larger Freedom: towards development, security and human rights for all. Addendum, SG report, A/59/2005/Add.3, 26 May 2005, para 95–100.
[55] Concept Paper of the High Commissioner's Proposal for a Unified Standing Treaty Body (n 50).
[56] ibid para 16.
[57] ibid 26–27.
[58] ibid para 23.
[59] ibid para 33.

In brief, the High Commissioner proposed a permanent human rights body with several alternatives – it could work as a single body with no chambers or with chambers operating in parallel.[60] The costs per diem and for the travel of the 115 experts amounted to 7.1 million USD per biennium. According to the concept paper, the cost of remunerating 25 experts of the USTB would amount to 7.7 million USD per year.[61]

From the legal point of view, one of the major issues to overcome would be the legal obstacles of the different treaties with regard to amendments. Although there are slight differences among them, the general procedure is as follows.[62] Any State Party can propose an amendment to a treaty to the UN SG who then informs the other States Parties. If at least one-third of the States Parties is in favour of a conference to decide about the amendment, the SG convenes the conference. If the majority of states present and voting adopt the amendment, it will be submitted to the UN GA. If approved by the GA, an amendment will enter into force once two-thirds of the States Parties ratify the amendment. However, after entry into force, it should only be binding for the states who accepted it. Thus, the states who would be slower to ratify or who would not want to ratify the amendment would still be part of the 'old' system. In this regard, it is necessary to say that parallel regimes are not desirable, as they would only complicate the already very complex system.

The concept paper of the High Commissioner contained only two brief articles on this topic. With regard to amendments, it stated two options – amending all treaties individually or supporting one overarching amending procedural protocol. However, it also mentions legally non-binding solutions – either a gradual transfer of the powers to one of the existing treaty bodies, or a temporary suspension of the functions of treaty bodies and a transferal of their powers to a USTB created by a GA resolution.[63]

As the concept paper was very vague with regard to the legal feasibility of the proposal, a more detailed preliminary non-paper on legal options

[60] Among those are chambers along functional lines, chambers along treaty lines, chambers along thematic lines or chambers along regional lines. See ibid paras 39–45.
[61] ibid 30.
[62] ICCPR, art 51 or ICESCR art 29.
[63] OHCHR report (n 50) para 64.

for a USTB has been published by the OHCHR Secretariat.[64] The non-paper presented three ways to establish the USTB by means of an amendment. First, the regular amendment procedure; second, a simplified amendment procedure and provisional application of the amendment; third, amendment with the consent of all States Parties. Although by means of a provisional application of a treaty the States Parties would not need to wait for the creation of the USTB until two-thirds of them ratify the amendment,[65] the first two options would not mean that parallel regimes would be avoided –the USTB would function at the same time as the 'old' committees. The third option avoids parallel regimes, but States Parties would have to wait for the new body until the very last ratification, which could take decades and as such, does not provide for any practical solution.

As a possibility that does not require any amendment, the non-paper mentioned a proposal of the 'consolidated treaty body system' presented by Professor Martin Scheinin.[66] He suggested making use of the fact that the Committee on Economic, Social and Cultural Rights has not been created by a treaty but by an ECOSOC resolution. Therefore, the ECOSOC could dissolve it and transfer the powers to the Human Rights Committee, which would then serve as a monitoring body for both the ICCPR and the ICESCR. The committee would keep its part-time character and the other (specialised) treaty bodies would hold their sessions right before or after the session of the 'new' Human Rights Committee. In addition, some of its members would be simultaneously appointed to the specialised committees. Although the 'consolidated treaty body system' presented already in 2006 was an interesting and creative proposal that does not require an amendment of the current treaties, it seems that it would make the system even a bit more complicated.

The OHCHR concept paper also mentioned creating the USTB by means of a GA resolution.[67] However, it remained silent with regard

[64] Preliminary non-paper on legal options for a unified standing treaty body, OHCHR <www.ohchr.org/Documents/HRBodies/TB/TBS/Legal_options_paper_USTB2005.pdf> accessed 1 July 2017.

[65] See the Vienna Convention on the Law of Treaties, art 25.

[66] Martin Scheinin 'The Proposed Optional Protocol to the Covenant on Economic, Social and Cultural Rights: A Blueprint for UN Human Rights Treaty Body Reform–Without Amending the Existing Treaties' (2006) 6 (1) HRLR 131–142.

[67] OHCHR report (n 50) para 64.

to any detailed legal argumentation about how this would be possible. Some authors argue that creating the USTB without an amendment is a possible option.[68] It is quite obvious that there would have to be significant political support for such a solution.

In the case of a GA resolution supporting such a radical solution, it would be possible to find some support in the Vienna Convention on the Law of Treaties. Article 31 of the Vienna Convention explains the general rules on the interpretation of treaties, and it states the following in para 3:

> There shall be taken into account, together with the context: (a) Any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions; (b) Any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation.[69]

Therefore, in the case of a large political consensus, in my opinion, it could be argued that a subsequent agreement and subsequent practice of states would have to be taken into account while considering the legality of such an approach.

Bearing this in mind, it is necessary to take a cautious position, as the treaties provide for well-defined procedures in order to amend their provisions and a GA resolution does not have any formal powers to surpass the provisions for amendments in the treaties. Therefore, if a USTB was considered as a way forward, a proper analysis on the possibility of performing such a reform without treaty amendments would need to be undertaken.[70]

With regard to the High Commissioner's proposal to create the USTB, a 'brainstorming meeting' of experts on the theme of treaty body reform was held in 2006 in Liechtenstein ('Malbun II'), where again several treaty body members, representatives of states, as well as NGOs

[68] Johnstone (n 50) 199; furthermore John Morijn 'Reforming United Nations Human Rights Treaty Monitoring Reform' (2011) 58 (3) NILR 295–333, 329; also Michael Bowman 'Towards a Unified Treaty Body for Monitoring Compliance with Human Rights Conventions? Legal Mechanisms for Treaty Reform' (2007) 7 (1) HRLR 236–249, 239.

[69] Vienna Convention on the Law of Treaties, art 31, para 3.

[70] With regard to a different but somewhat comparable solution without treaty amendment, the UN Office of Legal Affairs (OLA) argued that such a proposal presents serious legal obstacles and if adopted, its legal validity could be challenged. See the Preliminary non-paper on legal options for a unified standing treaty body (n 64) para 29.

discussed the reform proposal.[71] Although some delegations of states were willing to discuss the proposal further, the general opinion was that this idea should be abandoned.[72]

Within the academic debate on the USTB, most authors also rejected the proposal. Although some commentators viewed the proposed reform in a positive way,[73] the majority of them were rather critical, one even calling it 'fundamentally flawed and irresponsible'.[74] In this regard, it is worth mentioning that the concept paper with the proposal to create a USTB did not come as a result of any broad discussion with stakeholders. Therefore many felt that they were not included in the decision-making and were surprised by the ambitious or even radical solution.

The central argument regarding why so many treaty body members, NGO representatives, but also academics were against a USTB, was the concern of losing the focus on 'specificity'.[75] A number of treaty bodies focus on very specific groups or human rights violations (women, children, torture, etc) and they feared that such a focus would be lost in one unified treaty body where an overall focus on civil and political rights might prevail.

Although the proposal to merge the committees did not receive enough support, it presented an interesting reform proposal that could have been able to face a number of challenges of the system. It may be the case that for future considerations, all the possibilities considered

[71] Report of a brainstorming meeting on reform of the human rights treaty body system, 'Malbun II', Liechtenstein, A/61/351, 18 September 2006. It is also worth mentioning that shortly before the High Commissioner published her concept paper on the USTB, there was a discussion on the topic at the University of Nottingham. See Expert Workshop on Reform of United Nations Human Rights Treaty Monitoring Bodies, University of Nottingham <www.nottingham.ac.uk/hrlc/documents/publications/treatymonitoringbodies2006workshopreport.pdf > accessed 1 July 2017.

[72] 'Malbun II' meeting, A/61/351 of 18 September 2006, para 12.

[73] See Johnstone (n 50). A closer look at the legal challenges is provided by Bowman (n 68). Later, John Morijn argues that it would be sensible to support unification. See Morijn (n 68) 328.

[74] Hampson (n 11) 12. An overall critique was presented by Michael O'Flaherty and Claire O'Brian (Michael O'Flaherty and Claire O'Brian 'Reform of UN Human Rights Treaty Monitoring Bodies: A Critique of the Concept Paper on the High Commissioner's Proposal for a Unified Standing Treaty Body' (2007) 7 (1) HRLR 141–172). In addition, Hanna Beate Schöpp-Schilling presents the view from a CEDAW Committee (Hanna Beate Schöpp-Schilling 'Treaty Body Reform: the Case of the Committee on the Elimination of Discrimination against Women' (2007) 7 (1) HRLR 201–224, 209).

[75] For a short overview of the reaction, see Michael O'Flaherty 'Reform of the UN Human Rights Treaty Body System: Locating the Dublin Statement' (2010) 10 (2) HRLR 319–335, 324.

in the past might be on the table again. Therefore, in my opinion, four positive points should be mentioned with regard to this proposal.

First, it is conceivable that the internal rules of the USTB could be drafted in a way that prevents losing the focus on the specific human rights areas according to specialised treaties – for example, minimum time frames could be determined for reviewing states according to each of the specialised treaties. Second, in a USTB it would be possible to review states, with regard to their human rights obligations for all human rights treaties, within one meeting with the delegation of a particular state, lasting one or two weeks depending on how many treaties the particular state had ratified.[76] Thereby, the system would reduce the burden on states that are now expected to send delegations to Geneva for each review by different committees. Third, as human rights are interdependent and interrelated, unifying the treaty bodies into one permanent body would prevent inconsistencies in their interpretation. Four, such a reform would simplify the system and, as such, it would make it more visible and comprehensible for the public and the rights holders.

However, as the proposal to create the USTB met with predominantly negative reactions, the idea was not further promoted by the High Commissioner.

2.3 Conclusions

At the beginning of the new millennium, two reform proposals were under consideration by different stakeholders of the treaty body system. The first one – introducing a single report for all treaty bodies – aimed at lowering the burden on states with regard to their different reporting obligations. However, the opinion prevailed that separate reports better correspond to the requirements of different treaty bodies.

The second proposal was more radical. The High Commissioner decided to address the very roots of the problems of treaty bodies, ie the

[76] In most treaty bodies the review of one state including the dialogue with the state delegation takes one full day. As there are currently nine functionally similar treaty bodies, cumulating the reviews would enable a review of the human rights obligations within one week to a country that is a party to five treaties. If a state was a party to all the treaties, the maximum time necessary to review its report would amount to two weeks.

ad hoc approach of their creation that had led to the complicated and uncoordinated existence of different committees. The idea of merging the current committees into one full-time treaty body was basically a plan to create the structure of the human rights treaty monitoring system again from scratch. In my opinion, by taking up such a reform proposal, many challenges of the current system could be addressed effectively.

However, the High Commissioner underestimated two issues. First, she should have presented some proposals on how the USTB could guarantee to maintain attention on the thematic treaties. This is due to the fact that the most important criticism of the proposal was based on the concern of losing the current focus on specific areas of human rights protection (eg racial discrimination, rights of women). Second, as a number of treaty body members considered the idea as a cancellation of their respective committee,[77] the proposal should have been better communicated. It was presented without any consultations with the stakeholders. As a result, a number of them felt excluded and took a negative position towards the idea.

In addition, another critical point should be made with regard to the legal aspects of the proposal. Unfortunately, the proposal of the High Commissioner is not clear about whether it would be possible to achieve such a reform without amending the current treaties. Nonetheless, this is a crucial question for the consideration of such a reform. Therefore, should the creation of a USTB be ever considered again in the future, these shortcomings would have to be avoided, and proper analysis of the legal requirements would need to be available.

[77] Rachael Lorna Johnstone 'Streamlining the Constructive Dialogue: Efficiency from States' Perspectives' in M. Cherif Bassiouni and William A. Schabas (eds), *New Challenges for the UN Human Rights Machinery* (Intersentia 2011) 71.

3.

MAIN POINTS OF CRITICISM OF THE TREATY BODY SYSTEM

In order to find out what kind of reform would be optimal in order to tackle the problems of the treaty body system, it is necessary to take a step aside and have an overall look at the system.[78]

To begin with, two important virtues of the system should be mentioned. First, treaty bodies are composed of independent human rights experts. This is why they provide for an objective and reliable review of the human rights situations in the respective countries. The only comparable system, in the way that it reviews the compliance of states with their human rights obligations and presents recommendations for improvements, is the UPR that takes place in the UN Human Rights Council. Nevertheless, this is performed by diplomats, ie representatives of states, and as such it is highly politicised and thus inaccurate. If one wants to make a picture about a human rights situation in a particular country, it is far more reliable to have a look at recommendations given by treaty bodies than the ones received within the UPR system. In other words, the treaty body monitoring system is constructed in such a way that its conclusions reflect the real human rights situation in the particular country and as such, it can be trusted.

[78] The author dealt with the universal level of human rights protection and the problems of the treaty bodies also in one chapter of his PhD dissertation that was published as a monograph (in Czech). See Jan Lhotský, *Ochrana lidských práv v mezinárodním právu: kontrolní mechanismy na regionální a univerzální úrovni a možnost vzniku Světového soudu pro lidská práva* [Human Rights Protection in International Law: Control Mechanisms on the Regional and Universal Level and the Possibility of Creating a World Court of Human Rights], (Masaryk University 2012) 137–198.

Second, the treaty bodies are a cooperative system. They are not an authoritative organ that could impose their outcomes on states. They function in cooperation with the respective countries. The review is based on the report of the state, and when the review takes place, the delegation of the state is present and engages in dialogue with the committee members. Based on the state report, dialogue and also external information the committee issues the concluding observations that include recommendations for the state to put into practice. Thus, the outcome document should serve the state as an implementation tool in order to improve the human rights situation in the respective state.

There are also other assets of the system, such as its focus on specific areas of human rights or its general contribution to the development of the internationally recognised human rights standards in the long-term. Although there are a number of characteristics of the system that should be maintained, it is also good to focus on the more problematic issues. As there are good data available on the state of the system in 2011 and 2012, the long-term imperfections will mainly be assessed based on information from that period.[79] In the following chapters, later improvements of the system and an assessment of them will be presented.

