



The Dublin Statement on the Process of Strengthening of the United Nations Human Rights Treaty Body System

Drafting Meeting - Dublin, 18-19 November 2009

Informal Background Paper

**Reform of the United Nations Human Rights Treaty Monitoring Bodies:
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1. Introduction

The University of Nottingham Human Rights Law Centre, with the financial support of the Irish Department of Foreign Affairs, has convened this expert meeting to develop a statement that marks out key parameters, for a programme of reform of the United Nations human rights treaty body system, to be known as, *The Dublin Statement on the Process of Strengthening the United Nations Human Rights Treaty Body System*.

The present document proposes a brief overview of reform proposals since 2006, concentrating mainly on the Concept Paper published by the High Commissioner for Human Rights and reactions to it. A more detailed analysis can be found in the annexed table (Annex 1).

It constitutes an update to the Informal Background Paper prepared by the University of Nottingham Human Rights Law Centre on the occasion of the Expert Workshop on Reform of UN Human Rights Treaty Monitoring Bodies, held on 11-12 February 2006 in Nottingham, UK (attached hereto as Annex II).

We concentrate on major themes and developments. The document does not purport to be a comprehensive account of the discussions around reform of the treaty monitoring bodies over the past three years. Any omissions or errors are regretted.

Nottingham

November 2009

2. Reform of the United Nations Human Rights Treaty Monitoring Bodies: developments since February 2006

2.1 Expert Workshop on Reform of United Nations Human Rights Treaty Monitoring Bodies – Nottingham, 11-12 February 2006¹

An Expert Workshop on Reform of United Nations Human Rights Treaty Monitoring Bodies was convened in February 2006 by the University of Nottingham Human Rights Law Centre following the call made by the United Nations High Commissioner for Human Rights' 2005 Plan of Action for the creation of a unified standing treaty body (USTB).

The Nottingham Report described structural and technical reform options for the treaty monitoring bodies (TMBs), based on an overview of general challenges faced by the system and informed by principles that are deemed essential to every reform experiment.

Information and coordination gaps - both within and outside the TMBs system - constitute an obstacle to TMBs' engagement with the wider network of stakeholders who are essential for effective implementation of human rights protection at the national level. The TMBs' review process is of variable quality and effectiveness, discouraging access and participation by States and civil society. The outputs of the reporting process are insufficiently detailed to be a useful tool for Governments and civil society. TMBs' engagement with individual States across reporting cycles is discontinuous. TMBs are generally incapable of reaching agreement and achieve coordinated, system-level change. Many of these problems can be traced back to chronic resource shortfalls; the part-time, unremunerated character of TMBs' members; and the unsteady political commitment of member States. Any TMBs reform must address these challenges. TMBs must be more accessible to civil society; there is also need for greater outreach to marginalised constituencies and proactive inclusion measures. Technical assistance to less developed and small countries for the preparation of State reports must be widely available. Efforts are needed to make the dialogue with States during the reporting process more constructive. Concluding observations should be more focussed and concrete (more 'actionable').

The Nottingham Report emphasized that, prior to considering potential reform options, it is necessary to conduct a new analysis and transparent evaluation of a number of issues.

¹ Report of the Expert Workshop on Reform of United Nations Human Rights Treaty Monitoring Bodies, University of Nottingham, 11-12 February 2006.

These include the precise definition of national human rights implementation and the distinctive role of the TMBs' system in achieving it; the positive qualities of existing TMBs structures and practices; the impact of past and undergoing TMBs reform initiatives; the political dimension of reform options. Any reform initiative should be guided by an explicit commitment that reform will not retreat from existing levels of protection (non-regression principle). Furthermore, any reform of the system should not endanger the specificity of TMBs practice, nor jeopardise the depth and quality of protection for rights-holders in different spheres. All parties to reform should be willing to enter open-minded deliberations and compromise, with a view of constructing a system better equipped to address the diversity and needs of rights-holders. Structural reform debates and initiatives should not forestall technical improvements already underway or that could be achieved immediately.

Structural reform options

The Nottingham Report presented an overview of available structural reform options that involve total or partial unification of the TMBs.

The creation of a USTB would allow enhanced coordination in information gathering and follow-up activities, more systematic prioritisation of issues and greater authority inside the United Nations (UN) system and beyond. A single panel body could be created which might best achieve coherence across TMBs operations and would not necessarily be detrimental to specificity; however, it might be less efficient than the present system. Alternatively, a chamber based structure could be adopted. Each chamber could have comprehensive competence, treaty specific competence, cross-treaty competence, or competence on a functional basis. The establishment of a follow-up unit should also be considered. In case plenary approval for decisions of the chambers is deemed necessary, this should be readily obtainable.

The Nottingham Report outlined also a number of 'partial unification' options. One of these would be the creation of a Standing Executive Bureau composed of members of existing Committees. Another option would be the aggregation of particular TMBs functions into new structures, such as e.g. a Treaty Implementation Committee for follow-up. Alternatively, a bifurcated system for follow-up and review could be established; this, however, would raise questions as to competence for general comments and with regard to the nature (binding or not) of adjudications.

Further proposed structural reform options included the establishment of a single entry point for NGOs and other parties, such as NHRIs; efforts towards greater convergence in TMBs working methods and coordination of priorities.

The Nottingham Report emphasized that structural reform should incorporate and further develop innovative practices emerging within the TMBs system (e.g. preventative field visits under the Optional Protocol to the Convention against Torture (OPCAT)) and by other UN human rights entities (e.g. inquiries, urgent action and early warning procedures); overlap between TMBs activities and those of other bodies should be avoided though.

The Nottingham Report then considered legal options for structural reform of the TMBs system. It highlighted that it may, in practice, be impossible to achieve the necessary agreement from States parties required for treaty amendment. The same might be true also for other legal reform options, such as the adoption of a short amending protocol or the amalgamation of the treaties themselves. However, if amendment of the treaties should be the chosen path, then this would be an opportune moment to make subsequent amendment of the treaties easier, e.g. by separating substantive and procedural provisions in the treaties and establishing less demanding requirements for the amendment of the latter.

An alternative legal path could involve reform through an action of the General Assembly (GA), for instance establishing a cohort of TMBs members as a single pool from which individual panels would be selected on a rotating basis. However, in this case questions would arise as to whether this would constitute a sufficiently authoritative and impartial foundation for TMBs. Other suggested options include the *de facto* establishment of a single treaty committee (to meet twice a year) through amendment of the TMBs Rules of Procedure, with equal numbers of members drawn from each existing Committee; or the merge of the Committee on Economic, Social and Cultural Rights (CESCR) with the Human Rights Committee.

The Nottingham Report stressed that, whichever structural reform option should be chosen, it would be essential to first analyse the full range of potential reforms, the different paths to achieve them, and then accurately evaluate related risks and opportunities.

Other reform options

While acknowledging that structural reforms might take their time, the Nottingham Report emphasized that certain improvements to TMBs procedures and practice could be introduced without delay and would not require legal action. Among these are the introduction of the expanded core document and the harmonized reporting guidelines, as well as the relocation of the Committee on the Elimination of Discrimination Against Women (CEDAW) to Geneva. Furthermore, mechanisms should be introduced to obtain

systematic feedback from States on the usefulness of TMBs concluding observations. Further development of policy and practice relating to focussed reports based on lists of issues was encouraged, along with more experimentation in joint TMBs work (e.g. joint general comments, joint consideration of country reports, joint thematic workshops) and more individual and collective TMBs outreach activities.

With regard to criteria for TMBs membership and election, the Nottingham Report asserted that these should guarantee greater diversity in TMBs membership, particularly in terms of gender balance, equal geographical distribution, and appropriate mix of professional background (legal and public administration). To this end, reports on candidates should be publicly available prior to their nomination. The practice of the United Kingdom (public advertisement followed by interviews) or of the International Criminal Court (advisory committee on nominations) are cited as reference models. In addition, the Nottingham Report supported the introduction of performance assessment for TMBs members, especially for those who seek re-election. Length and renewability of TMBs terms of membership should also be reviewed. More training should be available for TMBs members through the Office of the High Commissioner for Human Rights (OHCHR).

The Nottingham Report noted that good practice models are lacking in a number of areas such as evaluation of impact of TMBs activities at the domestic level, coordination across TMBs, relationship between TMBs and other UN human rights mechanisms, and TMBs' engagement with institutions at the domestic level. To this end, the report recommended the development of a TMBs Best Practice Manual to supplement OHCHR's internal best practice guide. Furthermore, more systematic review of practice developments should be conducted during TMBs' sessions, encouraging non-governmental organisations (NGOs) to provide more input and States to share experiences.

2.2 *Concept Paper on the High Commissioner for Human Rights' Proposal for a Unified Standing Treaty Body – 22 March 2006*²

In March 2006, as announced in her Plan of Action, the High Commissioner for Human Rights published a Concept Paper outlining proposals for a unified standing treaty monitoring body (USTB).

The High Commissioner's proposal aimed at securing comprehensive and holistic implementation by States parties of the human rights obligations they voluntarily

² The Concept Paper on the High Commissioner's Proposal for a Unified Standing Treaty Body, 22 March 2006, UN Doc HRI/MC/2006/2.

accepted when ratifying the treaties. It also aimed at strengthening the level of protection that rights-holders enjoy at the national level by providing supervision through an easily accessible, efficient and effective system. While reiterating the importance of the specificity of each treaty, the Concept Paper stressed the interdependent and indivisible nature of human rights obligations, which would be adequately reflected in the USTB.

The Concept Paper recalled the numerous and considerable achievements of the TMBs system, which have provided a significant contribution to the promotion and protection of human rights worldwide. The TMBs provide authoritative interpretation of international human rights standards, guidance on the application of treaties and advice on steps that States should undertake to fully implement human rights. The TMBs' reporting process has stimulated the creation of national constituencies that promote human rights implementation. Moreover, it has provided direct input in the development of new laws, policies and programmes for the advancement of human rights at the national level. The submission of reports to the TMBs system has evolved in many countries to an occasion for national dialogue and public scrutiny of the country's human rights performance. Outcomes of the process offer guidance on implementation to governments and often constitute frameworks for joint action by States, UN agencies, civil society and other stakeholders.

The Concept Paper identified, however, also a number of practical problems and more general challenges that underlie the TMBs system. These include: non- or late submission of State reports, their poor quality, with the consequence that TMBs often do not have at their disposal sufficient information about implementation and *de facto* enjoyment of human rights at the domestic level; the increased workload of TMBs and the Secretariat that has accompanied the surge in ratifications and the creation of new treaty bodies; the backlog in report consideration and individual complaints procedures; insufficient financial and human resources; insufficient meeting time; general lack of visibility and poor media coverage of TMBs' activities, which contributes to victims and civil society being unfamiliar and unaware of the TMBs' potential; uneven expertise and independence of TMBs members; lack of comprehensive and effective follow-up mechanisms; diverging interpretations of human rights standards and conflicting jurisprudence; limited use of TMBs' jurisprudence by national lawyers and judicial systems.

The Concept Paper argued that a USTB would meet current challenges for a number of reasons. It would be able to produce consistent and authoritative jurisprudence. Victims would be able to approach it at any time and it could respond rapidly in case of grave

human rights violations. It could adopt innovative working methods and clear modalities of collaboration with other UN partners and civil society. Greater assistance to States parties in the implementation of their treaty obligations could be secured through new follow-up activities and country engagement strategies.

The USTB would constitute a framework for a comprehensive, cross-cutting and holistic approach to the implementation of treaties, producing a holistic assessment of a State's human rights record through a single cycle of reporting once every three to five years. This approach would provide a complete picture of the human rights priorities in a country, facilitating the work of national stakeholders (national human rights institutions (NHRIs) and civil society organisations) and the integration of USTB's recommendations in their country programming. One in-depth session with each State (that could last up to five days) would provide an opportunity to strategically monitor compliance with all obligations. This would encourage enhanced participation, information and exchange of views on all human rights issues faced by a country. Similarly, the session would produce more precise, clear and practical recommendations.

The USTB would allow consistent interpretation of similar or overlapping human rights norms contained in different treaties, alongside with clear and consistent General Comments, avoiding diverging interpretations and uncertainty as to the content of human rights obligations. Other practical advantages would be represented by increased expeditiousness in the consideration of individual complaints; increased follow-up capacity; enhanced visibility and greater flexibility with regard to timing and venue of the sessions.

The permanent character of the proposed USTB would have implications on its structure, membership, working methods and procedures. The Concept Paper outlined a number of forms and modalities of operation for the USTB:

- a) a single, one chamber body would ensure consistent interpretation, but might not solve problems related to the heavy workload or the backlog in consideration of reports and individual complaints; moreover, if the number of members is high, it might be difficult to reach the necessary consensus;
- b) a single body with multiple chambers operating in parallel, where each chamber has a full mandate for all treaties and monitoring functions, would bring with it increased capacity for tasks and workload distribution;
- c) a single body with multiple chambers divided along functional lines (consideration of reports, individual complaints, country visits, follow-up, implementation) would allow a clear distribution of tasks and the development of expertise on specific procedures, but

might entail a risk for disconnection on substantive issues and inconsistency in interpretation;

d) a single body with multiple chambers divided along treaty lines would allow for easy distribution of workload, maintain the specificity of each treaty and implement identical working methods, but would otherwise replicate the problems and divisions of the current system;

e) a single body with multiple chambers divided along thematic lines (clusters of rights) would reduce the risk of inconsistencies; however, it might prove difficult to identify the clusters of rights and there might still be the risk of overlap between chambers as well as the risk of undue emphasis on certain rights and neglect of others;

f) a single body with multiple chambers divided along regional lines would allow the development of expertise on human rights issues in specific regions and stronger collaboration with regional human rights mechanisms; however, this model would bear risks of inconsistencies among chambers, duplication of the work of regional mechanisms and development of regional, instead of universal standards.

The Concept Paper furthermore identified adjustments and improvements to existing core functions of the TMBs system.

With regard to reporting, it envisaged the submission of an expanded core document together with treaty specific reports; alternatively, periodic reports might be substituted by responses to comprehensive and integrated lists of issues.

For the consideration of individual complaints, the USTB could appoint special rapporteurs or working groups to consider new complaints and interim measures, their areas of responsibility defined according to institutional/instrument criteria or overarching clusters of rights. Expedited procedures for manifestly ill founded cases could be established, as well as fast track procedures for routine meritorious cases. The USTB could adjudicate claims of violations of provisions of more than one treaty in the same case. In this regard an extra chamber for complaints or a staggered chamber system might be considered.

With regard to follow-up procedures, the Concept Paper suggested that the rules of procedure of the USTB should clearly spell out its follow-up competencies, including for example *in situ* monitoring missions. The USTB could also develop early-warning and fact-finding mechanisms. The Concept Paper also encouraged the involvement of other UN actors in the USTB's work through the submission of written reports - based on standard guidelines - on e.g. specific countries; moreover, interaction with civil society

should be further strengthened. These actors should be involved consistently in the days of general/thematic discussion, a tool that should be used more frequently.

The Concept Paper addressed concerns that were raised in previous consultations about the USTB. With regard to the issue of specificity, it had been argued that a USTB would not be able to monitor in sufficient depth the implementation of specific human rights or the protection of specific rights-holders as identified in the treaties. The Concept Paper assured that 'measures would be taken to prevent loss of specialized expertise and ensure focus on specific rights and right-holders'.

With regard to the different ratification patterns of the treaties, concerns had been raised as to how this would affect membership in the USTB as well as the participation in deliberations and decision-making on substantive treaty obligations by members whose own country does not accept those same obligations. The Concept Paper advised that such issues could be effectively addressed, for instance, when designing the chambers of the USTB.

In response to concerns about the quality of membership, the Concept Paper envisaged an election procedure benefiting from more information on candidates and the introduction of more detailed criteria for candidature (qualifications, expertise, term limits, geographic and gender balance). Remuneration at senior level would attract adequately qualified candidates for permanent and non-permanent positions. The development of a detailed system for the nomination and election of experts, together with mechanisms to maintain the accountability of members towards their constituencies would further promote quality of membership.

Legal options for reform presented in the Concept Paper include the amendment of each treaty; the adoption of an overarching amending protocol; the gradual transfer of competencies to one TMB; the temporary suspension of TMBs functions and their transfer to the USTB through a resolution of the General Assembly. Whichever reform path is chosen, the Concept Paper recommended avoiding the concurrent application of parallel monitoring regimes.

2.3 Brainstorming Meeting on Reform of the Human Rights Treaty Body System ("Malbun II") – Liechtenstein, 14-16 July 2006³

A brainstorming meeting, organised by OHCHR and the Government of Liechtenstein, was held in Malbun on 14-16 July 2006. The meeting - attended by TMB members,

³ Chairperson's Summary of a Brainstorming Meeting on Reform of the Human Rights Treaty Body System ("Malbun II"), Annex to the Letter dated 14 September 2006 from the Permanent Representative of Liechtenstein to the United Nations addressed to the Secretary General, UN Doc A/61/351, 18 September 2006.

representatives of States, United Nations entities, independent NHRIs and NGOs - considered the High Commissioner's Concept Paper, as well as other treaty body reform proposals.

OHCHR's proposal for a USTB found generally little support, while some delegations took the position that they saw great merit and potential in the proposal and would like to see it further discussed. Still other delegations made it clear that their respective countries did not have a position on the proposal and needed more time and information. The Concept Paper was welcomed though as a valuable contribution to the further discussion of treaty body reform.

Nonetheless, some participants pointed out that it seemed unclear how the USTB would ease the reporting burden on States. Concerns were expressed with regard to the standing and quasi-judicial character of the USTB, as well as in relation to its permanent, full-time, fully remunerated members. Furthermore, it was pointed out that the different ratification patterns of the treaties would make the creation of a USTB difficult. Some participants considered that a more in-depth discussion of current challenges to the TMB system was needed, and the point was made that additional practical information on how these challenges ought to be addressed, before reaching a conclusion on which reform model would be most appropriate.

Many participants were reluctant to engage in discussions on the proposed USTB forms, due to their opposition in principle to this approach. Those who saw potential future merit in the proposal favoured further discussion of the proposal.

During a hypothetical discussion of the options contained in the Concept Paper, the view was expressed that a regional chamber model was undesirable as it might duplicate the different regional human rights systems and lead to normative fragmentation. Some participants were attracted to model with chambers along treaty lines as this would preserve the specificity of the current system, while other considered that this model would simply replicate the present system. Several participants noted that the six structural options for a USTB presented in the Concept Paper were not exhaustive and that indeed there might be many possible ways of combining them.

Participants expressed keen interest in discussing short-term practical measures that, especially if combined, could help to address the challenges faced by the TMB system as outlined in the Concept Paper. Several proposals for further improvement of the TMB system were made.

Proposed measures include the further harmonisation of working methods and guidelines for focused reports. TMB should assist States in the preparation of focused reports by submitting lists of issues that can serve as a guide for the preparation and content of the

report. Concluding observations and recommendations could be used as reference when compiling the lists of issues. TMB should be more consistent, strategic, concrete, and focussed when preparing dialogues with States and elaborating concluding observations and recommendations. A more consistent, harmonized and transparent approach is needed with regard to follow-up activities, and documents on follow-up should be made widely available. TMB should strive for better coordination amongst themselves, so as to avoid duplication. A more consistent policy for the appointment of focal points could improve attention to specificity in TMB's work. Furthermore, harmonization should extend to all areas of TMB work. The creation of a unified mechanism for individual communications might be considered in order to improve consistency in jurisprudence. Greater use of joint general comments, joint general recommendations, joint working groups and task forces is encouraged. More far-reaching reform proposals could be discussed and adopted in case these measures should not obtain the desired outcome.

A number of concrete proposals on how to tackle specific problems faced by the TMB system were made.

With regard to the backlog in the consideration of State reports and individual complaints, the view was expressed that the allocation of additional meeting time – perhaps through a new bureau of Chairpersons as proposed by the Committee on the Rights of the Child (CRC) – together with a more focused dialogue with States, facilitated by clear identification of priority issues and concerns could contribute in reducing the backlog. The adoption of a chamber system as done by CRC and CEDAW was favourably commented on in connection with the issue of the TMBs' considerable backlog.

However, the view was expressed by some that institutional changes would not be sufficient to address the problem of non-reporting. In cases where non-reporting is due to a genuine lack of capacity, technical assistance provided by TMBs could prove essential. This would be useless though where there is lack of political will. In any case, the view was expressed that it would be appropriate to reconsider the review procedures available to TMBs in cases of non-reporting.

To address the lack of visibility endured by the TMB system, it was suggested that better dissemination of concluding observations and recommendations was needed, including through Secretariat initiatives and better use of the Internet, radio broadcasts and live webcasts. It was suggested that TMB sessions could be convened in State parties, although this would involve additional costs. The creation of a single system for individual communications was also mentioned in relation to increase of TMBs' visibility. The role of OHCHR, UN field presences and independent NHRIs in the promotion of awareness by the general public of TMBs' activities and potential was emphasized.

With regard to OHCHR's role, it was proposed that the Secretariat could take on greater coordination with regard to administrative aspects; in this regard, it was suggested that the creation of a shared Secretariat might be beneficial. Better coordination to facilitate simultaneous consideration of reports for each State party, as well as harmonization in the consideration of petitions were among the other suggested measures of improvement.

Some participants expressed the view that the doubled OHCHR budget (as promised at the 2005 World Summit) constituted a unique opportunity to enhance OHCHR's capacity to support the TMB system and provide technical assistance to States parties in regard to reporting and follow-up. The view was expressed that a more homogeneous and better expertise among Secretariat staff and perhaps the creation of a high-profile post in the Secretariat could help ensure greater coherence in TMBs' work, including in the individual complaints jurisprudence, as well as in the identification of priorities and the coordination of resources.

Questions were raised as to whether the current selection process of TMB members ensured the election of individuals with adequate expertise and independence. It was stated that the practice of casting votes in exchange for votes in other UN elections could have a negative impact on membership quality. The view was expressed that the selection process, already at the stages that precede nomination of candidates, could be improved. The importance of transparent national nomination and selection procedures was emphasized and open discussions with candidates for TMBs could help States parties in making decisions when electing TMB experts. Reference was made to the criteria for the election of judges contained in the Rome Statute of the International Criminal Court. Furthermore, the view was expressed that there should be greater accountability of TMBs or TMB members towards States parties and that this issue would be of particular relevance if TMB members were to be remunerated.

Participants to the Malbun II meeting drew particular attention to a number of issues that stakeholders should bear in mind when discussing TMB reform options.

Some participants emphasized that the protection through the treaty system of specific categories of rights and rights-holders should be safeguarded. They noted that a USTB would not be able to preserve the same level of specificity as the current system of TMBs. It was also noted that all stakeholders have a role to play in the safeguard of specificity: the TMBs themselves, States parties, other UN actors, NGOs and the Secretariat. In this regard, the view was expressed that the Human Rights Committee and the CESCR should be more responsive to specific issues or groups even though these are addressed by other TMBs, such as for instance women and children. It was

furthermore suggested that, whatever system was created, it needed to be accompanied by the adoption of mandatory guidelines for States parties and TMBs in order to ensure adequate attention to specificity.

With regard to the relationship between TMBs and the Universal Periodic Review (UPR) mechanism of the Human Rights Council (HRC), the view was expressed that complementarity between the UPR and TMB outputs needs to be ensured and necessary steps should be undertaken to avoid duplication. In this respect, it was noted that TMB concluding observations and recommendations should constitute the basis for the UPR. Furthermore, some participants suggested that the distribution of work among the TMBs and any special mechanism of the HRC should also be addressed to ensure complementarity and avoid overlap.

On the issue of legal complications related to potential reform procedures, no views were expressed on the viability of options presented in the Concept Paper, since the existence of the necessary political will (that should take into account also the views of civil society) was essential prior to any debate on the legal options available for the establishment of a USTB. Furthermore, the point was made that it would be advisable to consider also the rights of third States and the constitutional role of parliaments prior to debating legal options of reform.

Finally, participants in the Malbun II meeting suggested a number of mechanisms as possible *fora* for further discussion of treaty body reform: convening open-ended inclusive consultations on TMB reform that should involve all interested stakeholders and consider also the technical issues related to the reform process; regionally based consultations, as well as joint meetings of all TMB members on reform issues; institutionalisation and enhancement of the Inter-Committee Meeting mechanism, with extended meeting time. The point was also made that States parties should meet not only to elect expert members or discuss treaty amendments; States parties' meeting could be used also to discuss proposed amendments of the human rights treaties they ratified.

