

Human Rights Treaty Body Review 2020: Towards an Integrated Treaty Body System

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Abstract

The article contributes to the debate on the efficient functioning of the human rights treaty bodies. The major long-term problems of the treaty body system are identified. Furthermore, the extent to which the measures adopted in 2014 addressed the real problems of the system is assessed. It is concluded that out of nine issues, only one was properly addressed. As the General Assembly expects a review of the system in 2020, the paper argues for a genuine reform of the system. It suggests that an Integrated Treaty Body System (ITBS) should be established that would not require an amendment of the current treaties and it would enable effective functioning of the system under its permanent growth. The main features of the new proposal consist in transforming the Human Rights Committee into a permanent body monitoring both covenants on human rights, while the specialized committees would interact with the Human Rights Committee within regular post-session meetings. In addition, concrete measures are presented in order to reduce or eliminate the identified problems of the system.

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Introduction

Among the existing international human right mechanisms, a major attention is usually being paid to the regional instruments. This paper focuses on the functioning of the human rights treaty bodies – a system of human rights mechanisms at the universal level that should serve all countries of the world, or better put, their individuals.

The treaty bodies (committees) were established to monitor compliance of states with particular human rights treaties, for example the International Covenant on Civil and Political Rights (ICCPR) or the International Covenant on Economic, Social and Cultural Rights (ICESCR). A number of other more specific treaties were adopted and their corresponding treaty bodies established over time.

In principle, the treaty bodies have two main functions. First, they receive and examine state reports.¹ Each state party is obliged to submit initial and then periodic reports on compliance with the provisions of the respective human rights treaty. The committee examines the report, directly discusses particular human rights issues with the delegation of the state, and based on the report, dialogue, and external information the committee issues *concluding observations*.² In this report it publishes recommendations for the state to be implemented in the following period.

Second, if the state ratifies an optional protocol to a treaty or submits a relevant declaration, it also allows individuals who feel that their human rights have been violated to lodge an individual complaint to the relevant committee – a *communication*. In order for the communication to be accepted, all available domestic remedies must be exhausted. The committee considers the complaint and issues a legally non-binding decision (*view*) stating whether the right in question has been violated.³

¹ For example Article 40 of the ICCPR and Article 16 of the ICESCR. Apart from the stated two functions, a number of treaty bodies can also conduct inquiries. Furthermore, the Committee on Enforced Disappearances can also consider *urgent action* and all committees may accept complaints by states.

² With regard to the Human Rights Committee, this is regulated by Rule 71 at para 3 of its Rules of Procedure. For more on Concluding observations, see O’Flaherty, ‘The Concluding Observations of United Nations Human Rights Treaty Bodies’ (2006), 6 (1) Human Rights Law Review 27.

³ With regard to the Human Rights Committee, see Articles 1, 2 and 5 of the Optional Protocol to the ICCPR.

Already at the end of the 1980s, it started to be clear that the system was facing a number of problems. These included a lack of cooperation of the states, high load on especially smaller states in preparing different reports, backlog of the treaty bodies, a very low awareness of the system or thematic overlapping and lack of cooperation between different committees. These problems were dealt within a ‘Treaty Body Strengthening’ process that took place from 2009 until 2014.⁴ The weaknesses of the treaty body system as identified within the treaty body strengthening process were addressed by the UN General Assembly (GA) resolution 68/268 in April 2014.⁵ Based on the decision, several improvements were adopted for implementation. In addition, the resolution expects a further review of the treaty body system in 2020.⁶

The structure of the paper will be as follows – first, it will discuss the main weaknesses that are inherent to the system. Furthermore, it will present the outcome of the strengthening adopted by the GA in 2014. Based on a biannual report from 2016 it will analyse whether the GA resolution of 2014 addressed the major problems of the system; consequently it will suggest a needed form of the planned 2020 review. In short, the main purpose of this article is to perform a critical assessment of the status quo and based on that to propose concrete reform measures to be adopted in 2020.

1. Main points of criticism of the treaty body system

In order to find out what kind of reform would be optimal to tackle the problems of the treaty body system, it is necessary to take a step aside and have an overall look at the system. Although there are a number of characteristics of the system that should be welcome, like the role of the independent human right experts or the fact that it is a cooperative system, it is necessary to focus on the more problematic issues. As there is good data available about the state of the system in 2011 and 2012, the long-term imperfections will mainly be assessed based on information from that period.⁷ In the long term, nine major problems need to be mentioned.⁸ These are the following:

⁴ For more information see Treaty Body Strengthening, OHCHR <<http://www.ohchr.org/EN/HRBodies/HRTD/Pages/TBStrengthening.aspx>> accessed 1 August 2017.

⁵ Strengthening and enhancing the effective functioning of the human rights treaty body system, GA Res. 68/268, 9 April 2014.

⁶ Ibid. at para 41.

⁷ These data are mainly included in the following report: Strengthening the United Nations Treaty Body System. A report by the United Nations High Commissioner for Human Rights. OHCHR report, A/66/860, 22 June 2012.

1. Late reporting and non-reporting by states

The low proportion of states reporting has been an issue for the treaty bodies from the very beginning. One reason for this is that many states accept the treaties only on a formal level, but do not want to engage with the system. Another is that the system creates a high burden on states and especially the smaller ones lack the capacity to duly cooperate with it.⁹

When we look at the years 2000 and then 2011, although there was an increase in the number of states reports received, if we take into account the rising number of ratifications, there was actually a relative decrease in reporting compliance.¹⁰ In fact, only 16% of the reports due in 2010 and 2011 were submitted in strict accordance with the due date. If we allow the states one-year flexibility, still only one-third report on time.¹¹ A large number of states report with a delay of many years and some do not do so at all.

2. Backlog of the treaty bodies

The treaty bodies operate on a part-time basis, often three times a year only for several weeks. With the growing number of treaty ratifications more states have the obligation to report on their human rights situation to different committees. However, in spite of the fact that in the vast majority of cases the states fail to comply with their reporting obligations, the treaty bodies are overloaded with reports (and communications). That is why the High Commissioner stated that “...it is unacceptable that the system can only function because of non-compliance.”¹²

With regard to state reports, in 2012 the average waiting time for a report to be reviewed was two to four years in different committees. However, if such a report is not reviewed shortly after being submitted, its relevance decreases and then the treaty body works with outdated information. With regard to individual communications in the same year, the time between registration of the complaint and the decision in the Human Rights Committee amounted to

For a short overview on what problems were considered most important in 2006, see Concept Paper of the High Commissioner's Proposal for a Unified Standing Treaty Body, OHCHR report, HRI/MC/2006/2, 22 March 2006 at para 16.