In the long-term, ten major problems have been identified.[80] In fact, as the last one refers to the long-term underfunding of the system and as such has a different character, it is more appropriate to say that there are 9+1 major problems. They are the following:

1. Late reporting and non-reporting by states

The low proportion of states reporting has been an issue for the treaty bodies from the very beginning. One reason for this is that many states accept the treaties only on a formal level, but do not want to engage with the system. Another is that the system creates a high burden on states and especially the smaller ones lack the capacity to duly cooperate with it.[81]

[79] These data are mainly included in the following report: Strengthening the United Nations Treaty Body System. A report by the United Nations High Commissioner for Human Rights. OHCHR report, A/66/860, 22 June 2012. For a short overview on what problems were considered most important in 2006, see OHCHR report, HRI/MC/2006/2, 22 March 2006, para 16.

[80] The selection of the 10 (9+1) major long-term problems of the treaty bodies are selected in accordance with the assessment of the author.

[81] ibid.

When we look at the years 2000 and then 2011, although there was an increase in the number of state reports received, if we take into account the rising number of ratifications, there was actually a relative decrease in reporting compliance.[82] In fact, only 16% of the reports due in 2010 and 2011 were submitted in strict accordance with the due date. If we allow the states one-year flexibility, still only one-third reported on time.[83] A large number of states report with a delay of many years, and some do not do so at all.

2. Backlog of the treaty bodies

The treaty bodies operate on a part-time basis, often three times a year only for several weeks. With the growing number of treaty ratifications, more states have the obligation to report on their human rights situation to different committees. However, in spite of the fact that in the vast majority of cases the states fail to comply with their reporting obligations, the treaty bodies are overloaded with reports (and communications). This is why the High Commissioner stated that 'it is unacceptable that the system can only function because of non-compliance.'[84]

With regard to state reports, in 2012 the average waiting time for a report to be reviewed was two to four years in the different committees. However, if such a report is not reviewed shortly after being submitted, its relevance decreases and then the treaty body works with outdated information. With regard to individual communications in the same year, the time between registration of the complaint and the decision in the Human Rights Committee amounted to three and a half years.[85] It goes without saying that from the point of view of a rights holder such a delay plays a significant role and thus undermines the delivery of justice.

[82] OHCHR report (n 1) 18.
[83] ibid 22. According to the report, in April 2012, 626 state reports were overdue.
[84] ibid 9.
[85] In addition, it was two and a half years in CAT, two years in CEDAW and one and a half years in CERD. ibid 19 and 20.

3. High reporting burden on states

There are a number of reasons why the system creates a high burden on states. First, states are expected to report to all nine treaty bodies. As preparation of one report is a complex process – we should not forget about the national costs of the reporting procedure in terms of resources, time and staff with the relevant expertise – this is demanding in itself. Second, as the topics of different treaty bodies often overlap (eg Human Rights Committee partially deals with the same issues as the more specialised CAT or CEDAW), states need to report on the same issues to different treaty bodies.[86]

Third, the reporting process is traditionally twofold. The state elaborates and submits the national report, a committee then sends a list of issues that it wants to focus on and subsequently, the state should submit written replies on the list of issues. Fourth, the deadlines for submitting a report are not coordinated among the different treaty bodies. Therefore, it can happen that one year a state does not need to submit any reports and another year it has a number of reports due. Under these circumstances, it is understandable that even if the state wants to cooperate, the set-up of the system is not very helpful in this regard.

4. Diverging interpretation of same issues by different treaty bodies

In 2000, there were 97 members of different treaty bodies (experts). However, as the number of committees grew, in 2012, there were already 172 experts working in ten of the treaty bodies.[87] It is then no surprise that within such a large number of experts sitting in different bodies with overlapping powers, there are necessarily diverging interpretations on the same human rights issues,[88] due to the fact that the right hand of the system does not know what the left hand is doing.

[86] See Johnstone (n 50) 181.

[87] The number includes the Subcommittee on Prevention of Torture.

[88] See also Nigel Rodley 'Duplication and Divergence in the Work of the United Nations Human Rights Treaty Bodies: A Perspective from a Treaty Body Member' (2011), 105 ASIL 512–515.

5. Quality of the treaty body members

The expertise and determination of the treaty body members is the main virtue of the whole system, and their valuable work should be appreciated. Nonetheless, it does not mean that the rules for treaty body membership are perfect. They are, actually, far from that. Seven points need to be mentioned in this regard.

First, the treaty body members should be the best experts in their particular fields, either human rights generalists or with substantial experience in a particular area – depending on the committee of which they are members. Although the majority of them definitely fulfil such requirements, within the elections of new members by States Parties, 'horse-trading' often plays an important role and sometimes results in electing a member who does not possess the necessary expertise.

Second, treaty body members need to be independent. However, if we have a look at the membership in 2012, 20% of the experts were diplomats, government officials or members of a parliament.[89] There is no need to explain why this cannot be considered in line with the independence requirement.

Third, gender balance is an important issue. In the same year, there were 107 male experts (62%) and 65 female experts (38%) in the committees.[90] In this regard, however, it is good to mention that the CEDAW committee has traditionally had a vast majority of female experts. Therefore, without CEDAW, the proportion is even less balanced.

Fourth, although the committee members consider the individual communications and thus decide about violations of human rights, they do not need to be lawyers.[91] In this regard, it is almost hard to believe that after a case has been decided a number of times under domestic jurisdiction – by judges, ie lawyers – after exhausting all domestic remedies it comes to a treaty body where non-lawyers decide on violations of rights.

Fifth, all treaty bodies are part-time organs holding sessions several times a year for a particular number of weeks. Therefore, if the members are not in retirement, they have other permanent jobs. However, what kinds of jobs allow an employee to be out of work for 20% of the year?

[89] OHCHR report (n 1) 77.
[90] ibid 77, 78.
[91] For an overview of the background of treaty body members, see ibid.

It needs to be seen that the system limits the scope of experts it can involve by the fact that they either need to be retired or have a job that allows such a side-activity – like, eg academia.

Sixth, due to the unwillingness of the GA, the experts are not formally remunerated for their work. They only receive a daily subsistence allowance (DSA) for the days of the session, but no salary. This again limits the scope of experts that can be involved in the treaty body system. In addition, remuneration, in general, serves as one of the guarantees of independence, so that it could improve the level of independence of the treaty body members.

Seventh, the national procedures of selections and nominations of experts are not very transparent. In many cases, the government nominates a candidate without broader consultation with the civil society or academia.[92] Therefore, in order to nominate the best experts and not the ones with friendly ties to the government, domestic selection procedures should be improved.

6. Low authority of decisions on communications

The main reason why the results of the quasi-judicial activity of the treaty bodies, ie considering individual complaints, is to a large extent not complied with by the states, is the legal character of the committee's final *views*. As the treaty bodies are not a court, their decisions are not legally binding. However, some human rights law experts argue that as the treaties themselves are binding, without any doubt, and that they created the committees in order to consider such violations, in relevant cases, the state is legally obliged to remedy such a situation.[93]

Nevertheless, as states often do not share this opinion, the level of compliance with the decisions of treaty bodies with regard to individual communications remains very low. Open Society Foundations calculated that with regard to violations established by the Human Rights Committee up until 2009, states complied with the decisions only in 12% of the cases.[94]

[92] Hellen Keller and Geir Ulfstein, 'Conclusions' in Hellen Keller and Geir Ulfstein (eds), *UN Human Rights Treaty Bodies: Law and Legitimacy* (CUP 2012) 423.

[93] Scheinin (n 26) 617. For the state to comply, the Human Rights Committee argues with the right to an effective remedy. See the General Comment No. 33 on the ICCPR, para 14. Last but not least, the International Court of Justice in its *Diallo* case states that it believes that it should ascribe 'great weight' to the interpretation according to the views of the Human Rights Committee. See Case concerning Ahmadou Sadio Diallo, (Republic of Guinea *v* Democratic Republic of the Congo), 2010, ICJ <www.icj-cij.org/files/case-related/103/103-20101130-JUD-01-00-BI.pdf> accessed 1 July 2017.

[94] David C. Baluarte and Christian M. de Vos. *From Judgement to Justice: Implementing International and Regional Human Rights Decisions*. (Open Society Foundations 2010) 27.

7. Insufficient or non-existent follow-up procedures

The very reason why the committee reviews the human rights situation in a particular state and issues the recommendations is in order for them to be implemented. The same relates to communications. Therefore, follow-up procedures that would give the treaty body (and also civil society) objective information about the level of implementation should constitute an integral part of the system. However, until 2012 only four committees introduced some procedures to monitor the implementation.[95] In this regard, there is a need for harmonisation between the committees.

8. High costs of translations

In 2006, the harmonized guidelines on reporting were issued that introduced page limits on states documentation. Nonetheless, the States Parties did not learn to respect them very quickly. In 2011, 33% of the initial reports exceeded the 60-page limit, and 64% of the periodic reports exceeded the 40-page limit. With regard to translation costs, the number of pages above the limit in that year alone amounted to 5.5 million USD.[96] In other words, if page limits were respected, this amount could have been saved or used differently. In addition, costly translations of summary records of the treaty body meetings are also to be mentioned.

9. Low awareness of the system

The system of human rights treaty bodies is largely unknown not only among the general public – the rights holders themselves – but also among journalists and even lawyers. At least in Europe, the international human rights system offered by lawyers to their clients is traditionally the European Court of Human Rights.[97] This is natural, as the treaty bodies

[95] OHCHR report (n 1) 80.

[96] ibid 54, 55.

[97] With regard to the question of whether the system of the treaty bodies and the European Court of Human Rights are mutually exclusive it should be mentioned that after submitting a communication to a treaty body, the same case containing no relevant new information cannot be later submitted to the European Court of Human Rights, as it would be declared inadmissible (art 35 para 2 (b) of the ECHR). With regard to the possibility of an examination of a case by a treaty body after it has been examined by the European Court of Human Rights, it depends on the rules of the particular committee. For example, the Human Rights Committee can examine such a case if the proceeding at the European Court of Human Rights is already finished (art 5, para 2a of the Optional Protocol to the ICCPR).

are not a court and their decisions cannot be enforced. However, another reason for this is that the system of different committees with different competencies is extremely complicated and difficult to understand.

With regard to the state reporting procedure, concluding observations containing expert recommendations are a very valuable resource deserving wide dissemination by the media and more awareness by the public in the given country. However, due to the complexity and low visibility of the system, they often receive very little attention.

With regard to communications, if we take into account that the treaty bodies have a specific authority towards countries in all world regions, due to the reasons mentioned above, we need to conclude that the number of individual complaints received by the committees is actually very low. For example, the Human Rights Committee that has been dealing with individual communications for the longest period has decided 1155 cases from its inception 40 years ago up until 2016 on the merits.[98] If we compare it to the European Court of Human Rights, which is able to deliver around 1000 judgments a year,[99] and at the same time take into consideration that the system serves all regions of the world, we see that the contribution to the protection of individuals that the treaty body system provides for is actually very low.

It is easy to understand why the rights holders do not use the system. Even if the committee found a violation of a right, as mentioned above, only a very small proportion of decisions would be respected and remedied domestically. Taking into account the costs of lawyers, this is simply not worth the time, effort or money. Moreover, the vast majority of people are not even aware of the very existence of the system. As one expert noted, with regard to the very small team of the OHCHR that deals with communications, 'The UN can be grateful that most of the millions of victims of human rights violations around the world have never heard of the possibility of lodging a complaint to any of the nine UN treaty monitoring bodies.'[100]

[98] *Statistical survey on individual complaints, March 2016*, at Human Rights Committee, OHCHR <www.ohchr.org/EN/HRBodies/CCPR/Pages/CCPRIndex.aspx> accessed 1 July 2017.

[99] In 2016 the ECHR delivered judgments in respect of 1926 applications. As a number of applications were joined, it actually delivered 993 judgments. See *Analysis of statistics 2016*, at European Court of Human Rights, Council of Europe <www.echr.coe.int/Pages/home.aspx?p=reports> accessed 1 July 2017.

[100] Nowak (n 17) 5.

10. Insufficient funding in relation to the growth of the system

Whereas all the meetings of the treaty bodies amounted to 51 weeks in 2000, they grew to 74 weeks in 2012. The cumulative number of ratifications amounted to 927 in 2000 and grew to 1586 in 2012.[101] The growth of the system, however, was not supported by an appropriate increase in resources and the required amount of working weeks. Therefore, the backlog of the committees grew significantly. In addition, one-quarter of its budget needed to be financed by voluntary contributions.[102] The chronic under-resourcing of the treaty body system, due to the unwillingness of the GA to properly finance such a mechanism, is a long-term problem of the whole system.

With regard to the costs structure, it is important to take into account that the highest proportion is represented by the 'conference services': mainly translations of documentation and interpretation. The following table distinguishes four key categories of the system with regard to annual costs.[103]

Table 1: Costs of the treaty body system (2012, in million USD)

Conference services (meetings and documentation)	29.7
Travel and DSA of experts[104]	7.4
Staff costs (OHCHR)	14.6
UN Information services	0.38
Total	**52**

[101] OHCHR report (n 1) 17, 18.

[102] ibid 26.

[103] Christen Broecker and Michael O'Flaherty, *The Outcome of the General Assembly's Treaty Body Strengthening Process,* 2014, Universal Rights Group <www.universal-rights.org/wp-content/uploads/2015/02/URG_Policy_Brief_web_spread_hd.pdf> accessed 1 July 2017, 18. Based on the Background paper in support of the intergovernmental process of the General Assembly on enhancing the effective functioning of the human rights treaty body system, SG report, A/68/606, 19 November 2013.

[104] Apart from Daily Subsistence Allowances (DSA), with regard to costs it is important to emphasize that as the treaty bodies are not permanent committees, the costs of flights for the experts to each of the sessions presents a notable cost item.

3.1 Conclusions

A lot has been written about the imperfections of the treaty body system. Although established as rather weak with only soft powers, this is the mechanism we have to monitor compliance with human rights treaties at a universal level. As the different committees review over 100 state reports yearly and issue relevant recommendations for improvements,[105] the work of their members should be very much appreciated. However, the system suffers from many imperfections, and therefore we should strive to make it better.

Within this chapter, nine major problems of the system have been identified that require implementation of effective reform measures. The additional problem (9+1) relates to the long-term under-resourcing and, as such, it requires that the GA takes human rights protection as a priority not only within its formal declarations but also by granting appropriate resources to the system that would help all countries in the world to improve their human rights situation.