2.4 Activities of Inter-Committee Meetings of Human Rights Treaty Bodies and Meetings of Chairpersons of Human Rights Treaty Bodies

The Inter-Committee Meetings (ICM) and meetings of Chairpersons of the human rights treaty bodies have consistently adopted recommendations on how to improve the TMB system.

The ICM in June 2007 considered it appropriate that, in the future, it convene twice annually with the participation *ex officio* of TMB Chairpersons. The ICM subsequently

recommended that one of the two annual meetings should be dedicated exclusively to the improvement and harmonization of working methods of the human rights treaty bodies.

Potential areas of harmonization that are regularly considered and discussed by the ICMS include: form and structure of lists of issues; role and functions of the country rapporteur or country task force and publication of their identity; use of statistical information in monitoring the implementation of human rights; follow-up to concluding observations and individual communications, and follow-up workshops; cross-references to the work of other treaty bodies; modalities of participation of NGOs and NHRIs; standardisation of treaty body terminology; development of joint general comments and consideration of reports; development of individual and joint media strategies; criteria for TMB membership.

Other important areas of concern that have been consistently addressed by the ICMS include: promotion of ratification of core international human rights treaties; input and output in the context of the UPR; strategies for a durable solution to the backlog in report consideration, as well as strategies for addressing the problem of non-reporting States; closer collaboration with specialised agencies of the United Nations; modalities for further consultation on TMBs reform proposals.

Among proposed measures to address the above mentioned issues were the development and adoption of a programme of work for improvement and harmonization of working methods, including targets, short and long-term objectives and timelines for future ICMS; the establishment of a mechanism of rapporteurs or focal points to enhance cooperation and facilitate more effective interaction on country-specific and thematic issues and follow-up with the United Nations specialized agencies; the possibility of a merger of the Inter-Committee and Chairpersons meeting and an enhanced decision making role for the ICM with regard to harmonisation of working methods.

One of the main recurrent recommendations in ICMS' discussions concerns closer interaction with the HRC, its special procedures and the UPR mechanism. The ICMS emphasized the complementary and mutually reinforcing nature of the two main human rights protection mechanisms of the United Nations (the HRC and the TMBs) and the need for each to maintain its integrity while avoiding duplication of work. The importance of a more systematized exchange of information between TMBs and special procedures has been often highlighted. The Secretariat should routinely make available to the TMBs the compilations prepared by OHCHR. TMB concluding observations and recommendations should be given due consideration in the compilation of United Nations

sources prepared by OHCHR. TMBs may consider referring to States' pledges and commitments during the UPR. The TMBs' Chairpersons, however, also repeatedly noted that significant human, financial and technical resources have been allocated to support the UPR and this might have affected the effective functioning of the TMBs. The ICM in June 2009 requested the Secretariat to prepare a study analyzing human and budgetary allocations to both processes, including trends in this context since the establishment of the HRC.

The ICMs time and again assigned great importance to the question of follow-up on concluding observations and recommendations, as well as on individual communications. In this regard, greater institutionalisation of follow-up is encouraged, for instance through a regular meeting of TMB follow-up rapporteurs or closer collaboration with country-specific rapporteurs of the HRC. Furthermore, although several treaty bodies have introduced formal procedures to monitor implementation of concluding observations and recommendations, it was emphasized that these procedures are particularly affected by the general lack of human and financial resources allocated to the work of TMBs. Additional resources are needed and it is suggested that TMB follow-up rapporteurs should meet to exchange best practices and ideas; follow-up workshops and inter-committee working groups or task forces should be convened, also inter-sessionally, in order to further strengthen the follow-up capacity of TMBs.

In 2008 the *Harmonized Guidelines on Reporting under the International Human Rights Treaties, including Guidelines on a Core Document and Treaty-Specific Documents*⁴ were adopted. Several States are piloting the guidelines and Switzerland has developed a web-based, reporting-on-demand tool, based on these guidelines, to assist States in the preparation of streamlined reports. The tool allows for external access to the draft (e.g. by NGOs or other UN agencies) during or at the end of the process.

Individual treaty bodies have adopted revised treaty-specific reporting guidelines or are in the process of developing them. The new treaty-specific guidelines are intended to reflect and take due account of the guidelines for the common core document, simplifying reporting and making the procedures more manageable for States. All TMBs should have adopted their new treaty-specific guidelines by the end of 2009 and States are strongly encouraged to prepare their periodic reports following the new guidelines.

To address the issue of reservations to human rights treaties, the ICM appointed in 2006 a working group on reservations, whose final report and recommendations were

⁴ Compilation of Guidelines on the Form and Content of Reports to be submitted by States Parties to the International Human Rights Treaties, UN Doc. HRI/GEN/2/Rev.5, 29 May 2008.

endorsed during the ICM in June 2007. The working group's recommendations were previously discussed with the International Law Commission, whose position has evolved since the last consultation in 1997 and now considers the treaty bodies competent to assess the validity of reservations.

2.5 Berlin Workshop on UN Treaty Body Reform – 2-3 July 2007

In July 2007 an expert meeting on treaty body reform was held in Berlin. The meeting was organised by Prof. Eibe Riedel (University of Mannheim and member of CESCR) and the OHCHR, with the support of the German Foreign Office. The meeting's primary purpose was to follow-up on previous meetings (Malbun I and Malbun II) and to identify next steps. Background presentations on treaty body reform initiatives and discourse so far were followed by general discussions, which emphasized some aspects that have received less attention in the reform debate.

The Berlin meeting strongly encouraged a more active role for the ICMs. These should be used as a vehicle to promote and coordinate reform within the framework of procedural and substantive harmonization and streamlining of the existing system.

More structural reforms – such as the proposed unification of the treaty bodies – were not rejected in principle; they were, however, seen as options for the long term. Some participants considered the USTB proposal to be basically sound, but questioned whether the High Commissioner should continue to take a leading role with regard to reform efforts.

In the short and medium term, further measures for the harmonisation and streamlining of the TMBs' working methods would be more likely to improve human rights protection. In this regard, the meeting endorsed the proposal for the ICM to meet twice a year and serve as an organizing entity for harmonisation efforts. However, decisions on issues relating to individual TMBs should be made by the TMB concerned.

The launch of the UPR mechanism within the newly established HRC emphasized the need for discussions over treaty body reform to be an important priority that should remain on top of the international agenda.

An important part of the discussions in Berlin concerned the idea of a merger of the Committee on Economic, Social and Cultural Rights with the Human Rights Committee, as presented by Prof. Scheinin during the meeting. In this regard, issues of practicability, feasibility and reluctance (of States and TMBs alike) were raised, the underlying concern being the justiciability of economic, social and cultural rights and the main problem States' reluctance to go along with a stronger move in this direction.

2.6 Global Standards – Local Action: Expert Conference on the Occasion of the 15th Anniversary of the World Conference on Human Rights - 28-29 August 2008⁵

In August 2008 the Austrian Government hosted in Vienna an international conference on the occasion of the 15th Anniversary of the World Conference on Human Rights. The conference addressed numerous issues relevant to the debate around treaty body reform.

The conference acknowledged with concern the still considerable gap between international human rights standards and national implementation of those standards, as well as the absence of the necessary national and international political will to ensure implementation. There is still large resistance to deal effectively with human rights violations and deficits. Universal ratification of core human rights treaties is still an unfulfilled objective; in addition, States still maintain significant reservations to core human rights treaties.

The conference issued recommendations addressed to States, international human rights protection mechanisms – including TMBs – and other relevant stakeholders on how the above mentioned challenges should be addressed.

All concluding observations, recommendations and views of TMB should be made known to all relevant stakeholders in order that they may be properly implemented. The mandate of NHRIs should include a role in the follow-up procedure to recommendations of TMBs. Existing monitoring of human rights education by TMBs should be strengthened. States should implement recommendations of TMBs in an institutionalised and effective manner. Further efforts should be made to ensure that the UPR is complementary to the work of other human rights mechanisms, particularly the TMBs. To increase effectiveness of TMBs and cooperation of States at all levels, a stronger link between technical cooperation and State cooperation should be established. The HRC should envisage a system for addressing non-cooperation by States with the TMB system. TMBs should make further progress in the harmonization of their working methods and procedures. HRC special procedures and TMBs should institutionalize procedures for sharing information and expertise, for example through regular briefings and common work plans. TMBs should make recommendations more implementable, by

⁵ Global Standards – Local Action: Expert Conference on the Occasion of the 15th Anniversary of the World Conference on Human Rights, Vienna, 28-29 August 2008, Letter dated 15 September 2008 from the Permanent Mission of Austria to the President of the Human Rights Council, UN Doc A/HRC/9/G/6

formulating them in an action oriented and less abstract manner and clearly identifying their recipients. Furthermore, TMBs should enhance the effectiveness of their recommendations by bringing them closer to the people, inter alia through the use of modern technologies and direct transmission of recommendations to various actors in the country concerned. To this end, TMBs should engage closely with national stakeholders, such as parliamentarians, judges, NHRIs and NGOs. States should translate TMBs' concluding observations and recommendations into local languages in order to promote their awareness and ownership. States should increase OHCHR's resources and these additional resources should be used to further improve the servicing of TMBs. An institutional reform that might be worth considering is the creation of a unified body for individual complaints procedures.

3. Selected academic and civil society reactions to the High Commissioner's Concept Paper

Academic reactions

In Spring 2007, the *Human Right Law Review* dedicated a special edition to the 'Reform of the UN Human Rights Machinery'. Main themes of the special issue were the establishment of the Human Rights Council and the reform of the treaty monitoring body system.

Michael O'Flaherty and Claire O'Brien⁶ in *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* presented a critique of the High Commissioner's Concept Paper, arguing that it actually proposes an expansion of the scope and diversification of the modalities of UN human rights treaty supervision, exacerbating the overlap with other UN human rights protection mechanisms, while remaining silent on clear definitions of proposed work division (referred for example to the Council's special procedures).

The article further criticized the conflation of proposals for structural reform with an agenda for expansion and diversification of existing working methods and mandates. The authors pointed out that the Concept Paper fails to properly address the future relationship of the proposed USTB with the newly created HRC. Furthermore, it neglects

⁶ Michael O'Flaherty, Claire O'Brien, 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, pp. 141-172 in *Human Rights Law Review* 7:1 (2007).

the risk that unification would reduce attention to the specificity of human rights protection. The Concept Paper does not contain any indication of what measures would be adopted to safeguard specificity; it merges unification (an institutional design) with mainstreaming (an implementation methodology) and claims that mainstreaming offers effective protection for specific rights while excluding the need and scope for specialist structures. The idea of interdependence and indivisibility of human rights is conflated with the idea of a comprehensive, holistic and cross-cutting approach, while ignoring the fact that the former is a theoretical, normative claim that does not entail specific prescriptions for institutional design or implementation methodology.

The authors recommended that inflated expectations about what unification in and of itself could achieve should be avoided. Moreover, it is necessary to clarify beforehand what the core mission of a reformed TMB system would be. Two distinct dialogues with States are necessary within the UN human rights system. One is the dialogue that States undertake with TMBs, which serves the purpose of gathering comprehensive information concerning States' compliance with their human rights treaty obligations and consequently produce recommendations for enhancement.

The outcomes of this dialogue should provide the platform for the second dialogue, to take place within the framework of the HRC, which should focus on issues of implementation and where States should use their political influence, capacity for sanction and peer pressure to improve implementation. In any case, the authors strongly warn against confusing the language and discourse of mainstreaming with that of unification. Specificity is crucial to ensure adequate protection of all categories of rights-holders; further debate is needed on the precise design of specific protection structures and the scope of their activities, with particular attention to modalities of State reporting.

Rachel Lorna Johnstone, in *Cynical Savings or Reasonable Reform? Reflections on a Single Unified UN Human Rights Treaty Body*⁷ expressed cautious support for the USTB. The current TMB system clearly shows considerable weaknesses, exemplified by the huge volume of accumulated work and the considerable overlap between treaties. It does not reflect the indivisibility of human rights and it is difficult to understand and access for victims of human rights violations, civil society and government officials. The treaty bodies have neither status nor impact in the world press or the general public. There is currently no guarantee of the expertise and independence of TMB members, so that membership is often characterized by poor quality. Moreover, the treaty system is

⁷ Rachael Lorna Johnstone, *Cynical Savings or Reasonable Reform? Reflections on a Single Unified UN Human Rights Treaty Body*, pp. 173-200 in *Human Rights Law Review* 7:1 (2007)

based on consensus; TMBs cannot (and should not) question States over obligations they have not voluntarily accepted.

However, the author emphasized that, before embarking upon ambitious structural reforms, it is necessary to make sure that unification would constitute an improvement with respect to the current system. If this is not the case, then solutions within the current system are to be preferred. These could include the consolidation of the reporting process and improvement of its timetabling. Two or more chambers could be introduced in each TMB, as already done by CRC or CEDAW. Inter-Committee and Chairpersons meetings could be held more frequently. The author stressed that any reform of the TMB system should be conducted in light of the role of the HRC, in order to reduce repetition and to ensure that important protection tasks do not fall through the gaps.

Hanna Beate Schöpp-Schilling in *Treaty Body Reform: the Case of the Committee on the Elimination of Discrimination Against Women*⁸ presented the viewpoint of the Committee on the Elimination of Discrimination Against Women.

The author argued that the proposed USTB does not respond to the core challenges and risks that undermine the differentiation and specificity of human rights. The nature of CEDAW and the causes of women's persistent inequality are still not fully understood by many, including some staff at the OHCHR – as can be seen from the harmonized guidelines on reporting. The author further lamented the absence of the issue of inquiries from TMB reform debate. The author encouraged further harmonisation, coordination and integration of the present TMB system, accompanied by more frequent ICMs and meetings of Chairpersons.

Further practical reform options envisaged include the creation of a common Secretariat that would review and amend consistently treaty specific reporting guidelines within the framework of harmonized guidelines. Discussions are needed on how lists of issues should be decided without creating the perception of new hierarchies of human rights. The author encourages further discussion of CERD's proposal for a unified individual complaints mechanism and CRC's proposal to create a permanent bureau of Chairpersons, while advising against a rapid implementation of the former. The article shares CEDAW's understanding that a consistent approach to human rights protection and monitoring should not amount to the smallest common denominator in human rights

⁸ Hanna Beate Schöpp-Schilling, *Treaty Body Reform: the Case of the Committee on the Elimination of Discrimination Against Women*, pp. 201-224 in *Human Rights Law Review* 7:1 (2007)

interpretation. Caution is needed so that the call for consistency does not dampen any creative approaches aimed at expanding the conceptual nature of norm interpretation.

Reactions of other actors

In 2007 Penny Parker produced a report on the *State of the UN Human Rights Treaty Body system* for the Minnesota Advocates for Human Rights⁹. The report contained numerous observations and recommendations for efficient TMB reform.

To address the considerable backlog in the consideration of individual complaints, the report suggested that information about the individual communication procedures should be made more visible; furthermore, information about decisions, when adopted, should be made promptly available. TMBs reviewing individual communications should establish a dialogue with NGOs, NHRIs, national and regional human rights courts and mechanisms, to evaluate whether the jurisprudence emerging from the consideration of individual complaints is clear and can be used as a precedent in national or regional courts and complaints systems.

Concerning the lack of awareness endured by TMB outputs and recommendations and the lack of general publicity, the report encouraged TMBs to develop a strategy for more effective publicity of TMB results, including predictable access to NGOs, media and other interested parties. The strategy should cover issues related to timing, summarizing of contents to facilitate wider distribution and recognition, and the use of new technologies. Information about TMB schedules should be regular and transparent, so that NGOs and NHRIs receive prompt notice of upcoming State appearances and have enough time to prepare and provide input to State report proceedings.

The report expressed concern about the fact that the creation and discussion of lists of issues takes place at a point in the State reporting cycle where the most relevant exchange of substantive views is shifted away from the domain where NGOs input is most emphasized.

The report strongly encouraged TMBs to continue posting copies of States' written replies to the lists of issues as promptly as possible, so that NGOs and other interested parties can access them before relevant TMBs' appearances. It also encouraged further harmonisation of practices regarding the lists of issues among TMBs, as well as the development of methods that allow effective input from NGOs and NHRIs in relation to the written replies of States.

⁹ Penny Parker, Minnesota Advocates for Human Rights, *The State of the UN Human Rights Treaty Body System – An NGO Perspective*, 20 June 2007

With regard to the current imbalance of TMB experts in terms of expertise and independence, the report suggests that each TMB should regularly assess its composition, including through NGO and NHRI input, identify any important skill sets, gender, regional or other backgrounds that are missing or under-represented in its current composition and make appropriate recommendations to State parties.

The report further argued that the creation of an Inter-Committee management structure is needed to address the current workload, backlogs, and other system management needs of the TMB system. The compilation of an annual 'State of the Treaty Body System' report that identifies successes and problems of the system is encouraged. Moreover, TMBs should monitor and assess the impact of changes in State reporting guidelines, including on the quality of reports, their responsiveness to prior concluding observations and to relevant new general comments.

In July 2007 the Dutch Advisory Council on International Affairs (Adviesraad Internationale Vraagstukken – AIV) issued a report¹⁰, *The UN Human Rights Treaty System – Strengthening the System Step by Step in a Politically Charged Context* in response to an inquiry by the Dutch Ministry of Foreign Affairs about developments in the UN human rights treaty system.

In light of the considerable variety in the number of ratifications of the different treaties, the AIV report noted that it is necessary to evaluate what these numbers actually mean, how compliance is monitored and what changes can be made or have already been made as a result of the different ratification patterns. Furthermore, it is necessary to constantly study the interaction between the systems of standards under treaty law and national practices, assessing whether human rights norms need to be adjusted to meet contemporary challenges.

Moreover, the report encouraged a systematic assessment of the practical significance of 'access to justice' in different parts of the world. This is deemed necessary because Western countries might assume that legal proceedings are a viable approach to human rights protection throughout the world, while in many countries human rights are regarded as an ideal to be achieved rather than a viable legal instrument.

The report noted with concern the lack of awareness faced by the TMB system amongst the general public, the limited use of complaints procedures, and the absence of global recognition of TMBs' potential. Practical problems hamper the reporting process, such as large backlog in the consideration of reports, overlap in States' reporting obligations, the

¹⁰ Advisory Council on International Affairs/Adviesraad Internationale Vraagstukken (AIV), *The UN Human Rights Treaty System – Strengthening the System Step by Step in a Politically Charged Context*, No. 57 July 2007

different working methods of TMBs, staffing and financial shortages at OHCHR and the system's lack of public profile.

The AIV report considered that the USTB proposed by the High Commissioner is not a desirable long-term solution for above mentioned problems, even assuming that it is a feasible solution. The report mentioned political, practical and legal reasons for this assessment.

The current general political climate entails a major risk that past achievements may easily be lost. It is dubious that there is at present sufficient political will to introduce concrete structural measures to strengthen the TMB system, as demonstrated by the negotiations for the establishment of the HRC and its UPR. Furthermore it is unclear whether the proposed USTB would indeed provide a solution in practice to current challenges. In addition, it would be exceptionally difficult, if not impossible, to cover all specific issues relevant for human rights protection in a single TMB. However, according to AIV's report, the legal complications associated with the creation of a USTB present the chief obstacle to its creation.

The AIV report suggested and supported short and medium term alternatives to the USTB. It is essential that States Parties pursue the highest possible degree of expertise, commitment and independence of TMB members. A possible structural reform would be the merger of the Human Rights Committee with the CESCR, or alternatively with the Committee Against Torture (CAT). The creation of a joint complaints chamber should be considered or at least the coordination of the meeting schedule of TMB working groups dealing with complaints.

Efforts should continue to harmonise, coordinate and integrate the different aspects of TMB mandates, while maintaining the specificity of their functions (e.g. harmonisation of treaty procedures, coordination and dialogue on human rights interpretation). A strict management of TMB agendas is necessary, as well as the streamlining of reporting procedures. Guidelines on the common core document and the shorter reports for specific treaties should be issued and OHCHR should provide advisory services, training meetings, and direct assistance in order to achieve substantive and procedural coordination.

The number of Chairpersons meetings should be increased and these meetings should have a more prominent role in the decision of substantial and procedural matters. OHCHR must be further strengthened so that it can provide adequate secretarial and financial support for TMB activities and play a greater role in strengthening TMBs' cooperation with other relevant UN actors, NHRIs and NGOs.

Moreover, it is essential to develop an effective relationship with the HRC, so that issues of concern to TMBs are raised during HRC sessions and extensive use is made of TMBs'

information in HRC activities and the UPR. In this regard it is noted that, as TMB reports will be included in the documentation supplied by OHCHR on countries under review in the UPR system, different quantity and quality of information will be available for different countries, as not all countries have ratified all treaties.

In any event, the AIV report strongly encouraged the HRC, or more specifically, the UPR Working Group to always put following questions (as appropriate) to countries under review: why has the State concerned not ratified certain UN human rights treaties; why has it entered and/or maintained reservations to treaties; why has it not fulfilled its reporting obligations; what measures has it taken to implement TMBs' concluding observations; why has it not yet accepted certain optional monitoring procedures (such as individual complaints procedures or investigation procedures); what arrangements has it made to comply with TMBs' decisions on individual complaints cases.

TMBs need to have optimal access to the HRC. The rotating Chair of the Chairpersons meeting and the TMBs' Chairpersons themselves should have the opportunity at least once a year to debate with the HRC. Furthermore, it is important to achieve better cooperation and synergy between TMBs and HRC's thematic rapporteurs.

4. Summary remarks

Few concrete reform proposals have been put forward following the High Commissioner's Concept Paper. Most discussions in institutional, academic and civil society circles have focused on the merits and demerits of the USTB. In fact, the proposed USTB has not encountered much support.

One of the main criticisms is that, despite correctly identifying practical and underlying challenges currently faced by the TMB system, the Concept Paper does not provide concrete answers on how those challenges would be effectively addressed by the USTB. It is generally felt that more in-depth analysis and discussion of the current problems is needed with a view to enhance human rights protection, in particular with regard to specific rights or rights holders so as to avoid the potential loss of specificity intrinsic to the creation of a single unified standing treaty body. In this regard, many lament that the Concept Paper does not provide clear proposals of how specificity would be preserved, but merely announces that adequate measures would be adopted. Similarly concerns regarding the relationship with the Human Rights Council are deemed not to be addressed adequately in the Concept Paper.

Common suggestions towards the improvement of the TMB system regard the increased harmonization of working methods, reporting guidelines and rules of procedure. This would contribute to ease the reporting burden on States and facilitate more constructive

dialogues with States. Great concern is generally expressed with regard to the lack of awareness of the TMB system and its potential by victims of human rights violations and more generally the broader public. Practical measures to increase the system's transparency and further promote involvement of national human rights institutions and NGOs are encouraged. To address the considerable backlog in the examination of State reports and individual cases, the necessity of some form of consolidated coordination is expressed, which might take the form of a bureau of treaty body chairpersons or an Inter-Committee coordination mechanism. Collaboration with other UN human rights mechanisms should be strengthened, amongst others through a boost in resources for OHCHR. Effective and strong follow-up mechanisms are commonly viewed as essential, should the TMB system meet its goal of ensuring effective human rights protection at the national level through the implementation of treaty obligations. In light of the creation of the Human Rights Council and specifically of its Universal Periodic Review, strong emphasis is given to the necessity of effective collaboration and dialogue with this new mechanism.