⁸ The nine major long-term problems of the treaty bodies are selected in accordance with the above-mentioned UN reports and the assessment of the author.

⁹ Ibid.

¹⁰ OHCHR report, A/66/860, 22 June 2012 at 18.

¹¹ Ibid. at 22. According to the report, in April 2012, 626 state reports were overdue.

¹² Ibid. at 9.

three and a half years.¹³ It goes without saying that from the point of view of a rights holder such a delay plays a significant role and thus undermines the delivery of justice.

3. High reporting burden on states

There are a number of reasons why the system creates a high burden on states. First, states are expected to report to all nine treaty bodies. As preparation of one report is a complex process – we should not forget about the national costs of the reporting procedure in terms of resources, time and staff with the relevant expertise – this is demanding in itself. Second, as the topics of different treaty bodies often overlap (for example Human Rights Committee partially deals with the same issues as the more specialized Committee against Torture or the Committee on the Elimination of Discrimination against Women), states need to report on the same issues to different treaty bodies.¹⁴

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

4. Diverging interpretation of same issues by different treaty bodies

In 2000, there were 97 members of different treaty bodies. However, as the number of committees grew, in 2012, there were already 172 experts working in ten of the treaty bodies.¹⁵ It is then no surprise that within such a large number of experts sitting in different bodies with overlapping powers, there are necessarily diverging interpretations of the same

¹³ In addition, it was two and half years in the Committee against Torture (CAT), two years in the Committee on the Elimination of Discrimination against Women (CEDAW) and one and half years in the Committee on the Elimination of Racial Discrimination (CERD). *Ibid.* at 19-20.

¹⁴ See Johnstone, 'Cynical Savings or Reasonable Reform? Reflections on a Single Unified UN Human Rights Treaty Body' (2007), 7 (1) *Human Rights Law Review* 173 at 181.

¹⁵ The number includes the Subcommittee on Prevention of Torture.

human rights issues,¹⁶ due to the fact that the right hand of the system does not know what the left hand is doing.

5. Quality of the treaty body members

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

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

Second, treaty body members need to be independent. However, if we have a look at the membership in 2012, a full 20% of the experts were diplomats, government officials or members of a parliament.¹⁷ There is no need to explain why this cannot be considered in line with the independence requirement.

Third, gender balance is an important issue. In the same year, there were 107 male experts (62%) and 65 female experts (38%) in the committees.¹⁸ In this regard, however, it is good to mention that the Committee on the Elimination of Discrimination against Women (CEDAW) has traditionally had a vast majority of female experts. Therefore, without CEDAW, the proportion is even less balanced.

Fourth, although the committee members consider the individual communications and thus decide about violations of human rights, they do not need to be lawyers.¹⁹ In this regard, it is almost hard to believe that after a case has been decided a number of times under domestic

¹⁶ See also Rodley, ‘Duplication and Divergence in the Work of the United Nations Human Rights Treaty Bodies: A Perspective from a Treaty Body Member’ (2011), 105 *American Society of International Law Proceedings* 512.

¹⁷ OHCHR report, A/66/860, 22 June 2012 at 77.

¹⁸ *Ibid.* at 77 and 78.

¹⁹ For an overview of the background of treaty body members, see *ibid.*

jurisdiction – by judges, after exhausting all domestic remedies it comes to a treaty body where non-lawyers decide about violations of rights.

Fifth, all treaty bodies are part-time organs holding sessions several times a year for a particular number of weeks. Therefore, if the members are not retired, they have other permanent jobs. However, what kinds of jobs allow an employee to be out of work for 20% of the year? It needs to be seen that the system limits the scope of experts it can involve by the fact that they either need to be retired or have a job that allows such a side-activity – like for example academia.

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

Seventh, the national procedures of selections and nominations of experts are not very transparent. In many cases, the government nominates a candidate without broader consultation with the civil society or academia.²⁰ Therefore, in order to nominate the best experts and not the ones with friendly ties to the government, domestic selection procedures should be improved.

6. Low authority of decisions on communications

The main reason why the results of the quasi-judicial activity of the treaty bodies, that is considering individual complaints, is to a large extent not complied with by the states, is the legal character of the committee's final *views*. As the treaty bodies are not a court, their decisions are not legally binding. However, some human rights law experts argue that as the treaties themselves are binding without any doubt and that they created the committees in order to consider such violations, in relevant cases the state is legally obliged to remedy such a situation.²¹

²⁰ Keller and Ulfstein, 'Conclusions' in Keller and Ulfstein (eds), *UN Human Rights Treaty Bodies: Law and Legitimacy* (Cambridge University Press 2012) 423.

²¹ Scheinin, 'International Mechanisms and Procedures for Monitoring' in Krause and Scheinin (eds), *International Protection of Human Rights: A Textbook* (Åbo Akademi University 2009) 617. For the state to comply, the Human Rights Committee argues with the right to an effective remedy. See the General Comment No. 33 on the ICCPR at para 14. Last but not least, the International Court of Justice in its Diallo case stated that

Nevertheless, as states often do not share this opinion, the level of compliance with the decisions of treaty bodies with regard to individual communications remains very low. Open Society Foundations counted that with regard to violations established by the Human Rights Committee up until 2009, states complied with the decisions only in 12% of the cases.²²

7. Insufficient or non-existent follow-up procedures

The very reason why the committee reviews the human rights situation in a particular state and issues the recommendations is in order for them to be implemented. The same relates to communications. Therefore, follow-up procedures that would give the treaty body (and also civil society) objective information about the level of implementation should constitute an integral part of the system. However, until 2012 only four committees introduced some procedures to monitor the implementation.²³ In this regard, there is a need for harmonization between the committees.

8. High costs of translations

In 2006, the Harmonized guidelines on reporting were issued that introduced page limits on states documentation. Nonetheless, the States Parties did not learn to respect them very quickly. In 2011, 33% of the initial reports exceeded the 60-page limit and 64% of the periodic report exceeded the 40-page limit. With regard to translation costs, the number of pages above the limit only in that year amounted to 5.5 million USD.²⁴ In other words, if page limits were respected, this amount could have been saved or used differently. In addition, costly translations of summary records of the treaty body meetings are also to be mentioned.

9. Low awareness of the system

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

it believes that it should ascribe ‘great weight’ to the interpretation according to the views of the Human Rights Committee. See Case concerning Ahmadou Sadio Diallo, (Republic of Guinea v. Democratic Republic of the Congo), merits, judgment, ICJ 2010 at 29.