Unfortunately, most of the problems identified are an integral part of the system resulting from the manner in which it was created. Therefore, it is not possible to effectively tackle them with any minor changes. In other words, the treaty bodies deal with major difficulties, and if we take the intention to improve the system seriously, it is clear that it requires significant changes. In this regard, it is necessary to stress that any reform measures considered should aim at reducing or eliminating the identified problems.

[105] OHCHR report (n 1) 20.

4.

TREATY BODY STRENGTHENING PROCESS 2009–2014

Although the ambitious proposal of the High Commissioner, from 2006, to merge all committees into one was abandoned, it was clear that the 'old' problems of the treaty bodies were growing and, that there was an urgent need for improvements. However, as the 'reform' was not successful, the OHCHR took a diplomatic approach and started to call the new process a 'strengthening'.

4.1 The 'Dublin process'

In 2009, the High Commissioner initiated a robust Treaty Body Strengthening process which included some twenty consultations with treaty body members, representatives of states, civil society as well as academics.[106]

As the first meeting of 35 serving and former treaty body members took place in Dublin, the process organised under the auspices of the High Commissioner is sometimes referred to as the 'Dublin process'. In contrast to the previous approach, all stakeholders were included, and within two years a large number of strengthening alternatives had been discussed. Among the outcomes of the meetings, a 'Dublin II Outcome Document' is to be mentioned, which contained 137 recommendations.[107]

[106] For the relevant documents, see Treaty Body Strengthening (n 5).

[107] *The Dublin II Outcome Document*, at Treaty Body Strengthening – Outcome documents, reports, and statements <www.ohchr.org/EN/HRBodies/HRTD/Pages/Documents.aspx> accessed 1 July 2017.

In 2011, the SG proposed that in the short-term, current backlogs should be reduced by giving the committees additional meeting time and in the long-term, a fixed calendar based on 100% compliance should be introduced.[108]

4.1.1 Measures proposed by the UN High Commissioner's 2012 report

The report of the UN High Commissioner for Human Rights was supposed to be the conclusion of the two years of debate on how to improve the functioning of treaty bodies. Based on all the discussions and their outcome documents, the OHCHR prepared a report in which the High Commissioner presented her view about what concrete measures should be implemented. These proposals were based on the criteria that they do not require any amendments to the treaties; they were considered by different stakeholders during the consultations and as such were likely to be agreed on.[109] Although the report contained a large number of recommendations for improvements, five major points will be presented here.

First, in order to tackle the high level of non-cooperation by states with regard to reporting and to ensure a regular review of their human rights obligations by all committees, the High Commissioner proposed introducing a **comprehensive reporting calendar** (fixed calendar or sometimes also called a 'master calendar').[110] As late reporting became the norm in two-thirds of the cases, and only a few committees would review a country in the absence of a report, which in practice happens many years after the report is due anyway, this measure would introduce strict deadlines for report submissions and reviews of states by different committees. They would know the deadlines well in advance, and if a state did not submit a report, it would be reviewed in the planned time-slot anyway. Therefore, by submitting the report late or not submitting it at all, the state would not be able to avoid the review of its human rights obligations by the relevant committee.

This measure also allows for a balance of the burden that the reporting imposes on states in different years. Currently, the uncoordinated

[108] Measures to improve further the effectiveness, harmonization and reform of the treaty body system, SG report, A/66/344, 7 September 2011, para 46.
[109] OHCHR report (n 1) 10.
[110] ibid 37–47.

deadlines by different committees often result in a situation when a state does not have to report in a particular year, but then should submit a number of reports the following year. The comprehensive reporting calendar, with a five-year cycle, would, therefore, be designed in such a way that each state would need to prepare a maximum of two reports per year.[111]

Second, the High Commissioner proposed that all committees introduce a **simplified reporting procedure**, which is also known as a List of Issues Prior to Reporting (LOIPR). This measure was used only by a few treaty bodies and makes the reporting procedure more focused, as a state does not submit a comprehensive report, but first receives information from the committee about what issues it wants to focus on. In line with this input, the state elaborates a report aimed at the emphasised topics. The simplified reporting procedure thus results in the reporting process being unweighted and streamlined, reducing the costs for translations of long reports and focussing more on the most pressing human rights issues.[112]

Third, according to the report, a **joint treaty body working group on communications** should be set up. As each committee deals with the individual communications separately, it is true to say that interpretations of the same topics by different committees sometimes differ. Therefore, in order to ensure uniform decision-making of the treaty body system, the High Commissioner wanted to explore the possibility that the treaty bodies perform their quasi-judicial authority together.[113]

Because the different committees truly deal with overlapping human rights issues (eg torture, as part of both the ICCPR and CAT), with regard to the potential of bringing legal clarity this would be a very welcome measure. It has also been described as 'perhaps the most radical and surprising' recommendation of the report by one of the commentators.[114] However, to several lawyers, it seemed that such a

[111] OHCHR report (n 1) 46–47.

[112] In the traditional reporting procedure, there are four steps – the state submits a report, based on which the state prepares a list of issues to focus on, then the state submits written replies to the list of issues and finally the dialogue between the committee and the delegation of the state takes place. By introducing the simplified reporting procedure, the 'bureaucracy' of this procedure, including necessary translations, is reduced to three steps. For more on this recommendation, see OHCHR report (n 1) 48–52.

[113] ibid 69–74.

[114] Suzanne Egan 'Strengthening the United Nations Human Rights Treaty Body System' (2013), 13 (2) HRLR 209–143, 229.

move might require amendments to the treaties.[115] Similarly, as regard to the USTB, the treaties were drafted for each committee separately. Therefore, some argue that according to the treaties each committee needs to exercise their powers with regard to considering individual complaints separately. Moreover, a joint treaty body working group on communications seems to be only step before implementing the idea of a World Court of Human Rights, as supported by Professors Manfred Nowak and Martin Scheinin, which would take over the powers of the treaty bodies with regard to individual communications and would be able to decide in a legally binding manner.[116] Regarding the proposal to create the joint treaty body working group on communications, proper analysis of its legal feasibility would need to be performed.

Fourth, although the majority of the treaty body members, who are not remunerated for their work apart from the DSA, are very engaged professionals, in general, the membership of the treaty bodies could be improved. Therefore, the High Commissioner supported strengthening their independence and impartiality by adopting **guidelines on the independence and impartiality** of members of the human rights treaty bodies (the 'Addis Ababa guidelines' were adopted shortly after the release of the report).[117] As treaties are rather silent about the expertise of the treaty body members and therefore open some space for 'horse-trading' by states voting, the High Commissioner also proposed adopting national policies that would ensure the nomination of candidates through an open and transparent selection process from the best experts in the relevant area.[118]

[115] This was also mentioned at the Expert Meeting on Petitions in Geneva 29 October 2011. See Treaty Body Strengthening – Outcome documents, reports, and statements, OHCHR <www.ohchr.org/EN/HRBodies/HRTD/Pages/Documents.aspx> accessed 1 July 2017.

[116] For more information, see Manfred Nowak 'The Need for a World Court of Human Rights' (2007), 7 (1) HRLR 251–259; see also Gerd Oberleitner 'Towards an International Court of Human Rights?' In Mashood Baderin and Manisuli Ssenyonjo (eds) *International Human Rights Law: Six Decades after the UDHR and Beyond* (Ashgate 2010) 359–370; moreover, a draft statute of the possible World Court of Human Rights has been elaborated, see Julia Kozma, Manfred Nowak and Martin Scheinin, *A World Court of Human Rights – Consolidated Statute and Commentary* (Neuer Wissenschaftlicher Verlag 2010). For a negative standpoint, see Philip Alston 'Against a World Court of Human Rights' (2014) 28 (2) E&IA 197–212.

[117] Guidelines on the independence and impartiality of members of the human rights treaty bodies ('The Addis Ababa Guidelines'), A/67/222, June 2012.

[118] OHCHR report (n 1) 74–80.

Fifth, in order to improve the **visibility and accessibility** of the treaty bodies, the report suggested that webcasting of the public sessions of all treaty bodies should be organised, in order to enable easy access for the public, NGOs or academia to sessions of the committees. At the same time, videoconferencing should help to reduce the travel costs of some delegations and also enable the treaty bodies to better engage with civil society.[119]

Apart from the measures mentioned above, there were others like strict adherence to page limitations according to the harmonized guidelines. In this regard, a reduction in the translations of summary records was also suggested. Further measures included, *inter alia,* establishing a treaty body jurisprudence database on individual cases, more focused concluding observations (recommendations of the treaty bodies), common guidelines for follow-up procedures and capacity-building activities related to state reporting.[120]

As the outcome presented by the High Commissioner took into account the large number of discussions that took place within the treaty body strengthening process, there can be little doubt that it is a high-quality set of proposals. However, one issue needs to be pointed out – the question of costs. While different measures would result in the need for some additional funds, as well as in cost-saving, the major proposal to introduce a comprehensive reporting calendar presented a significant increase in the costs of the system.

This needs to be the case simply because if the treaty bodies start to review all states, in contrast to the current situation when a number of states do not report and thus are not reviewed, consequently there would be a need for additional meeting time and conference services. The meeting time of different committees would increase from 73 weeks to 124 weeks annually. As a result, the costs of the system would rise from 56.4 million USD to 108 million USD. This would amount to an increase of 52 million USD.[121] In other words, according to the report of the High Commissioner from 2012, implementing the comprehensive reporting calendar would almost double the budgetary needs of the system.

[119] OHCHR report (n 1) 89–94.
[120] For a detailed analysis of the measures, see Egan (n 114) 214.
[121] OHCHR report (n 1) 43, 97.

4.2 The intergovernmental process

In early 2012, when the treaty body strengthening process run by the OHCHR was slowly coming to a conclusion, a little-expected move came from the UN GA. The Russian Federation put through a GA resolution that initiated an open-ended intergovernmental process on strengthening the treaty bodies within the framework of the GA.[122] As it was seen by the drafters and a number of like-minded states that instead of the OHCHR-led consultations it should be the states who have control over the process, by this initiative the centre of gravity of the treaty body strengthening process was shifted to the GA.[123]

Based on the resolution, the President of the GA appointed two co-facilitators from Iceland and Tunisia to lead the process within the GA. The co-facilitators organised a number of consultations and informal meetings, and a year later issued a progress report characterising 32 issues that had been discussed, in a similar way as the High Commissioner had already done.[124]

With regard to the support of different measures, it is necessary to admit that assessment of their cost implications played a major role. According to the cost review, in 2012, the costs of the whole system amounted to 52 million USD.[125] In addition, the cost review explained that the costs of clearing the in-hand (existing) backlog would amount to 79.61 million USD. Moreover, in order to clear the anticipated backlog (if all States Parties complied with their treaty obligations), the cost would amount to 158.42 million USD.[126]

In her 2012 report, the High Commissioner stated that introducing the comprehensive reporting calendar would represent additional

[122] Intergovernmental process of the GA on strengthening and enhancing the effective functioning of the human rights treaty body system, GA Res. 66/254, 23 February 2012.

[123] See Egan (n 114) 240. Among the like-minded states forming a 'cross-regional group', apart from the Russian Federation there was also Belarus, Bolivia, China, Cuba, Iran, Nicaragua, Pakistan, Syria and Venezuela.

[124] Report of the co-facilitators on the open-ended intergovernmental process to conduct open, transparent and inclusive negotiations on how to strengthen and enhance the effective functioning of the human rights treaty body system, GA report, A/67/995, 16 September 2013.

[125] Background paper in support of the intergovernmental process of the General Assembly on enhancing the effective functioning of the human rights treaty body system, SG report, A/68/606, 19 November 2013, 11.

[126] *Comprehensive cost review of the human rights treaty body system, Geneva, April 2013*, at Treaty Body Strengthening, OHCHR <www.ohchr.org/Documents/HRBodies/TB/HRTD/ComprehensiveCostReview.pdf> accessed 1 July 2017, 10–11.

costs of 52 million USD a year.[127] However, in a later consideration the OHCHR came to the conclusion that if several measures were respected (ie strict adherence to page limitations, a simplified reporting procedure, limiting the languages for summary records, working in chambers etc), the additional costs of implementing the comprehensive reporting calendar could decrease to 12.5 million USD.[128] Although the costs of the fixed calendar may, in reality, be lower than previously expected, in general, we can see that dealing with all reports that the states are legally obliged to submit would have considerable cost implications.

Later, the UN SG presented a thorough report with a cost assessment of the measures in question based on the report of the co-facilitators. In this report, he provided valuable information about the positive and negative cost effects of the different measures considered.[129] However, the report did not contain the comprehensive reporting calendar that would enable the human rights obligations of all States Parties to be reviewed on a regular basis.

4.2.1 Measures adopted by GA resolution 68/268

After the cost assessment, the co-facilitators finalised their work and the set of measures that the states had agreed on during the intergovernmental process.[130] In April 2014, the work resulted in the adoption of GA resolution 68/268 on *Strengthening and enhancing the effective functioning of the human rights treaty body system,*[131] which outlined the outcome of the four-and-half year long treaty body strengthening process.

[127] OHCHR report (n 1) 43, 97.

[128] *Questions and answers on the Comprehensive Reporting Calendar, OHCHR, November 2012*, at OHCHR <www.ohchr.org/Documents/HRBodies/TB/HRTD/QAReportingCalendar.pdf> accessed 1 July 2017, 9–11.

[129] SG report, A/68/606, 19 November 2013.

[130] Report of the Secretary General on measures taken to implement resolution 9/8 and obstacles to its implementation, including recommendations for further improving the effectiveness, harmonization and reform of the treaty body system, GA report, A/HRC/25/22, 17 January 2014; also Report of the co-facilitators on the intergovernmental process of the General Assembly on strengthening and enhancing the effective functioning of the human rights treaty body system, GA report, A/68/832, 9 April 2014.

[131] GA Res. 68/268, 9 April 2014. The resolution was adopted by consensus. In this regard it is good to note that already in 2005 the UN SG Kofi Annan in his report *In Larger Freedom* criticized the frequent adoption of resolutions by consensus in the GA. He pointed out that the content then reflects only the lowest common denominator and it leads to 'abandoning any serious effort to take action'. See SG report, A/59/2005, 21 March 2005, para 159.