Annex I – Survey and Analysis of Selected Reform Proposals and Commentaries (2006-2009)

Year	Source	Themes	Criticisms, challenges	Positive reform proposals
2006	Concept Paper on the High Commissioner’s Proposal for a Unified Standing Treaty Body – Report by the Secretariat (UN Doc HRI/MC/2006/2)	Practical challenges to treaty monitoring body (TMB) system	<p>Increase in number of TMB and ratifications</p> <p>Lack of capacity and/or political will of States Parties – failure to submit reports (TMB have no power to force States to submit reports and could not cope with full compliance)</p> <p>Duplication – different working methods, no coordination re report consideration</p> <p>Increased workload of TMB and Secretariat, backlog in report consideration and individual complaints procedures, insufficient resources and meeting time</p>	<p>Proposals to meet practical challenges:</p> <p>Convening TMB sessions at same time</p> <p>Examining reports of State parties jointly</p> <p>Formulation of joint General Comments</p> <p>Convening joint thematic working groups</p> <p>Harmonisation of agendas, priorities and objectives</p> <p>Meeting of Chairpersons and Inter-Committee Meeting to take on coordination functions</p>

		<p>Challenges underlying the system</p>	<p>TMB system is unknown by general public</p> <p>Victims and civil society are unfamiliar and unaware of potential of TMB</p> <p>Poor media coverage</p> <p>Limited use of TMB jurisprudence by lawyers and national judicial systems</p> <p>Country visits of TMB experts are still an exception</p> <p>Uneven expertise and independence of TMB members</p> <p>Impact weakened by ad hoc approach</p> <p>Diverging interpretations of human rights standards and conflicting jurisprudence</p> <p>Poor quality of State reports</p> <p>Insufficient information about national implementation and de facto enjoyment of human rights available to TMB</p> <p>Absence of effective, comprehensive follow-up mechanisms</p>	<p>Unified standing treaty body (USTB) comprised of permanent, full-time professionals</p> <p>Single cycle of reporting every three to five years</p> <p>Extended dialogue with individual States parties to up to 5 days</p> <p>Model A – A single body with no chambers: ensures consistent interpretation, but might not solve problem of workload or backlog; if number of members is large, difficult to reach consensus</p> <p>Model B – A single body with chambers operating in parallel: each chamber has full mandate for all treaties and monitoring functions; increased capacity for distribution of tasks and workload</p> <p>Model C – A single body with chambers along functional lines: separate chambers for consideration of reports, individual complaints, inquiries, country visits, follow up/implementation – allows for distribution of tasks, development of expertise on specific procedures, but might result in disconnection on substantive issues and inconsistency of interpretation</p> <p>Model D – A single body with chambers along treaty lines: allows for easy distribution of workload, maintains specificity of each treaty, would implement identical working methods, but would otherwise reflect problems and divisions of the current system</p> <p>Model E – A single body with chambers along thematic lines: chambers structured along clusters of rights; reduced risk of inconsistencies; but difficult to define clusters, overlap between chambers would remain, risk of undue emphasis of certain rights and neglect of others</p> <p>Model F – A single body with chambers along regional lines: pro: expertise on human rights issues in certain regions and stronger bonds with regional mechanisms; contra: risk of inconsistencies and duplication of work of regional mechanisms, regional instead of universal standards.</p>
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				<p>Reporting procedure: submission of expanded core document and treaty-specific reports; responses to comprehensive lists of issues</p> <p>Individual complaints procedure: special rapporteurs/working groups for new complaints and interim measures, aligned along institutional/instrument lines or overarching substantive clusters; expedited procedures for manifestly ill-founded cases; fast-track procedure for routine meritorious cases; power to adjudicate claims of violations of provisions of more than one instrument in the context of the same case; extra chamber for complaints or staggered chamber system</p> <p>Follow-up procedures: rules of procedure of USTB to clearly spell out follow-up competencies, eg in situ monitoring missions</p> <p>General comments as usual</p> <p>Development of early-warning and fact-finding mechanisms</p> <p>Greater involvement of other parts of the UN system through submission of written reports on specific countries, following standard guidelines</p> <p>Strengthen role of civil society</p> <p>Strengthen role of general/thematic discussions</p>
		Issues to bear in mind when considering reform	<p>Specificity</p> <p>USTB critics:</p> <ul style="list-style-type: none"> - USTB unable to monitor implementation of specificities of each treaty in sufficient depth - less scrutiny of implementation of specific rights - less capacity to galvanize government and civil society sectors dealing with specific issues - less variety of expertise in membership 	<p>Measures would be taken to prevent loss of specialized expertise and ensure focus on specific rights and right-holders</p> <p>Measures would be taken to engage government and civil society sectors dealing with or interested in specific rights and right-holders</p>

			<p>Different ratification patterns</p> <p>How membership in USTB will be determined</p> <p>Participation of USTB members in deliberations and decision-making on substantive treaty obligations that their own country has not accepted</p>	<p>Issues could be solved when designing chambers of USTB</p>
			<p>Membership</p> <p>Quality of members</p>	<p>Election procedures with more information on candidates</p> <p>Introduction of more detailed criteria for candidature, qualifications, expertise, term limits, geographic and gender balance</p> <p>Remuneration at senior level to attract good candidates</p> <p>Introduction of mechanisms to maintain link between members and their constituencies</p> <p>Combination of permanent and non-permanent members</p> <p>Development of detailed system for nomination and election of experts</p>
			<p>Legal issues</p>	<p>Amendments to each of the treaties</p> <p>Overarching amending procedural protocol</p> <p>Gradual transfer of competences to one TMB</p> <p>Temporary suspension of TMB functions and transfer to USTB through General Assembly resolution</p> <p>Necessity to avoid concurrent application of parallel monitoring regimes</p>
2006	Fifth Inter-Committee Meeting and Eighteenth Meeting of Chairpersons of the human rights treaty	Coordinated approach to Reporting; standardization of terminology; participation of non-governmental organisations		<p>All TMB should consider developing procedures and guidelines for enhanced interaction, where appropriate, with the special procedures mandate holders in order to strengthen a coordinated and coherent approach to their work.</p> <p>The Secretariat should seek ways and means to facilitate interaction</p>

	bodies	(NGOs); meetings with specialised agencies; national human rights institutions (NHRIs); ratification of core human rights instruments; consultations on reform proposals		<p>between the TMB and the special procedures, not only during the annual joint meetings, but also with respect to strengthening mandate-specific and direct interaction during sessions of the TMB.</p> <p>Recommendations of the special procedures and the concluding observations of the TMB should form part of the basis of the universal periodic review.</p> <p>The TMB should consider institutionalizing their relationship with the Council and consider and propose modalities for such a relationship. The Secretariat should provide to the TMB information on an ongoing basis on the work undertaken by the Human Rights Council (HRC).</p> <p>The Secretariat should continue to organize, in appropriate forums, consultations among the TMB, States parties, the Office of the High Commissioner for Human Rights (OHCHR), United Nations entities, NGOs, NHRIs and other stakeholders to discuss all reform proposals, including those put forward by the Committee on the Rights of the Child (CRC) and the Committee on the Elimination of Discrimination Against Women (CEDAW).</p> <p>Each committee should continue to consider adopting procedures to ensure effective follow-up to their concluding observations/comments, including the appointment of a rapporteur on follow-up. Follow-up could be conducted in open meetings and follow-up seminars and that each committee should explore other follow-up measures.</p> <p>All TMB establish a mechanism of rapporteurs or focal points to enhance cooperation and facilitate more effective interaction on country-specific as well as thematic issues and follow-up with the United Nations specialized agencies.</p> <p>NGOs should send information well in advance of treaty body sessions to allow committee members the opportunity to take those important submissions into account, and should continue to disseminate the conclusions of the TMB and report on their implementation.</p>
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2006	Brainstorming Meeting on Reform of the Human Rights Treaty Body System (“Malbun II”) – Annex to the Letter dated 14 September 2006 from the Permanent Representative of Liechtenstein to the United Nations addressed to the Secretary General (Un Doc A/61/351)	The High Commissioner for Human Rights’ proposal for a USTB	<p>USTB proposal has little support</p> <p>Main criticisms:</p> <ul style="list-style-type: none"> - Unclear how USTB addresses reporting burden - USTB has quasi-judicial character - Different ratification patterns of treaties make creation of USTB difficult - Need for more in- depth discussion of challenges to TMB system and practical information on how challenges ought to be addressed <p>Opposition in principle to USTB and specific criticism of proposed models:</p> <ul style="list-style-type: none"> - Regional chambers would replicate regional hr system and result in normative fragmentation - Chambers along treaty lines would recreate present system - Six options presented not exhaustive – many ways of combining them - Reservations on standing character of USTB, permanent membership (loss of connection with constituency), full-time and fully remunerated members 	<p>Preference for short term practical measures that combined could address challenges to TMB system. After testing phase of these changes, more far-reaching reform proposals could be discussed and adopted if needed</p> <p>Need for harmonization of working methods and harmonized guidelines for focused reports</p> <p>TMB to assist States in preparation of focused reports through submission of lists of issues to guide preparation and content of report – concluding observation to be used for lists of issues</p> <p>More consistent, concrete, strategic and focused approach when preparing dialogues with States and elaborating concluding observations and recommendations</p> <p>More consistent, harmonized and transparent approach to follow-up: documents re follow-up should be made widely available</p> <p>Better coordination to avoid duplication</p> <p>More consistent appointment of focal points in TMB to improve work on specificity</p> <p>Harmonization should extend to all areas of TMB work</p> <p>Creation of unified individual communications mechanism to improve consistency in jurisprudence</p> <p>Greater use of joint general comment, joint general recommendations, joint working groups and task forces</p>
		Alternative options for reform	Backlog in consideration of reports	<p>Additional meeting time (allocated by bureau of seven chairpersons as proposed by CRC)</p> <p>More focused dialogue with States and identification of priority issues and concerns</p> <p>Adoption of chamber system as done by CRC and CEDAW</p>

			<p>Non-reporting</p>	<p>Institutional changes not sufficient to address this problem</p> <p>Technical assistance could be essential in cases where non-reporting is due to lack of capacity – useless in cases of lack of political will</p> <p>Reconsideration of review procedures for non-reporting needed</p>
			<p>Visibility</p>	<p>Better dissemination of concluding observations and recommendations, including through Secretariat initiatives and better use of the Internet, radio broadcasts and live webcasts</p> <p>TMB sessions to be convened in States parties, but concern over additional costs</p> <p>Creation of single system of individual communications</p> <p>Greater role of OHCHR, UN field presences and independent NHRI needed</p>
			<p>Role of OHCHR</p>	<p>Secretariat to take on greater coordination role re admin aspects</p> <p>Creation of shared Secretariat</p> <p>Better coordination of timing of examination of reports for each State party</p> <p>Harmonization in consideration of petitions</p> <p>Enhance capacity of OHCHR to support the TMB (using part of the doubled OHCHR budget promised at 2005 World Summit)</p> <p>More unified and better expertise in Secretariat</p> <p>Creation of high-profile post in Secretariat to ensure coherence, incl in jurisprudence re individual complaints, identification of priorities and coordination of resources</p>
			<p>Criteria for membership</p> <p>Selection process for TMB does not ensure adequate expertise and independence</p> <p>Casting votes in exchange for votes in other</p>	<p>Improvement of selection process prior to nomination needed – transparent national nomination and selection procedures; organisation of open discussions of TMB with candidates</p> <p>Reference to criteria for election of judges in ICC Statute as a good</p>

			elections could have negative impact on membership quality	model Need for enhanced accountability of TMB or TMB members to States parties
	Issues to bear in mind when considering reform		Specificity – protection through treaty system of certain categories of rights and right-holders – USTB cannot guarantee this	Addressing specificity properly has implications for stakeholders, incl States parties, TMB, UN entities, NGOs and the Secretariat The Human Rights Committee and the Committee on Economic, Social and Cultural Rights need to be more responsive to certain specific issues or groups addressed by other specific TMB, eg women and children Creation of mandatory guidelines for States parties and TMB to ensure appropriate attention to specific issues or groups
		Relationship between human rights machinery and HRC Universal Periodic Review (UPR)	Need for complementarity between the UPR mechanism and TMB outputs (para 5 GA res 60/251) – efforts needed to avoid duplication TMB outputs could be basis for UPR Distribution of work among TMB and HRC special procedures	
		Legal issues on reform procedure (required unanimity or consensus)	Existence of political will that takes into account views of civil society essential prior to any debate on legal options to establish USTB Necessary to take into account rights of third States and the constitutional role of parliaments	
		CERD proposal for unified individual complaints mechanism	Might dissuade non-States parties from joining the system and accepting optional complaints procedures Might create incoherence between unified body and the other TMB bodies	Would increase coherence, visibility and accessibility of the system
		CRC proposal to create permanent bureau of chairpersons		Permanent, remunerated bureau of chairpersons to coordinate all activities, incl consideration of reports, general comments and follow-up activities. More info needed though.

		<p>CEDAW proposal for harmonization and integration of TMB system</p>		<p>Intensification of efforts for harmonization of working methods</p> <p>Coordination and improvement of follow up procedures</p> <p>Efforts to maintain consistency of jurisprudence</p>
		<p>Mechanisms for future consideration of TMB reform</p>		<p>Convene open-ended inclusive consultations on TMB reform, involving all stakeholders, focusing also on technical issues</p> <p>Organisation of regionally based consultations</p> <p>Institutionalized and enhanced Inter-Committee meeting mechanism, meeting for longer periods of time</p> <p>Joint meetings of all TMB members on reform</p> <p>States parties meeting to discuss proposed amendments to treaties</p>
2006	<p>NGO Group for the Convention of the Rights of the Child, Statement to the Fifth Inter-Committee Meeting, 20 June 2006</p>	<p>Reform of TMB system - USTB</p>	<p>HCHR's concept paper identifies concerns about a unified system, but does not address these concerns. The concept paper simply states that measures would be taken, but does not make any suggestions as to what these measures might be.</p>	<p>Need for a more sophisticated exercise which focuses on the problems of individual TMB and the enhancement of the rights of particular groups</p> <p>Withdrawal of the unified treaty body proposal and replace it with a more sophisticated approach, genuinely focused on the enhancement of the protection of rights holders</p> <p>Establish additional working groups composed of TMB members, States parties and NGOs on specific issues in order to seek consensus on harmonizing working methods.</p> <p>Establish of a bureau of TMB chairpersons, which would be mandated to coordinate and make improvements to the system.</p> <p>Creation of an inter-committee coordination mechanism within OHCHR, with a clear mandate and staff to support coordination of actions taken by different TMB and identify venues for collaboration.</p>

2006	Expert Workshop on Reform of United Nations Human Rights Treaty Monitoring Bodies – University of Nottingham, 11-12 February 2006	Structural or technical reform of TMB system – general challenges and principles	<p>Information and coordination gaps impede TMB engagement with wider network of actors essential for effective implementation</p> <p>Variable quality and effectiveness in review process – barrier to access and participation by States and civil society</p> <p>Outputs of reporting process are insufficiently detailed to be a useful tool for Governments and civil society</p> <p>Poor continuity of TMB engagement with individual States across reporting cycles</p> <p>Restricted capacity of TMB to agree on and achieve coordinated change at system level</p> <p>Chronic resource shortfalls</p> <p>Part-time, unremunerated members</p> <p>Unsteady political commitment by States</p>	<p>Any reform of the TMB system should not endanger specificity of TMB practice, nor jeopardise depth and quality of protection for rights-holders in different spheres.</p> <p>Augmenting TMB resources, enhancing TMB appointments, and reinforcing States; political engagement are key targets</p> <p>Enhance TMB accessibility to civil society – greater outreach to marginalised constituencies and proactive inclusion measures</p> <p>Widely available and flexible technical assistance to less developed and small countries for preparation of State reports</p> <p>Dialogue in reporting process must be constructive</p> <p>More focussed and concrete Concluding Observations – greater actionability might provide also higher profile in global and national media</p> <p>Direct engagement with national actors to instil deeper respect for TMB determinations under communication procedures</p> <p>Prior to choice of reform option, new analysis and evaluation is needed of:</p> <ul style="list-style-type: none"> - precise definition of national human rights implementation and distinctive role of TMB in it - assessment of positive qualities of TMB system that need to be safeguarded and strengthened - survey of impact of past and current TMB reform measures - assessment of political dimension of reform options
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		Structural reform options		<p>Unified standing treaty body would allow enhanced coordination in information gathering and follow-up, more systematic prioritisation, greater authority inside the UN system and beyond</p> <ul style="list-style-type: none"> - single panel: might best achieve coherence across TMB operations; not necessarily detrimental to specificity; perhaps less efficient - chamber based structure: comprehensive competence/treaty specific competence/cross-treaty competence/competence with functional basis; establishment of follow-up unit; plenary approval for decisions taken by subsidiary bodies readily obtainable or dispensed <p>Partial Unification</p> <ul style="list-style-type: none"> - Standing Executive Bureau comprising members of existing treaty committees - Aggregation of execution of particular TMB functions into new structures – eg Treaty Implementation Committee for follow-up - Bifurcated system for adjudication and review; but who elaborates general comments? Would the adjudications committee have binding jurisdiction? - Consolidation of different TMB activities on cross-cutting themes <p>Establishment of single entry point for NGOs and other parties (NHRIs)</p> <p>Greater convergence in TMB working methods and coordination of priorities</p> <p>Incorporate and further develop innovative practices emerging within the TMB system (eg preventative field visits OPCAT) and by other UN human rights entities (eg inquiries, urgent action and early warning procedures); overlap between TMB activities and those of other bodies should be avoided though</p> <p>Maintain flexibility necessary to accommodate new specific human rights instruments</p>
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		<p>Modalities for structural reform</p>	<p>It may in practice be impossible to achieve agreement of States Parties necessary for treaty amendment, as well as for other legal change options such as a short amending protocol or the amalgamation of the treaties themselves</p>	<p>If amendment of treaties is pursued, subsequent amendment of treaties should be made easier, eg by separating substantive and procedural provisions and establishing less demanding requirements for the alteration of the latter</p> <p>Undertake reform through action of the General Assembly, eg establishing a cohort of TMB members as a single pool from which individual panels would be selected on a rotating basis, but would this be a sufficiently authoritative and impartial foundation for a TMB?</p> <p>Single treaty committee might be established de facto through changes to TMB Rules of Procedure – equal numbers of members from each existing Committee, to assemble twice yearly</p> <p>Merge CESCR with Human Rights Committee</p> <p>Need for analysis of the full range of potential reforms, different pathways of achievement and projected time schedules for each, together with evaluation of risks and opportunities</p>
		<p>Technical and administrative reform</p>		<p>Expanded core document and harmonized reporting guidelines should be concluded without delay</p> <p>Relocate CEDAW to Geneva</p> <p>Establish mechanisms to obtain systematic feedback from States on usefulness of different types of Concluding Observations</p> <p>Further development, on cross-Committee basis, of policy and practice relating to Focussed Reports based on Lists of Issues</p> <p>More experimentation in relation to joint-TMB working such as joint general comments, joint consideration of country reports, joint thematic workshops</p> <p>More individual and collective outreach activities</p>

		Criteria for TMB membership and election		<p>Criteria and selection procedures need to guarantee greater diversity in TMB membership particularly in terms of gender balance, fair geographical distribution, appropriate mix of professional backgrounds (emphasis on experience in legal profession and public administration)</p> <p>Reports on candidates should be publicly available prior to nomination – UK model (public advertisement and interview) or ICC model (advisory committee on nominations)</p> <p>Introduction of performance assessment for TMB members, especially for those who seek re-election</p> <p>Review of length and renewability of TMB terms of membership</p> <p>More training available for TMB members</p>
		Good practice	Good practice models are lacking in a number of areas such as evaluation of state level outcomes of TMB activities, cross-TMB coordination, relationship of TMB with other UN human rights mechanisms, TMB engagement with institutions at the national level	<p>Development of TMB Best Practice Manual to supplement OHCHR’s internal best practice guide</p> <p>More systematic review of practice developments during TMB sessions, with more input from NGOs and experience sharing by States</p> <p>More coherent and effective media strategy</p>
		Making reform progress	TMB reform discussions often merely repeat past recommendations	<p>Twin track approach:</p> <p>1 – debate over proposals for structural reform must be advanced and brought to a definite conclusion</p> <p>2 – incremental improvements to TMB process must be put into effect</p> <p>All reform proposals must be SMART: specific, measurable, achievable, realistic and time-bound; mobilising the full range of stakeholders</p> <p>Programme of meetings to investigate specific components of reform</p>
2007	Sixth Inter-Committee Meeting and Nineteenth Meeting	Consultation on reform; harmonisation of working methods; standardisation		Please refer to 2006

	of Chairpersons of the human rights treaty bodies	of terminology; follow-up to concluding observations; reservations; harmonisation of reporting guidelines; liaising with UN funds, programmes, agencies; NGO participation; NHRI; statistics on HR; relationship with special procedures and HRC		
2007	Penny Parker, Minnesota Advocates for Human Rights, The State of the UN Human Rights Treaty Body System – An NGO Perspective, 20 June 2007	State of TMB System, criticism and suggestions	Backlog of individual complaints	Methods for making information about the individual communication procedures more visible should be pursued, in addition to prompt information about the results of the decisions when made. A dialogue should be established between the TMB who are reviewing individual communications and NGOs, NHRIs, and national and regional human rights courts and mechanisms, to evaluate whether the jurisprudence emerging from these decisions are clear and useable as precedents in the national court and complaint systems.
			Lack of awareness of results and recommendations; lack of general publicity	<p>Develop a strategy for more effective publicizing of treaty body results, including predictable access to NGOs, media and other interested parties. The strategy should include timing issues, summarizing content to facilitate wider distribution and recognition, and uses of new technology to better distribute information about the treaty body system.</p> <p>Continue to improve regularity and transparency of scheduling information so that NGOs and NHRIs have prompt notice of coming state appearances, and have sufficient time to prepare and provide input to state report proceedings Take steps to ensure that all treaty body sessions and materials are accessible to disabled persons.</p> <p>Establish a more transparent forum for treaty body discussions so that NGOs can meaningfully participate, including better notice and opportunity to NGOs from the South to take advantage of any fellowship grants made available for their travel and participation at such meetings.</p>

			<p>List of issues in State reporting cycle – the most relevant exchange of substantive views is shifted away from the domain where NGO input is now most emphasized</p>	<p>Continue the trend of posting copies of state written replies to lists of issues as promptly as possible so that NGOs and other interested parties can access them before the relevant treaty body appearance. TMB should also seek to harmonize the different Committee practices currently in effect regarding the list of issues and responses.</p> <p>Explore methods for ensuring effective NGO and NHRI input to the written replies of states to the Committee’s list of issues. Perhaps establish an open ended work group to study this issue and report to the next Inter-Committee Meeting with recommendations.</p>
			<p>Imbalance of experts</p>	<p>To the extent not already being done, each treaty body should regularly assess its composition, including through NGO and NHRI input, identifying any important skill sets, gender, regional, or other backgrounds that are missing or under represented in its current composition, and recommend to the state parties who will be selecting the next members of the Committee to consider these matters when choosing the next experts.</p>
			<p>Increasing work burden; increasing number of overdue reports; continuing challenges to promotion of meaningful implementation of recommendations in the field</p>	<p>Create an inter-committee management structure that can address workload, backlogs, and other system management needs for the treaty body system. Perhaps establish an open ended work group to study this management function and how it could be structured.</p> <p>Establish a practice of compiling an annual “State of the Treaty Body System” report that summarizes data that can meaningfully track the successes and problems of the system, and help to manage its future workload</p>
			<p>Availability and length of reports</p>	<p>Monitor and assess the impact of changes in state reporting guidelines, including on the quality of such reports, responsiveness to prior concluding observations, responsiveness to relevant new general comments, page length, and by soliciting feedback from states, NGOs and National Human Rights Institutions</p>
2007	<p>Advisory Council on International Affairs/Adviesraad Internationale Vraagstukken (AIV), The UN Human Rights</p>	<p>Identification of problems and assessment of reform proposals</p>	<p>Considerable variety in number of ratifications of different treaties</p>	<p>Evaluate what these numbers actually mean, how compliance is monitored and what changes can be made or have already been made as a result of the treaties and their ratification</p> <p>Constantly study the interaction between the systems of standards under treaty law and national practices, as well as the need for further adjustments to the system of standards to meet the contemporary</p>

Treaty System – Strengthening the System Step by Step in a Politically Charged Context, No. 57 July 2007			challenges
		Danger that Western countries assume legal proceedings/getting justice is a viable approach throughout the world – in many countries human rights are regarded as an ideal to be achieved rather than as a viable legal instrument	Systematic assessment of the practical significance of ‘access to justice’ in different parts of the world
		<p>Lack of awareness on the part of the general public</p> <p>Limited use of complaints procedure</p> <p>No global recognition of potential of TMB mechanisms</p> <p>Practical problems related to reporting such as large backlog, overlapping of reporting obligations, different working methods of TMB, staffing and financial shortages at OHCHR, system’s lack of public profile</p> <p>HRHC’s proposed long-term solution (USTB) is not desirable (always assuming that it is feasible) for political, practical and legal reasons:</p> <ul style="list-style-type: none"> - current general political climate (dubious that there is at present sufficient political will to introduce measures to strengthen the system – see negotiations for HRC and UPR) entails a major risk that past achievements may easily be lost - unclear whether USTB would indeed provide a solution to the problems in practice - specificity: exceptionally difficult, if not impossible to cover all relevant issues in a single TMB - legal complications present chief obstacle to USTB 	<p>Short and medium term alternatives to USTB:</p> <ul style="list-style-type: none"> - Pursue highest possible degree of expertise, commitment and independence of TMB members - Amalgamation of Human Rights Committee and the Committee on Economic, Social and Cultural RightsRC and CESCR or HRC and CAT: there would still be legal and other complications, but less far-reaching than for USTB - Joint complaints chamber or TMB working groups dealing with complaints meeting at the same time to maximise mutual benefit - Intensification of efforts to harmonise, coordinate and integrate different aspects of TMB mandates, while maintaining specificity of their functions (eg harmonisation of treaty procedures, coordination and dialogue on human rights interpretations) - Strict management of TMB agendas; streamlining reporting procedures (guidelines on common core document and shorter reports for specific treaties – OHCHR to provide advisory services, training meetings, direct assistance, harmonising guidelines); achieve organisational and substantive coordination - Increase number of chairpersons meetings, for instance to coincide with HRC sessions, and give them more prominent role on substantive and procedural matters - Further strengthen OHCHR, providing adequate secretarial and financial support for TMB mechanism activities; increase OHCHR’s role in strengthening cooperation of TMB with other relevant UN actors (agencies, SC etc), NHRI and NGOs. - Develop effective relationship with HRC; raise subjects relating to