²² Baluarte and de Vos, *From Judgement to Justice: Implementing International and Regional Human Rights Decisions* (Open Society Foundations 2010) at 27.

²³ OHCHR report, A/66/860, 22 June 2012 at 80.

²⁴ *Ibid.* at 54 and 55.

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

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

With regard to communications, if we take into account that the treaty bodies have a specific authority towards countries in all world regions, due to the reasons mentioned above we need to conclude that the number of individual complaints received by the committees is actually very low. For example, the Human Rights Committee that has been dealing with individual communications for the longest time decided 1155 cases from its inception 40 years ago up until 2016 in merits.²⁵ If we compare it to the European Court of Human Rights, which is able to deliver around 1000 judgments a year for the European region only,²⁶ we see that the contribution to the protection of individuals that the treaty body system provides for is actually very low.

Based on the above, it needs to be seen that the treaty bodies deal with major difficulties and if we take the intention to improve the system seriously, it is clear that it requires significant changes. In this regard, it is necessary to stress that any reform measures considered should aim at reducing or eliminating the identified problems.

2. Treaty body strengthening outcome in 2014

After the proposal of the Office of the UN High Commissioner for Human Rights (OHCHR) presented in 2006 to establish a Unified Standing Treaty Body (USTB) did not gain enough

²⁵ *Statistical survey on individual complaints, March 2016*, at Human Rights Committee, OHCHR <<http://www.ohchr.org/EN/HRBodies/CCPR/Pages/CCPRIndex.aspx>> accessed 1 August 2017.

²⁶ In 2016 the European Court of Human Rights delivered judgments in respect of 1926 applications. As a number of applications were joined, it actually delivered 993 judgments. See *Analysis of statistics 2016*, at European Court of Human Rights, Council of Europe <<http://www.echr.coe.int/Pages/home.aspx?p=reports>> accessed 1 August 2017.

support,²⁷ a ‘treaty body strengthening’ process took place between 2009 and 2014. At the beginning when led by the OHCHR, it seemed that the improvements supported would be ambitious in addressing the majority of the important challenges. The High Commissioner’s report of 2012 presented recommendations for measures to be adopted, including introducing a comprehensive reporting calendar that would have the real potential to effectively address the problem of the late reporting and non-reporting by states. However, as in the same year the process was taken over by the GA, the outcome of the treaty body strengthening was weaker than expected. In April 2014, the work resulted in the adoption of the GA resolution 68/268 on *Strengthening and enhancing the effective functioning of the human rights treaty body system*²⁸ which sets the outcome of the four-and-half year long treaty body strengthening process.

The resolution supports a number of concrete measures. With regard to their character according to the cost assessment, they can be divided into three groups. First, several measures require additional resources. Among those, the major measure adopted was granting **additional meeting time** to all treaty bodies, in order to enable them to deal with their heavy backlogs more effectively. The resolution added two weeks of meeting time to each committee and created a formula according to which an annual meeting time for each treaty body should be identified in the future.²⁹ In sum, the meeting time of the treaty bodies was increased by more than 20%, which should be appreciated. Another measure falling into the category of requiring additional resources is the support of **capacity-building** activities to states. By deploying human rights capacity-building experts to the regions, the OHCHR will be able to provide states with training on reporting.³⁰ Other such accepted measures were the introduction of **videoconferencing** in order to allow members of state delegations not present to participate at the meeting, and the introduction of webcasting of the public meetings of all treaty bodies in order to enable the public access.³¹ However, the letter received only

²⁷ See the Concept Paper of the High Commissioner’s Proposal for a Unified Standing Treaty Body, OHCHR report HRI/MC/2006/2, 22 March 2006.

²⁸ GA Res. 68/268, 9 April 2014. The resolution was adopted by consensus. With this regard it is good to note that already in 2005 the UN SG Kofi Annan in his report *In Larger Freedom* criticized the frequent adoption of resolutions by consensus in the GA. He pointed out that the content then reflects only the lowest common denominator and it leads to ‘abandoning any serious effort to take action’. See *In Larger Freedom: towards development, security and human rights for all*, SG report, A/59/2005, 21 March 2005 at para 159.

²⁹ GA Res. 68/268, 9 April 2014 at para 26.

³⁰ *Ibid.* at para 17.

³¹ *Ibid.* at paras 22 and 23.

rhetoical support, without granting resources from the UN regular budget.³² Therefore, such a measure would have to be financed from voluntary contributions.

Second, a number of measures were adopted that have a cost-saving effect. These are aimed at reducing the work of the ‘conference services’ activities that present by far the largest part of the costs of the treaty body system. In this regard, the GA agreed that **word limits** for States Parties documents will be introduced. Furthermore, a word limit was also set on documents produced by treaty bodies. The resolution also sets out that in principle, there will be a maximum of three official **working languages** for each of the committees, and **summary records** of the meetings will be issued in only one language.³³ By introducing these measures, the documents will need to be more focused and significant savings will be achieved by reducing the need for extensive translations, as well as for interpretation.

Third, among other measures supported by the resolution are the use of the simplified reporting procedure in order to reduce the steps of the reporting process and making the reports more focused. The treaty bodies were encouraged to adopt short and focused concluding observations including the recommendations therein. In order to harmonize the system, the GA supported the role of chairs of the treaty bodies with regard to standardizing working methods of different committees. In addition, with regard to treaty body membership it encouraged the states to nominate experts with recognised competence and experience in the field of human rights, as well as of high moral standing. Although this group of measures might seem to be simply proclamations, in reality the ‘soft law authority’ of the GA often provides an important argument for implementing such measures.³⁴

The outcome of the treaty body process in the form of the GA resolution mainly aimed to reduce the backlog of the treaty bodies by providing them with additional meeting time and to facilitate the reporting obligations of the states by introducing a capacity-building programme. Both measures are costly and the resources were found by introducing page limits and restricting translations and interpretations. By these measures, savings of 19 million USD a

³² Broecker, *UN General Assembly Concludes its Review of Human Rights Treaty Bodies*, 2014, Universal Rights Group <<http://www.universal-rights.org/blog/un-general-assembly-concludes-its-review-of-the-human-rights-treaty-bodies>> accessed 1 August 2017.

³³ GA Res. 68/268, 9 April 2014 at paras 15, 16, 24 and 30.