At the beginning of the treaty body strengthening process, when led by the OHCHR, it seemed that the improvements supported would be ambitious in addressing the majority of the important challenges. Nevertheless, the involvement of the GA led to a softening of the proposed measures. A positive point of the outcome, however, is that the co-facilitators and participants managed to identify the most costly areas of the system, and by cutting their costs they were able to allocate the relevant funds to other areas of the system that were in need of additional resources.

Within its 41 operational paragraphs, the resolution supports a number of concrete measures. With regard to their character, according to the cost assessment, they can be divided into three groups.

First, several measures will require additional resources. Among those, the major measure adopted was granting **additional meeting time** to all treaty bodies, in order to enable them to deal with their heavy backlogs more effectively. The resolution added two weeks of meeting time to each committee and created a formula according to which an annual meeting time for each treaty body should be identified in the future. It takes the average number of reports received during the last four years and assumes that a committee can review 2.5 reports within one week. If dealing with communications, a treaty body is also granted 1.3 hours to deal with one communication.[132] In sum, the meeting time of the treaty bodies was increased by more than 20%, which should be appreciated.

Another measure falling into the category of requiring additional resources is the support of **capacity-building** activities for states. By deploying human rights capacity-building experts to the regions, the OHCHR will be able to provide states with training on reporting.[133] Other such accepted measures were the introduction of **videoconferencing** in order to allow members of state delegations not present at the meeting to participate in the meeting, and the introduction of **webcasting** of the public meetings of all treaty bodies in order to enable the public access to the meetings.[134] However, the latter received only rhetorical support, without being granted resources from the UN's regular budget.[135]

[132] GA Res. 68/268, 9 April 2014, para 26.
[133] ibid para 17.
[134] ibid paras 22, 23.
[135] Christen Broecker, *UN General Assembly Concludes its Review of Human Rights Treaty*

Therefore, such a measure would have to be financed from voluntary contributions.

Second, a number of measures were adopted that have a cost-saving effect. These are aimed at reducing the work of the 'conference services' activities that present by far the largest part of the costs of the treaty body system. In this regard, the GA agreed that **word limits** for States Parties documents would be introduced. Furthermore, a word limit was also set on documents produced by treaty bodies. The resolution also set out that in principle, there would be a maximum of three official **working languages** for each of the committees, and **summary records** of the meetings would be issued in only one language.[136] By introducing these measures, the documents would need to be more focused and significant savings would be achieved by reducing the need for extensive translations, as well as for interpretation services.

Third, among other measures supported by the resolution were the use of the **simplified reporting procedure** in order to reduce the steps of the reporting process and making the reports more focused. The treaty bodies were encouraged to adopt short and **focused concluding observations,** including the recommendations therein. In order to harmonise the system, the GA supported the role of chairs of the treaty bodies with regard to **standardising the working methods** of the different committees. In addition, with regard to treaty body membership, it encouraged the states to **nominate experts with recognised competence** and experience in the field of human rights, as well as being of high moral standing. Although this group of measures might seem to be simply proclamations, in reality, the 'soft law authority' of the GA often provides an important argument for implementing such measures.[137]

In addition to the substantive paragraphs, the resolution requested the SG to submit to the GA a comprehensive report on the status of the treaty body system and the progress achieved on a biennial basis. Moreover, the GA decided to consider the state of the treaty body

Bodies, 2014, Universal Rights Group <www.universal-rights.org/blog/un-general-assembly-concludes-its-review-of-the-human-rights-treaty-bodies> accessed 1 July 2017.

[136] GA Res. 68/268, 9 April 2014, paras 15, 16, 24, 30.

[137] ibid paras 1, 6, 10, 38. For other measures, see the resolution. For a view of the author from the year 2014, see Jan Lhotský 'The UN Human Rights Treaty Body System – Reform, Strengthening or Postponement?' (2014) 5 (1) CYIL 255–266; for an immediate view after the GA resolution was passed, see Michael O'Flaherty 'The Strengthening Process of the Human Rights Treaty Bodies' (2014) 108 ASIL 285–288.

system 'no later than six years' from the date of the adoption of GA resolution 68/268, to review the effectiveness of the measures taken and if necessary, to decide on further action.[138] In other words, the resolution set out that in 2016 and 2018, the SG will provide the GA with a report on the situation of the treaty body system and in 2020, States Parties are expected to agree on a new 'review' of the system based on its actual needs.

The outcome of the treaty body process, in the form of the GA resolution, aimed to reduce the backlog of the treaty bodies by providing them with additional meeting time and to facilitate the reporting obligations of the states by introducing a capacity-building programme. Both measures are costly, and the resources were found by introducing page limits and restricting translations and interpretations. By these measures, savings of 19 million USD per year (37% of the costs of the system) could be redirected to the additional meeting time and capacity-building activities.[139] Therefore, the GA managed to introduce a set of measures that are in total cost-neutral, without granting the treaty body system additional resources.[140] Rationalisation of the use of resources is welcome indeed. However, it needs to be said that the measures supported by the GA focused on tackling the short-term rather than the long-term challenges of the system.

[138] GA Res. 68/268, 9 April 2014, paras 40–41.

[139] Christen Broecker (n 135); also Christen Broecker and Michael O'Flaherty (n 103) 2 and 19. The budget of 4.5 million USD a year should support the capacity-building activities.

[140] In fact, the Fifth Committee of the GA reported that taking both additional costs and savings into consideration, adopting the measures would lead to a net cost increase of 194,000 USD for the 2014–2015 biennium. This amounts to an increase of 0.19% annually. See *Fifth committee considers financial implications of draft resolution on strengthening United Nations human rights treaty body system,* 2014, UN <www.un.org/press/en/2014/gaab4103.doc.htm> accessed 1 July 2017.

4.3 Conclusions

After the proposal of the High Commissioner from 2006, to introduce one full-time committee had been abandoned, the OHCHR downgraded the wording of the efforts from a 'reform' to a 'strengthening', and in order to achieve a generally acceptable outcome, she included all the stakeholders in the process for finding the measures to be introduced. For more than two years the treaty body strengthening process thus took place under the lead of the High Commissioner. However, it was taken over by the GA as an 'intergovernmental process' in order to allow states to have the major role in negotiating the supported measures.

It would be a euphemism to say that the outcome of the treaty body strengthening process in the form of the GA 68/268 report of 2014 addressed the main problems of the system. In fact, it avoided introducing a number of measures supported by the High Commissioner, mainly the comprehensive reporting calendar that would have had real potential to effectively address the problem of the states' late and non-reporting.

Mainly three results of the strengthening process should be welcomed. First, it supports additional meeting time for all the committees in order to tackle the existing backlogs. Second, it allocates resources for a new capacity-building programme by which states should receive training in how to fulfil their reporting obligations. Third, by limiting translation and interpretation activities, resources were found and redistributed in order to fund the above-supported measures.

The GA resolution thus rationalised the use of current resources without granting the system additional ones. The result, whose main asset was granting the committees additional meeting time, was described as a 'temporary relief' by one of the stakeholders. Another one, a diplomat, called it a 'sticking plaster'.[141] In the long-term, the fact that what was once intended as a 'reform' was reduced to a 'strengthening', and this was further softened to a 'sticking plaster', is not acceptable. However, in the short-term, when you have a pressing problem, even a sticking plaster can help.

[141] O'Flaherty (n 137) 288.

5

ANALYSIS OF THE MEASURES IMPLEMENTED

The GA resolution 68/268 of 2014 requests that the SG submit to the GA a comprehensive report on the status of the human rights treaty body system and the progress achieved on a biennial basis.[142] The first report was therefore published two years after adoption of the GA resolution, in July 2016.

5.1 Status of the human rights treaty body system in 2016

The report of the SG presents the most up-to-date information about the system.[143] Its conclusions are supported by a supplementary information report containing 22 annexes with the relevant statistical data.[144] The report covers the time period from the adoption of GA resolution 68/268 in April 2014 until June 2016.[145] Although a little bit technical, its content is very helpful in order to assess the state of the system after the new measures have been implemented. In this regard, it is necessary to keep in mind that some of the measures do not become evident immediately; nevertheless, the report shows the important trends of the system.

According to the analysis, ratifications of the treaties increased by 5% from 2013 to 2015,[146] so the system continues its steady growth.

[142] Strengthening and enhancing the effective functioning of the human rights treaty body system, GA Res. 68/268, 9 April 2014, para 40.
[143] Status of the human rights treaty body system, SG report A/71/118, 18 July 2016.
[144] Status of the human rights treaty body system. Supplementary information, SG report A/71/118, 18 July 2016
[145] SG report, A/71/118, 18 July 2016, para 2.
[146] ibid para 4.

With regard to the states' compliance, it should be emphasised that at the beginning of 2016 only 13% of states were fully compliant with all their reporting obligations. In fact, three treaties counted more than 15 States Parties whose initial report was more than ten years overdue.[147]

The new capacity-building programme was fully operational in 2015, with ten staff members in ten OHCHR regional offices and six in Geneva. There has been a significant demand for the activities on the part of the states, and several training sessions of trainers were held in the regions.[148] The results of these activities, in the form of an increase in the submission of states reports, are expected in the long rather than short-term.

There is an important development to be noted with regard to communications. The number of individual communications received increased sharply between 2012 and 2015, from 170 to 307, which amounts to an increase of 80%. Most of them – almost two-thirds – are being received by the Human Rights Committee.[149]

The 2014 GA resolution 68/268 provides for a mathematical formula to identify the meeting time needed for different treaty bodies. From 2015, their overall meeting time amounted to 96.6 weeks a year, which amounted to an increase of 20.6 weeks. The additional meeting time granted had the desired effect of increasing the number of adopted concluding observations by 26% and of views by 58%.[150] There is little doubt that this is one of the biggest contributions achieved by the GA resolution. However, it should be noted that the additional meeting time presents considerable challenges to the treaty body members, as they have other jobs.

One would think that due to the additional meeting time, the problem of considerable backlogs would have significantly decreased. Nevertheless, the situation is more complicated. This is true with regard to the backlog of state reports, as it witnessed a decrease of 15%.

[147] SG report, A/71/118, 18 July 2016, paras 5–6. The OHCHR provides up-to-date information on late reporting states on its webpage. See Late and non-reporting states, OHCHR <http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/LateReporting.aspx> accessed 1 July 2017; furthermore see Human Rights Indicators, OHCHR <www.ohchr.org/EN/Issues/Indicators/Pages/HRIndicatorsIndex.aspx> accessed 1 July 2017; also see *Compliance Map,* OHCHR <www.ohchr.org/Documents/Issues/HRIndicators/Reporting_Compliance.pdf> accessed 1 July 2017.

[148] SG report, A/71/118, 18 July 2016, paras 9, 10, 12.

[149] ibid para 21.

[150] ibid paras 26–27.

Nevertheless, due to the rising number of individual communications, the backlog with regard to communications increased by 31% – and if we focused on the Human Rights Committee, it would rise by a full 90%. Therefore, in spite of the higher output, due to the sharp increase in the number of communications, the overall backlog of the treaty body system has actually increased rather than decreased.[151]

With regard to the gender composition of the committees, out of the 172 experts, there were 56% men and 44% women at the beginning of 2016. This is already close to being balanced, although if we look closer, it should be noticed that there is only one male expert on the CEDAW committee. In fact, in CEDAW men are underrepresented, and in the vast majority of the other committees, women are underrepresented. Therefore, if we do not take CEDAW into account, the proportion of women in the treaty bodies drops to only 31%.[152]

Other issues dealt with in the report were the exponential increase in the requests for urgent action to the CED, insufficient resourcing of the inquiries procedure, as well as the need to grant at least one additional week of meetings to the SPT that is not covered by the mathematical formula.[153]

The given word limits are being enforced strictly by the OHCHR, which brought the system the necessary savings. However, no word limits are established for State Party replies to the list of issues within the standard reporting procedure, which should be additionally introduced according to the report. All treaty bodies use three working languages. In addition, webcasting of treaty body sessions was introduced, funded by extra-budgetary resources from the European Union as a project ending in June 2017.[154] According to the supplementary information, the annual costs for webcasting should amount to approximately 530,000 USD.[155] The SG requests that the GA provide relevant resources for the future meeting time, including the costs of webcasting.[156]

The SG report considers the state of implementation of GA resolution 68/268 'globally positive', as it witnessed an increase in the number of state reports and communications, as well as initiating the new capacity-building programme.

[151] SG report, A/71/118, 18 July 2016, paras 31, 33, 36, 37. With regard to the proportion of the communications, 89% of them are addressed either to the Human Rights Committee or the Committee against Torture.
[152] SG report (supplementary information), A/71/118, 18 July 2016, Annex XVIII.
[153] SG report, A/71/118, 18 July 2016, paras 46, 49, 91.
[154] ibid paras 67, 69, 70, 73, 84.
[155] SG report (supplementary information), A/71/118, 18 July 2016, Annex XX.
[156] SG report, A/71/118, 18 July 2016, paras 84, 90.

5.2 Assessment of the current situation of the treaty body system

After explaining the major problems of the system in Chapter 3, presenting the strengthening measures adopted in Chapter 4, and summarising the status of the treaty body system after the implementation of these measures in Subchapter 5.1, it is time to evaluate to what extent the measures adopted by GA resolution 68/268 in 2014 confronted the real problems of the system. Based on such an evaluation, conclusions can be drawn on the need for further measures.

In order to maintain the consistency of the approach, the weaknesses of the system identified earlier will be taken as a reference, and for each of them the level of improvement initiated by GA resolution 68/268 will be assessed. The problems are the following:

1. Late reporting and non-reporting by states

After two years of implementation, there are no signs suggesting that the reporting compliance of states would improve. The number of states reporting on time remains very low, and a considerable number of states do not report at all. In this regard, however, the new capacity-building programme that has the potential to contribute to higher reporting compliance in the future should be welcome.

2. Backlog of the treaty bodies

The main measure adopted in 2014 was granting the committees additional meeting time in order to tackle their respective backlog. Although the backlogs of the state reports decreased by 15%, due to the sharp rise in new communications, the backlog for individual complaints increased by 31%.[157] This increase is most apparent with regard to the Human Rights Committee.

3. High reporting burden on states

The need for multiple reporting for different treaty bodies did not change. However, as all treaty bodies now offer states the possibility of using the simplified reporting procedure, the reporting burden has been reduced.[158] Two other measures might help to ease this – the existence of word limits, as well as the functioning of the capacity-building programme.