				TMB during HRC sessions; extensive use of TMB information in HRC activities and UPR (eg OHCHR to compile reports of Special Rapporteurs, working groups, TMB and NGOs).
		TMB and HRC/UPR system	TMB reports will be included in documentation supplied by OHCHR on country under review in UPR system – not same quantity of information will be available for all countries, as not all countries have ratified all treaties	<p>UPR Working Group/HRC should in any event put following questions(as appropriate) to country under review: why has the state concerned not ratified certain UN human rights treaties; why has it entered and/or maintained reservations; why has it not fulfilled its reporting obligations; what measures has it taken to implement the concluding observations; why has it not yet accepted certain optional monitoring procedures (such as the individual complaints procedure and the investigation procedure); what arrangements has it made to comply with the decisions by TMB on individual complaints, etc.?</p> <p>TMB need to have optimal access to HRC: rotating chair of the Chairpersons meeting and TMB chairpersons themselves should have the opportunity at least once a year to debate with HRC</p> <p>Achieve better cooperation and synergy between TMB and HRC's thematic rapporteurs</p>
2007	Amrei Muller, Frauke Seidensticker, The Role of National Human Rights Institutions in the United Nations Treaty Body Process, German Institute for Human Rights, December 2007	Cooperation NHRI - TMB	Interaction between TMB and NHRIs has not been systematic and existing interaction has not been reviewed and evaluated properly	<p>NHRIs should seize many more opportunities to relate to TMB and TMB should interact on many more levels with NHRIs than they currently do. Other actors should recognise NHRIs' role, such as UN funds and agencies, intergovernmental and non-governmental institutions involved in the implementation of international human rights law.</p> <p>Communication and transparency between NHRIs and TMB needs to be increased. Information on how to interact and cooperate with TMB must be transparent and easily accessible to NHRIs. An informative website, guidelines or other information instruments would help NHRIs to approach TMB on different matters in a qualified and effective fashion. A clear entry point for NHRIs would serve the same purpose. An improved and systematic exchange of information between NHRIs and UN TMB would keep NHRIs constantly informed</p>

				<p>about all aspects of the TMB’ work and vice versa.</p> <p>Common guidelines by all TMB for interaction with NHRIs should be developed with regard to all areas of cooperation: the steps of the states reporting process, the individual complaints procedures, the inquiry procedures, and for any special areas of common concern.</p>
2007	<p>Michael O’Flaherty, Claire O’Brien, 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, pp. 141-172 in Human Rights Law Review 7:1 (2007)</p>	<p>Concept paper critique, relationship with HRC, specificity</p>	<p>Concept paper actually proposes expansion of scope and diversification of the modalities of UN human rights treaty supervision – exacerbated overlap – does not communicate clear definitions of what division of labour with eg special procedures would be</p> <p>Conflation of proposals for structural reform with an agenda for expansion and diversification of existing working methods and mandates</p> <p>Concept paper neglects TMB relationship with the HRCouncil</p> <p>Concept paper neglects risk that unification would reduce attention to specificity of human rights protection:</p> <ul style="list-style-type: none"> - no indication of what specificity-saving measures would be - merges unification (institutional design) and mainstreaming (implementation methodology) - claims that mainstreaming offers effective protection for specific rights - claims that mainstreaming excludes need and scope for specialist structures - idea of interdependence and indivisibility of hr is conflated with idea of comprehensive, holistic and cross-cutting approach, while the former is a theoretical/normative claim that does not entail specific prescriptions for institutional design or 	<p>Avoid inflated expectations about what unification in and of itself can achieve</p> <p>Clarify a reformed TMB’s core mission within the UN system</p> <p>Two distinct dialogues with States within the UN human rights system:</p> <p>1) TMB dialogue: gather comprehensive information concerning States’ compliance with their human rights treaty obligations and produce recommendations for enhancement.</p> <p>Outcomes of (1) dialogue would provide platform for:</p> <p>2) Human Rights Council dialogue: focus on issues of implementation – use of political influence, capacity for sanction, peer pressure</p> <p>Avoid confusing the language and discourse of mainstreaming with that of unification</p> <p>Specificity is crucial to ensure adequate protection of all categories of rights-holders – further debate needed on precise design of specific structures and the scope of their activities, with particular attention to modalities of reporting</p>

			implementation methodology	
2007	Rachael Lorna Johnstone, Cynical Savings or Reasonable Reform? Reflections on a Single Unified UN Human Rights Treaty Body, pp. 173-200 in Human Rights Law Review 7:1 (2007)	Critique of concept paper, weaknesses and strengths of system	Weaknesses of current system: <ul style="list-style-type: none"> - huge volume of work - overlap between treaties - does not reflect indivisibility of human rights and is difficult to access/understand for victims, civil society and government officials - no status and impact in the world press/general public - no guarantee of/poor quality of TMB members - consensual system – TMB should not question States on obligations they have not accepted - expensive 	Cautious support to USTB Make sure that unification would be an improvement with respect to current system – solutions within the current framework might be more effective Consolidation of reporting process and timetabling Introduction of two or more chambers More frequent InterCom and Chairpersons meetings Reform TMB system in light of the role of the Human Rights Council in order to reduce repetition and to ensure that important tasks do not fall through the gaps
2007	Hanna Beate Schöpp-Schilling, Treaty Body Reform: the Case of the Committee on the Elimination of Discrimination Against Women, pp. 201-224 in Human Rights Law Review 7:1 (2007)	TMB reform – view from CEDAW	Usual list of problems USTB does not respond to core challenges and risks to undermine the differentiation and specificity of human rights Nature of CEDAW and causes of women’s persistent inequality is still not fully understood by many, incl some staff at OHCHR – which is reflected in the harmonized guidelines on reporting Nobody talks about inquiry procedure in recent TMB reform debate	Further harmonisation, coordination and integration of present TMB system Harmonisation of working methods Increase in number of InterCom and chairpersons meetings Consistent approach to human rights protection and monitoring should not amount to the smallest common denominator in interpreting human rights (CEDAW) Caution needed so that call for consistency does not dampen any creative approaches aimed at expanding the conceptual nature of norm interpretation Common secretariat – review and amend treaty specific reporting guidelines consistently within framework of harmonized guidelines Discussion on how lists of issues should be decided without creating perceptions of new hierarchies of human rights Further discussion of CERD and CRC proposals – but no rapid implementation of single body for communications

2008	Seventh Inter-Committee Meeting and Twentieth Meeting of Chairpersons of the human rights treaty bodies	Consultation on reform; harmonisation of working methods; reservations; liaising with UN funds, programmes, agencies; NHRI; ratification; statistics on HR; relationship with SP and HRC		Please refer to 2006
2008	NGO Joint Submission to the 7th Inter-Committee Meeting of the United Nations Treaty Monitoring Bodies, June 2008, AI Index IOR 40/014/2008, 1 July 2008	NGO involvement in TMB activities	Consideration of State reports – difficulty for NGOs to submit timely information in advance of consideration of States’ initial and periodic reports	Secretariat should develop, publish and maintain a master calendar of TMB’ consideration of states reports that is accessible on the OHCHR TMB website and includes deadlines for submissions of written reports, dates of Pre-Sessional Working Group meetings, and information on who to send the written submissions to.
			Rules on confidentiality of information submitted by NGOs are not uniform	TMB, which do not currently have a system to ensure confidentiality of NGO information, should allow NGOs to request that the information they submit be kept confidential, but still be considered by the treaty body concerned.
			Modalities and timing of NGO oral briefings vary greatly	All TMB should provide for formally scheduled NGO briefings in advance of the consideration of State parties’ reports or the review of a State party in the absence of a report; CAT, CEDAW or CRC practices present good models of approach
			Insufficient qualitative assessment of the implementations of the concluding observations	Each TMB should consider adopting a procedure to ensure effective follow-up to its concluding observations/comments, including the appointment of a rapporteur on follow-up. TMB should develop modalities for considering information provided by NGOs on follow-up. Any follow-up should provide for a periodic qualitative assessment of the implementation of concluding observations. Such assessment should be conducted in open meetings. Additional resources should be provided by the secretariat to support

				the work of the rapporteur on follow-up in each treaty body.
			Procedures for drafting General Comments are not consistent, particularly with respect to consultations with NGOs and other experts before and during the drafting process	TMB should adopt a common transparent procedure for consulting on and drafting general comments. Such procedures could include soliciting and considering contributions from NGOs, academics, other experts and UN and regional bodies; publication of comments submitted (including by posting on the relevant treaty body's website); and holding public discussion on draft general comments during sessions, with the opportunity for NGOs and other experts to intervene.
			Variable quality of individual members serving on TMB	<p>InterCom should adopt a recommendation on the criteria for treaty body membership, including reaffirming the Chairpersons' 1997 statement on independence;</p> <p>States parties should not re-nominate members who have already served two terms;</p> <p>States parties should nominate and elect more women candidates in order to address the issue of gender imbalance in TMB, as well as ensure the representation of members with women's human rights experience;</p> <p>TMB should consider requesting States parties to provide information on their selection and nomination process at the national level.</p>
2008	Global Standards – Local Action: Expert Conference on the Occasion of the 15 th Anniversary of the World Conference on Human Rights, Vienna, 28-29 August 2008 Letter dated 15 September 2008 from	Follow-up and implementation of the Vienna Declaration and Programme of Action	<p>Implementation gap between international human rights standards and national implementation</p> <p>Lack of necessary political will at international and national level to ensure implementation</p> <p>Resistance to deal effectively with human rights violations and deficits</p> <p>Universal ratification of core human rights treaties is still an unfulfilled objective</p> <p>States still maintain significant reservations to core</p>	<p>All concluding observations, recommendations and views of TMB [et al] should be made known to all relevant domestic stakeholders in order that they may be properly implemented</p> <p>The mandate of national human rights institutions should include a role in the follow-up to recommendations of TMB [et al]</p> <p>Strengthen existing monitoring of human rights education by TMB [et al]</p> <p>States should implement recommendations of TMB [et al] in an institutionalised and effective manner</p>

	<p>the Permanent Mission of Austria to the President of the Human Rights Council, UN Doc A/HRC/9/G/6</p>		<p>human rights treaties</p> <p>Diversity of international human rights protection system</p>	<p>Further efforts should be made to ensure that the Universal Periodic Review (UPR) is complementary to the work of other human rights mechanisms in particular the TMB</p> <p>To increase effectiveness of TMB [et al] and increase cooperation of States at all levels, a stronger link between technical cooperation and State cooperation should be established</p> <p>A system for addressing non-cooperation by States with the TMB [et al] should be envisaged by the HRC</p> <p>TMB should make further progress in the harmonization of their working methods and procedures</p> <p>Special procedures and TMB should institutionalize sharing of information and expertise, through regular briefings and common work plans</p> <p>TMB [et al] should make recommendations more implementable, by formulating them action-oriented and less abstract as well as identifying clearly their recipients</p> <p>TMB [et al] should enhance the effectiveness of their recommendations by bringing them closer to the people, inter alia through the use of modern technologies and direct transmittal of recommendations to various actors in the country concerned</p> <p>TMB [et al] should engage closely with national stakeholders, such as parliament, judges, NHRIs and NGOs</p> <p>States should translate recommendation into local languages in order to promote awareness and ownership</p> <p>States should ensure the highest quality and independence in membership of TMB</p> <p>States should increase resources for OHCHR and these resources should be used to further improve the servicing of TMB [et al]</p> <p>A unified body for individual complaints procedures under human</p>
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				rights treaties could be envisaged
2008	Judicial Colloquium on the Domestic Application of International Human Rights Norms, Panama, 1-3 September 2008	Strengthening implementation of recommendations	<p>Work of TMB and their outputs are not sufficiently known among the judiciary in Central and Latin America</p> <p>The judiciary is inclined to resort to the national law first in the reasoning of the decisions; moreover, there is a certain resistance to invoke international norms</p>	<p>Governments should promptly implement decisions rendered by UN human rights TMB as well as submit their periodic reports to these bodies within the established deadlines</p> <p>Decisions by UN human rights TMB should be practical and concrete and take into consideration the realities in the different countries</p>



**Expert Workshop on Reform of
UN Human Rights Treaty Monitoring Bodies**

11-12 February 2006

Informal Background Paper

- 1. Introduction: Workshop aims & objectives**
- 2. TMB reform: Past and current developments**
 - 2.1 Reports of the Independent Expert 1988-96
 - 2.2 Reform commentaries 1990-2002
 - 2.3 *Strengthening the United Nations*
 - 2.4 The Malbun meeting
 - 2.5 Harmonized reporting
 - 2.6 *In Larger Freedom* and the OHCHR *Plan of Action*
 - 2.7 OHCHR online forum
 - 2.8 TMB meetings since May 2005
- 3. Conclusion: TMB reform themes**
 - 3.1 TMB role
 - 3.2 TMB effectiveness
 - 3.3 TMB consolidation
 - 3.4 TMB reform process
- 4. Appendix I: Survey and Analysis of Selected Previous Reform Proposals (1985-2005)**

1. Introduction

The University of Nottingham's Human Rights Law Centre, with the generous financial support of the Irish Government and the United Kingdom Government, has convened this expert workshop to discuss key issues and pathways for further progressive reform of UN Human Rights Treaty Monitoring Bodies (TMBs).

The seminar follows the UN High Commissioner for Human Rights' commitment, stated in her 2005 *Plan of Action: Protection and Empowerment*, to take forward TMB reform and, to this end, to produce a concept paper, for discussion with States and other stakeholders from May 2006.

The workshop will engage TMB members, diplomats, civil society representatives, academics and key personnel of the Office of the High Commissioner for Human Rights (OHCHR) in focussed discussion and reflection to consider the full range of potential reforms and, we hope, contribute significantly to the ongoing process of TMB development, particularly in the context of this year's anticipated inter-Governmental conference, and prior consultation to be undertaken by OHCHR.

This background paper addresses the TMB reform agenda to date, highlighting persisting themes discernible amongst a wide field of contributions. From these, it identifies four possible strategic issues for future TMB reform: TMBs' distinctive *role* within a reformed UN human rights system; improving TMB *effectiveness*; the potential impact of TMB *consolidation*, as one possible reform model; and *process design* for TMB reform – the issue of the identification of the best route towards the implementation of chosen reforms.

The paper is proposed as an informal background text which may be of assistance to the workshop deliberations. The paper is not intended to propose any particular reform strategy and it does not necessarily reflect the views of any individual or institution. As a summary, it necessarily concentrates on major themes and developments, and should not be seen as an attempt to present a comprehensive account of the evolution of TMBs' role, functions and practice. Any consequent omissions, or errors otherwise made, are regretted.

Nottingham
6 February 2006

2. TMB reform: Past and current developments

Notwithstanding its relatively short lifespan, the UN's TMB system has been subject to extensive change and development. The following may be considered as significant events and contributions.

2.1 Reports of the Independent Expert 1988-1996

An early landmark, three reports authored between 1988 and 1996 by Philip Alston,¹¹ as Independent Expert appointed by the Secretary-General, addressed “long-term approaches” for enhancing the “effective operation of existing and prospective” TMBs.¹²

By 1988, though some TMBs had only recently become operational, it was already suggested that the TMB system “[had] reached a critical crossroads”.¹³ Like the rest of the UN, they were gripped by an acute funding crisis¹⁴; States complained of the “growing burden” imposed by the expansion and overlapping of reporting obligations¹⁵; and non-reporting, delayed reports, inadequate reporting, and backlogs in processing communications were all identified as chronic problems.¹⁶ Relative to the task at hand, TMB Secretariat support was considered nugatory.¹⁷ These difficulties were considered likely to be exacerbated by the establishment of new treaty bodies and proliferation of human rights standards in the UN context and beyond.¹⁸

The independent expert concluded that, given resource limitations that were in reality unlikely to change, the TMB system was operating unsustainably.¹⁹ Though universal ratification should remain the goal, the resulting expansion in workload would require a doubling of Committee meeting time and Secretariat support - neither of which was fiscally viable.²⁰ Further, with regard to the increasing number of TMBs, it was predicted that domestic and international non-governmental organizations (NGOs) would “soon lose interest”, overwhelmed by the need to engage with a different treaty body every year; and that TMBs’ media profile would diminish, given “such frequent and most likely superficial procedures”.²¹ As the growing workload associated with membership effectively restricted participation to serving Government officials or retirees, the quality of Committee personnel could also be expected to deteriorate.²²

¹¹ “Effective Implementation of International Instruments on Human Rights, Including Reporting Obligations Under International Instruments on Human Rights”, UN Doc A/44/668 (8 November 1989), hereafter ‘Initial Report’; “Interim Report on Updated Study by Mr Philip Alston”, UN Doc A/Conf.157/PC/62/Add.11/Rev.1 (22 April 1993); and “Effective Functioning of Bodies Established Pursuant to United Nations Human Rights Instruments, Final report on enhancing the long-term effectiveness of the United Nations human rights treaty system”, UN Doc E/CN.4/1997/74 (27 March 1996), hereafter ‘Final Report’.

¹² Initial Report, p.9, para.1.

¹³ Id., p.11, para.8.

¹⁴ Addressed at id., pp.26-40, paras.54-99.

¹⁵ Id., p.19, para.6(b); see further pp.21-26, paras.36-53.

¹⁶ Id., and pp.20-21, paras. 34-35.

¹⁷ See text cited n. 5 above.

¹⁸ Id., p.8, para.30; pp.14-15, para.20; and pp.14-15, paras.20-25.

¹⁹ Final Report, paras.9 and 120.

²⁰ Id., para.83.

²¹ Id.

²² Id., para.84

The Initial Report took the view, therefore, that despite TMBs' significant achievements, major reform was urgently needed. In the short term it was *inter alia* suggested²³:

To expand TMB capacity, steps should be taken, including to:

- Extend reporting periodicity
- Co-ordinate reporting periodicity across TMBs
- Extend Committee meeting time.

To increase TMB efficiency, greater use should be made of:

- Lists of issues
- Individual Rapporteurs and working groups
- Concluding observations.

To improve its quality, TMB review should have access to

- Country information (e.g. statistics), to be supplied by OHCHR
- Information from NGOs
- Opinion of independent experts.

To reduce the reporting burden on States, attempts should be made to:

- Harmonize and consolidate reporting guidelines
- Increase scope for cross-referencing State reports, to counter duplication
- Reduce human rights reporting requests emanating from other UN bodies.

And, to guarantee TMBs' future, it would be essential to

- Increase and stabilise funding for Secretariat support and TMB members' honoraria.

In the medium term, two alternative reform paradigms might be pursued.²⁴ The first would essentially maintain the existing model for TMB functioning, but increase capacity, while keeping overall costs constant, by making TMB operations less resource-intensive. So, for example, the Secretariat could be expanded by staffing it cheaply with junior personnel and interns, to whom the bulk of preliminary review work could be allocated. Unit costs could also be reduced if assessments were undertaken by individual members, rather than the Committee *en bloc*, and oral dialogue cut to a minimum. The processing of communications could be similarly slimmed down. In the Expert's conclusion, though, the resulting increase in TMB throughput would have to be set against a likely deterioration in quality – of domestic implementation responses, as well as the review process itself.

On the other hand, the aim of extending capacity could be paired with another, of qualitative change to the reporting model.²⁵ Thus, the conduct of comprehensive State review by each Committee separately could be substituted by:

- Consolidated reports, addressing a State's obligations under all relevant treaties, along with
- Issue-specific reports.

²³ Initial Report, *Summary of Conclusions and Recommendations*, paras.1-33.

²⁴ Final Report, paras.86-89.

²⁵ *Id.*, paras.90-101; Initial Report, pp.23-26, paras.43-53.

Long term, it appeared that some measure of TMB consolidation might be necessary.²⁶ In contrast, for example, to the Council of Europe system where, it was suggested, normative scope had been expanded via additional protocols forming ‘concentric circles around the core’, the UN system proceeded by adding to its principal covenants “a series of independent and increasingly narrowly focused instruments dealing in more detail, or with greater specificity” with issues already included in the original two. Since trying to restrain elaboration of new human rights norms was undesirable, as well as unlikely to succeed, further proliferation of “overlapping competences [was] effectively ensured.”²⁷

TMBs, it was suggested, should therefore be folded into one or two new “super-committees”²⁸ or, at minimum, their number should be stabilised by assimilating supervision of any new instruments into the work of established Committees.²⁹ Benefits to be gained from doing so might include:

- Eliminating overlapping competences – and consequent duplication
- Greater consistency between TMBs, with particular reference to
 - Procedural standardisation
 - Normative interpretation
- Coordination and prioritisation of implementation efforts at State level
- Further reduced reporting burden on States
- Overall, a stronger TMB and State review process, as a result of:
 - Greater likelihood of assured funding
 - Enhanced competence, and therefore
 - Enhanced credibility and
 - Enhanced visibility.

The Initial Report called for a “sustained exchange of views” to articulate, in greater detail, the “respective cases (for and against)” unification, which were seen, at that stage, as not being “especially clear-cut”; and to assess further the risk that “fundamental overhaul” could inadvertently present an opportunity for weakening of those aspects of TMB activity that were then proving effective.³⁰

2.2 Reform commentaries 1990-2002

Overlapping with the later work of the Independent Expert, and often echoing his findings, numerous academic and NGO commentaries presented accounts of TMBs’ difficulties, and a range of explanations and prescriptions for change.³¹

One large study, that incorporated consultation with TMBs and a range of stakeholders, as well as a survey of TMBs’ national-level impacts, concluded in favour, long-range, of a new optional protocol to UN human rights treaties. Described as procedural, this would establish two consolidated treaty bodies, “one for considering state reports and one for

²⁶ Initial Report, Part VII, pp.67-74, and pp.68-74, paras. 179-197; and Final Report, para.94.

²⁷ Initial Report, p.23, paras.44-45

²⁸ Id., para.179.

²⁹ Id., paras.184-192.

³⁰ Id., paras.182-3.

³¹ See *Appendix I* to this paper, “Survey and Analysis of Selected Previous Reform Proposals (1985-2005).

examining communications and...conducting inquiries.”³² This step, it suggested, would respond to existing deficiencies resulting from the overlap and complexity presented by differentiated, as opposed to harmonized TMB practice, which led to fragmentation in assessing and assisting state-level human rights implementation. Meanwhile, recommendations were issued for immediate concrete measures to improve TMB working methods, in relation, for instance, to engagement with States; consolidated reporting; integration with wider UN initiatives; concluding observations, and follow-up.

Attention was also addressed, in this period, to processes appointing individuals to membership of TMBs. Views were advanced that criteria ensuring greater independence, impartiality, human rights expertise, and more equitable representation on the basis of gender and other grounds were necessary.³³ Much greater scope existed, in others’ consideration, to involve NGOs,³⁴ and National Human Rights Institutions (NHRIs)³⁵ in the monitoring process. The authority and quality of TMB adjudication on complaints were also targeted for improvement.³⁶

Three objectives attracted almost universal support: increasing resources available for TMBs’ and associated Secretariat activity³⁷; improving follow-up to State review³⁸; and measures, in some fashion, to streamline and simplify activity across all TMBs.³⁹ In the latter case, these were frequently seen as entailing consolidation – whether of reporting, determination of communications, or at the institutional level via treaty amendment.⁴⁰

³² A. Bayefsky, *The UN Human Rights Treaty System: Universality at the Crossroads* (2001, Ardskey, NY: Transnational Publishers), Executive Summary, p.xvii.