³⁴ *Ibid.* at paras 1, 6, 10 and 38. For other measures see the resolution. For a view from the year 2014, see Lhotský, ‘The UN Human Rights Treaty Body System – Reform, Strengthening or Postponement?’ (2014), 5 (1) *Czech Yearbook of Public & Private International Law* 255; for an immediate view after passing the GA resolution, see O’Flaherty, ‘The Strengthening Process of the Human Rights Treaty Bodies’ (2014), 108 *American Society of International Law Proceedings* 285.

year (37% of the costs of the system) could be redirected into the additional meeting time and capacity building activities.³⁵ Therefore, the GA managed to introduce a set of measures that are in total cost-neutral, without granting the treaty body system additional resources.³⁶ Rationalization of the use of resources is welcome indeed. However, it needs to be said that in comparison to the measures proposed within the OHCHR report of 2012, the measures supported by the GA focused on tackling rather the short-term than the long-term challenges of the system.

3. Analysis of the measures implemented

The GA resolution 68/268 of 2014 requests that the UN Secretary-General (SG) submit to the GA a comprehensive report on the status of the human rights treaty body system and the progress achieved on a biennial basis.³⁷ The first report was therefore published two years after adoption of the GA resolution in July 2016.

3.1 Status of the human rights treaty body system in 2016

The report of the SG presents the most up-to-date information about the system.³⁸ Its conclusions are supported by a supplementary information report containing 22 annexes with the relevant statistical data.³⁹ The report covers the time period from the adoption of the GA resolution 68/268 in April 2014 until June 2016.⁴⁰ Although a little bit technical, its content is very helpful in order to assess the state of the system after the new measures have been implemented. In this regard it is necessary to keep in mind that some of the measures do not become evident immediately; nevertheless, the report shows the important trends of the system.

³⁵ Broecker, *supra* n 32; also Broecker and O’Flaherty, *The Outcome of the General Assembly’s Treaty Body Strengthening Process*, 2014, Universal Rights Group <https://www.universal-rights.org/wp-content/uploads/2015/02/URG_Policy_Brief_web_spread_hd.pdf> accessed 1 August 2017, at 2 and 19. The budget of 4.5 million USD a year should support the capacity-building activities.

³⁶ In fact, the Fifth Committee of the GA informed that taking both additional costs and savings into consideration, adopting the measures would lead to a net cost increase of 194,000 USD for the 2014-2015 biennium. That amounts to an increase of 0.19% annually. See *Fifth committee considers financial implications of draft resolution on strengthening United Nations human rights treaty body system*, 2014, UN <<http://www.un.org/press/en/2014/gaab4103.doc.htm>> accessed 1 August 2017.

³⁷ GA Res. 68/268, 9 April 2014 at para 40.

³⁸ Status of the human rights treaty body system, SG report A/71/118, 18 July 2016.

³⁹ Status of the human rights treaty body system. Supplementary information, SG report A/71/118, 18 July 2016.

⁴⁰ SG report, A/71/118, 18 July 2016 at para 2.

According to the analysis, the ratifications of the treaties increased by 5% from 2013 to 2015,⁴¹ so the system continues in its steady growth. With regard to the states' compliance it should be emphasized that at the beginning of 2016 only 13% of states were fully compliant with all their reporting obligations. In fact three treaties counted more than 15 States Parties whose initial report was more than 10 years overdue.⁴²

The new capacity-building programme was fully operational in 2015 with 10 staff members in ten OHCHR regional offices and six in Geneva. There has been a significant demand for the activities on the part of the states and several training sessions of trainers were held in the regions.⁴³ The results of these activities in the form of an increase in the submission of states reports are expected rather in the longer-term.

There is an important development to be noticed with regard to communications. The number of individual communications received increased sharply between 2012 and 2015, from 170 to 307 communications, which amounts to an increase of 80%. Most of them – almost two thirds – are being received by the Human Rights Committee.⁴⁴

The GA resolution 68/268 of 2014 provides for a mathematical formula to identify the meeting time needed for different treaty bodies. From 2015, their overall meeting time amounted to 96.6 weeks a year, which was an increase of 20.6 weeks. The additional meeting time granted had the desired effect of increasing the number of the adopted concluding observations by 26% and of views by 58%.⁴⁵ There is little doubt that this is one of the biggest contributions achieved by the GA resolution. However, it should be noted that the additional meeting time presents considerable challenges to the treaty body members, as they have other jobs.

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

⁴¹ Ibid. at para 4.

⁴² Ibid. at paras 5 and 6. The OHCHR provides up-to-date information on late reporting states on its webpage. See Late and non-reporting states, OHCHR <http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/LateReporting.aspx> accessed 1 August 2017.

⁴³ SG report, A/71/118, 18 July 2016 at paras 9, 10 and 12.

⁴⁴ Ibid. at para 21.

⁴⁵ Ibid. at paras 26 and 27.

to communications increased by 31% – and if we focused on the Human Rights Committee, it would rise by a full 90%. Therefore, in spite of the higher output, due to the sharp increase in the number of communications the overall backlog of the treaty body system has actually increased rather than decreased.⁴⁶

With regard to the gender composition of the committees, out of the 172 experts there were 56% men and 44% women at the beginning of 2016. This is already close to being balanced, although if we look closer, it should be noticed that there is only one male expert in the CEDAW committee. In fact, in CEDAW men are underrepresented and in the vast majority of the other committees women are underrepresented. Therefore, if we do not take CEDAW into account, the proportion of women in the treaty bodies drops to only 31%.⁴⁷

Other issues dealt with in the report were the exponential increase in the requests for urgent action to the Committee on Enforced Disappearances, insufficient resourcing of the inquiries procedure, as well as the need to grant at least one additional week of meetings to the Subcommittee on prevention of Torture that is not covered by the mathematical formula.⁴⁸

The given word limits are being enforced strictly by the OHCHR, which brought the system the necessary savings. However, no word limits are established for State party replies to the List of issues within the standard reporting procedure, which should be additionally introduced according to the report. All treaty bodies use three working languages. In addition, webcasting of treaty body sessions was introduced that was funded from extra budgetary resources from the European Union as a project ending in June 2017.⁴⁹ According to the supplementary information, the annual costs for webcasting should amount to approximately 530 000 USD.⁵⁰ SG requests that the GA provide relevant resources for the future meeting time, including the costs of webcasting.⁵¹

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

⁴⁶ Ibid. at paras 31, 33, 36 and 37. With regard to the proportion of the communications, 89% of them are addressed either to the Human Rights Committee or the Committee against Torture.

⁴⁷ SG report (supplementary information), A/71/118, 18 July 2016 at Annex XVIII.