[157] SG report, A/71/118, 18 July 2016, paras 33, 37.
[158] SG report (supplementary information), A/71/118 of 18 July 2016, 31.

4. Diverging interpretation of same issues by different treaty bodies

In essence, this has not changed. As the system is still composed of 172 experts in different treaty bodies, divergence is still present. Nevertheless, the chairs of different committees are gradually working on the harmonisation of the working methods across the treaty body system.[159]

5. Quality of the treaty body members

With regard to the quality of the committee experts it should be said that the seven problematic points explained in Chapter 3 were not effectively addressed. Relevant progress that should be noted is the adoption or endorsement of the Addis Ababa guidelines on the independence and impartiality of the treaty body members by the vast majority of the treaty bodies.[160]

6. Low authority of decisions on communications

This is, unfortunately, an area on which very little statistical information is available, including on the part of the OHCHR. In the past, according to one survey, the compliance of states with decisions of treaty bodies on individual communications amounted only to 12%.[161] As the 2014 outcome did not aim at improving this issue, it is clear that states' compliance rate with regard to communications remains very low.

7. Insufficient or non-existing follow-up procedures

As GA resolution 68/268 did not contain any measures aiming at introducing or improving follow-up activities of the committees, not even the SG report of 2016 dealt with this issue. Therefore, it remains unaddressed.

8. High costs of translations

Unnecessary translations of lengthy documents is something that was actually effectively addressed by the introduced strengthening measures. Both translation and interpretation costs were reduced, word limits for documentation were introduced and are being strictly enforced by the OHCHR.[162]

[159] SG report, A/71/118, 18 July 2016, para 64.
[160] ibid para 66.
[161] Baluarte at al. (n 94) 27.
[162] Additional possible improvement was identified in the SG report of 2016. See SG report, A/71/118, 18 July 2016, para 70.

9. Low awareness of the system

No measure among the ones adopted in 2014 aimed at achieving greater visibility of the system. Treaty bodies remain a complicated and incomprehensible system that are not only unknown by rights holders but also very little known by media and lawyers.

10. Insufficient funding in relation to the growth of the system

The additional problem of the unwillingness of the GA to grant the treaty body system additional resources was still valid in 2014, because the measures adopted were planned as cost-neutral. As identified by the SG report in 2016, there will be a need for additional resources from 2018 onwards. In this regard, a change in the attitude of the GA would be most welcome.

Based on the comparison of the problems in 2012 within Chapter 3 and the current situation after the implementation of the measures adopted in 2014, the following table divides the problems of the treaty bodies into three groups according to how effectively they were addressed by GA resolution 68/268.

Table 2: Level of improvement in 2016

Considerable improvement • High costs of translations
Limited improvement • Backlog of the treaty bodies • High reporting burden on states
Insignificant improvement • Late reporting and non-reporting by states • Diverging interpretation of same issues by different treaty bodies • Quality of the treaty body members • Low authority of decisions on communications • Insufficient or non-existing follow-up procedures • Low awareness of the system

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The additional problem of insufficient funding is not included as it is by its character not a problem requiring a specific measure other than granting the necessary resources. As we see, the assessment of the impact of GA resolution 68/268 supports a view that with regard to the major problems that the treaty body system faces, the measures adopted were rather of a cosmetic nature.

5.3 Conclusions

If we compare the state of the main weaknesses of the system before GA resolution 68/268 of 2014 and then two years after its adoption, we reach the conclusion that – to use the wording of the first research question of this thesis – the implementation of the given measures did not substantially improve the functioning of the treaty bodies. In fact, the vast majority of the system's problems remain unaddressed.

One of the main reasons for this is that the resolution failed to effectively address the problem of late reporting and non-reporting. States' reporting obligations and a periodic review of compliance of the state with its obligation followed by issuing recommendations to be implemented in practice builds the very core of the treaty body system. In this regard, it needs to be emphasised that the High Commissioner's proposal to establish a comprehensive reporting calendar would have much better addressed this problem. States would be reviewed in an allocated time slot no matter if they had managed to deliver their report. This would motivate states to higher compliance and at the same time ensure real periodic review of the human rights obligations of all States Parties.

Credit is to be given to the GA resolution for initiating the new capacity-building programme, whose aim is to help states with the preparation of their reports by organising relevant trainings. This programme should be further developed in the future. Furthermore, the additional meeting time granted to the committees also helped to partially eliminate the backlogs. However, due to the continuous growth of the system, including the sharp increase in receiving communications, this measure will not be sufficient.

It is necessary to conclude that the GA resolution did not address the major long-term problems of the system. In order to achieve a real improvement in the future, we need to point out the 'elephant in the room'. Since 2009, the efforts were being called a 'strengthening'. For 2020, they are being called a 'review'. However, if we truly want to improve the system, we need to admit that there is a need for a 'reform'.

6.

THE WAY FORWARD

The treaty body system has, in fact, been in need of a reform for the last 30 years.[163] As the outcome of the treaty body strengthening process in the form of GA resolution 68/268 did not properly address the long-term inefficiencies of the system, we need to approach the review envisaged for 2020 as a serious opportunity to improve the functioning of the treaty bodies.[164]

In order to tackle the problems, all the proposals discussed in the course of the last three decades should be taken into consideration. That is why the first chapters of the thesis also deal with the proposals that did not receive sufficient support at the time. A number of them should be 'on the table' again, as they may provide for effective measures to deal with the identified problems.

At the same time, the changes should strive to reduce the level of fragmentation of human rights mechanisms at the universal level. Human rights are universal, indivisible, interdependent and interrelated and, as such, they should be approached as one set of values.[165]

In order to prepare for the review, in 2015, the Geneva Academy of International Humanitarian Law and Human Rights launched a research project to thoroughly explore the options for reform in order to provide for effective functioning and long-term sustainability of

[163] The GA requested a study on long-term approaches with regard to the development of treaty bodies as early as 1988. The initial report of Philip Alston was published one year later. See GA report, A/44/668, 8 November 1989, para 1.

[164] Strengthening and enhancing the effective functioning of the human rights treaty body system, GA Res. 68/268, 9 April 2014, para 41.

[165] Vienna Declaration and Programme of Action, 25 June 1993, para 5.

the treaty body system.[166] The '**Academic Platform**' organises regional workshops to discuss the matter (ie Dublin, Moscow, San José, New York, Nairobi, New Delhi and Amman). It also developed a series of research questions and launched a call for papers, inviting all interested researchers to take part in the process.[167] The platform discusses the proposals with relevant stakeholders (ie states, treaty body members, NGOs, national human rights institutions and the UN) and during its annual meetings in Geneva. Based on the research project, the Academic Platform will present an outcome report, the conclusions of which will be considered for the 2020 review.

This thesis will also be submitted in response to the call for papers by the Academic Platform.

6.1 Reform measures recommended for 2020

The reforms proposed by the author are divided into short-term measures that should be supported in 2020 and long-term measures that require further research but should be considered in the future. It is necessary to emphasise that a premise for the measures to be implemented in 2020 is that they should support to a maximum extent the effective functioning of the treaty bodies while not requiring an amendment of the current treaties.

Any such reform has to meet two requirements. First, it needs to reduce or eliminate the major weaknesses identified in Chapter 3 that were not tackled within the previous strengthening process. Second, it needs to address the problem of the growth of the system. As the number of ratifications is growing continuously,[168] more reviews of state reports should be expected. Furthermore, there is a sharp increase in communications,[169] almost two-thirds of which are addressed to the Human Rights Committee. Moreover, the creation of additional

[166] For more information, see *Concept note*, 4–6, on the Academic Platform on Treaty Body Review 2020, Geneva Academy <www.geneva-academy.ch/our-projects/our-projects/un-human-rights-mechanisms/detail/16> accessed 1 July 2017.

[167] All relevant documents including the outcome reports from the regional workshops can be found on the webpage of the Academic Platform. See ibid.

[168] The ratifications of the treaties increased by 5% from 2013 to 2015. See Status of the human rights treaty body system, SG report A/71/118, 18 July 2016, para 4.

[169] In 2012, there were 170 communications, whereas in 2015, the treaty bodies received 307 communications. This amounts to an increase of 80%. See ibid para 21.

specialised treaty bodies is expected in the future.[170]

At the same time, as treaty body members perform their functions on a part-time basis mostly with three sessions a year, each lasting three or four weeks, the meeting time has reached the limit for being still able to perform such a function on top of another job. It is, therefore, necessary to choose a structure of the treaty body system that takes this growth into consideration.

6.1.1 The proposed Integrated Treaty Body System (ITBS)

In order to enable efficient functioning of the system under the condition that the measures supported will not require a treaty amendment, the creation of an **Integrated Treaty Body System (ITBS)** should be supported (see Diagram 1, p. 62). This would consist of a permanent Human Rights Committee monitoring both covenants (the ICCPR and the ICESCR) and a set of specialised part-time committees in the present form with an enhanced level of cooperation with the Human Rights Committee. There are two main advantages of such a move. First, it would enable the functioning of the system under its permanent growth. Second, integration of the monitoring of civil and political rights, as well as economic, social and cultural rights under one committee would strengthen the coherent interpretation of human rights. Taking their interdependence into consideration, the reformed Human Rights Committee would monitor the whole spectrum of human rights without division, as they were enshrined already in the Universal Declaration of Human Rights.

The main features of the new institutional set-up are the following:

1. Authorisation of the Human Rights Committee to monitor the ICESCR

As the ICESCR does not establish a specific treaty but assigns the ECOSOC with the task of reviewing state reports[171] (the only treaty with such a solution) and the ECOSOC later established a Committee on Economic, Social and Cultural Rights for this purpose,[172] the ECOSOC should adopt a resolution redirecting this competence to the current Human Rights Committee.

[170] Currently a drafting process exists for three treaties – rights of elderly persons, rights of peasants, and human rights and transnational corporations. See *Background Paper*, 2, on the Academic Platform on Treaty Body Review 2020, Geneva Academy <www.geneva-academy.ch/our-projects/our-projects/un-human-rights-mechanisms/detail/16> accessed 1 July 2017.

[171] ICESCR of 16 December 1966, art 16 para 2 (a).

[172] ECOSOC Res. 1985/17 of 28 May 1985.

2. Proper involvement of experts on economic, social and cultural rights

Rules for membership of experts in economic, social and cultural rights in the Human Rights Committee would need to be adopted to ensure their proper representation.[173] In this regard, several members of the current Committee on Economic, Social and Cultural Rights should be elected in order to transfer the relevant expertise to the Human Rights Committee.

3. The 'new' Human Rights Committee as a permanent body

The reformed Human Rights Committee would become a permanent body of 18 remunerated experts monitoring both the ICCPR and the ICESCR. By means of that, the current Human Rights Committee which, in fact, functions as a 'Committee on Civil and Political Rights' would become a real Human Rights Committee monitoring the whole spectrum of human rights.[174]

4. Specialised treaty bodies to work in chambers

Specialised treaty bodies would stay part-time in their current form. However, due to the growth of the system, they would increasingly work in chambers in order to cope with the workload. It was identified that working in chambers would potentially increase the number of state reports reviewed by 70–80%.[175]

5. Post-sessional meetings to ensure coherence

In order to enhance cooperation and uniform interpretation of human rights by different treaty bodies, 'Post-sessional meetings' should be established between the new Human Rights Committee and the specialised treaty bodies. These meetings would take place in the Human Rights Committee after each session of a specialised committee.

The post-sessional meetings would consist of three parts. First, the chair of a specialised committee (eg Committee on the Rights of the Child) would present the work concluded within the session to the Human Rights Committee. Second, within the membership of a Human Rights Committee, rapporteurs would be established for a topic of each specialised committee,

[173] For this purpose, the Rome Statute of the International Criminal Court can serve as an example. In art 36 para 5, it is defined that for the purpose of the election, there should be two lists of candidates.

[174] Two similar proposals were discussed in the past. However, their features differed from the presented proposal in important points, mainly because they did not consider the joined body being permanent. See Scheinin (n 66). In addition, a combined CCPR/ESCR treaty body was discussed in the San José regional workshop. See *Report of the regional consultation for Latin America*, 6, on the Academic Platform on Treaty Body Review 2020, Geneva Academy <www.geneva-academy.ch/our-projects/our-projects/un-human-rights-mechanisms/detail/16> accessed 1 July 2017.

[175] GA report, A/67/995 of 16 September 2013, para 28.

and the respective rapporteur (eg Rapporteur on the Rights of the Child) would present the recent work of the Human Rights Committee that is relevant to the respective specialised committee. Third, there would be a dialogue between members of the Human Rights Committee and members of the specialised committee on the relevant developments and legal issues with respect to the specific human rights in question.

In principle, the post-sessional meetings should take place after each session of each specialised treaty body, and they should take one day. If there were less need for interaction with regard to a particular topic, the post-sessional meetings could last only a half a day or take place only once a year.

6. Synchronisation with the UPR

As the states would report to the new Human Rights Committee on their legal obligations with regard to both the ICCPR and the ICESCR, the dates of the reviews of state reports by the Human Rights Committee should be synchronised with the UPR.[176] If there was a five-year cycle, the systems should be organised in such a way that two and half years after the review of a state by the Human Rights Committee, it would engage in a UPR within the UN Human Rights Council. By means of such synchronisation, the UPR would strengthen the follow-up to the work of the Human Rights Committee.

In addition, the workload of the permanent Human Rights Committee should be briefly outlined. As a year has 52 weeks, it is possible to count with around 46 working weeks. The committee members would need approximately 35 weeks to deal with their duties with regard to both covenants.[177] If we add up the individual days of the post-sessional meetings, they would take about four weeks. This allows for around seven weeks a year on top of that when the experts could prepare to review the reports or consider communications. This is, of course, only a rough estimate and a more detailed schedule should be elaborated in this regard.

The Human Rights Committee members should also have assistants to help them perform their duties. If the workload increased in the future, the Human Rights Committee members could work in chambers.

[176] For more on the complementarity of the treaty body system and the UPR, see Nigel S. Rodley, 'UN treaty bodies and the Human Rights Council' in Hellen Keller and Geir Ulfstein (eds), *UN Human Rights Treaty Bodies: Law and Legitimacy* (CUP 2012).