³³ See e.g. J. Crawford, *The UN human rights treaty system: a system in crisis?*, and D. Harris, *Lessons from the reporting system of the European Social Charter*, both in P. Alston & J. Crawford, *The Future of Human Rights Treaty Monitoring* (2000, Cambridge: CUP); and Amnesty International, *United Nations: Proposals to Strengthen the Human Rights Treaty Bodies*, [http://web.amnesty.org/library/pdf/IOR400182003ENGLISH/\\$File/IOR4001803.pdf](http://web.amnesty.org/library/pdf/IOR400182003ENGLISH/$File/IOR4001803.pdf). Continuing impacts of inequitable gender representation within the TMB system are suggested in H. Charlesworth, “Not Waving But Drowning: Gender Mainstreaming and Human Rights in the United Nations”, 18 *Harvard Human Rights Journal* 2005 (Spring), 1.

³⁴ See e.g. A. Clapham, *UN Human Rights Reporting procedures: An NGO perspective*, in Alston & Crawford (eds.), *op. cit.*, supra n.23, and L. Theyatz-Bergman, “State reporting and the role of non-governmental organizations”, R. Brett, “State reporting: An NGO perspective”, and S. Grant, “The NGO role: Implementation, expanding protection and monitoring the monitors”, in A. Bayefsky (ed.), *The UN Human Rights System in the 21st Century* (2000, The Hague: Kluwer).

³⁵ See e.g. A. Gallagher, *Making human rights a reality: Working with new actors and partners*, in Alston & Crawford (eds.), *op. cit.*, supra n.23.

³⁶ See e.g. I. Byrnes, *An effective complaints procedure in the context of international human rights law*, and D. Kretzmer and P. Burns, *Commentary on complaints processes by Human Rights Committee and Torture Committee Members*, both in A. Bayefsky (ed.), *op.cit.* supra n.24.

³⁷ See e.g. E. Evatt, *Ensuring effective supervisory procedures: The need for resources*, and M. Schmidt, *Servicing and Financing human rights supervision*, both in P. Alston & J. Crawford, *op.cit.* supra n.23.

³⁸ See e.g. M. Schmidt, *Follow-up mechanisms before UN human rights treaty bodies and the UN mechanisms beyond*, in A. Bayefsky (ed.), *op.cit.*, supra n.24, and I. Boerefijn, *The Reporting Procedure Under the Covenant on Civil and Political Rights: Practice and Procedures of the Human Rights Committee* (1999, Oxford/Antwerp: Hart Intersentia).

³⁹ Though cf. the suggestion to disperse existing bodies across world regions to promote profile and engagement: C. Heyns and F. Viljoen, *The impact of the United Nations human rights treaties on the domestic level*, 23 *Human Rights Quarterly* (2001), pp.483-535, at 532.

⁴⁰ See e.g. T. A. Buergenthal, “A Court and Two Consolidated Treaty Bodies”, in A. Bayefsky (ed.), *op.cit.* supra n.24, and Evatt, *op.cit.*, supra n.27.

Steps were gradually taken to implement, or partially implement, a number of the changes called for.⁴¹ Nevertheless, by the new Millennium, that serious deficiencies in capacity (backlogs); compliance (non-reporting, late reporting); quality (superficial review, follow-up); and resources (insufficient Secretariat support and meeting time) was a perception that remained widespread.

2.3 Strengthening the United Nations

In the wake of the *Millennium Summit*, the Secretary-General, Kofi Annan, in his report, *Strengthening the United Nations: An agenda for further change*,⁴² attributed the problems described above to:

“The current structure of disparate human rights committees – each focussing on important but discrete issues...”⁴³ and

“[T]he growing complexity of the human rights machinery and the corresponding burden of reporting obligations [which] strain the resources of Member States and the Secretariat”.⁴⁴

To promote achievement of an integrated UN human rights system, that is, in its turn, a prerequisite to fulfilment of the *Millennium Declaration*’s goal of raising country-level human rights capacity, he therefore suggested that State reporting obligations should be “simplified”, by two routes:

- Greater coordination across TMB activities, including by standardizing TMBs’ varied reporting requirements and procedures; and ultimately
- A single State report, covering all human rights treaty obligations.⁴⁵

The report requested the High Commissioner for Human Rights to produce, following consultation, recommendations on “new streamlined reporting procedures”; a measure for which the General Assembly⁴⁶ and Commission on Human Rights⁴⁷ later confirmed support.

Subsequent to the Secretary-General’s report, a number of dialogues proceeded on further harmonization of TMB practice. These addressed, *inter alia*, issues of better cooperation between TMBs; and best practice in a number of areas, including the use of pre-sessional working groups and parallel chambers, follow-up measures, and review in the absence of reports. Amongst a range of initiatives, OHCHR conducted pilot exercises with States on cooperative measures further to concluding observations, and certain advances were made in processing communications and deployment of IT.⁴⁸

⁴¹ Detailed accounts are contained in the Reports of the Annual meetings of Chairpersons of the Human Rights Treaty Bodies, available at <http://www.ohchr.org/english/bodies/icm-mc/documents.htm>.

⁴² “Strengthening the United Nations: An Agenda for Further Change”, UN Doc A/57/387, 9 September 2002.

⁴³ *Id.*, para.53.

⁴⁴ *Id.*, para.52.

⁴⁵ *Id.*, para.54.

⁴⁶ UN Doc A/Res/57/300, 7 February 2003, para.8.

⁴⁷ CHR Res 2004/78, 21 April 2004, UN Doc. E/CN.4/2004/L.11/Add.7.

⁴⁸ See for relevant discussion e.g. Report of 16th Meeting of Chairpersons of Human Rights Treaty Bodies, Note by the Secretary-General, Effective Implementation of international instruments on human rights, including reporting obligations under international instruments on human rights, 11 August 2004, <http://daccessdds.un.org/doc/UNDOC/GEN/N04/458/43/PDF/N0445843.pdf?OpenElement>.

2.4 The Malbun Meeting

A particularly significant event in the wake of *Strengthening the UN's* reform agenda, a brainstorming meeting in Malbun, Liechtenstein, in May 2003, involved TMB members, State representatives and other stakeholders.⁴⁹ While affirming the broad goal of practical, flexible measures further to advance implementation of treaties by more effective monitoring, dialogue and follow-up,⁵⁰ and to improve TMB coordination, the meeting did not support the specific proposal for a single State report.⁵¹ Comments relating to the latter suggested⁵²:

- The difficulty of examining a single report
- A perceived linkage between a single report and TMB consolidation
- States had not taken up single reporting, though it was legally possible
- Single reporting could marginalize issues
- Producing a single report would be a complex task, beyond the capacity of, or at least off-putting to, many States, and costly and complex for OHCHR
- Single reporting would require treaty amendment
- A single report would not solve the problem non-reporting
- An obstacle was posed by different treaties' set periodicities
- Single reports would be less useful to civil society and in national constituency-building.

Instead, it was pointed out, more detailed guidelines on an expanded core document⁵³ and formulation of harmonized guidelines on "technical and formal elements of the reports", such as format, length, layout, and methodology, would assist states in reporting. The Secretariat was requested to prepare relevant assessments and drafts by 2004.

Other ideas on reporting reform canvassed at the meeting adverted to:

- Focused periodic reports⁵⁴

At a TMB's request, these might concentrate on issues identified in dialogue, and be linked to the core document. Focused reporting could have the advantages of: improving the quality of engagement on a particular issue, by encouraging in-depth analysis; reducing the reporting burden; and allowing systematic treatment of different issues over time. Yet it might also carry risks, for example, of undermining compliance with overall reporting obligations; permitting neglect or marginalization of issues affecting vulnerable groups; encouraging selective implementation, driven by public attention; and narrowing the base of future reporting.

- Periodicity⁵⁵

Opinions both rejecting and supporting coordinating amendments to treaty periodicity requirements were represented.

⁴⁹ Letter dated 13 June 2003 from the Permanent Representative of Liechtenstein to the United Nations addressed to the Secretary-General, N Doc A/58/123, 8 July 2003. See also, *Methods of Work Relating to the State Reporting Process*, Background document prepared by the Secretariat, UN Doc. HRI/ICM/2003/3, 11 April 2003.

⁵⁰ *Id.*, para.12.

⁵¹ *Id.*, para.20.

⁵² *Id.*, paras.23-27.

⁵³ *Id.*, paras.29-30.

⁵⁴ *Id.*, paras.37-49.

⁵⁵ *Id.*, paras.55-65.

Further meetings in 2003-4 generally concurred in finding that TMBs had reaped significant benefits from the degree of coordination and convergence of reporting practice already achieved; that in a number of areas steps could be taken that were likely to yield further improvement (e.g. on impact assessments, and coordination of long-term programmes), or which could encourage uptake of holistic and mainstreaming approaches.⁵⁶

On the other hand, concerns were voiced that coordination needed to remain flexible with respect to the specificities of different treaties and TMBs, to safeguard the value of diversity. The impact of including congruent provisions in the expanded core document was thus queried. Certainly, at this stage, the balance of opinion amongst TMBs did not support consolidation of Committees or instruments. A higher priority, it was suggested, should be to address directly TMBs' perennial problems: capacity deficit, which was precluding improvements in quality (this had blocked the Committee on the Rights of the Child, for example, from adopting follow-up measures in place in other TMBs); poor State cooperation; and inadequate integration of different bodies' programmes concerning human rights within the UN system.

2.5 Harmonized reporting

In, *In Larger Freedom: towards development, security and human rights for all*, published in March 2005, the Secretary-General reemphasised the need for effective human rights implementation. Whereas TMBs were still compromised by delayed reporting, duplication of reporting requirements, poor implementation of recommendations, and remained little known, they needed to "function as a unified system."⁵⁷ In this connection, *In Larger Freedom* reiterated the importance of finalizing and introducing harmonized guidelines for all human rights TMBs – a goal the Secretary-General had already set in *Strengthening the UN*.

Pursuant to *Strengthening the UN*, and the subsequent General Assembly resolution,⁵⁸ the OHCHR consulted on steps to coordinate and streamline reporting requirements under the human rights treaties. As indicated above, TMB views did not then favour a single consolidated report.⁵⁹ In this context, the Secretariat developed draft guidelines on harmonized reporting to all treaty bodies, targeted reports, and an expanded core document. These were published in 2004.⁶⁰ A technical working group, comprising representatives from each TMB had contributed to their finalisation. In June 2005, a

⁵⁶ See, e.g., for a summary of discussions, Reports of the Fifteenth and Sixteenth Meetings of Chairpersons, UN Doc A/58/350 (5 September 2003), and UN Doc A/59/254.

⁵⁷ *In Larger Freedom: towards development, security and human rights for all*, UN Doc A/59/2005, 21 March 2005, para.147.

⁵⁸ See Section 2.3 above. Consolidation of reporting, and consultation with TMBs in this regard was also recommended by the Management Review of the Office of the UN High Commissioner for Human Rights, UN Doc A/57/488, 12 October 2002, paras.62-63.

⁵⁹ See, e.g., for summary of consultations, Methods of Work Relating to the State Reporting Process, Background document prepared by the Secretariat, UN Doc HRI/ICM/2003/3, 11 April 2003.

⁶⁰ Guidelines on an Expanded Core Document and treaty-specific targeted reports and harmonized guidelines on reporting under the international human rights treaties, UN Doc HRI/MC/2004/3, 9 June 2004.

Revised Version of the Guidelines was published, taking account of states' and TMB responses.⁶¹

The core document Draft Guidelines proposed expanding its content by requiring States to provide: a) "more detailed general background information"; and b) information on treaties' "congruent provisions".⁶² The former now comprises general factual and statistical information about the reporting State; details of the State's framework for protecting and promoting human rights; and of measures relating to implementation of substantive human rights common to all or several treaties.⁶³ Consideration of additional guidance on "targeted reports" (i.e. reports submitted by States under individual treaties, to tie in with the expanded core document) currently awaits adoption of the core document guideline proposals.

External commentary concerning the recent consolidated reporting proposals has been cautious.⁶⁴ Whether States' uptake of the core and targeted reporting model will match their previously stated support for the principle of more 'streamlined' reporting is not yet clear.⁶⁵

2.6 In Larger Freedom and the OHCHR Plan of Action

In May 2005, as requested by the Secretary-General in *In Larger Freedom*,⁶⁶ the High Commissioner for Human Rights published the *OHCHR Plan of Action: Protection and Empowerment*.⁶⁷ The *Plan of Action*, focussing on State-level capacity building and implementation, and based on an analysis that four factors – knowledge, capacity, commitment and security – are prerequisite to achieving effective human rights, as well as subsequent views expressed by the High Commissioner, indicate several TMB functions⁶⁸:

⁶¹ For the Revised Guidelines, see UN Doc HRI/MC/2005/3, 1 June 2005; Comments and Suggestions Concerning the Draft Harmonized Guidelines on Reporting Under the International Human Rights Treaties, UN Doc General HRI/MC/2005/6, 8 June 2005; and Addendum, UN Doc HRI/MC/2005/6/Add.1, 14 June 2005.

⁶² Draft Guidelines, supra n.50, para.8

⁶³ Revised Draft Guidelines, supra n. 51.

⁶⁴ See e.g. D. Otto, "Strengthening the Effectiveness of the UN Human Rights Treaty Bodies: A Gender Perspective on the Proposal for a Common [Expanded] Core Report", Paper written for International Women's Rights Action Watch Asia Pacific's *isterserv cedaw4change*, Jan-Mar 2005, available at http://list.iwrawap.org/lists/d_read/cedaw4change/Expanded%20Core%20Document/CommonReportfinal.pdf; Dutch Section of the ICJ, "Commentary on the Guidelines on an expanded core document", 24 March 2005, available at <http://www.njcm.nl/upload/NJCM%20Commentary%20on%20the%20Guidelines%20on%20an%20expanded%20CCD.PDF>; S. Joseph & J. Kyriakakis, "Submission to the 'Inquiry into the Revised Draft Guidelines on an Expanded Core Document'", available at <http://www.law.monash.edu.au.castancentre/publicatinos/ohchr-submission.pdf>.

⁶⁵ See e.g. General Assembly Resolution cited supra n.36.

⁶⁶ Supra n.47, at para.145.

⁶⁷ The OHCHR Plan of Action, contained in, *In larger freedom: towards development, security and human rights for all*, Addendum, UN Doc A/59/2005/Add.3, 26 May 2005; also available at <http://www.ohchr.org/english/planaction.pdf>.

⁶⁸ Id., paras.95-100; Statement of Ms Louise Arbour, High Commissioner for Human Rights, to the Fourth Inter-Committee Meeting, Palais Wilson, 22 June 2005, available at <http://www.ohchr.org/english/bodies/icm-mc/docs/stat4thmeeting.doc>; and summary of Statement by the UN High Commissioner for Human Rights to the Fourth Inter-Committee Meeting (22 June 2005), Section VIII in Report of the fourth inter-committee meeting of human rights bodies, Annex, Report of the Chairpersons of

- To assist States to assess achievements and identify implementation gaps
- To monitor progress and provide public scrutiny on implementation efforts
- To stimulate national level changes in law, policy and practice
- To afford individual redress
- To create new constituencies in support of human rights
- To stimulate and inform national human rights dialogue
- To provide authoritative interpretations of the human rights treaties
- To provide guidance on measures needed to protect rights at the national level, and offer a framework for joint action.

Yet, numerous problems are seen as currently obstructing fulfilment of these aims:

- Excessive reporting onus on States
- Delays in processing reports and communications
- Poor quality reports
- Poor quality concluding observations
- Inadequate time for reviews
- Poor follow-up to reviews
- Inadequate resources for OHCHR in supporting TMBs
- Failure to rationalise reporting, e.g. by use of an expanded core document.

In Larger Freedom stated the need to render TMBs “more effective and responsive.”⁶⁹ In this context, in the medium term, the *Plan of Action* suggests, the problems identified may be addressed by⁷⁰:

- Stronger support for TMB work via enhanced country engagement – the *Plan’s* major objective. This ought to improve the quality of information available for TMB review, and provide a more responsive institutional environment for implementation and follow-up.
- Streamlined reporting - through use of harmonized reporting guidelines, ‘so that treaty bodies can begin to function “in partnership”, and as a unified system’; harmonization will also foster a “holistic approach” and “jurisprudential coherence”.

In the long term, though, the view taken was that a clear need will remain to “find some means to consolidate the work of the seven treaty bodies and to create a unified standing body”.⁷¹ The benefits doing so might include⁷²:

- Greater authority
- Higher visibility
- New potential for prioritization of human rights actions at country level
- Greater efficiency - in the use of human and financial resources
- Greater coherence and consistency of legal interpretation and working methods.

On this basis - and while recognising that unification may also carry risks – the High Commissioner committed to present options on reform, including “modalities for a permanent standing body”, in the form a concept paper to be presented to TMBs, States

the human rights treaty bodies on their seventeenth meeting, UN Doc A/60/278, 19 August 2005, paras.33-34.

⁶⁹ *In Larger Freedom* supra n.47, Executive Summary, Section III.

⁷⁰ *Id.*, para.99.

⁷¹ *Id.*

⁷² *Id.*, and sources cited supra n.58.

parties, UN system partners, NGOs and others, at an informal brainstorming in May 2006; subsequently, at the 5th Inter-Committee Meeting and 18th Meeting of Chairpersons of TMBs; and at a two-day intergovernmental consultation in July 2006.

The High Commissioner's *Strategic Management Plan 2006-7* reiterates OHCHR's commitments both to making TMB activity more effective, and to pursuing their reform. On the first, OHCHR will continue to work towards "greater awareness, understanding, and support for the implementation of [TMB] recommendations at the national level", including through steps to make TMB recommendations "more concrete and targeted"; and to assist in reducing backlogs.⁷³ On reform, OHCHR's aims are to "support processes to reform the treaty bodies", and that "Efforts will be made to consolidate the work of [TMBs] and [to] create a more unified, strategic and effective system" – with reporting harmonization to be pursued in tandem.

2.7 OHCHR online forum

OHCHR has subsequently sought further views and ideas to inform the development of its reform proposals. One medium for doing so was an online discussion on TMB reform, hosted for five weeks from November 2005.⁷⁴ Across a range of stakeholders, there was support for TMB reform, but a mix of views between those backing, expressing caution over, and rejecting TMB unification.

On TMB performance, participants reiterated the now familiar assessment of TMBs' strengths and weaknesses. The TMB system's principal problems comprised: late and poor reporting; low compliance, weak follow-up and lack of enforcement; inadequate and uneven accessibility to stakeholders; low media interest and, therefore, public visibility; widespread reservations; obstacles blocking individual recourse to complaints procedures; and backlogs in processing complaints. Reporting remained a heavy burden for LDCs. Some TMBs had shown that reporting could trigger new sensitivity to human rights issues, and could set productive rhetorical traps for Governments, but in most cases substantial potential for engaging NGOs, mobilising national capacity building, and raising public profile remained untapped.

As to consolidation, contributors ventured the following potential benefits:

- Greater transparency in overall assessment of State performance; and so
- Increased utility of concluding observations and reports
- Enhanced authority, and so
- Higher profile
- Stronger coordination in norm generation (e.g. General Comments)
- A professional membership of full-time, permanent, and therefore independent experts, in line with the judicial standards of the ICC, ECtHR, and ICJ.

But scepticism was expressed about the motivation underlying current proposals to consolidate – if 'efficiency', narrowly defined, was the only goal of reform, standards, and therefore implementation, would ultimately suffer. Further potential hazards were suggested to include:

⁷³ High Commissioner's Strategic Management Plan 2006-7, *Advanced Version*, January 2006, p.8.

⁷⁴ For full record of the online discussion and summaries: <http://portal.ohchr.org/tbforum/mvnforum/index>.

- Marginalization of issues and / or constituencies
- Effective suspension of activities during a potentially long transitional period between multiple and single bodies
- Disruption of NGO links - currently organised on treaty basis
- Overwhelming NGOs by requiring simultaneous inputs into all-encompassing single reports, as well, potentially, as focussed and/or thematic reports
- Failure to appreciate the different positions of general (ICCPR and ICESCR) and specialised instruments and committees.

A number of contributors also feared that unification could entail a damaging loss of specificity. Others, on the other hand, thought that women's rights, for instance, might benefit from systematic treatment that a unified TMB might facilitate. Imagining that consolidation was undertaken, a strategic approach, based on clear evidence that unification would enhance TMB performance in critical areas, would be needed, with robust measures in place to mitigate the risks identified. Any reform process would moreover need careful design to ensure smooth transition and avoid creating a 'dead' period between one set of institutions winding down and the next becoming legally and operationally established.

Discussed amongst unification models were:

- A senior coordinating body with subsidiary chambers on either treaty/thematic or functional lines (e.g. individual complaints, reporting, follow-up, inquiries)
- A composite structure – including some full- and some part-time members
- *De facto* merger – i.e. unification without treaty amendment. While the level of political support necessary to achieve amendment of the seven current human rights treaties is unlikely, this option would also seek to avoid the operational difficulties created by the establishment of two parallel treaty systems (i.e. for States which ratified a new 'procedural' treaty, and those which did not).⁷⁵

One proposal in this regard suggests merging CESCR with ICCPR⁷⁶ to create a 'Super Human Rights Committee' that would absorb monitoring and communications functions, as a starting point for gradually integrating remaining TMBs over time. This route – as the first step in which all Committee sessions could be scheduled around those of the fused CESCR/HRC - has been counselled as incorporating a number of advantages, including: smooth transition, as Committee memberships gradually overlap; promotion of interdependence and indivisibility of rights under ICCPR and ICESCR; and creation of a body with leverage to direct States to adopt single reports.

- The possibility of establishing a World Court of Human Rights, whose jurisdiction could encompass all communications received by existing TMBs, and which might either

⁷⁵ M. 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", *Human Rights Law Review* forthcoming (2006), *Draft*.

⁷⁶ Possible without treaty amendment by virtue of CESCR's establishment by ECOSOC Resolution 1985/17, Review of the composition, organization and administrative arrangements of the Sessional Working Group of Governmental Experts on the Implementation of the International Covenant on Economic, Social and Cultural Rights, sub-paragraph (a), 28 May 1985, available at <http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/663/73/IMG/NR066373.pdf?OpenElement> .

substitute their adjudication functions, or operate as an appellate tribunal. Though its decisions might enjoy higher visibility and authority than those of TMBs, potential administrative and financial drawbacks were registered.

Amongst ideas on TMB reform more generally participants advised:

- A need for more representative Committees – a better balance in terms of gender, professional background, and world region, for example, was needed
- Appointment of all or some Committee members by the Secretary General, subject to confirmation by General Assembly or ECOSOC
- Splitting review into “constructive dialogue” and “technical analyses” functions, as in the ILO Committee of Experts. Under this model, a Secretariat prepares analysis of Government information; whereas State performance is reviewed by a separate Standing Committee, based on draft comments addressing particular norms prepared by individual members⁷⁷
- Use of Rapporteurs
- Hosting TMB sessions in countries under review
- Making better use of electronic media to enhance profile and accessibility, e.g. Webcasts.

2.8 TMB meetings after May 2005

A number of discussions between the High Commissioner / OHCHR and TMBs took place during late 2005 on the topic of TMB reform and, in particular, regarding the OHCHR's development of proposals.⁷⁸

During these consultations, the High Commissioner / OHCHR emphasised that it was seeking to follow an inclusive and transparent process in developing its reform concept. To that end it was actively soliciting inputs from TMBs, States, National Human Rights Institutions (NHRIs), NGOs and others. It was noted that brainstorming meetings with various parties had been organized.

It was acknowledged that development of thinking on TMB reform was less advanced because States' attention had been diverted to the Human Rights Council, and Plan of Action: proposals were still ‘at the embryo stage’. As, *inter alia*, HRC's role had still to be ‘clearly defined’, the field of TMB reform options remained open, and OHCHR's task was to ‘develop and explore reform concepts’, addressing issues including four main areas of: legal and procedural questions; lessons from regional and other reporting systems; modalities; stakeholders. At this stage, though, it was already clear that a major question for a unified body would be how to avoid losing specific expertise accumulated by the existing Committees – especially as improving the situation of rights holders would have to be the ultimate aim of reform.

⁷⁷ See also V. Leary, *Lessons from the Experience of the ILO*, in P. Alston (ed.), *The United Nations and Human Rights* (1992, Oxford: Clarendon).

⁷⁸ See Human Rights Committee, Summary Record (Partial) of the 2296th Meeting, UN Doc CCPR/C/SR.2296, 26 July 2005; Committee on the Elimination of Racial Discrimination, Summary Record of the 1726th Meeting, UN Doc CERD/C/SR 1726, 9 September 2005; Committee against Torture, Summary Record of the 665th Meeting, UN Doc CAT/C/SR.665, 10 November 2005; Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, Summary Record of the 23rd Meeting, UN Doc CMW/C/SR.23, 19 December 2005.