⁴⁸ SG report, A/71/118, 18 July 2016 at paras 46, 49 and 91.

⁴⁹ Ibid. at paras 67, 69, 70, 73 and 84.

⁵⁰ SG report (supplementary information), A/71/118, 18 July 2016 at Annex XX.

⁵¹ SG report, A/71/118, 18 July 2016 at paras 84 and 90.

3.2 Assessment of the current situation of the treaty body system

After explaining the major problems of the system in Chapter 2, presenting the strengthening measures adopted in Chapter 3 and summarizing the status of the treaty body system after the implementation of these measures in Subchapter 4.1, it is time to evaluate to what extent the measures adopted by the GA resolution 68/268 in 2014 confronted the real problems of the system. Based on such an evaluation conclusions can be drawn on the need for further measures.

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

1. Late reporting and non-reporting by states

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

2. Backlog of the treaty bodies

The main measure adopted in 2014 was granting the committees additional meeting time in order to tackle their backlog. Although with regard to the states reports it decreased by 15%, due to the sharp rise in new communications, the backlog increased by 31% with regard to individual complaints.⁵² This increase is most apparent with regard to the Human Rights Committee.

3. High reporting burden on states

The need for multiple reporting for different treaty bodies did not change. However, as all treaty bodies now offer states the possibility of using the simplified reporting procedure, the reporting burden has been reduced.⁵³ Two other measures might be helping to ease this – the existence of word limits, as well as the functioning of the capacity-building programme.

⁵² SG report, A/71/118, 18 July 2016 at paras 33 and 37.

⁵³ SG report (supplementary information), A/71/118 of 18 July 2016 at 31.

4. Diverging interpretation of same issues by different treaty bodies

In essence, this has not changed. As the system is still composed of 172 experts in different treaty bodies, divergence is still present. Nevertheless, the Chairs of different committees are gradually working on the harmonization of the working methods across the treaty body system.⁵⁴

5. Quality of the treaty body members

With regard to the quality of the committee experts it should be said that the seven problematic points explained in the Chapter 3 were not effectively addressed. Relevant progress that should be noted is the adoption or endorsement of the Addis Ababa guidelines on the independence and impartiality of the treaty body members by the vast majority of the treaty bodies.⁵⁵

6. Low authority of decisions on communications

This is, unfortunately, an area on which very little statistical information is available, including on the part of the OHCHR. In the past, according to one survey the compliance of states amounted only to 12%.⁵⁶ As the 2014 outcome did not aim at improving this issue, it is clear that states' compliance rate with regard to communications remains very low.

7. Insufficient or non-existing follow-up procedures

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

8. High costs of translations

Unnecessary translations of long documentation are something that was actually effectively addressed by the introduced strengthening measures. Both translation and interpretation costs

⁵⁴ SG report, A/71/118, 18 July 2016 at para 64.

⁵⁵ Ibid. at para 66.

⁵⁶ Baluarte and de Vos, *supra* n 22 at 27.

were reduced, word limits for documentation were introduced and are being strictly enforced by the OHCHR.⁵⁷

9. Low awareness of the system

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

Based on the comparison of the problems in 2012 within Chapter 2 and the current situation after the implementation of the measures adopted in 2014, the problems of the treaty bodies can be divided into three groups according to how effectively they were addressed by the GA resolution 68/268.

Level of improvement in 2016
<p>Considerable improvement</p> <ul style="list-style-type: none"> ▪ High costs of translations
<p>Limited improvement</p> <ul style="list-style-type: none"> ▪ Backlog of the treaty bodies ▪ High reporting burden on states
<p>Insignificant improvement</p> <ul style="list-style-type: none"> ▪ Late reporting and non-reporting by states ▪ Diverging interpretation of same issues by different treaty bodies ▪ Quality of the treaty body members ▪ Low authority of decisions on communications ▪ Insufficient or non-existing follow-up procedures ▪ Low awareness of the system

As we see, the assessment of the impact of the GA resolution 68/268 supports a view that with regard to the major problems that the treaty body system faces, the measures adopted did

⁵⁷ Additional possible improvement was identified by the SG report of 2016. See SG report, A/71/118, 18 July 2016 at para 70.

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

4. The way forward: reform measures recommended for 2020

It is necessary to emphasise that a premise for the measures to be implemented in 2020 is that they should support to a maximum extent the effective functioning of the treaty bodies under the condition that they will not require an amendment of the current treaties.

Any such reform has to meet two requirements. First, it needs to reduce or eliminate the major weaknesses identified in Chapter 2 that were not tackled within the previous strengthening process. Second, it needs to address the problem of the growth of the system. As the number of ratifications is growing continuously,⁵⁸ more reviews of state reports should be expected. Furthermore, there is a sharp increase in communications,⁵⁹ almost two thirds of which are addressed to the Human Rights Committee. Moreover, the creation of additional specialized treaty bodies is expected in the future.⁶⁰

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

⁵⁸ The ratifications of the treaties increased by 5% from 2013 to 2015. See Status of the human rights treaty body system, SG report A/71/118, 18 July 2016 at para 4.

⁵⁹ In 2012, there were 170 communications, whereas in 2015, the treaty bodies received 307 communications. This amounts to an increase of 80%. See *ibid.* at para 21.

⁶⁰ Currently a drafting process exists for three treaties – rights of elderly persons, rights of peasants, and human rights and transnational corporations. See *Background Paper*, at 2, on the Academic Platform on Treaty Body Review 2020, Geneva Academy <<https://www.geneva-academy.ch/our-projects/our-projects/un-human-rights-mechanisms/detail/16>> accessed 1 August 2017.

4.1 Establishing a new Integrated Treaty Body System (ITBS)

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

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

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

As the ICESCR does not establish a specific treaty, but assigns the UN Economic and Social Council (ECOSOC) with the task of reviewing state reports⁶¹ (the only treaty with such a solution) and the ECOSOC later established a Committee on Economic, Social and Cultural Rights for this purpose,⁶² the ECOSOC should adopt a resolution redirecting this competence to the current Human Rights Committee.

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

Rules for membership of experts in the economic, social and cultural rights in the Human Rights Committee would need to be adopted to ensure their proper representation.⁶³ In this regard, several members of the current Committee on Economic, Social and Cultural Rights should be elected in order to transfer the relevant expertise onto the Human Rights Committee.

⁶¹ Article 16 para 2 (a) of the ICESCR of 16 December 1966.

⁶² ECOSOC Res. 1985/17 of 28 May 1985.