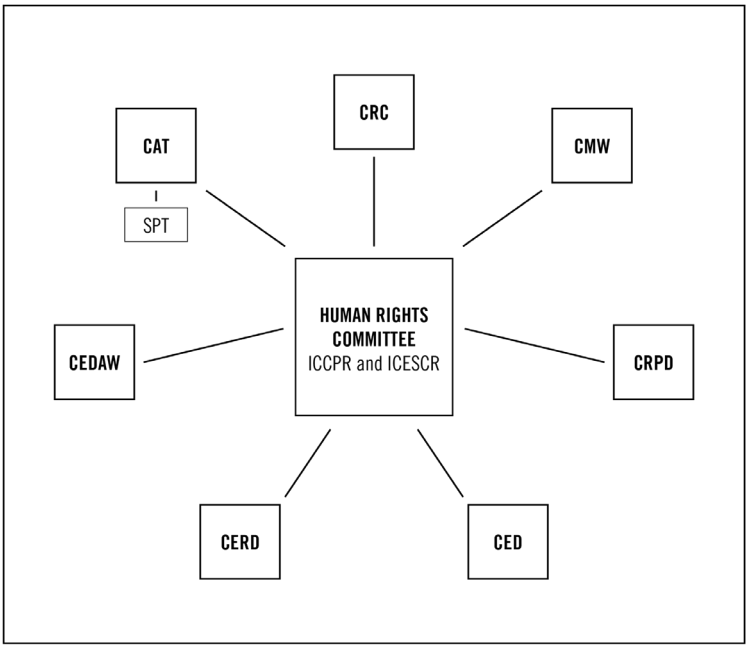
[177] The number takes into consideration the introduction of the comprehensive reporting calendar. It was counted as a proportion of the committees covering the two covenants, based on the estimate of the OHCHR that after introducing the fixed calendar, the meeting time of all treaty bodies would increase to 124 weeks annually. See Strengthening the United Nations Treaty Body System. A report by the United Nations High Commissioner for Human Rights, OHCHR report (n 1) 43.

Diagram 1: The proposed Integrated Treaty Body System (ITBS)

Premise: no need for treaty amendments

Requirements for the reform measures to be met

1. Enable the treaty bodies to function effectively under the growth of the system
2. Address the identified problems of the system to a maximum extent



Key components of the system

1. Human Rights Committee monitoring both the ICCPR and the ICESCR
   - Permanent body
   - Experts on both civil and political, as well as economic, social and cultural rights
2. Institutionalised cooperation with specialised committees
   - Post-sessional meetings

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In order to assess the impact of such a reform, it is important to outline how it would affect the following **stakeholders**:

a) States

States Parties would prepare a report on both civil and political rights, as well as economic, social and cultural rights together as one comprehensive human rights strategy. This would enable them to plan better, as well as to implement the recommendations received. In addition, any possible contradictory recommendations by different treaty bodies should be avoided through the functioning of the ITBS.

b) Treaty body members

The committee experts would be differentiated according to whether they sit in the permanent or specialised body. Members of the permanent Human Rights Committee would be properly remunerated because they would perform their duties as a full-time job. An important point is that the Human Rights Committee would not just 'take over' the duties with regard to the ICESCR, but it would integrate experts on both groups of rights in one body. Members of specialised committees would not feel any major change, with the exceptions of the work in chambers and the institutionalised communication with the Human Rights Committee.

c) NGOs

Nongovernmental organisations engage with the work of the treaty bodies on a long-term basis, providing them with important information besides the reports submitted by the states. By introducing the Human Rights Committee as a permanent body, there might be more interaction resulting in their input gaining in importance.

d) OHCHR

The work of the OHCHR would become more demanding, as it would need to organise the operation of the permanent Human Rights Committee, as well as the post-sessional meetings with specialised committees. There would be a need for some additional staff.

e) Rights holders

The rights holders would benefit from a more streamlined system with a Human Rights Committee operating as a permanent body and thus providing them with more stable protection. The ITBS would

maintain its focus on specific issues, while at the same time provide for a better functioning, coherent and more visible mechanism at the universal level.

It is argued that the proposal for the ITBS with a permanent Human Rights Committee at its centre, monitoring both the ICCPR and the ICESCR, can be implemented without the need to amend the current treaties. However, several **legal issues** are to be mentioned in this regard.

First, a legal opinion exists that the Human Rights Committee cannot be entrusted with new powers without amending the ICCPR. In fact, this was supported by the UN Office of Legal Affairs (OLA) in the past, when it considered a draft of the Convention against Torture that envisaged the Human Rights Committee as the monitoring body of the convention. OLA expressed the view that for such a move, the ICCPR would have to be amended. In 2003, it reiterated this position with regard to the proposed Convention for the Protection of All Persons from Enforced Disappearance.[178] However, for example Sir Nigel Rodley described the stand of OLA as 'legally debatable'.[179]

Consequently, we should look at examples from regional human rights systems. The European Convention on Human Rights was adopted in 1950, and later, a number of protocols were adopted that provided the system with competence on additional human rights. The American Convention on Human Rights (ACHR) of 1969 added new powers to the already existing Inter-American Commission on Human Rights. And the later Additional Protocol on Economic, Social and Cultural Rights defined new powers both for the commission, as well as for the Inter-American Court of Human Rights established by the ACHR, which contained an amendment provision.[180] Therefore, supporting the view that adding new competences to an existing body would require the original treaty to be amended according to the respective amendment procedure would be legally formalistic and rigid.[181]

[178] Preliminary non-paper on legal options for a unified standing treaty body (n 64) paras 29–30.

[179] Nigel Rodley 'Duplication and Divergence in the Work of the United Nations Human Rights Treaty Bodies: A Perspective from a Treaty Body Member' (2011) 105 ASIL 512–520, 512.

[180] See the Protocol, art 19 para 6 and the ACHR, art 76.

[181] Using this argument *ad absurdum*, it could even be argued that providing a treaty body with the responsibility for considering communications by means of an optional protocol would also require a treaty amendment.

Second, it can be argued that as an Optional Protocol to the ICESCR was adopted in 2008 and entered into force in 2013, the Committee on Economic, Social and Cultural Rights also became a treaty-based body. This is due to the fact that the ICESCR entrusts the ECOSOC with the responsibility of reviewing state reports and later the ECOSOC created the Committee on Economic, Social and Cultural Rights for this purpose. As the subsequent Optional Protocol to the ICESCR entrusts the Committee on Economic, Social and Cultural Rights with the competence to consider communications,[182] it may be argued that the ECOSOC cannot refer all powers of such a body to the Human Rights Committee.

However, as the respective committee was created by the ECOSOC and later it was provided with additional responsibilities, it can be convincingly argued that if the ECOSOC decides to redirect the responsibility to another body and the respective committee ceases to exist, the reference to the responsible body in the Optional Protocol to the ICESCR will be automatically redirected as well.

An example that could serve as a model in this regard is the African human rights system. Since 1967, the regional organisation on the continent was the Organisation of African Unity with its distinctive organs. Nevertheless, in 2001 it was replaced by the African Union. As the Protocol establishing the African Court on Human and Peoples' Rights was adopted in 1998,[183] the text entrusts several powers to the bodies of the 'old' organisation.[184] However, since 2001 it has been interpreted as relating to the corresponding organs of the African Union.

The third legal issue relates to membership. According to the ICCPR, the Human Rights Committee should be composed of nationals to the covenant.[185] As the ICCPR currently has 169 States Parties and the ICESCR has 164,[186] there are only a small number of states that would be prevented from nominating their nationals to the new Human Rights Committee. However, one of them is China, who signed in 1998, but still has not ratified the ICCPR. This might, nevertheless, present more of a political rather than a legal issue.

[182] Optional Protocol to the ICESCR, art 1.
[183] Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights, 10 June 1998.
[184] For example, monitoring the execution of judgments in art 29 para 2 of the Protocol.
[185] ICCPR, art 28 para 2.
[186] Human Rights Treaties (n 34).

A permanent organisational structure does not present any legal obstacle,[187] and neither does adjusting the periodicity of the state reports.[188] In order to take up such a reform proposal, a comprehensive legal analysis would need to be undertaken, a respective ECOSOC resolution drafted, as well as new Rules of Procedure of the Human Rights Committee.

6.1.2 Measures to address the problems of the system

Apart from the institutional setup, concrete measures need to be taken in order to address eight of the problems that were not tackled during the strengthening process.[189] The weaknesses of the current treaty body system, as identified in Chapter 3, should be reduced or eliminated by the implementation of the proposed measures (see Diagram 2, p. 75). As several of them aim to tackle more than one of the system's problems, they will be stated under each relevant area. The problems and the proposed measures to address them are the following:

1. Late reporting and non-reporting by states

a) Comprehensive reporting calendar

Much has been written about introducing a calendar, according to which all States Parties would have fixed dates for their reviews that would take place even if they had not submitted a report. This was the main recommendation by the High Commissioner's report in 2012, which was abandoned due to the later intergovernmental process run by the GA.[190]

As currently the states who report in time are in fact reviewed more often than the ones who report late (or not at all), this measure would enable an equal approach towards all States Parties and increase the motivation of states to cooperate with the treaty bodies.

[187] ICCPR, art 37 para 2.
[188] ICCPR, art 40 para. 1 (b).
[189] Chapter 3 deals with ten (9+1) problems of the system, out of which nine are inherent problems, whereas the additional one refers to under-resourcing of the system. As the problem of the high costs of translation was effectively addressed within the strengthening process, the final chapter, in fact, deals with eight problems inherent to the system.
[190] For more about the proposal, see OHCHR report (n 1) 37–47, 96–98. The measures supported in the report are further discussed in Egan (n 114).

b) Capacity-building activities for states

As the first results of the OHCHR technical assistance and training on reporting in different regions supported by GA resolution 68/268 are promising,[191] capacity-building should continue to assist states with their reporting obligations.

c) National Mechanisms for Reporting and Follow-up (NMRF)

States should be encouraged to support the establishment of NMRF that will coordinate the state activities on reporting to different human rights bodies, the follow-up and implementation on a national level. For this purpose, the OHCHR can assist with providing advice and sharing best practices.[192]

2. Backlog of the treaty bodies

a) State reports: comprehensive reporting calendar

As a result of introducing the fixed calendar, current backlog problems in the state reporting procedure would be eliminated. This is due to the fact that all dates would be set up well in advance and the respective state would always be reviewed in a particular time after its report was due.

b) State reports: specialised committees to work in chambers

Due to the fact that introducing the comprehensive reporting calendar would require additional meeting time, specialised committees would be expected to work in chambers to be able to review the states reports within their part-time appointments.

c) Communications: joint working group (WG) on communications

In order to effectively deal with the rising number of communications,[193] as well as to increase the coherence of the decisions on communications that relate to different human rights treaties, the treaty bodies should create one common working group in order to deal with the communications. As almost two-thirds are directed at the Human Rights Committee,[194] its transformation into a permanent body could provide for a platform for such a working group.

[191] SG report A/71/118, 18 July 2016, para 10.
[192] National Mechanisms for Reporting and Follow-up, OHCHR <www.ohchr.org/Documents/Publications/HR_PUB_16_1_NMRF_PracticalGuide.pdf> accessed 1 July 2017.
[193] SG report A/71/118, 18 July 2016, para 21.
[194] ibid.

3. High reporting burden on states

a) Simplified reporting procedure for all states

The simplified reporting procedure enables states to provide only one, more focused report, instead of the traditional 'twofold' reporting system. All treaty bodies already offer the simplified reporting procedure to the states. However, not all treaty bodies limit the number of questions that they send to the states as a basis for the report and several states still use the traditional system.[195] In order to streamline the system, all treaty bodies should limit the number of their questions and use the simplified reporting procedure for all States Parties.

With regard to reporting to the Human Rights Committee that would monitor both the ICCPR and the ICESCR, it is important to note that the page limit of the report would count for both covenants separately. Furthermore, if the treaty bodies and states felt that further shortening of the state documentation would enable the reports to be more focussed, such a measure (with a significant cost-saving effect) could be considered as well.

b) Capacity-building activities for states

It is necessary to keep in mind that the national costs of reporting in terms of resources, staff and time are considerable and this is one of the reasons for the lack of cooperation. As the capacity-building activities of the OHCHR help states to organise their reporting activities more efficiently, they should be further supported.

c) Harmonised working methods

The long-term efforts for the harmonisation of working methods should continue with the aim of achieving common working methods to an extent that the treaties allow. This would make the treaty bodies less complicated and more comprehensible for the states. The role of the chairs needs to be stressed in this regard.

[195] Status of the human rights treaty body system. Supplementary information, SG report A/71/118, 18 July 2016, Annex XIV.

d) Videoconferencing

In order to enable the states to involve governmental experts who cannot be physically present at the review, the use of technology needs to be supported. Involving videoconferencing can significantly lower the national costs of engaging with the treaty bodies, and it can be effectively used mainly by countries in a similar time zone as Geneva, for example by a number of African states.

4. Diverging interpretation of same issues by different treaty bodies

a) Post-sessional meetings

The expertise of the specialised committees is one of the assets of the treaty body system. Therefore, it is necessary to ensure cross-fertilisation between the permanent Human Rights Committee and the specialised treaty bodies. This would be institutionalised by post-sessional meetings that would take place after each session of the specialised committee, where relevant issues would be discussed with the Human Rights Committee members.

In addition, if there was a need to enhance coherence between the mechanisms at the universal, as well as at the regional level, informal annual meetings could be organised with the presence of several representatives of the treaty bodies and of the European, Inter-American and African human rights systems to discuss jurisprudential developments.[196]

b) Human Rights Committee monitoring both the ICCPR and the ICESCR

The fact that one permanent body would function as an umbrella mechanism for the whole spectrum of human rights would serve as a safeguard for a coherent interpretation of civil and political, as well as economic, social and cultural rights.

c) User-friendly jurisprudence database

Although in 2015 the OHCHR launched a treaty body jurisprudence database, there has been some criticism regarding its lack of comprehensiveness and practical difficulties with regard to its use.[197] Therefore, it is advisable to address these issues in order to make the case law database more user-friendly.

[196] This idea was discussed at the regional workshop in San José. See *Report of the regional consultation for Latin America* (n 174) 16.

[197] ibid 10–11.

5. Quality of the treaty body members

a) Independent assessment of candidates

An independent body consisting of former treaty body members should be established to publicly assess the qualifications of treaty body candidates.[198] This assessment would then provide guidance for the states in order to elect the best candidates.