On operational questions, the High Commissioner / OHCHR indicated that a single TMB would not necessarily entail single reporting; that servicing a single body would not increase demands on OHCHR; and that, whatever shape reform took, enhanced country engagement under OHCHR's *Plan of Action* would bolster TMBs' activities, for example through OHCHR geographic desks and field staff working with Governments and stakeholders at all stages of the reporting process. Other key developments for reform proposals to take account of included evolving approaches to monitoring, such as under the draft International Convention for the Protection of all Persons from Enforced Disappearances enforced disappearances, which provided for country visits, and measures to ensure cross-TMB consistency – as well as consultation after 4-6 years on the possible transfer of its monitoring functions to another body.

Discussions in the Human Rights Committee raised a range of discrete points. Caution was again registered by some individual committee members concerning the possibility that unification would undermine the specialized, treaty-specific consideration given to State reports. One way of avoiding this, it was suggested, could be to organize consideration of reports in clusters. Further risks that might be associated with reform derived from the need for treaty amendment – which might present as an opportunity for so-minded States to dilute their obligations, for example, by entering new reservations, and that the reform process, if lengthy, might itself distract attention from current deficiencies, such as backlogs. Consolidation could, on the other hand, raise public awareness.

Amongst technical and functional questions that committee members suggested as arising were whether universal ratification of all seven core human rights treaties would be necessary to proceed to a unified TMB; whether a single body could have the necessary capacity to absorb the work of seven others; and whether the longer sessions needed to consider single State reports would be viable for Committee members and NGOs. Concern was expressed over the possibility that HRC's peer review function might simply duplicate TMBs' work. Consequently, it was submitted that HRC might play a supervisory role and focus on cooperation with States, follow up and coordination within the UN human rights system.

When synthesising its proposals, OHCHR was urged to consult further with TMBs; to learn from the experiences of regional human rights regimes, as well as to ensure coordination with them; to ensure that presently underused mechanisms, such as country visits and early warning procedures, would be better exploited in future; to consider future scenarios facing the TMB system, and not just present circumstances.

In discussions in the Committee on the Elimination of Discrimination, the risk that unification could marginalize certain treaties within the system was also emphasised by some committee members. Whether unification was the most effective means of achieving current reform objectives was queried – it was argued that present problems did not derive from the system's specialised structure, and so did not require a 'structural' solution. Less drastic measures, such as streamlined reporting, were available, which might be effective. A single body to receive communications, which would enhance profile and authority of TMBs' adjudication function, might be more easily envisaged. It was very important, in any case, to be realistic, at the outset, about what any reform project could be expected to deliver. A gradual approach was to be preferred, as 'radical reform on a grand scale often resulted in unforeseen problems'. In

line with this, there would be benefit in presenting a variety of carefully researched options in 2006, rather than solely proposals for consolidation, and broad consultation should continue.

Tactical risks were also identified: the difficulty of successfully negotiating an amending protocol; that a long transitional period might encourage States to default on existing reporting and other obligations; and that, in a unified system, States might use disapproval of one element as a pretext for disregarding the whole.

Some members suggested that questions to which answers were at present lacking concerned the financial costs of a single versus separate TMBs; whether finding the requisite number of full-time experts would be problematic; would be could be found; and whether a unified system would in practice exert greater pressure on States.

Particular questions facing new TMBs received ventilation before the Committee on Migrant Workers. One view was that unification faced the Committee with a risk that its identity would be diluted even before it had any real opportunity to establish one. The agenda of a unified TMB might be dictated by lobbies for popular human rights issues, at the expense of 'less visible, vulnerable groups'; powerful States might also try to filter the impact of certain treaties out of a unified system. Transition was again indicated as a time of risk.

But unification was also seen as offering potential gains. A unified TMB might be able to act more powerfully on individual complaints; against the threat of marginalization, a single body, with greater prestige, might have more success in persuading States to sign and implement newer treaties. The support of other TMBs was already important in this regard. Consolidation of adjudication functions was again mooted, this time in the form of a World Court of Human Rights.

One mechanism by which specificity could be maintained would be to establish several sub-chambers to a single body. These individuals could consider treaty-specific reports or parts, with a large body of permanent Committee members scrutinising the core report.

Queries were raised over whether an amending protocol would be necessary; whether reporting harmonization and unification could be independent processes; and whether the membership of a single TMB would be restricted to States having ratified all seven core treaties. In general, greater detail was required before the idea of such a body could be supported or rejected.

3. Conclusion: TMB reform themes

It is suggested that the following four broad strategic questions can be seen as emerging from previous ideas and critiques about TMB reform. In closing, this section poses some questions for reflection in relation to each.

3.1 TMB role

Clarity about ultimate goals is crucial to the success of any reform programme. In the TMB context, this perhaps has two main dimensions. First, what are the goods that the UN human rights system aims to deliver to the wider world? TMBs must serve this end. And second, what, in light of this objective, and given their distinctive quality of independent expertise, should be the specific role of TMBs within the UN human rights system?⁷⁹

Concerning the first, the continuing growth of human rights standards in number and complexity worldwide, and of mechanisms and institutions to support them at regional and sub-national, as well as national levels, seems relevant. The post-*Millennial* UN-wide reform agenda included priorities for human rights bodies. But how should future TMB activity integrate global UN priorities with treaty-specific ones? Will separate, but coordinated bodies, or a single TMB, be more successful in adhering to a focussed, distinctive global role? As to the second aspect, the Human Rights Council's functions are now envisaged as including "objective", "interactive dialogue" to assess State practice in a cooperative manner, with attention to capacity-building needs, and in addition to national-level "follow-up".⁸⁰ Growing interest also surrounds the idea of a possible future World Human Rights Court. What would be the relationship of such an institution and TMBs? What might its impact be on the TMBs' distinctive mission and how might the range of its possible forms shape such impact?

3.2 TMB effectiveness

Most reform contributions have, assuming TMBs' goals, sought to improve their performance in achieving them. Into this category fall suggestions made for enhancing TMB fulfilment of functions of:

- Monitoring
- Reporting modalities
- Lists of issues
- Concluding observations⁸¹
- Information available to State review
- In-country or regional visits / review⁸²

⁷⁹ See, for another view in this regard, SubCommission on the Promotion and Protection of Human Rights, *Role of an independent expert body within the reform of the United Nations human rights machinery* UN Doc E/CN.4/Sub.2/2005/L.48 (9 August 2005), identifying a distinctive role for an independent expert body in the identification of new primary and secondary (i.e. operational and implementation) human rights standards.

⁸⁰ In *Larger Freedom*, supra, Addendum 1 Human Rights Council, Explanatory Note by the Secretary General, and Second Co-Chair's Text on Human Rights Council, 1 February 2006, available at: <http://reformtheun.org/index.php/issues/1732?theme=alt4&XARAYASID=ce7855d7303307f2bddf308e69825e34>

⁸¹ See e.g. M. O'Flaherty, "The Concluding Observations of United Nations Human Rights Treaty Bodies", *Human Rights Law Review* (forthcoming 2006), *Draft*.

- Promoting implementation⁸³
 - Links between TMBs: dissemination and coordination
 - Inter-UN coordination
 - Links with States
 - Links with NHRIs
 - Links with NGOs⁸⁴
 - Public awareness and media
 - Technical assistance
- Adjudication⁸⁵
- Civil society engagement

Concern has at points been expressed that current reforms may be directed to efficiency alone. Given finite resources, efficiency is one important element of effectiveness - but there are many others. For example, policies must be apposite to objectives - requiring accurate information, translated into accessible knowledge. Flexibility is a second element: different implementation scenarios may call for different tools, mobilising different combinations of actors. It might seem helpful, therefore, if a comparative analysis of alternative reform models could be undertaken to show, with reference to arguments in principle and evidence from practice, their likely strengths and weaknesses in relation to effectiveness; in addition, such an analysis, if publicly disseminated, might enhance understanding and legitimacy of a subsequent selection between models.

3.3 TMB consolidation

The comparative analysis of reform models could be of particular relevance to the issue of consolidation. Consolidation, while frequently suggested as a solution to inadequate TMB capacity, and perceived low efficiency (in part due to duplication),⁸⁶ at the same time generates widespread concern among commentators, especially regarding its potential impact in diminishing diversity of priority and perspective within the TMB system.

A wide range of different models for consolidation can be conceived, varying, at least, in the following factors:

- 1) Degree of integration: would the discrete identities of existing TMBs be retained in some way, for example, through sub-chambers? Would internal structures be based on treaty or functional lines?
- 2) Committees: size, requirements of fair representation,⁸⁷ appointments procedures⁸⁸

⁸² See e.g. J. Fitzpatrick, "Human rights fact-finding", in A. Bayefsky (ed.), *op.cit.*, supra n.24.

⁸³ See e.g. M.G. Schmidt, *Follow-up mechanisms before UN Human Rights Treaty Bodies and the UN mechanisms beyond*, in A. Bayefsky (ed.), *op.cit.*, supra n.24.

⁸⁴ See sources cited supra n.24.

⁸⁵ See e.g. I. Byrnes, *An Effective Complaints Procedure in the Context of International Human Rights Law*, in Alston & Crawford (eds.), *op.cit.* supra n.23.

⁸⁶ See e.g. E. Tistoune, "The problem of overlapping among different treaty bodies", in Alston & Crawford, *ibid.*, and T. A. Buergenthal, "A Court and Two Consolidated Treaty Bodies", in A. Bayefsky (ed.), *op.cit.*, supra n.24; J. Connors, *An Analysis and Evaluation of the System of State Reporting*, in *ibid.*; and International Law Association, *Committee on International Human Rights Law and Practice, Report on the Treaty System: Facing the Implementation Crisis*, now available at <http://www.bayefsky.com/reform/ila.php>

⁸⁷ See, e.g., proposals in C. Scott, "Bodies of Knowledge: A diversity promotion role for the UN High Commissioner for Human Rights", in Alston & Crawford, *op.cit.*, supra n.23.

⁸⁸ See e.g. Amnesty International, *op.cit.*, supra n.23.

- 3) Adjudication: would a separate body be established to undertake all adjudication?
- 4) Relationship with further, new TMBs: immediate or 'staggered' integration?
Temporary treaty-based structures to promote their norms and identity?

3.4 Reform process

For TMBs, perhaps the most important process issue is that of whether to proceed by legal or non-legal means. Amongst views surveyed here a number perceived the legal route as a difficult and hazardous one. On the other hand, the scope for non-legal reforms may be limited; and a combination of legal and non-legal means may, additionally, be pursued, either in parallel, or sequence.

Further, concerns have been voiced that, without careful planning, an institutional reform process, which might take years, could meanwhile undermine achievement of TMB activities and goals. This suggests the need to ensure integration of immediate, medium and long-term objectives, and to consider establishing specifically transitional structures to promote continuity. Overall, experiences in reforming rights bodies elsewhere suggest that giving effect to values of transparency, participation, and representation are crucial to securing wider accountability and legitimacy of reform.⁸⁹

⁸⁹ See e.g. UN Human Rights Treaty Monitoring Body Reform: Insights from the UK's recent equality body merger process, University of Nottingham Human Rights Law Centre Paper, 5 October 2005.

Appendix I: Survey and Analysis of Selected Previous Reform Proposals (1985-2005)

Year	Source	Addressee(s)	Themes	Criticisms, challenges	Positive reform proposals
1989	UN, Initial Report, Effective Implementation of International Instruments on Human Rights, Including Reporting Obligations Under International Instruments on Human Rights, UN Doc A/44/668	general TMB	Reporting; resources; UNHR information; consolidation; strategic approach; duplication; Secretariat; inter-TMB coordination	<p>Proliferation of HR instruments – too much standard setting, at cost of more effective implementation</p> <p>Ad hoc, uncoordinated development between instruments and bodies</p> <p>Overlapping UNHR competences and reporting requirements; also overlap between UNHR and ILO reporting Reporting burden on states - too heavy and repetitious; consolidating reporting guidelines inadequate to fully address it</p> <p>Periodicity of reporting - UNHR treaties too restrictive</p>	<p>Prioritise implementation over setting new HR standards; prioritisation, pre-legislative cost-benefit and feasibility studies in relation to new human rights standard-setting; vest responsibility for decision to initiate new HR standards in HR Commission; inventorize current HR standard-setting activity; exercise preference for making any new instruments non-binding rather than binding; technical review before finalization of new instruments; production of <i>travaux préparatoires</i>; formalise NGO role in standard-setting</p> <p>Maximise normative consistency between TMBs; exercise caution in creating new TMBs; Update 'UN Action in the Field of Human Rights'; Increase specialisation of Secretariat experts; Improve TMB access to information on other TMBs, specialised agencies, experts, NGOs; make available comprehensive analysis of existing HR provisions to all standard-setting bodies; Establish any new functions for existing bodies by amendment of existing treaties (except CESCR) or additional protocols, not new treaties; Initiate review on rationalization of treaty regime, consider consolidation into 1 or 2 TMBs</p> <p>TMBs to provide guidance to states on cross-referencing reports to different TMBs; states to be encouraged and assisted themselves to implement cross-referencing; extend practice of providing state parties with list of principal issues of concern; more focussed concluding observations; better use of supplementary information; update and expand analysis of overlap between UNHR and ILO obligations; Reduce non-treaty based reporting requests to states; extend consolidation of reporting guidelines</p> <p>Allow flexibility over reporting periodicity in future treaties</p>

Year	Source	Addressee(s)	Themes	Criticisms, challenges	Positive reform proposals
				<p>Voluntary state funding - compromises UNTMBs</p> <p>TMB meeting time inadequate; TMB remuneration inadequate</p> <p>Secretariat servicing inadequate</p> <p>Poor public information on TMBs – e.g. annual reports inaccessible</p>	<p>Existing and future treaties bodies not to be subject to state party financing; amend existing HR treaties to vest funding responsibility in UN; suspension of rights as penalty for non-payment; pursue alternative funding arrangements</p> <p>Extend meeting time; raise remuneration levels</p> <p>Short and long term measures to increase resources available for Secretariat services</p> <p>Make annual reports more accessible, with summaries; provide information nationally and locally</p>
1992	Alston, P., Critical Appraisal of the UN Human Rights Regime, in Alston, P. (ed), <i>The United Nations and Human Rights</i> (Oxford: Clarendon)	general UNHR	Evaluation; strategic approach; inter-UNHR coordination	Lack of clear criteria and systematic evaluation of UNHR bodies	<p>Framework for evaluation UN HR bodies:</p> <p>I. Standards</p> <p>a) setting standards</p> <p>b) Deepening normative understanding</p> <p>c) Issue analysis</p> <p>II. Promotion</p> <p>a) Promoting rights-consciousness</p> <p>b) Encouraging and facilitating norm incorporation</p> <p>c) Encouraging and facilitating national institution building</p> <p>d) Networking international institutions</p> <p>III. Establishing accountability</p> <p>a) Develop accepted legal framework</p> <p>b) Monitoring compliance by review</p> <p>c) Preventing violations</p> <p>d) Responding to violations</p> <p>e) Redress for victims</p>
1992	Van Boven, T. C., The Role of the United Nations Secretariat, in Alston, P. (ed), <i>The United Nations and Human Rights</i> (Oxford: Clarendon), pp. 549-579	UN HR Secretariat	Planning; individual complaints; independence; inter UNHR coordination; dissemination	<p>Weak status of HR Sector of UN Secretariat</p> <p>Lack of structure in Secretariat's processing of communications under UN HR treaties</p> <p>Deficient planning and budgeting practices across HR activities</p> <p>Inadequate communications with other relevant entities, internally and externally</p> <p>Political pressure on Secretariat</p>	<p>Relocate HR Sector of UN Secretariat to New York from Geneva, or substantially strengthen HR Centre's NY Liaison Office</p> <p>Improved Medium Term Plan; enforcement of priorities by Secretariat</p> <p>Open channels of communication with international organisations, NGOs, individuals; stronger links with UN expert HR bodies</p> <p>Leadership preserving political independence;</p>

Year	Source	Addressee(s)	Themes	Criticisms, challenges	Positive reform proposals
1992	Leary, V. A., Lessons from the Experience of the ILO, in Alston, P. (ed), <i>The United Nations and Human Rights</i> (Oxford: Clarendon)	general UNHR; ILO	Participation; NGOs; Secretariat; independence; inter-UNHR coordination	Anomalous role of TMBs within UN, leading to inadequate resources and inadequate servicing by UN Secretariat (except in relation to individual communications) Politicization of UN human rights activities, including monitoring, leading to ineffectiveness, partiality	stronger role for Director of HR Secretariat Expand Secretariat assistance to TMBs and increase funding available to Centre for Human Rights; Appointment of independent, fully competent individuals to UN HR bodies; More expansive involvement of civil society (eg trade unions, employers) and NGOs in monitoring processes e.g. distribution of NGO reports to Committees and states
1992	Samson, Klaus T., Human Rights Coordination within the UN System, in Alston, P. (ed), <i>The United Nations and Human Rights</i> (Oxford: Clarendon)	General UNHR; general TMB	Inter-UNHR coordination; strategic approach; duplication; consolidation	Limits on TMBs' accepting information relevant to state implementation from specialized agencies (e.g. ILO, UNESCO); lack of authority of UN HR Secretariat to impose coordination Proliferation of standards; overlapping and inconsistencies between UN HR instruments Simultaneous proliferation of supervisory procedures; increasing administrative and information burdens on states; backlogs Poor overall HR coordination within UN system	Stronger inputs from specialized agencies in TMB activities; change bureaucratic culture to strengthen role of specialized agencies and Secretariat Rationalisation of agendas and priorities, including need for removal of agenda items; rationalisation of SubCommission activities; improve quality ECOSOC HR governance; prepare compilation of existing HR standards and practices; introduce administrative systems to ensure systematic consideration of overlap Development of standardized UN procedures for issuing new HR standards; rationalize supervisory processes and methods; avoid further wide-ranging HR instruments; Single supervisory body for UN HR instruments; consider consolidation of UN HR instruments; Reliance on new protocols to existing treaties instead of promulgating new instruments Aim coordination at specific, time-limited objectives; maintain fora for inter-body dialogue as informal, rather than formal, to avoid bureaucratization
1992	UN, Effective Implementation of International Instruments on Human Rights, Including Reporting Obligations Under International Instruments on Human Rights (Interim report on updated study by Mr Philip Alston), UN Doc A/Conf.157/PC/62/Add.11/Rev.1	general TMB	Inter-UN HR coordination; reporting; Secretariat; NGOs; local capacity building; strategic approach;	Failure to achieve universal ratification Chronic overdue reports	Prioritise 6 core UNRH treaties and adopt strategy to achieve universal ratification by 2000; identify specific implementation target issues, with strategies (eg small states ratifications) Overhaul technical services for late-reporters; undertake assessment in absence of reports;

Year	Source	Addressee(s)	Themes	Criticisms, challenges	Positive reform proposals
			duplication; consolidation	<p>Ad hoc, uncoordinated development between instruments and bodies; normative inconsistency</p> <p>TMB meeting time and remuneration inadequate</p> <p>Inadequate Secretariat servicing of TMBs</p> <p>Inadequate relations with NGOs</p> <p>Poor TMB relations with regional counterparts</p> <p>Lack of focus on purpose of TMBs</p>	<p>Name-and-shame late reporters in ChB resolutions; incentivise reporting by tying to additional technical assistance</p> <p>Rationalise information requirements on states; prioritise information demands from TMBs and ChBs; Guidance and encouragement for states to introduce cross-referencing between reports; update and expand analysis of overlap between UNHR and ILO obligations; states to establish reporting units; Committee Chairs to consider reduce overlaps; Consider flexible modalities for allocating new dimensions (eg age, disability) to existing bodies;</p> <p>Single 'global' report; Replace comprehensive periodic reports with specifically-tailored reports; Reduce number of TMBs; exercise caution in creating new TMBs; alert TMBs on existing inconsistencies; new UN Action in the Field of Human Rights as authoritative source on TMB jurisprudence</p> <p>Further extend TMB meeting time Increase TMB member remuneration</p> <p>Increased Secretariat resources; restructure servicing arrangements; increase Secretariat specialisation</p> <p>Establish NGO Liaison Office</p> <p>Increase judicial awareness and cross-fertilisation</p> <p>Re-focus TMBs on enhancing national monitoring, so a) increase dissemination b) revise modalities of reporting c) ensure diverse submissions in reporting process d) foster national dialogue on reports and issues</p>
1996	International Law Association, Committee on International Human Rights Law and Practice (A. Bayefsky), Report on the Treaty System: Facing the Implementation Crisis	general TMB; HRC; CAT;	Resources; NGOs; country engagement; individual complaints; follow-up; consolidation	<p>Incompatible reservations to HR treaties</p> <p>Chronic late and poor quality reporting, due to TMB meeting time inadequate; time for consideration of individual state reports inadequate; Secretariat servicing of TMBs inadequate; remuneration of</p>	<p>TMBs to determine compatibility of reservations</p> <p>Better resourcing for HR TMBs; enhanced NGO involvement in state reporting procedures; naming and shaming late reporters; TMBs not to accept consolidated overdue reports under different treaties – but allow rescheduling on receipt of first overdue</p>

Year	Source	Addressee(s)	Themes	Criticisms, challenges	Positive reform proposals
				<p>TMB Committee members inadequate; reporting process too remote; non-independent TMB members</p> <p>Follow-up procedures for state reporting fundamentally deficient due to TMB undercapacity, and lack of political will in HR Commission, UNGA; variable quality of concluding observations</p> <p>Low media profile of TMBs</p> <p>Under-utilisation of individual petitions procedures due to practical inaccessibility, reluctance of Committee members to reach decisions; lack of individual petition mechanisms for some UN HR treaties; low quality of determinations</p> <p>Public information inadequate</p> <p>NGOs role too tenuous</p>	<p>report; introduce guidelines for quality of state reporting representatives; stronger quality control of reports; written questions substantially in advance of dialogue; locate examination of reports in relevant geographical region; introduce TMB membership criteria on political independence and expertise; Time limits on dialogue; coordination of TMB members' questioning to avoid duplication; minimum 3 meetings per state report; 1-year advance scheduling of considering reports; exceptional reports in urgent situations</p> <p>Consolidate all HR reporting systems to create 1 permanent body</p> <p>Resourcing to allow more familiarity with country situations, better investigation, TMB missions to states parties; states to establish national permanent HR treaty monitoring bodies and involve NGOs in monitoring; more specific, critical concluding observations, also requesting additional information; TMBs publish separate reports on follow up; HR Commission, CSW and UN GA should pass resolutions on HR situations of concern, and establish additional investigative mechanisms as required</p> <p>Publicise Concluding Observations; stronger media profile</p> <p>Expand individual applications rights and procedures; adopt additional individual complaints protocols for CEDAW, CESCR, CRC; require acceptance of individual applications for accession to HR treaties; publicize right of petition; regional meetings with HR lawyers and groups to promote petition mechanism; more detailed , public determinations of individual communications; require legal qualifications for appointment to TMBs</p> <p>Center for Human Rights to produce comprehensive HR information from all UN sources on country basis; and service NGO information needs</p> <p>TMBs to develop guidelines and procedures for accepting and acknowledging NGO submissions, and</p>

Year	Source	Addressee(s)	Themes	Criticisms, challenges	Positive reform proposals
				Proliferation of substantive HR rules	<p>extend communications with NGOs, including oral presentations</p> <p>No new protocols adding substantive rights already addressed by existing HR treaties; HR Commission to cancel working groups on protocol on sale of children, child prostitution, and child pornography; and right to fair trial</p> <p>New joint resolution UN GA and HR Commission providing for above measures</p> <p>TMBs to issue General Comments</p>
1996	UN, Effective Functioning of Bodies Established Pursuant to UN Human Rights Treaties: Final Report on enhancing the long-term effectiveness of the UN human rights treaty system, UN Doc E/CN.4/1997/74	general TMB	Reporting; inter-UNHR coordination; UNHR information; consolidation; strategic approach; ratification	<p>Failure to achieve universal ratification of 6 core UNHR treaties</p> <p>Chronic overdue reports</p> <p>Quality of reporting process</p> <p>TMB 'mission creep' towards special / urgent procedures</p> <p>Inadequate documentation systems and public information</p> <p>TMB effectiveness not viable in long term given present reporting modality</p>	<p>Involve wider international agencies in ratification drive; dedicated resources, new specialist personnel on reporting; explore streamlining reporting for small states; identify other common categories of non-parties; High Level meeting on cooperation</p> <p>Establish new state advisory services project; examination without reports</p> <p>Improved concluding observations; Secretariat to submit new proposals on documentation limits to which TMBs to respond individually; new advisory services programme to assist states pre-ratification surveys and state reports</p> <p>Review effectiveness of TMB special reports and urgent procedures; maintain division of labour between TMBs and specialised procedures</p> <p>Shift to electronic publications and information systems; establishment of online databases; appointment of external advisory group on databases; budget to support grass-roots dissemination; partnerships with academic bodies to expand publications programme; external advisory group on publications programme; review of UN Information Centres' HR information</p> <p>Consider measures including: consolidated reports, tailoring reporting guidelines to individual states; consolidate TMBs; appoint expert group on TMB consolidation; allocate supervisory responsibility for CMW to existing TMB; review CAT protocol implications; revise UN HR treaties to allow</p>