⁶³ For this purpose, the Rome Statute of the International Criminal Court can serve as an example. In its Article 36 para 5, it defines that for the purpose of the election, there should be two lists of candidates.

3. The ‘new’ Human Rights Committee as a permanent body

The reformed Human Rights Committee would become a permanent body of 18 remunerated experts monitoring both the ICCPR and the ICESCR. By means of that, the current Human Rights Committee which in fact functions as a ‘Committee on Civil and Political Rights’ would become a real Human Rights Committee monitoring the whole spectrum of human rights.⁶⁴

4. Specialized treaty bodies to work in chambers

Specialized treaty bodies would stay part-time in their current form. However, due to the growth of the system, they would increasingly work in chambers in order to cope with the workload. It was identified that working in chambers would potentially increase the number of state reports reviewed by 70–80%.⁶⁵

5. Post-sessional meetings to ensure coherence

In order to enhance cooperation and uniform interpretation of human rights by different treaty bodies, ‘post-sessional meetings’ should be established between the integrated Human Rights Committee and the specialized treaty bodies. These meetings would take place on the Human Rights Committee after each session of a specialized committee.

The post-sessional meetings would consist of three parts. First, the chair of a specialized committee (for example Committee on the Rights of the Child) would present the work concluded within the session to the Human Rights Committee. Second, within the membership of a Human Rights Committee, rapporteurs would be established for a topic of each specialized committee and the respective rapporteur (for example Rapporteur on the Rights of the Child) would present the recent work of the Human Rights Committee that is relevant to the respective specialized committee. Third, there would be a dialogue between members of the Human Rights Committee and members of the specialized committee on the relevant developments and legal issues with respect to the human rights in question.

⁶⁴ Two similar proposals were discussed in the past. However, their features differ from the presented proposal in important points, mainly because they did not consider the joined body being permanent. See Scheinin, ‘The Proposed Optional Protocol to the Covenant on Economic, Social and Cultural Rights: A Blueprint for UN Human Rights Treaty Body Reform—Without Amending the Existing Treaties’ (2006), 6 (1) Human Rights Law Review 131. In addition, a combined CCPR/ESCR treaty body was discussed in the San José regional workshop. See *Report of the regional consultation for Latin America*, at 6, available on the Academic Platform on Treaty Body Review 2020, supra n 60.

⁶⁵ GA report, A/67/995 of 16 September 2013 at para 28.

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

6. Synchronization with the Universal Periodic Review (UPR)

As the states would report to the integrated Human Rights Committee on their legal obligations with regard to both ICCPR and ICESCR, the dates of the reviews of state reports by the Human Rights Committee should be synchronized with the UPR.⁶⁶ If there was a five-year cycle, the systems should be organized in such a way that two and half years after the review of a state by the Human Rights Committee, it would engage in a UPR within the UN Human Rights Council. By means of such synchronization, the UPR would strengthen the follow-up to the work of the Human Rights Committee.

In addition, the workload of the permanent Human Rights Committee should be briefly outlined. As a year has 52 weeks, it is possible to count with around 46 working weeks. The committee members would need approximately 35 weeks to deal with their duties with regard to both covenants.⁶⁷ If we add up the individual days of the post-sessional meetings, they would take about four weeks. This allows for around seven weeks a year on top of that when the experts could prepare to review the reports or consider communications. This is, of course, only a rough estimate and a more detailed schedule should be elaborated in this regard.

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

⁶⁶ For more on the complementarity of the treaty body system and the UPR, see Rodley, 'UN treaty bodies and the Human Rights Council' in Keller and Ulfstein (eds), *UN Human Rights Treaty Bodies: Law and Legitimacy* (Cambridge University Press 2012) 320.

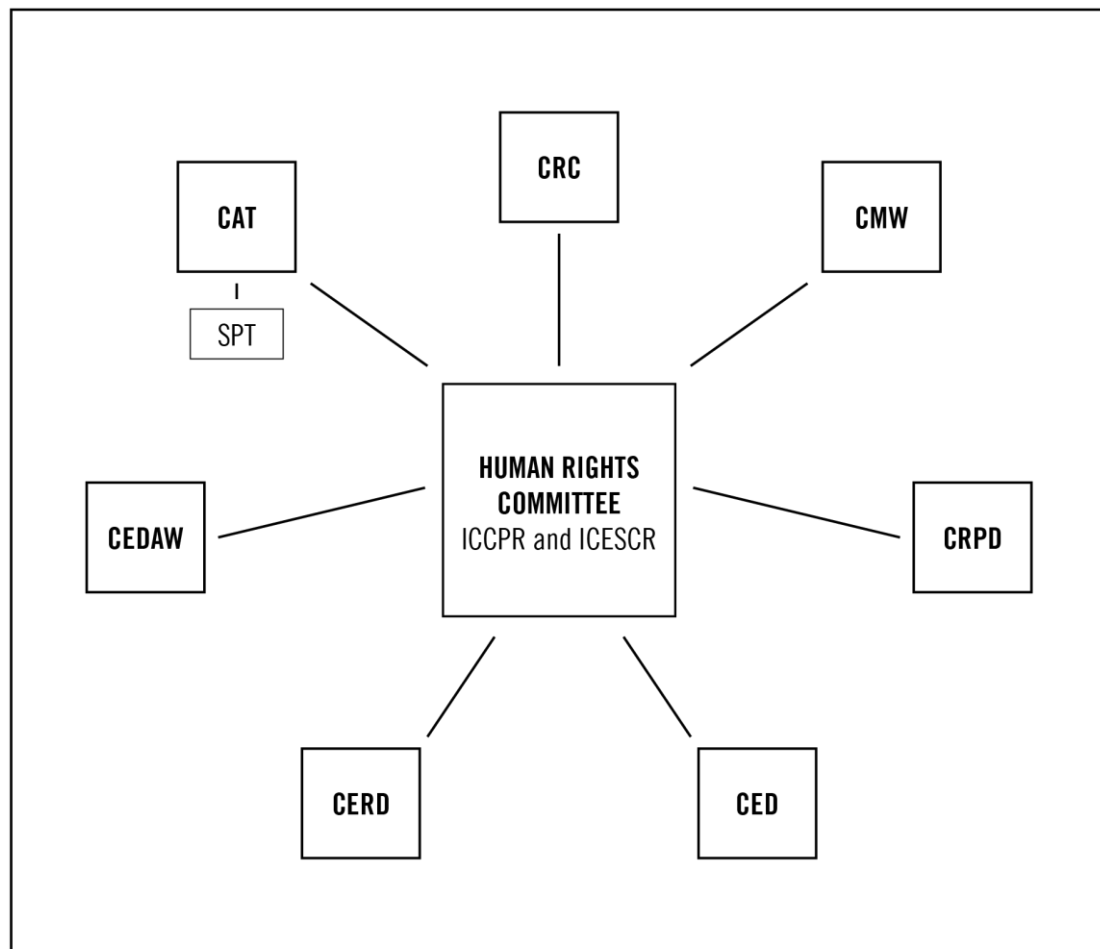
⁶⁷ The number takes into consideration the introduction of the comprehensive reporting calendar. It was counted as a proportion of the committees covering the two covenants, based on the estimate of the OHCHR that after introducing the fixed calendar, the meeting time of all treaty bodies would increase to 124 weeks annually. See *Strengthening the United Nations Treaty Body System*. A report by the United Nations High Commissioner for Human Rights, OHCHR report, A/66/860, 22 June 2012 at 43.