In addition, it would also be possible to organise a platform for elections where states would present their potential candidates in an open public space, as suggested in the High Commissioner's report in 2012.[199]

b) Guidelines for nomination and election of treaty body experts

Ensuring the nomination and then election of the highest quality experts who are independent is, in fact, the most important factor of the treaty body system. The Addis Ababa guidelines on independence and impartiality elaborated by the chairpersons of the treaty bodies were already adopted or endorsed by eight of the treaty bodies.[200] However, as the treaties are relatively vague with regard to rules on nomination and election of experts, there is a need to elaborate guidelines that could be analogically drafted by the chairpersons with the support of the OHCHR and that would be used by states as a soft law in order to assess candidates for treaty body membership. The proposed guidelines should include the following criteria to be met by the candidates:[201]

- Persons of highest moral authority, impartiality and integrity
- Established competence in the field of human rights
- Expertise on the specific issues of human rights relevant to the respective treaty

The guidelines should also require the states to take into account the need within the membership for the following:

- Representation of the principal legal systems of the world
- Equitable geographical representation
- Balanced representation of female and male members
- Proper representation of lawyers with academic or judicial experience

[198] ibid 9.
[199] OHCHR report (n 1) 79–80.
[200] SG report, A/71/118, 18 July 2016, para 66.
[201] See the Rome Statute of the International Criminal Court of 17 July 1998, art 36. In addition, see the 2010 proposal of the Statute of the World Court of Human Rights, arts 21–23. See Julia Kozma et al. (n 116).

In addition, the following two requirements should be stated:
- No members should serve for longer than 12 years
- Independent assessment of the candidate should be taken into consideration

6. Low authority of decisions on communications

a) Joint WG on communications

As the treaty body system is not a court, the decisions on communications need to build their authority by means of their high quality. To achieve this, diverging jurisprudence by different committees needs to be avoided.

Each treaty body should entrust some of its members who are lawyers and have experience in the relevant human rights case law with the responsibility to sit with other members from different treaty bodies in the joint WG on communications. Such an expert WG would provide high quality preparation of the views on individual communications that would then be formally adopted by the respective treaty bodies.[202]

In order to implement the measure, research on the alternatives of the functioning of such a WG needs to be undertaken, the best option chosen and then endorsed by the GA. The existence of the WG needs to be integrated into the rules of procedures of the committees. The role of the chairpersons would be important in order to facilitate implementation of this measure.

b) Prioritising

Drawing on the experience of the European Court of Human Rights, the WG should consider prioritising certain types of cases in order to consider them as soon as possible. The prioritisation should be triggered if the alleged violation is of a high gravity or of a systemic nature, where the problem could result in a large number of similar violations.[203]

c) User-friendly jurisprudence database

Improving the jurisprudence database would enable states, lawyers, but also rights holders to find relevant information with regard to the interpretation of the human rights treaties at the universal level. The OHCHR should also publish user-friendly fact sheets with regard to the relevant case law.[204]

[202] OHCHR report (n 1) 69–70. The proposal is more closely discussed in Egan (n 114) 229. In addition, this idea was discussed at the regional workshop in Dublin. See *Report of Dublin Workshop*, para 27, on the Academic Platform on Treaty Body Review 2020, Geneva Academy <www.geneva-academy.ch/our-projects/our-projects/un-human-rights-mechanisms/detail/16> accessed 1 July 2017.

[203] ibid para 16.

[204] *Report of the regional consultation for Latin America* (n 174) 11.

7. Insufficient or non-existent follow-up procedures

a) Human Rights Council (HRC) Special Rapporteur on Follow-up

The follow-up of the treaty bodies should be significantly strengthened by introducing an HRC Special Rapporteur on follow-up to the work of the human rights treaty bodies. The HRC Special Rapporteur would communicate with committee-specific rapporteurs on follow-up in each treaty body and would be required to elaborate annual reports on follow-up to the work of the treaty bodies. As a result of this, one reader-friendly report would be introduced that would serve as a reliable source of information on follow-up with regard to different states.[205]

In this regard, it is interesting to point out that in the European system of human rights protection, a political body (Council of Ministers) is entrusted with supervising the execution of judgments.[206] The peer pressure in this body relatively successfully supports compliance by states with the mechanism. The report of the HRC Special Rapporteur on follow-up to the work of the treaty bodies should be presented and discussed during the HRC session under one of its agenda items, or as a new separate agenda item.

b) Harmonised follow-up procedures

With regard to state reports, introducing the comprehensive reporting calendar would enable regular follow-up within the subsequent review. However, in relation to some pressing issues, it proved useful to request that a state party reply just one year after the review on the measures taken. In general, not all treaty bodies have introduced formal follow-up procedures yet.[207] Therefore, with the help of the OHCHR, the chairpersons should coordinate efforts with the aim of achieving common follow-up procedures within all relevant treaty bodies.

[205] The options of finding synergies between the treaty bodies and the HRC mechanisms were discussed in the past. See O'Flaherty et al. (n 74) 163. Furthermore, see Egan (n 114) 237. In addition, *Report of Dublin Workshop* (n 202) para 26.

[206] ECHR, art 46, para 2.

[207] Six committees have some form of a follow-up procedure. See Follow-up to Concluding Observations, OHCHR <www.ohchr.org/EN/HRBodies/Pages/FollowUpProcedure.aspx> accessed 1 July 2017.

To support the implementation, each treaty body should have a committee-specific Rapporteur on Follow-up to Concluding Observations and a Rapporteur on Follow-up to Views. These would monitor the implementation and also serve as focal points for the HRC Special Rapporteur on Follow-up to the work of the human rights treaty bodies.

c) Grading systems

With regard to follow-up, the Human Rights Committee and the CAT developed grading systems in order to evaluate the level of implementation of the selected recommendations.[208] Introducing such grading systems in all treaty bodies should be part of the harmonised follow-up procedures.

It is important to emphasise that the respective follow-up procedures, including grading the level of implementation, should not concern only concluding observations, but also communications.

d) National Mechanisms for Reporting and Follow-up (NMRF)

Encouraging states to establish NMRF to coordinate domestic reporting and follow-up activities and providing them with relevant advice should be an important part of the OHCHR capacity-building activities.

e) Synchronisation with UPR

As the Human Rights Committee would monitor both covenants, the impact of the review should by strengthened by synchronising it in a way so that the UPR would take place right between the reviews of the particular state by the Human Rights Committee. This would provide additional follow-up on the implementation of the committee's recommendations.

[208] Note by the Human Rights Committee on the procedure for follow-up to concluding observations, CCPR/C/108/2, 21 October 2013, para 17. For a comparison of the grading systems of the Human Rights Committee and the CAT, see Vincent Ploton 'The development of grading systems on the implementation of UN treaty body recommendations and the potential for replication to other UN human rights bodies', International Service for Human Rights <www.ishr.ch/sites/default/files/documents/tb_grading_systems_their_replicability_to_other_un_hr_bodies.pdf> accessed 1 July 2017.

8. Low awareness of the system

a) Permanent Human Rights Committee

Implementing the ITBS with a Human Rights Committee monitoring the whole spectrum of human rights would create a visible permanent human rights body at the universal level that would be more comprehensible for media, lawyers, as well as rights holders.

b) Webcasting

As the aim of the ITBS must be to serve the rights holders in the whole world, its public meetings need to be webcasted and archived. For this purpose, use of the relevant technology needs to be supported and properly financed.[209] This enables all relevant stakeholders, including NGOs and media, to better understand and report on the work of the treaty bodies.

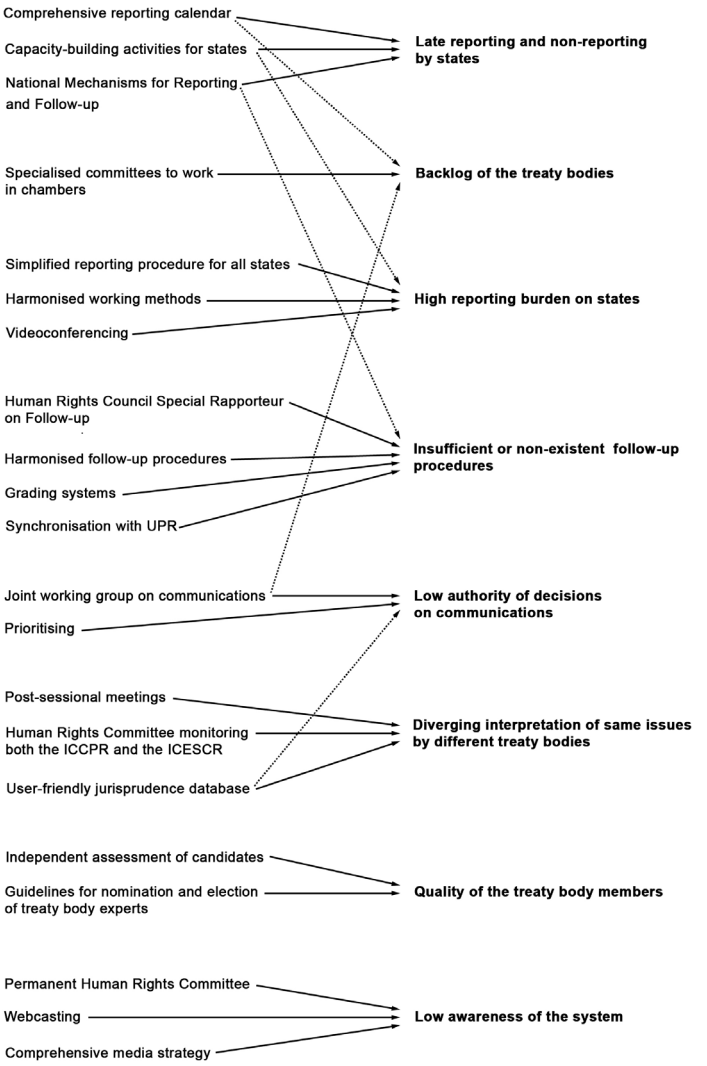
c) Comprehensive media strategy

With regard to visibility, it is necessary to admit that due to its complexity, the system remains unknown to a large extent. However, if the reform efforts are taken seriously, it could provide individuals with valuable protection of their rights. For this purpose, the OHCHR should consult a professional marketing company in order to develop a media strategy with the aim of increasing the visibility and awareness of the system.[210] The analysis should use the full potential of the role of press releases and the use of social media in order to inform and involve the younger generation.

[209] Annual costs for webcasting should amount to approximately 530,000 USD. See SG report (supplementary information), A/71/118 of 18 July 2016, Annex XX.

[210] This should include an analysis of how to make the OHCHR web of the treaty bodies more user-friendly, including the possibility of establishing a separate webpage for the treaty body system.

Diagram 2: Measures to address the problems



Author: Jan Lhotský

With regard to the proposed reform, it should be stated that its implementation would increase the **costs of the system**, mainly due to the creation of the permanent Human Rights Committee and the implementation of the comprehensive reporting calendar. Although a proper cost analysis would have to be undertaken, it is possible to briefly outline the need for additional resources.

The current costs of the system amount to approximately 50 million USD.[211] Within the proposal for the USTB, it was calculated by the OHCHR that a permanent body of 25 experts would cost 7.7 million USD a year.[212] As the permanent Human Rights Committee would have only 18 members, the difference would enable experienced legal assistants to be financed, who would support each member. In addition, there would be savings in travel expenses and DSA of the two committees that would proportionally amount to around 2.5 million USD.[213] Out of these savings, it would be possible to finance the post-sessional meetings, some additional OHCHR staff, as well as the webcasting.[214]

With regard to the costs of the comprehensive reporting calendar, although the first OHCHR estimate was relatively high, it was later specified that if a number of measures were respected (ie strict adherence to page limitations, simplified reporting procedure, working in chambers etc), the additional costs of implementing the fixed calendar would amount to 12.5 million.[215] The sum of these three items – current costs of the system, remuneration of Human Rights Committee experts and the fixed calendar – amounts to 70.2 million USD.

A new building might be needed for the Human Rights Committee, as the current premises of Palais Wilson in Geneva might not sufficiently accommodate a permanent body. Nevertheless, in order

[211] Christen Broecker and Michael O'Flaherty (n 103) 19.
[212] Concept Paper of the High Commissioner's Proposal for a Unified Standing Treaty Body (n 50) 30.
[213] Christen Broecker and Michael O'Flaherty (n 103) 19, 22.
[214] Annual costs for webcasting would amount to approximately 0.53 million USD. See SG report, A/71/118, 18 July 2016, Annex XX.
[215] *Questions and answers on the Comprehensive Reporting Calendar, OHCHR, November 2012* (n 128) 10–11.

to cover such costs, extra-budgetary funding might be available if several like-minded states were willing to support the reform. In sum, it should be taken into account that the cost of the reformed system appears to be somewhere between 70 and 75 million USD.

It is suggested that this is a fair price for the much-needed reform of the treaty body system.

If there was an opposition to the proposal solely due to the need for additional resources, further page limitations of the state documentation could be considered or a differentiation of the page limits according to certain criteria (eg covenants and specialised treaties), as well as moving the treaty body system from Geneva to Vienna.[216] In this regard, it must be stated that if the planned review in 2020 does not adopt effective measures and accepts only another 'plaster' as in 2014, it would mean a resignation on the willingness to have a well-functioning treaty-based human rights system at the universal level. Therefore, it is suggested that the proposal for creating the ITBS be dealt with in the planned treaty body review of 2020.

In this regard, three topics should be elaborated by **further research**:

- Are there any major legal obstacles to referring the responsibility of monitoring the ICESCR to the Human Rights Committee? In the case of a positive answer, can they be overcome without the need for treaty amendments?
- How to best organise the internal functioning of the Human Rights Committee, including its meetings with specialised committees?
- How to best organise a joint WG on communications without the need for treaty amendments?

[216] However, in this regard it is necessary to point out that art 37 para 3 of the ICCPR states that the committee shall normally meet at the headquarters of the UN or at the UN Office in Geneva.

6.2 Long-term perspective

It is suggested that the ITBS should be supported within the 2020 review and implemented as soon as possible. Nevertheless, how it works in practice would need to be assessed. Therefore, like in the 2014 GA resolution,[217] it should be stated in the 2020 outcome that comprehensive reports on the status of the human rights treaty body system and the progress achieved should be elaborated on a biennial basis, ie in 2022 and 2024, and that if needed, a review of the system's functioning should take place after six years, that is in 2026.