Year	Source	Addressee(s)	Themes	Criticisms, challenges	Positive reform proposals
2000	Crawford, J., The UN human rights treaty system: A system in crisis?, in Alston, P. & J. Crawford (eds.), The Future of Human Rights Treaty Monitoring (Cambridge: Cambridge University Press)	general UNHR	Reporting; individual communications; resources; strategic approach; TMB appointments	<p>Chronic overdue reports; lack of power to censure late reporters; delayed processing of reports, due to inadequate meeting time, remuneration, inter-sessional communications</p> <p>Delayed processing of individual applications; lack of case-filters</p> <p>Resource constraints affecting personnel, activities, technology; instability due to unreliability of voluntary contributions</p> <p>Constraints set by principle of non-selectivity in TMB activities</p> <p>TMB appointments process inadequate</p>	<p>amendment more readily</p> <p>More differentiated and selective approach to individual communications</p> <p>Increased TMB resources, through regular UN budget</p> <p>Greater prioritisation and more strategic approach in selection of TMB activities</p> <p>Introduce minimum qualifications for, and scrutiny of, Committee candidates; NGO role in appointments</p>
2000	Clapham, A., UN Human Rights reporting procedures: An NGO perspective, in Alston, P. & J. Crawford (eds.), The Future of Human Rights Treaty Monitoring (Cambridge: Cambridge University Press)	NGOs	Coordination; reporting; TMB appointments; NGOs; consolidation; Secretariat; strategic approach; duplication	<p>TMBs isolated from rest of UNHR system</p> <p>Uninterrupted sittings for assessment of state reports, excluding dialogue with NGOs and between TMB members</p> <p>Static question and answer format of report hearings, leading to ineffectual report hearings; Inadequately qualified state representatives</p> <p>TMBs' NGO participation procedures inadequate; diminishing NGO interest in and relevance of work of TMBs</p> <p>TMBs inadequate treatment of gender dimension</p> <p>Proliferation of instruments, duplication of obligations; expanding reporting burden on states, leading to chronic undercapacity</p>	<p>Break sittings of TMBs</p> <p>Proactive chairing of report hearings; NGO probing to trigger more informed government representation;</p> <p>NGO activism in scrutinising TMB candidates; professionalise TMB membership – full time paid commitment, 7-year single term; allow informal briefings, submission of documents, NGO position papers, before all TMBs; TMBs to outreach to rest of UN system; single TMB to increase profile</p> <p>Greater gender expertise across TMBs</p> <p>Create permanent professional treaty body to examine all state reports; consolidated and/or treaty-specific treaties; in the interim, harmonise TMB reporting schedules; cross-TMB working groups; enhanced Secretariat support</p>
2000	Gallagher, A., Making human rights treaty	TMB general	Local capacity	Restricted contact between NHRIs and	Proactive engagement by TMBs with NHRIs; involve

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	obligations a reality: Working with new actors and partners, in Alston, P. & J. Crawford (eds.), The Future of Human Rights Treaty Monitoring (Cambridge: Cambridge University Press)		building; NHRIs; technical assistance; strategic approach	<p>UN HR treaty system</p> <p>TMBs' recommendations for future action over-general, inapposite, and ineffective in relation to NHRIs</p> <p>TMB's low awareness of real nature and scope of OHCHR technical assistance for human rights</p> <p>TMB undercapacity, limiting scope to improve quality of work e.g. by outreach to NHRIs, without reducing its scope</p>	<p>NHRIs in reporting's 'constructive dialogue' process, along with states e.g. by sending state reports to NHRIs pre-review</p> <p>Refer to NHRIs in concluding observations, recommendations, general comments</p> <p>More specific recommendations for future action; involved NHRIs as a source of information for TMBs;</p> <p>Improve TMBs' informedness about OHCHR Technical Cooperation Programme; appoint human rights practitioners to TMBs, instead of diplomats, to provide expert analysis of national human rights capacity building needs</p> <p>Radical restructuring of TMBs; failing that, prioritise TMB work by focusing on states with highest assistance needs; shift from adversarialism and focus on recalcitrant states to national HR capacity building with cooperative states</p>
2000	Byrnes, A., Uses and abuses of the treaty reporting procedure: Hong Kong between two systems, in Alston, P. & J. Crawford (eds), The Future of Human Rights Treaty Monitoring (Cambridge: Cambridge University Press)	states	NGOs; dissemination of TMB information; duplication	<p>Short time-periods between different report reviews can lead to governments advancing rigid policy formulations in response to recommendations, due to lack of time to develop alternative policy positions</p> <p>Duplication of resources where NGOs raise same issue under multiple treaties</p>	
2000	Harris, D., Lessons from the reporting system of the European Social Charter, in Alston, P. & J. Crawford (eds), The Future of Human Rights Treaty Monitoring (Cambridge: Cambridge University Press)	TMB comparative	Independence; capacity; effectiveness; Secretariat; inter-UNHR coordination	<p>Political partiality of members of UN TMBs; election solely by states parties</p> <p>Undercapacity</p> <p>Failure by states to take TMB conclusions seriously</p> <p>Inadequate secretariat support for part-time TMBs</p>	<p>Ensure political independence of TMB members; include democratic elements in electoral college for TMBs</p> <p>Introduce parallel working groups for conduct of reviews</p> <p>Peer review process by government representatives of TMB conclusions</p> <p>Enhance full-time secretariat support for TMBs, to prepare draft conclusions on state reports, preserve institutional memory across TMB membership changes</p>

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				<p>Shortage of technical assistance for state reporting</p> <p>Incomplete use of expertise of UN specialised agencies in treaty reporting process</p>	<p>Expand technical assistance for state reporting</p> <p>Greater reliance on expertise of UN specialised agencies e.g. ILO in state reporting process</p>
2000	Bodansky, D., The role of reporting in international environmental treaties: Lessons for human rights supervision, in Alston, P. & J. Crawford (eds), The Future of Human Rights Treaty Monitoring (Cambridge: Cambridge University Press)	TMB comparative	Reporting; capacity; independence	<p>Late reporting</p> <p>Need for independent verification of state information</p> <p>Undercapacity and lack of independence of reviews; superficial reviews; inflexible review process</p>	<p>Penalties for late reports e.g. use of non-official sources of information, loss of eligibility for privileges; technical and financial assistance for report preparation, variable reporting schedules for different classes of states (e.g. LDCS)</p> <p>Accept information from NGOs</p> <p>Select review panels from larger pool of independent experts nominated by states; use country visits to deepen review process; adopt more flexible approach to review, using sustained dialogue with state personnel</p>
2000	Tistounet, E., The problem of overlapping among different treaty bodies, in Alston, P. & J. Crawford (eds), The Future of Human Rights Treaty Monitoring (Cambridge: Cambridge University Press)	general TMB	Duplication; inter-TMB coordination	<p>Overlaps and discrepancies between different HR treaties; proliferation of HR instruments</p> <p>Overlapping state reports; over-comprehensive reports; TMBs straying beyond own terms of reference into other TMBs' mandates</p> <p>Divergent interpretations of HR treaty provisions by different TMBs</p> <p>Conflicting effects of states' reservations to different treaties' overlapping provisions</p>	<p>Better links between TMB Chairpersons and SubCommission on Promotion and Protection of Human Rights; SubCommission to consult TMBs before enacting new standards; single consolidated state reports for all HR treaties, or create single supervisory body for HR treaties;</p> <p>Better coordination between TMBs, including on form and content of concluding observations; all parties to be involved in designing better coordination</p> <p>Improve mutual informedness of TMBs</p> <p>Hold states responsible for incoherent reservations</p>
2000	Scott, C. Bodies of Knowledge: A diversity promotion role for the UN High Commissioner for Human Rights, in Alston, P. & J. Crawford (eds), The Future of Human Rights Treaty Monitoring (Cambridge: Cambridge University Press)	general TMB, OHCHR	Pluralism and diversity in TMB membership; inter-TMB coordination	<p>Inadequate representational diversity sought and achieved by TMB appointments processes; higher diversity required, e.g. of professional and cultural background, and gender balance</p> <p>Inadequate coordination between TMBs</p>	<p>OHCHR to conduct 'global search process' for diverse potential TMB candidates; OHCHR to establish eminent persons group to assist in this; OHCHR to consult widely to establish diversity criteria; NGO appraisals of candidates to interact with OHCHR process; TMBs to identify own diversity gaps</p> <p>Joint drafting of general comments; overlapping TMB sessions for exchange of views; evolution of annual</p>

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					meeting of chairpersons into Council of the Committees; bilateral TMB communications; overlapping TMB memberships
2000	Evatt, E., Ensuring effective supervisory procedures: The need for resources, in Alston, P. & J. Crawford (eds), The Future of Human Rights Treaty Monitoring (Cambridge: Cambridge University Press)	general TMB	Resources; Secretariat; effectiveness; consolidation; IT	<p>Under-resourcing of Secretariat</p> <p>Short-termism in attempts to improve TMB effectiveness</p> <p>State reports provide inadequate information on domestic frameworks for rights protection</p> <p>Part-time TMB membership limits scope for implementing reform suggestions; TMBs too isolated inter se; overlapping provisions; fragmented reporting process between instruments</p> <p>Failure to exploit information technology in Committee operations</p>	<p>Seek new sources of support e.g. external funding, greater use of interns; closer links with specialised agencies to exploit synergies</p> <p>Longer-range approach to identifying resource needs; dedicated UN budget for TMB(s); state party funding for specific projects; support national NGO capacity building for participation in reporting process</p> <p>Secretariat to produce and maintain updated reports on rights protection framework of each state party</p> <p>Amalgamate TMBs, by consolidating HR instruments; expanded professional, full-time Secretariat support to assist reform implementation by single, full-time TMB; consideration of single comprehensive state reports</p> <p>As interim measures towards amalgamation: introduce cross-TMB observation by Committee members at other Committees' reviews; joint working groups between TMBs on overlap areas; cross-TMB thematic working groups; bring CEDAW into same servicing structure as other TMBs</p> <p>Publish electronically all OHCHR materials; seek external funding for IT initiatives</p>
2000	Schmidt, M., Servicing and financing human rights supervision, in Alston, P. & J. Crawford (eds), The Future of Human Rights Treaty Monitoring (Cambridge: Cambridge University Press)	general TMB	Resources; Secretariat; capacity; strategic approach; consolidation (reports); IT	Undercapacity; chronic budgetary shortfall	<p>Need for OHCHR and individual TMBs to look to external funding and voluntary contributions – despite latter's unreliability; voluntary funding of Junior Professional Officers (JPOs) and interns to TMBs;</p> <p>Streamline and simplify TMB procedures: convert all TMB decision-making to majority, instead of consensus; condense consideration of communications; parallel chambers for adjudication of complaints; require submission of individual complaints in UN languages; new format for comprehensive country analyses, to be prepared by Secretariat, in place of current country profiles; Increase UN TMB horizontal links with regional mechanisms</p>

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				<p>TMB meeting time too short</p> <p>Incomplete use of information technology</p> <p>Over-specialised Secretariat staff, creating bottlenecks</p>	<p>Harmonise and consolidate reporting guidelines; single global state reports</p> <p>Improve use of TMB meeting time e.g. by use of TMB drafting groups, eliminating duplication in questioning; filter out individual complaints for substantive consideration that raise serious treaty interpretation issues; delegation of routine decision-making to Secretariat</p> <p>Extend internal IT resources, and reliance on external database facilities</p> <p>Extend restructuring of OHCHR to introduce integrated Secretariat teams; more effective Secretariat management</p>
2000	Connors, J., An Analysis and Evaluation of the System of State Reporting, in Bayefsky, A. (ed), The UN Human Rights System in the 21 st Century (The Hague: Kluwer)	general TMB	Reporting; independence; media; resources	<p>Inadequate state reporting practice – late reports, incomplete reports, superficial review of reports; Inefficient review of state reports: sessions too short; repetitious, unstructured dialogue; too short time to formulate concluding observations</p> <p>Partiality of TMB members</p> <p>Variable quality of concluding observations</p> <p>Low media profile</p> <p>Resource limitations</p>	<p>Consider radical reform e.g. merger of TMBs, allowing development of uniform standards</p> <p>Greater involvement of Secretariat and/or NGOs in preparation of concluding observations over more than 1 session; advance circulation of concluding observations by country rapporteurs;</p> <p>Greater deployment of IT, interns, externs; seek extra-budgetary funding; stronger liaison with other UN agencies and Bretton Woods institutions; further use of Action Plans</p>
2000	Theyatz-Bergman, L., State Reporting and the Role of Non-Governmental Organizations, in Bayefsky, A. (ed), The UN Human Rights System in the 21 st Century (The Hague: Kluwer)	general TMB	NGOs; capacity; duplication; consolidation	Weak use of NGOs by some TMBs	Strengthen NGO involvement in monitoring process and follow-up e.g. by including questions on NGO involvement in Lists of Issues; prevent NGO involvement adding to Secretariat workload; foster NGO groups under specialist treaties; NGO attendance and briefings at pre-sessional TMB meetings

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				Under-capacity of TMB system; over-burdened states; overlaps between HR instruments	Radical reform to consolidate reporting process, either by reducing number of TMBs or through single global report
2000	Brett, R., State Reporting: an NGO Perspective, in Bayefsky, A. (ed), The UN Human Rights System in the 21 st Century (The Hague: Kluwer)	general TMB	NGOs; reporting; inter-TMB coordination; IT; consolidation	<p>Slow reporting process, long lag between report preparation and consideration</p> <p>Formal, diplomatic reporting dialogue</p> <p>Expense for NGOs of attending reviews</p> <p>Unavailability of state reports to NGOs</p> <p>Lack of coordination between TMBs</p> <p>Need to extend NGO involvement in reviews; substantive and procedural treaty issues</p> <p>Lack of provision for monitoring where no government in place</p>	<p>Introduce ability for TMBs to call for special interim reports, attendance of state representatives, and to refer deteriorating HR situations to OHCHR</p> <p>Extend use of e-publication of reports; make reports available via UN Information Centres;</p> <p>TMBs need to consider whether states are parties to other treaties in considering reports; ensure states report on only 1 treaty per year; advance scheduling of reviews by all TMBs;</p> <p>In longer term, move to single reports for states party to more than 1 treaty; overlapping TMB memberships; consolidate TMBs</p> <p>Disseminate information for NGOs on how to make effective submissions to TMBs, extend formal and informal contacts between TMBs and NGOs</p> <p>Make provision for monitoring of states without governments, e.g. nominating TMB members to report to OHCHR</p>
2000	Fitzpatrick, J., Human Rights Fact-Finding, Bayefsky, in A. (ed), The UN Human Rights System in the 21 st Century (The Hague: Kluwer)	general UNHR	Human rights fact-finding; independence; inter-TMB coordination	<p>Systematic bias of state reports</p> <p>Partiality of TMB members and, in some cases, participation in reviews by TMB members of the state in question</p> <p>Failure to exploit potential efficiencies and synergies in fact-finding in face of resource constraints</p>	<p>Extend supplementary information from NGOs and UN specialized agencies; extend field presences</p> <p>Strict criteria for independence of TMB members</p> <p>Greater information sharing between TMBs, with Special Rapporteurs, involvement of NGOs and IGO elements; introduce TMB country visits; introduce core state reports; consider consolidating TMBs, sitting in specialized chambers;</p>
2000	Martin, I., The Role of a Human Rights Field Presence, in Bayefsky, A. (ed), The UN Human Rights System in the 21 st Century (The Hague: Kluwer)	general UNHR	Human rights fact-finding; inter-UN coordination	No information flow between UN human rights field presences and TMBs	Establish communications between HR field presences and TMBs
2000	Byrnes, I., An Effective Complaints Procedure in the Context of International Human Rights	general TMB	Individual complaints;	Uneven awareness and access to individual complaints mechanisms across	Dissemination concerning pro bono assistance for individual complaints

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	Law, in Bayefsky, A. (ed), The UN Human Rights System in the 21 st Century (The Hague: Kluwer)		follow-up; resources; local capacity building	states Slow determination of individual complaints Decisions on individual complaints too brief, opaque Low state follow-up/compliance rates with individual complaints determinations Resource constraints, leading to backlogs	Possibly reduce time limits for parties to individual complaints Extend use of dissenting opinions; longer reasoning HRC to publish more complete information on follow up to individual complaints determinations; states parties to optional protocol to elect working group on follow up HRC to sit in chambers for determination of individual complaints; joint determination of admissibility and merits; national capacity building for HR adjudication
2000	Clapham, A., Defining the Role of Non-Governmental Organizations with Regard to the UN Human Rights Treaty Bodies, in Bayefsky, A. (ed), The UN Human Rights System in the 21 st Century (The Hague: Kluwer)	general TMB	NGOs; media; inter-UN coordination; independence	Poor involvement by TMBs of NGOs Isolation of TMBs from rest of HR movement and world media, UN field presences; Lack of effective scrutiny of state HR performance during reviews, due to stylized dialogue, part-time TMB members, non-impartial TMB members	Contact national NGOs to warn of upcoming reviews; circulate NGO reports to TMB members; schedule reviews to facilitate NGO participation Move to full-time, professional, independent consolidated TMB and consolidated state reports
2000	Miller, A. M., Women's Human Rights NGOs and the Treaty Bodies: Some Case Studies in Using the Treaty Bodies to Protect the Human Rights of Women, in Bayefsky, A. (ed), The UN Human Rights System in the 21 st Century (The Hague: Kluwer)	CEDAW	NGOs; gender; local capacity building	Poor accessibility and involvement of national NGOs in TMBs Marginalisation of women's human rights within TMB system; need for gender-mainstreaming in all TMBs work	Capacity building of national NGOs; hold TMB meetings in different states Extend analytical and factual bases relating to HR abuses by non-state actors; make expertise in women's rights criterion for TMB members;
2000	Grant, S., The NGO Role: Implementation, Expanding Protection and Monitoring the Monitors, in Bayefsky, A. (ed), The UN Human Rights System in the 21 st Century (The Hague: Kluwer)	General TMB	NGOs; inter-UN coordination; independence	Resource constraints Weak links between TMBs and national NGOs, and media Weak links between TMBs and rest of UN system; inadequate servicing of TMBs (information, translation) Non-impartiality of TMB members	Stronger links, including through state visits; better communications, including producing video summary of state reviews; procedures for recognition of national NGOs Trust fund for TMB compensation; all TMBs to prohibit members participating in any proceedings

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					touching state of nationality; establish agreed criteria for TMB membership and regional representation
2000	Thomson, M., Defining the Role of Non-Governmental Organisations: Splendid Isolation or Better Use of NGO Expertise?, in Bayefsky, A. (ed), The UN Human Rights System in the 21 st Century (The Hague: Kluwer)	general TMB	NGOs; reporting; follow-up; independence; Secretariat	Overloading LDCs with reporting requirements, late reports; poor quality reports Weak dissemination of concluding observations, general comments TMB members lack of expertise, impartiality Servicing by Secretariat inflexible	States to create expertise on reporting in single government department; consolidation of state reports Greater NGO input into TMB member selection Secretariat to focus instead on developing thematic and country expertise
2000	Schmidt, M.G., Follow-up Mechanisms Before UN Human Rights Treaty Bodies and the UN Mechanisms Beyond, in Bayefsky, A. (ed), The UN Human Rights System in the 21 st Century (The Hague: Kluwer)	general TMB	Follow-up; individual complaints	Weak follow-up by HR Committee under Optional Protocol Weak follow-up to concluding observations and periodic reports	Interpret Optional Protocol to extend to follow up; follow-up state visits; improve publicity for follow-up action; earmark funds for follow-up; earmark Secretariat staff to follow-up; 1-year advance schedule for follow-up consultations; stronger highlighting non-compliance in concluding observations; encourage state enabling legislation Establish Special Rapporteur on follow-up on Concluding Observations; follow-up state visits; consolidate all concluding observations on a state into UN-wide country assessment; require state confirmation of publicity for concluding observations; OHCHR to collate best practice on follow-up; disseminate concluding observations to UN Field Officers; amend TMB procedural rules to formalize follow-up; allocate adequate Secretariat resources (by discontinuing country profiles, or re-allocating to different part of OHCHR)
2000	Nowak, M., The UN High Commissioner for Human Rights: A Link Between Decisions of Expert Monitoring Bodies and Enforcement by Political Bodies, in Bayefsky, A. (ed), The UN Human Rights System in the 21 st Century (The Hague: Kluwer)	general TMB, OHCHR	Follow-up; consolidation; purposive approach	Weak follow-up by TMBs Absence of links between TMBs and UN political bodies	Interpret TMB instruments to derive legal competence for follow-up of individual complaints; establish Special Rapporteurs for Follow-Up; follow-up missions; establish black-lists of states failing to follow-up; Establish Permanent HR Court for individual adjudications; permanent HR Committee to consider state reports under all HR treaties; state enabling legislation; dedicated follow-up resources OHCHR to determine situations warranting collective enforcement action, on basis of TMB information, and make recommendations to political bodies

Year	Source	Addressee(s)	Themes	Criticisms, challenges	Positive reform proposals
					including HR Commission and Security Council
2000	Ramcharan, B. R., Follow-Up of Treaty Body Conclusions by the Treaty Bodies and the UN Mechanisms Beyond, in Bayefsky, A. (ed), The UN Human Rights System in the 21 st Century (The Hague: Kluwer)	general TMB, general UNHR	Follow-up; capacity building	Weak follow up by TMBs	Regional advisers for human rights standards; follow-up by UN development agencies – country officers specialising in human rights; greater follow-up by NGOs
2000	Evatt, E., The Future of the Human Rights Treaty System: Forging Recommendations, in Bayefsky, A. (ed), The UN Human Rights System in the 21 st Century (The Hague: Kluwer)	general UNHR	Reporting; media; inter-TMB coordination; duplication	Reporting and communications procedures too drawn-out; ineffective dialogue – underprepared, unfocussed, lacking continuity over successive state reports Late reports, missing reports, delinquent states Resource constraints Poor compliance / follow-up Low visibility and accessibility of TMB system overall, to public, media, NGOs Lack of coordination between TMBs; overlapping instruments and reporting requirements; overburdened states	Better preparation for review dialogues; TMBs to obtain more detailed country analytical information, further in advance of reviews; Country Rapporteurs to prepare analytical reports put before TMB session in advance of review to identify information gaps; prioritise issues for review dialogue instead of comprehensive discussion; greater cooperation and information exchange between TMBs on state performance; Technical assistance for reporting; substitute TMB own reports where reports missing Greater focus and publicity by TMBs on states' follow up performance; technical assistance with follow-up; extended role for Country Rapporteurs e.g. to undertake state visits to assist follow-up Computerization of TMB documentation Overlapping memberships of TMBs; arrangements for mutual observation by TMBs; single state reports; reporting guidelines under different treaties, developed by Joint Working Groups of TMBs; single TMB
2000	Buergenthal, T. A., A Court and Two Consolidated Treaty Bodies, in Bayefsky, A. (ed), The UN Human Rights System in the 21 st Century (The Hague: Kluwer)	general TMB	Consolidation; capacity; duplication; inter-TMB coordination	Undercapacity; overlapping reporting requirements; overburdened states Poor coordination between TMBs	Replace TMBs with 2 consolidated committees – 1 to review state reports (open to diverse professional backgrounds and expertise), 1 to process individual and inter-state communications (legal expertise required); both committees to work in parallel panels; establish UN Court for Human Rights to promulgate initially advisory bindings, later binding interpretations; and/or single consolidated reports Establish inter-committee thematic working groups
2000	Bayefsky, A. F., Conclusions and Recommendations, in Bayefsky, A. (ed), The	general UNHR,	Reporting; inter-UNHR	Ineffective state reporting process: overdue reports; backlogs of reports	Higher coordination between TMBs, including Joint General Comments; harmonized reporting