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

Premise: no need for treaty amendments

Requirements for the reform measures to be met

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



Key components of the system

1. Human Rights Committee monitoring both ICCPR and ICESCR
 - Permanent body
 - Experts on both CP and ESC rights
2. Institutionalized cooperation with specialized committees
 - Post-sessional meetings

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

a) States

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

b) Treaty body members

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

c) NGOs

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

d) OHCHR

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

e) Rights holders

The rights holders would benefit from a more streamlined system with a Human Rights Committee operating as a permanent body and thus providing them with more stable protection. The integrated treaty body system would maintain its focus on specific issues,

while at the same time provide for a better functioning, coherent and more visible mechanism at the universal level.

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

First, a legal opinion exists that the Human Rights Committee cannot be entrusted with new powers without amending the ICCPR. In fact this was supported by the UN Office of Legal Affairs (OLA) in the past, when it considered a draft of the Convention against Torture that envisaged the Human Rights Committee as the monitoring body of the convention. OLA expressed the view that for such a move, ICCPR would have to be amended. In 2003, it reiterated this position with regard to the proposed Convention for the Protection of All Persons from Enforced Disappearance.⁶⁸ However, for example Sir Nigel Rodley described the stand of OLA as ‘legally debatable’.⁶⁹

In this regard, we should have a look at examples from regional human rights systems. The European Convention on Human Rights was adopted in 1950 and later, a number of protocols were adopted that provided the system with competence on additional human rights. The American Convention on Human Rights of 1969 added new powers to the already existing Inter-American Commission on Human Rights. And the later Additional Protocol on Economic, Social and Cultural Rights defined new powers both for the commission, as well as for the Inter-American Court of Human Rights established by the American Convention on Human Rights, which contained an amendment provision.⁷⁰ Therefore, supporting the view that adding new competences to an existing body would require the original treaty to be amended according to the respective amendment procedure would be legally formalistic and rigid.⁷¹

⁶⁸ Preliminary non-paper on legal options for a unified standing treaty body, OHCHR <http://www.ohchr.org/Documents/HRBodies/TB/TBS/Legal_options_paper_USTB2005.pdf> accessed 1 August 2017, at paras 29 and 30.

⁶⁹ Rodley, ‘Duplication and Divergence in the Work of the United Nations Human Rights Treaty Bodies: A Perspective from a Treaty Body Member’ (2011), 105 *American Society of International Law Proceedings* 512 at 512.

⁷⁰ See Article 19 para 6 of the Protocol and Article 76 of the American Convention on Human Rights.

⁷¹ Using this argument *ad absurdum*, it could even be argued that providing a treaty body with the responsibility for considering communications by means of an optional protocol would also require a treaty amendment.

Second, it can be argued that as an Optional Protocol to the ICESCR was adopted in 2008 and entered into force in 2013, the Committee on Economic, Social and Cultural Rights also became a treaty-based body. In this regard it is good to mention that the ICESCR entrusts the ECOSOC with the responsibility for reviewing state reports and later the ECOSOC created the Committee on Economic, Social and Cultural Rights for this purpose – therefore the committee was not treaty-based. As the subsequent Optional Protocol to the ICESCR entrusts the Committee on Economic, Social and Cultural Rights with the competence to consider communications,⁷² it may be argued that the ECOSOC cannot refer all powers of such a body to the Human Rights Committee.

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

An example that could serve as a model in this regard is the African human rights system. Since 1967, the regional organization on the continent was the Organization of African Unity with its distinctive organs. Nevertheless, in 2001 it was replaced by the African Union. As the Protocol establishing the African Court on Human and Peoples' Rights was adopted in 1998,⁷³ the text entrusts several powers to the bodies of the 'old' organization.⁷⁴ However, since 2001 it has been interpreted as relating to the corresponding organs of the African Union.

The third legal issue relates to membership. According to the ICCPR, the Human Rights Committee should be composed of nationals to the covenant.⁷⁵ As the ICCPR currently has 116 States Parties and the ICESCR has 114,⁷⁶ there are only a small number of states that would be prevented from nominating their nationals to the integrated Human Rights Committee. However, one of them is China, who signed in 1998, but still has not ratified the ICCPR. This might, nevertheless, present more of a political rather than a legal issue.

⁷² Article 1 of the Optional Protocol to the ICESCR.

⁷³ Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights, 10 June 1998.

⁷⁴ For example monitoring the execution of judgments in Article 29 para 2 of the Protocol.

⁷⁵ Article 28 para 2 of the ICCPR.

⁷⁶ Human Rights Treaties, UN <https://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&clang=_en> accessed 1 August 2017.

Permanent organizational structure does not present any legal obstacle,⁷⁷ and neither does adjusting the periodicity of the state reports.⁷⁸ In summary, it is being argued that it would be possible to establish the new Integrated Treaty Body System without a need for a treaty amendment.

In order to take up such a reform proposal, a comprehensive legal analysis would need to be undertaken, a respective ECOSOC resolution drafted, as well as new Rules of Procedure of the Human Rights Committee.

4.2 Adopting measures to address the identified problems of the system

Apart from the institutional setup, concrete measures need to be taken in order to address eight of the problems that were not tackled within the strengthening process. The weaknesses of the current treaty body system, as identified in Chapter 2, should be reduced or eliminated by the implementation of the proposed measures. The majority of the measures below have already been discussed within the treaty body strengthening process, whereas some are new proposals. Apart from several examples,⁷⁹ they are not dependent on whether the above Integrated Treaty Body System would be implemented. The problems and the proposed measures to address them are the following:

1. Late reporting and non-reporting by states

a) Comprehensive reporting calendar

All treaty bodies should introduce a calendar, according to which all States Parties would have fixed dates for their reviews that would take place even if they did not submit a report. This was the main recommendation by the High Commissioner's report in 2012, which was abandoned within the later intergovernmental process run by the GA.⁸⁰ As currently the states who report in time are in fact reviewed more often than the ones who report late (or not at all), this measure would enable an equal approach towards all States Parties and increase the

⁷⁷ Article 37 para 2 of the ICCPR.