In the long-term, nevertheless, also the creation of the USTB should be considered.[218] Integrating the current system of 172 experts working in different committees into one USTB exercising its competence within all the treaties would best ensure the coherence of interpretation of human rights at the universal level. Such a body would, however, need to contain rules in order to maintain the expertise on specific human rights issues, eg by means of advisory working groups on issues relating to specific treaties. Establishing the USTB should be welcomed by states that would not need to engage in multiple reporting to different treaty bodies anymore. They would need to present a single comprehensive report that would be reviewed by the USTB within one dialogue with the state delegation that would last for approximately one week.[219] At the end of the review, single concluding observations containing the committee's recommendations would be issued that would serve as a comprehensive source for the domestic implementation strategy of the respective country.

Looking at the treaty body system from a functional point of view, it should also be considered whether the USTB exercising powers with regard to considering communications would be welcome. This is due to the fact that advising states on how to improve their human rights situation and exercising quasi-judicial functions are very different activities from the functional point of view requiring even a different type of expertise. Therefore, apart from the joint working group on

[217] Strengthening and enhancing the effective functioning of the human rights treaty body system, GA Res. 68/268, 9 April 2014, 41.

[218] OHCHR report, HRI/MC/2006/2, 22 March 2006. See also Morijn (n 68) 328.

[219] It is suggested that the reviews according to the ICCPR and the ICESCR could take one day each and the review according to each specialized treaty would take half a day. In such a set-up, the dialogue of the USTB with one state delegation would in most cases take a maximum of one week.

communications, the proposal to create a World Court of Human Rights might also be considered in the future.[220] As Manfred Nowak and Martin Scheinin suggest, this institution would take over the powers of the treaty bodies to consider communications, and it would exercise competence to decide on future individual complaints in a legally binding manner.

With regard to the long-term development, it is necessary to undertake thorough research in order to find out whether it is legally possible to create a USTB without the need to amend the treaties.[221] Therefore, the OHCHR should be asked to elaborate an **analysis** in order to answer the following questions:

- What workload can the treaty body system expect in 2025 and 2030? What consequences does it have on the functioning of the treaty bodies, including the costs of the system?
- How should the system of considering communications be organised in order to effectively deal with the expected workload?
- Can a single report be introduced without treaty amendments?
- Can a USTB be established without treaty amendments?
- How should the internal functioning of a USTB be organised in order to best address the challenges of the system? The analysis should elaborate on how to ensure an emphasis of the USTB on specialised treaties, as well as present relevant lessons learned from the ILO monitoring system.
- How would the creation of the USTB affect the following stakeholders: states, treaty body members, NGOs, OHCHR and the rights holders?
- What would be the cost implications of introducing the USTB?
- Based on the above information, the relevant recommendations should be expressed, including whether the creation of the USTB should be supported.

This comprehensive analysis should be undertaken in due course in order to understand what alternatives are available for the proposed following review in 2026. It should assess the functioning of the ITBS and, if appropriate, decide on further action. Therefore, within the following review, three major options may be expected:

[220] Julia Kozma et al. (n 116).

[221] See OHCHR report (n 50) paras 64–65. For an analysis on the relevant legal options, see Preliminary non-paper on legal options for a unified standing treaty body (n 64).

1. ITBS as a long-term solution

The evaluation in 2026 should assess to what extent the ITBS proved to be a well-functioning solution that effectively addresses the need to eliminate the system's problems, as well as to accommodate its growth. If its functioning suggested that it provides for a long-term solution of the treaty body institutional set-up, a decision should be taken that the ITBS will operate further, potentially with some further improvements.

2. USTB without treaty amendments

If there is a need to further integrate the system, simplify it and ensure a coherent interpretation, the USTB should be created. In this regard, it should also be pointed out that to engage a USTB, instead of the current nine committees, would most likely lower the costs of the system. The outcome of the above-suggested analysis would be crucial for this purpose. If it were possible to create the USTB without the need for amending the current treaties, it could provide for a real long-term solution in the form of an effective functioning of the treaty-based mechanism at the universal level. Such a body could then be given a new name, for example, a Commission on Human Rights.[222]

3. USTB with the need for treaty amendments

Only if it proves impossible to create the USTB without treaty amendments and there is still a need to establish a single monitoring body, an amending protocol could be drafted. In the case of triggering a provisional application of such an amendment,[223] the USTB could be established relatively quickly. However, for all the States Parties who would not ratify the amendment, the 'old' system would function in parallel with the new one. As such a situation could last for decades in reality, involving parallel systems does not seem to be a welcome solution.

[222] As the 'old' UN Commission on Human Rights was replaced by the Human Rights Council in 2006, the name could be used for the USTB. In this regard, Olivier de Frouville suggested that a World Commission of Human Rights could be created for such a purpose, with the status of being a subsidiary body to the GA. See Olivier de Frouville 'Building a Universal System for the Protection of Human Rights: The Way Forward' in M. Cherif Bassiouni and William A. Schabas (eds), *New Challenges for the UN Human Rights Machinery* (Intersentia 2011) 265.

[223] Vienna Convention on the Law of Treaties, art 25.

6.3 Conclusions

Within the last half-century, the treaty bodies were being created on an *ad hoc* basis, resulting in an uncoordinated system. Professor Yuval Shany described the effectiveness of the treaty bodies as inevitably limited due to, among other things, the fact that they are based on a 'grossly inadequate organisational structure'.[224]

We need to admit the realities of the system. The treaties establishing the committees are very difficult to amend.[225] Therefore, the question for the review in 2020 is not how we could ideally set up the organisational structure but how we can achieve the maximum under the conditions that the current treaties allow.

It is suggested that an ITBS should be created that would enable the treaty bodies to handle the steadily rising workload, as well as to address the coherence challenge. It would consist of a permanent Human Rights Committee monitoring both covenants that would also engage in dialogues with the specialised committees by means of institutionalised post-sessional meetings.

Furthermore, a number of concrete measures are presented to address the problems of the system, some of them being properly discussed within the strengthening process (eg the comprehensive reporting calendar), and some being new ideas (eg measures to increase the quality of treaty body membership, measures to strengthen the follow-up). An added value of the presentation of these measures is that they are directly linked to the weaknesses of the treaty body system identified within the thesis, in order to reduce or eliminate the given problems.

It is suggested that this reform would significantly improve the functioning of the treaty body system while maintaining the focus on specific human rights areas and it would not require treaty amendments. However, several research questions were identified that should be further discussed. An analysis of the OHCHR in this regard would be welcome. The answers to the questions would be of crucial importance for assessing whether it is recommendable to consider creating the USTB in the long-term. However, at present, legal obstacles to such a reform seem to be unresolved.

[224] Yuval Shany 'The Effectiveness of the Human Rights Committee and the Treaty Body Reform' (2013). Hebrew University of Jerusalem Research Paper No. 02-13, available at SSRN, 23.

[225] See, for example, ICCPR, art 51.

CONCLUSION

The human rights mechanisms at the universal level cannot be perceived as any kind of panacea for the human rights problems in different regions of the world. The respect for the dignity of an individual needs to grow within the 'human rights culture' of different societies and be respected by the governments of the respective countries. However, the treaty bodies can have a significant impact on improving human rights standards by advising states on how to address their problems. It needs to be noted that the ratification of the main treaties is nearly universal. Therefore, even though the treaty bodies are equipped only with soft powers from the legal point of view, their work can potentially have a strong impact on the lives of a large number of individuals. This is why ensuring the quality and efficiency of the system is of very high importance.

The need to reform the treaty bodies has been discussed already for three decades. Within recent years, the treaty body strengthening process took place between 2009 and 2014, which resulted in the adoption of GA resolution 68/268.[226] This outcome supported a number of concrete measures with the aim of improving the functioning of the system. It also envisages that in 2020 a review of the functioning of the treaty bodies will take place and if needed, further improvements should be decided on.[227]

In this regard, it is necessary to point out that the main reason for choosing this research topic was that an analysis of the functioning of the system in 2017, halfway between 2014 and 2020, can already lead to

[226] Strengthening and enhancing the effective functioning of the human rights treaty body system, GA Res. 68/268 of 9 April 2014.
[227] ibid para 41.

particular conclusions from the implementation of the GA resolution, and based on the assessment of whether the measures adopted addressed the real problems of the system, further improvements for the anticipated review can be suggested. Therefore, the aim of this thesis is to contribute to the discussion on the shape of the reform that should be taken up for 2020.

The course of the thesis is as follows: the first chapter explained the origins of the treaty bodies. In principle, the first human rights treaties at the universal level transformed the rights defined in the Universal Declaration of Human Rights into legally binding agreements. Each treaty created a separate committee whose purpose was to monitor the compliance of states with the respective treaty. However, soon it started to be observed that the treaty bodies suffer from a number of deficiencies, eg the high burden that the system imposed on states or the lack of cooperation on the part of the states.

The second chapter discussed two reform proposals that did not receive sufficient support – the idea of presenting a single report to all treaty bodies and the proposal to replace the committees with a single USTB. The latter would present a significant legal challenge, as the current treaties provide for only very rigid amendment procedures and no generally acceptable way was presented to achieve the USTB without treaty amendments.

Based on the information from the long-term functioning of the treaty bodies, the third chapter identified and explained ten (9+1) major problems of the treaty body system. These are: (1) late reporting and non-reporting by states, (2) backlogs of the treaty bodies, (3) high reporting burden on states, (4) diverging interpretation of same issues by different treaty bodies, (5) quality of the treaty body members, (6) low authority of decisions on communications, (7) insufficient or non-existing follow-up procedures, (8) high costs of translations, and (9) low awareness of the system. In addition, insufficient funding by the GA in relation to the growth of the system must be noted.

The fourth chapter presented the treaty body strengthening process that took place from 2009 until 2014 with the aim of strengthening the functioning of the treaty body system. As the first part of the process was coordinated by the High Commissioner for Human Rights, her report from 2012 recommended a number of effective measures,

including implementation of the comprehensive reporting calendar.[228] Nevertheless, in the same year, the GA took over the negotiations that resulted in GA resolution 68/268 in 2014. Although several practical measures were supported (eg additional meeting time), it is argued that the outcome addressed the short-term rather than the long-term problems of the system.

As two years later the SG published a 'progress report' on the treaty body system, including the state of implementation of GA resolution 68/268, the fifth chapter presented the outcome of this 2016 report.[229] Based on the presented data, it further assessed to what extent the measures adopted two years ago helped to address the long-term weaknesses of the treaty body system, as identified in Chapter 3. It concluded that out of the nine major problems, only one resulted in a considerable improvement (ie high costs of translations), two resulted in a limited improvement (ie high reporting burden on states, backlog of the treaty bodies) and six remained basically unaddressed.

The first research question of this thesis was defined as follows: *Did the implementation of GA resolution 68/268 of 2014 substantially improve the functioning of the treaty bodies?* At this stage, it is concluded that the question was answered negatively.

The second research question was the following: *What measures should be supported for implementation after 2020 in order to streamline the functioning of the treaty body system?* A proposal for a reform that would address the remaining major problems of the treaty body system was elaborated within the sixth chapter.

It is suggested that a serious reform of the treaty body system should be supported within the 2020 review. There are two requirements for the shape of such a reform. First, it should enable the treaty bodies to function under the constant growth of the system. Second, the measures adopted should address the remaining eight long-term problems of the system to a maximum extent possible. Nevertheless, the premise for such a reform is that it should not require the current treaties to be amended.

To meet these criteria, an Integrated Treaty Body System (ITBS was presented. The proposed system would consist of a permanent

[228] Strengthening the United Nations Treaty Body System. A report by the United Nations High Commissioner for Human Rights. OHCHR report, A/66/860, 22 June 2012.
[229] Status of the human rights treaty body system, SG report A/71/118, 18 July 2016.

Human Rights Committee that would monitor both the ICCPR, as well as the ICESCR.[230] The reformed body would integrate experts on civil and political, as well as on economic, social and cultural rights in one committee, whose members would be properly remunerated and exercise their functions as a full-time job. The permanent Human Rights Committee would thus monitor the whole spectrum of human rights.

The other seven treaty bodies (ie specialised committees) would, in principle, operate in their current way. However, in order to support the coherence of the interpretation of human rights by different committees, institutionalised meetings between the permanent Human Rights Committee and the specialised treaty bodies would be introduced in the form of post-sessional meetings. At the end of each session of a specialised committee, its members would meet with the members of the Human Rights Committee and discuss relevant developments and legal issues with regard to the focus of the respective specialised treaty.

Apart from the institutional shape of the reform, the last chapter also presented a set of reform measures to be supported in 2020. In this regard, it is important to emphasise that each of these measures is directly linked to one or more of the eight major problems of the treaty body system in order to reduce or eliminate them. The measures contain some that were duly discussed already within the strengthening process, eg introducing the comprehensive reporting calendar, working in chambers or creating the joint WG on communications. Furthermore, some of the proposed measures are relatively new ideas, and it is suggested that they should be properly discussed in the near future, eg guidelines for nomination and election of treaty body experts, grading the level of implementation of selected recommendations, and appointing a rapporteur of the Human Rights Council to strengthen the follow-up to the work of the treaty bodies.

It is suggested that the proposal to create the ITBS is taken up for the 2020 reform. Furthermore, after six years it should be reviewed to see whether it provides for a mechanism that ensures efficient functioning of the system in the long-term. Within the thesis, a number of questions for further research and legal assessment were also identified. If there was a general agreement that it is possible to create the USTB without

[230] For this purpose, the ECOSOC would need to redirect the competence to monitor the ICESCR to the Human Rights Committee. See ICESCR, art 16 and the ECOSOC Res. 1985/17, 28 May 1985.

treaty amendments, this alternative could also be considered in the long-term.

In general, the treaty bodies provide a valuable service with regard to monitoring the human rights treaties at the universal level. However, they could do much better. As the real needs of the system were not adequately addressed by the GA in 2014, the next window of opportunity opens in 2020. For this purpose, the thesis presents the shape of a reform that would enable the treaty bodies to work as one integrated system in which coherent interpretation of human rights would be supported by cross-fertilisation between the committees. The proposed measures aim at resulting in higher compliance by states while lowering their burden; they would increase the quality of decision-making and the coherence of the system, as well as its visibility. Using the opportunity of the 2020 review would consequently enable the treaty body system to provide a better service for the rights holders.

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