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	UN Human Rights System in the 21 st Century (The Hague: Kluwer)	general TMB	coordination; strategic approach; individual communications; follow-up; TMB appointments; consolidation	<p>inadequate TMB meeting time</p> <p>inadequate access to individual complaints procedures</p> <p>Poor follow-up</p> <p>Backlogs of individual complaints</p> <p>Memberships of TMBs</p> <p>Long-term capacity and resource constraints</p>	<p>guidelines; TMB members appointed to liaise with wider UN system; closer links with special procedures; better dissemination of information on scheduling, states reports to national and international NGOs; advance scheduling TMB sessions; focussed reports; pre-sessional activities; Better use of Country Rapporteurs; more structured review dialogues; state reviews in absence of reports; hold TMB meetings in states; more specific concluding observations; Secretariat to produce revised country profiles; stronger dissemination of reports and concluding observations</p> <p>Special Rapporteur for Follow-Up; publish state follow-up responses and include in UN country-wide assessment; adequate budget for follow-up; national level technical assistance; links with UNDP country offices</p> <p>Join consideration of admissibility and merits of complaints; reasoned decisions on merits; reduce time limits for state responses; TMBs to sit in adjudication chambers; review viability of oral hearings; dissemination on complaints procedures</p> <p>Account needs for regional and gender balance in appointments; develop TMB codes of conduct for members</p> <p>Move gradually through joint reporting guidelines; consolidated state reports; joint examination of reports; merge TMBs into single committee; identify new criteria for TMB membership; extend individual complaints mechanisms to all TMBs; single full-time permanent body for all individual complaints; UN Human Rights Court</p>
2001	Bayefsky, A. F., The UN Human Rights System: Universality at the Crossroads, (New York: Transnational Publishers Inc.)	general UNHR, general TMB	Reporting; individual communications; duplication; inter-TMB coordination; follow-up; NGOs; independence	<p>Overdue reports; backlogs</p> <p>Inaccessible individual complaints mechanisms</p> <p>Duplication of procedures; overburdening of states</p> <p>Lack of coordination between TMBs;</p>	<p>Consolidate TMBs; consolidated reporting</p> <p>Expand adjudications capacity with 2/3 adjudications working group sitting in parallel chambers; more transparent adjudication decisions</p> <p>Single consolidated report, organized thematically</p> <p>More proactive outreach and liaison between TMBs</p>

Year	Source	Addressee(s)	Themes	Criticisms, challenges	Positive reform proposals
				<p>between TMBs and rest of UN, and Special Procedures</p> <p>Poor quality reporting and follow-up by TMBs</p> <p>Under-use of NGOs in reporting process</p> <p>Lack of independence of TMB members</p>	<p>and with rest of UN system; move CEDAW to Geneva; standardise documentation across TMBs</p> <p>More programmatic concluding observations; OHCHR to introduce 'in-house' follow-up management; deploy OHCHR field missions and technical cooperation capacity to implement concluding observations; develop model national HR plan; sustained dialogue between states and TMBs; OHCHR to prepare state data in advance of reviews; greater use of TMB working groups; all TMBs to adopt list of issues approach; more detailed prescription of information to be included in concluding observations; appoint Special Rapporteur for follow-up; TMB state visits;</p> <p>Better dissemination to NGOs on TMB procedures, scheduling; stronger liaison with national level NGOs</p> <p>Exclusion of government officials from nominations</p> <p>Standardise criteria for nomination to TMBs</p>
2002	Amnesty International, United Nations: Proposals to Strengthen the Human Rights Treaty Bodies	general TMB	Ratification; resources; independence; gender; local capacity building	<p>Widespread reservations to HR treaties; Incomplete ratification of HR instruments by states</p> <p>Resource constraints</p> <p>TMB appointments lacking independence, impartiality and expertise; lack of geographical and gender balance</p> <p>Inadequate attention to gender</p> <p>Incomplete use of reporting process as platform for national HR capacity building</p>	<p>OHCHR initiated Global Campaign for Ratification; include ratification targets in Common Country Assessments/UN Development Assistance Frameworks; offer technical cooperation at point of ratification, national capacity building</p> <p>Increase regular budget funding for OHCHR – voluntary contributions inadequate</p> <p>OHCHR to develop clear criteria for independence and impartiality, competence, skills and expertise for TMB members, including proven understanding of gender issues, and excluding government officials; more transparent nominations process consulting civil society.</p> <p>Comprehensive gender mainstreaming of TMBs work, including state inputs; cross-TMB coordination on gender</p> <p>Greater involvement of national NHRIs; capacity building for national judiciaries and legal professions; greater use of UN Information Centres for</p>

Year	Source	Addressee(s)	Themes	Criticisms, challenges	Positive reform proposals
				Late reports Weak concluding observations	dissemination; wider e-publication of TMB documentation; live webcasts; centralized electronic advance schedule for reporting; formalized procedures for NGO participation at TMB meetings; common TMB guidelines for NGO submissions; Identify technical assistance needs for reporting during TMB Chairpersons' annual general meeting; discussions with states Clearer, more specific, concluding observations; monitor states' dissemination of concluding observations
2002	Hudson, A., Dangerous Potential: Streamlining the United Nations Human Rights Committees [2002] Australian Journal of Human Rights 15	general TMB	Risks of consolidation	Criticisms of duplication between TMBs, overburdening of states, inconsistent jurisprudence between TMBs exaggerated; difficult to formulate viable methodology for STMB where different states parties to different sets of treaties; retrogressive impact on substantive HR of integration, marginalisation of economic and social, women's, children's, and minority rights	Moderate streamlining only; deep consolidation of TMBs will compromise integrity of HR regime and not improve efficiency;
2002	International Movement Against All Forms of Discrimination and Racism, NGO Participation in the Work of UN Human Rights Treaty Monitoring Bodies (Submission to 14 th Meeting of Chairpersons of the Human Rights Treaty Bodies)	general TMB	NGOs; Secretariat	Uneven TMB practice relating to involvement of NGOs	More systematic use of NGO information by TMBs; stronger links and information between national NGOs and TMBs; Secretariat to facilitate national NGO participation and access NGO information more proactively; dialogue between TMBs, Secretariat and NGOs to enter dialogue on working relationships
2002	International Movement Against All Forms of Discrimination and Racism, NGO Non-Paper: Treaty Body Reform following the UN Secretary-General's proposals	general TMB	Reporting; capacity; strategic approach; inter-UNHR coordination	Under-capacity for reporting Non-reporting and late reporting TMB system not integrated into wider UN system and goals	Enable TMBs to request focussed reports (not single reports); expanded use of core documents; thematic reporting only in context of single treaty body; harmonization of reporting procedures, follow-up, urgent procedures Automatic scheduling for long-overdue reports; liaison with systematic late reporters; strengthened technical cooperation; institutionalised follow-up, involving UN Field Offices Establish links including to MDGs, PRSPs, special procedures
2005	International Commission of Jurists, Reforming the Human Rights System: A Chance for the UN to Fulfil Its Promise	general UNHR, HR Council	Resources; capacity; strategic approach; follow-up	Resource constraints; TMB system undercapacity; Late reporting; non-reporting; Lack of prioritization, coordination by	Establish single standing treaty body, also to serve as HR court; supplement TMB activities by expanding OHCHR field presences; use Peer Review by new Human Rights Council to support TMB

Year	Source	Addressee(s)	Themes	Criticisms, challenges	Positive reform proposals
				TMBs; Uneven expertise of TMB members; Inadequate dissemination of TMB outputs Weak concluding observations;	activities
2005	Joseph, S. and Kyriakakis, J., 'Inquiry Into the Revised Draft Guidelines on an Expanded Core Document and Treaty-Specific Targeted Reports and Harmonized Guidelines on Reporting under the International Human Rights Treaties', 2005, http://www.law.monash.edu.au/castacentre/publications/ohchr-submission.pdf	general TMB	Reporting ; inter-TMB coordination; duplication; consolidation (reports)	Late reporting, non-reporting; backlogs; lack of coordination between TMBs; uncoordinated scheduling and periodicity of state reports; variable quality of state report; overlapping and onerous reporting obligations	Develop collaboratively across TMBs guidelines for treaty-specific targeted reports, and issue as soon as possible; further expand core document; provide guidelines to states in electronic format; harmonize periodicity and scheduling for state reporting and oral reviews before all TMBs; in longer term, move to single state report

UN Treaty Monitoring Bodies: Survey and Analysis of Selected Committee-Specific Previous Reform Proposals

Year	Source	Organs addressed	Themes	Criticisms, challenges	Positive reform proposals
1992	Partsch, K.J., <i>The Committee on the Elimination of Racial Discrimination</i> , in Alston, P. (ed), <i>The United Nations and Human Rights</i> (Oxford: Clarendon)	CERD	Independence; resources; duplication; reporting	<p>Criteria and processes for appointment of CERD members weaker than for judges of ICJ</p> <p>Central UN funding restricted to members' travel expenses – heavy burden on LDCs</p> <p>Duplication of work between CERD and other TMBs, UNESCC</p> <p>Art 15 function of doubtful contemporary/future efficacy</p> <p>Difficulties of Federal states in gathering and/or reconciling reporting information</p> <p>Late reporting (as partial consequence of increased reporting burden on states); inadequate reports; contested reporting requirements</p> <p>Restrictions on sources of information accepted by CERD in assessing states' performance; inefficient conduct of review meetings</p>	<p>States not to nominate individuals exposed to conflicts of interest</p> <p>Expand permissible sources of information to include NGOs with ECOSOC consultative status; expanded CERD's scope for fact-finding activity</p> <p>More proactive management of review dialogue; <i>not</i> to move towards formal recommendations;</p>
1992	Opsahl, T., <i>The Human Rights Committee</i> , in Alston, P. (ed), <i>The United Nations and Human Rights</i> (Oxford: Clarendon)	HRC	Local capacity building; resources; strategic approach; inter-TMB coordination; individual complaints; Secretariat; purposive approach	<p>Long-term limitations on development of HRC's adjudicatory role; currently low awareness of Optional Protocol</p> <p>Inadequate resources; inadequate means of fact-finding; inadequate information system for reporting</p> <p>Sporadic contact between states and HRC</p>	<p>Allow developing capacity of regional HR mechanisms to take over complaints adjudication; HRC to focus on HR implementation</p> <p>HRC requires resources for rapporteurs and working groups for each reporting country; to make visits and conduct interviews concerning state reports; diversity reporting system e.g. according to different types of states (e.g. federal, post-conflict); technical assistance with reporting for LDCs; better coordination across TMBs on reporting</p> <p>Move towards continuous dialogue between states and HRC</p>

Year	Source	Organs addressed	Themes	Criticisms, challenges	Positive reform proposals
				<p>Limited efficiency in HRC decision-making</p> <p>More guidance needed on implementation</p> <p>Inefficient, incomplete procedures for handling complaints</p> <p>Insufficient Secretariat support; misalignment of resources between Secretariat (concentrates on complaints) and HRC (concentrates on reports)</p> <p>Incomplete use of HRC's mandate – linked to lack of independence of HRC members from states parties</p>	<p>Move to majority decision-making</p> <p>Greater use of General Comments – thematic as well as article-based</p> <p>More liberal interpretation and/or amendment of Additional Protocol, to develop procedure to include fact-finding, pleadings, conciliation</p> <p>HRC to request own Secretariat Unit as well as expanded resources</p> <p>More liberal, purposive interpretation of mandate</p>
1992	Jacobson, R., <i>The Committee on the Elimination of Discrimination against Women</i> , in Alston, P. (ed), <i>The United Nations and Human Rights</i> (Oxford: Clarendon)	CEDAW	NGOs; resources; reporting; independence	<p>Lack of standardized procedures for NGO involvement</p> <p>Uncertainty over whether incompatible reservations should nullify ratification</p> <p>Financial constraints – resource starvation by General Assembly</p> <p>Inadequate Committee meeting time</p> <p>Ineffective, inefficient review dialogue</p> <p>Less development of jurisprudence by CEDAW than other TMBS</p> <p>Poor institutional memory</p> <p>Lack of independence of TMB members – too many direct government representatives</p>	<p>Increase NGO information and access to CEDAW</p> <p>Request Advisory Opinion from ICJ</p> <p>Seek external funding</p> <p>Increase meeting length</p> <p>Formalise procedures for coordinating questioning of states by TMB members; maintain practice of working groups to develop Committee practice</p> <p>Increased output of substantive General Comments</p> <p>Revise information system to preserve record of past practices</p> <p>More specific guidelines on independence from governments</p>
1992	Alston, P., <i>The Committee on Economic, Social and Cultural Rights</i> , in Alston, P. (ed), <i>The United Nations and Human Rights</i>	CESCR	Reporting; resources; Secretariat	<p>Non-reporting, late-reporting</p> <p>Non-appearance of state party for review</p>	<p>Black-listing chronic late/non-reporters</p> <p>Adopt practice of reviewing report in state party's</p>

Year	Source	Organs addressed	Themes	Criticisms, challenges	Positive reform proposals
	(Oxford: Clarendon)			<p>Less than fully constructive review dialogue with states parties</p> <p>Inadequate information base for reviews</p> <p>Committee's lack of control over own procedure</p>	<p>absence</p> <p>States to send representatives to review meetings of appropriate stature and expertise; advance notice of issues; stronger evaluations of state performance and concluding observations</p> <p>Reporting guidelines; expand sources of information to which Committee has access on reviews: UN agencies and other bodies; other UN human rights organs; NGOs; increased secretariat resources</p> <p>Vest control over procedure in Committee, instead of ECOSOC council</p>
1992	Byrnes, A., <i>The Committee against Torture</i> , in Alston, P. (ed), <i>The United Nations and Human Rights</i> (Oxford: Clarendon)	CAT	Resources; NGOs; reporting; purposive approach; duplication	<p>Financial resources inadequate – especially as states parties directly responsible for CAT funding</p> <p>Weak NGO involvement</p> <p>Late reporting; variable report quality; incomplete information base</p> <p>Unclear power to make General Comments</p> <p>Risk that lengthy investigations on CAT's initiative under Art 20 will lack transparency</p> <p>Overlap with other human rights bodies (e.g. HR Committee) – potential for duplication and inconsistency in recommendations to states and interpretation</p>	<p>Formal invitation to NGOs to participate in CAT work; requests for thematic information from NGOs; translation and circulation of NGO materials by Secretariat</p> <p>CAT to interpret implied power to make General Comments to develop jurisprudence</p>
1999	Arambulo, K., <i>Strengthening the Supervision of the International Covenant on Economic, Social and Cultural Rights: Theoretical and Procedural Aspects</i> (Oxford / Antwerp: Hart Intersentia)	CESCR	Reporting	<p>Scarcity of NGOs and NHRIs addressing ESC rights</p> <p>Lack of complaint mechanism</p> <p>Complexity and scope of information required to supervise compliance with</p>	Optional protocol to ICESCR establishing complaint mechanism

Year	Source	Organs addressed	Themes	Criticisms, challenges	Positive reform proposals
2000	Steiner, H., Individual claims in a world of massive violations: What role for the Human Rights Committee? in Alston, P. & J. Crawford (eds), The Future of Human Rights Treaty Monitoring (Cambridge: Cambridge University Press)	HRC	Individual complaints; strategic approach	<p>ICESCR</p> <p>HRC adjudications opaque, truncated, lack substantive reasoning or interpretation</p> <p>Mandatory jurisdiction to decide admissible communications inapposite to scope of application of ICCPR and HR violations worldwide – concentrates resources inefficiently onto few cases</p>	<p>Need to shift HRC role in adjudications to engaging in more judicial, transparent, interpretative dialogue over content and implementation of ICCPR; issue public draft General Comments</p> <p>Move to discretionary jurisdiction over adjudication of communications</p>
2000	Banton, M., Decision-taking in the Committee on the Elimination of Racial Discrimination, in Alston, P. & J. Crawford (eds), The Future of Human Rights Treaty Monitoring (Cambridge: Cambridge University Press)	CERD	Reporting; independence	<p>Weak powers of TMB Chairpersons over proceedings</p> <p>Slow reporting proceedings; inefficient use of meeting time</p> <p>Committee membership unremunerated; differential impact on access to membership of experts from LDCs</p> <p>Low ratification of Optional Protocol to CERD on individual communications</p> <p>Lack of sanctions against state parties failing to pay assessments or submit reports</p> <p>Backlog of reports</p>	<p>Advance circulation of written proposals; improve committee working practices to reduce repetitive or over-lengthy questioning</p> <p>Consider suspending states parties' participation rights as sanction for breach of obligations</p> <p>Seek extended meeting time; harmonize and coordinate meeting times across TMBs</p>
2000	Bustelo, M. R., The Committee on the Elimination of Discrimination against Women at the crossroads, in Alston, P. & J. Crawford (eds), The Future of Human Rights Treaty Monitoring (Cambridge: Cambridge University Press)	CEDAW	Gender; independence; inter-UNHR coordination; NGOs	<p>Low visibility of CEDAW</p> <p>Politicised appointments of Committee members</p> <p>Separation of CEDAW from rest of HR machinery, leading to distinctions in jurisprudential approach and practices</p> <p>Formally limited, and inadequate meeting time; backlog of reports; updating information submitted only orally; unclear focus and rigid model of review of reports; ineffective pre-sessional dialogue; uneven</p>	<p>Hold CEDAW sessions and service CEDAW from Geneva</p> <p>Combined reviews of state reports; submission of updating information to reports to be provided in written form and become state's next periodic report; thematically targeted periodic reports; focussed and re-scheduled pre-sessional meetings with states;</p>

Year	Source	Organs addressed	Themes	Criticisms, challenges	Positive reform proposals
				<p>quality of concluding comments</p> <p>Inadequate mainstreaming of CEDAW's work in activities of other TMBs, UN HR bodies</p> <p>Potential for stronger NGO involvement</p>	<p>introduce more efficient formal structure for review dialogue; improve CEDAW reporting guidelines; broaden participation in formulation of concluding comments (Secretariat, NGO), drafting of comments at session prior to adoption; review of states parties in absence of reports</p> <p>CEDAW actively to monitor progress by other TMBs towards implementation of chairpersons' recommendations on gender mainstreaming; CEDAW members' participation in other TMBs' sessions; links with Special Procedures; CEDAW guidelines for UN agencies</p> <p>CEDAW to clarify requirements for NGO submissions in guidelines</p>
2000	Lansdown, G., The reporting process under the Convention on the Rights of the Child, in Alston, P. & J. Crawford (eds), The Future of Human Rights Treaty Monitoring (Cambridge: Cambridge University Press)	CRC	Reporting; purposive approach; capacity	<p>Review dialogue rigidly follows structure of reporting guidelines, leading to neglect of issues addressed at end of guidelines</p> <p>Timing of pre-sessional working groups after full session results in weak focus and energy; question-and-answer structure of pre-sessional working groups too formal</p> <p>Excessive CRC workload</p> <p>No General Comments on CRC issued to date</p>	<p>Strategic approach to review dialogue required, including advance identification of issues</p> <p>Expand CRC membership; expand Secretariat support for CRC</p>
2000	Leckie, S., The Committee on Economic, Social and Cultural Rights: Catalyst for change in a system needing reform, in Alston, P. & J. Crawford (eds), The Future of Human Rights Treaty Monitoring (Cambridge: Cambridge University Press)	TMB general; CESCR	Independence; duplication; resources; follow-up; local capacity building	<p>Overall system too focussed on reporting as mechanism of human rights implementation</p> <p>Uneven quality of TMB membership - expertise and independence compromised; inherent government bias</p> <p>Overlapping reports, late reports, states parties' failure to follow reporting guidelines</p> <p>'Constructive dialogue' ineffectual, over-reluctant to criticise state conduct; weak concluding observations</p>	<p>Independent, long-term Committee appointments required</p> <p>Improve reporting guidelines</p> <p>Increase resources for HR TMBs; expand Secretariat support;</p>

Year	Source	Organs addressed	Themes	Criticisms, challenges	Positive reform proposals
				<p>Low accessibility, efficiency and resource-starvation of TMBs</p> <p>Poor reporting follow-up</p>	<p>Digitalise TMB reporting system; websites for all TMBs</p> <p>Secretariat to prepare follow-up documents post-country reporting; more judicially-oriented Concluding Observations identifying violations of ICESCR</p>
2000	Bank, R., Country-oriented procedures under the Convention against Torture: Towards a new dynamism, in Alston, P. & J. Crawford (eds), The Future of Human Rights Treaty Monitoring (Cambridge: Cambridge University Press)	CAT	Reporting; strategic approach; follow-up	<p>Weaknesses in reporting dialogue: lack of in-depth oral inquiries; lack of strategic prioritisation of most important country issues at review; repetitive questioning; lack of cohesive interpretations by CAT members; tender questioning; weak follow-up questioning to information received; weak follow-up on past recommendations not implemented</p> <p>Opaque, limited conceptualisation of key concepts under CAT</p> <p>Low capacity to respond to emerging high-risk situations</p> <p>Little recourse to Art 20 inquiry procedure and weak follow-up on Art 20 inquiry reports</p>	<p>Invest greater resources in review dialogue preparation, mainly via Secretariat, Country Rapporteurs; clearer, more specific, concluding observations, giving greater guidance to states; more dynamic interpretation of mandate; shift in CAT's understanding of role and purpose</p> <p>Establish fact-finding mechanisms to cover follow-up of substantial, complex recommendations; consider visits outside of Art 20 inquiry procedure</p> <p>Imply power for CAT to issue general comments amplifying meaning of CAT</p> <p>CAT to empower chairperson to request inter-sessional special reports</p> <p>Shorter time-limits under Art 20 inquiry procedure; use working groups and/or bureaus to support conduct of Art 20 inquiries;</p>
1999	Boerefijn, I., The Reporting Procedure under the Covenant on Civil and Political Rights: Practice and Procedures of the Human Rights Committee (Oxford / Antwerp: Hart Intersentia)	HRC	Reporting; resources; Secretariat; inter-TMB coordination	<p>Lack of specificity of analysis in concluding observations</p> <p>Low visibility and effectiveness of concluding observations</p> <p>Late reports</p> <p>Missing reports stalling review</p> <p>Use of Special Reports restricted to limited categories of rights</p> <p>Weak support for HRC by General</p>	<p>More detailed identification and analysis of factors affecting implementation in concluding observations</p> <p>Higher profile domestic publication of concluding observations in states parties, especially to NGOs; shorter reporting cycle to enhance follow up on concluding observations; appoint Rapporteur on follow-up</p> <p>Measured use of requests for focussed, instead of comprehensive reports</p> <p>Review in absence of reports</p> <p>Consistent recourse to Special Reports across all rights under ICCPR, where deteriorating situation likely, or where positive change requires incubation</p>

Year	Source	Organs addressed	Themes	Criticisms, challenges	Positive reform proposals
				<p>Assembly</p> <p>Resource restrictions; inadequate Secretariat support</p> <p>HRC decision to refuse to account other TMBs' findings and jurisprudence</p>	<p>Expand Secretariat support</p> <p>HRC should account and refer to other TMBs' findings in its own jurisprudence and other outputs</p>
2000	Kretzmer, D. and Burns, P., Commentary on Complaint Processes by Human Rights Committee and Torture Committee Members, in Bayefsky, A. (ed), The UN Human Rights System in the 21 st Century (The Hague: Kluwer)	HRC CAT	Adjudications; capacity; resources	<p>Backlog of HRC complaints</p> <p>Amending ICCPR or Optional Protocol with aim of reform could expose to attempts by states to weaken them; denial of adequate resources</p> <p>Individual complaint adjudication decisions too short, opaque</p> <p>Insufficient resources; no capacity for research in adjudicating communications; backlog of communications Lack or variable quality of reasoning for decisions on communications; reluctance to interfere with Rapporteur's assessment of communication</p> <p>Over-reliance on CAT communications procedure by legal professions in certain countries</p> <p>Slow progress of cases in non-UN languages due to delays in translation</p>	<p>Consider establishing Chambers of the HRC to adjudicate individual complaints</p> <p>Consider external funding for processing complaints</p> <p>Decisions on individual communications to give reasons</p>
2000	Dandon, V., The Committee on Economic, Social and Cultural Rights and Non-Governmental Organisations, in Bayefsky, A. (ed), The UN Human Rights System in the 21 st Century (The Hague: Kluwer)	CESCR	NGOs	<p>Low attendance by NGOs at pre-sessional working groups, due to low awareness of procedure, and costs of attendance</p> <p>Low awareness of ESC rights and CESCR</p>	<p>Need to evolve creative, non-traditional working methods, including cooperation with NGOs</p>