⁷⁸ Article 40 para 1 (b) of the ICCPR.

⁷⁹ Post-sessional meetings, permanent Human Rights Committee monitoring both ICCPR and ICESCR and synchronization with the UPR.

⁸⁰ For more about the proposal, see OHCHR report, A/66/860, 22 June 2012 at 37–47 and 96–98. The measures supported in the report are further discussed in Egan, 'Strengthening the United Nations Human Rights Treaty Body System' (2013), 13 (2) Human Rights Law Review 209.

motivation of states to cooperate with the treaty bodies. In addition, introducing the comprehensive reporting calendar would also help to tackle the backlog of the treaty bodies (problem no. 2).

b) Capacity-building activities for states

As the first results of the OHCHR technical assistance and training on reporting in different regions supported by the GA resolution 68/268 are promising,⁸¹ capacity-building should continue to assist states with their reporting obligations. Furthermore, capacity-building activities for states also contribute to lowering the states' reporting burden (problem no. 3).

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

States should be encouraged to support the establishment of NMRF that will coordinate the state activities on reporting to different human rights bodies, the follow-up and implementation on a national level. For this purpose, the OHCHR can assist with advice and sharing of best practices.⁸² Moreover, establishing the NMRF also strengthens the insufficient follow-up activities (problem no. 7)

2. Backlog of the treaty bodies

a) Specialized committees to work in chambers

In general, introducing the comprehensive reporting calendar would require more time to review the state reports. As it would be difficult for the specialized committees to further extend their meeting time, they would be expected to work in chambers to be able to review the states reports within their current part-time appointments.

⁸¹ SG report A/71/118, 18 July 2016 at para 10.

⁸² National Mechanisms for Reporting and Follow-up, OHCHR
<http://www.ohchr.org/Documents/Publications/HR_PUB_16_1_NMRF_PracticalGuide.pdf> accessed 1 August 2017.

3. High reporting burden on states

a) Simplified reporting procedure for all states

The simplified reporting procedure enables states to provide only one, more focused report, instead of the traditional ‘twofold’ reporting system. All treaty bodies already offer the simplified reporting procedure to the states. However, not all treaty bodies limit the number of questions that they send to the states as a basis for the report and several states still use the traditional system.⁸³ In order to streamline the system, all treaty bodies should limit the number of their questions and use the simplified reporting procedure for all States Parties.

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

b) Harmonized working methods

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

c) Videoconferencing

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

⁸³ Status of the human rights treaty body system. Supplementary information, SG report A/71/118, 18 July 2016 at Annex XIV.

4. Diverging interpretation of the same issues by different treaty bodies

a) Post-sessional meetings

The expertise of the specialized committees is one of the assets of the treaty body system. Therefore, if the Integrated Treaty Body System was implemented, it would be necessary to ensure cross-fertilization between the permanent Human Rights Committee and the specialized treaty bodies. This would be institutionalized by post-sessional meetings that would take place after each session of the specialized committee, where relevant issues would be discussed with the Human Rights Committee members.

In addition, if there was a need to enhance coherence between the mechanisms at the universal, as well as at the regional level, informal annual meetings could be organized with the presence of several representatives of the treaty bodies and of the European, Inter-American and African human rights systems to discuss jurisprudential developments.⁸⁴

b) Human Rights Committee monitoring both ICCPR and ICESCR

In case the Integrated Treaty Body System was taken up, the fact that one permanent body would function as an umbrella mechanism for the whole spectrum of human rights would serve as a safeguard of a coherent interpretation of civil and political, as well as economic, social and cultural rights.

c) User-friendly jurisprudence database

Although in 2015 the OHCHR launched a treaty body jurisprudence database, there has been some criticism regarding its lack of comprehensiveness and practical difficulties with regard to its use.⁸⁵ Therefore, it is advisable to address these issues in order to make the case-law database more user-friendly. In addition, this measure would also strengthen the low authority of decisions on communications (problem no. 6).

⁸⁴ This idea was discussed at the regional workshop in San José. See *Report of the regional consultation for Latin America*, at 16, available on the Academic Platform on Treaty Body Review 2020, supra n 60.

⁸⁵ *Ibid.*, at 10–11.

5. Quality of the treaty body members

a) Independent assessment of candidates

An independent body consisting of former treaty body members should be established to publicly assess the qualifications of treaty body candidates.⁸⁶ This assessment would then provide guidance for the states in order to elect the best candidates. In addition, it would also be possible to organize a platform for elections where states would present their potential candidates in an open public space, as suggested in the High Commissioner's report in 2012.⁸⁷

b) Guidelines for nomination and election of treaty body experts

Ensuring the nomination and then election of the highest quality experts who are independent is in fact the most important factor of the treaty body system. The Addis Ababa guidelines on independence and impartiality elaborated by the chairpersons of the treaty bodies were already adopted or endorsed by eight of the treaty bodies.⁸⁸ However, as the treaties are relatively vague with regard to rules on nomination and election of experts, there is a need to elaborate guidelines that could be analogically drafted by the chairpersons with the support of the OHCHR and that would be used by states as a soft law in order to assess candidates for treaty body membership. The proposed guidelines should include the following criteria to be met by the candidates:⁸⁹

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

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

- Representation of the principal legal systems of the world
- Equitable geographical representation

⁸⁶ Ibid. at 9.

⁸⁷ OHCHR report, A/66/860, 22 June 2012 at 79–80.

⁸⁸ SG report, A/71/118, 18 July 2016 para 66.

⁸⁹ See Article 36 of the Rome Statute of the International Criminal Court of 17 July 1998. In addition, see Articles 21–23 of the 2010 proposal of the Statute of the World Court of Human Rights in Kozma, Nowak and Scheinin, *A World Court of Human Rights – Consolidated Statute and Commentary* (Neuer Wissenschaftlicher Verlag 2010).

- Balanced representation of female and male members
- Proper representation of lawyers with academic or judicial experience

In addition, the following two requirements should be stated:

- One member should not serve for longer than 12 years
- Independent assessment of the candidate should be taken into consideration

6. Low authority of decisions on communications

a) Joint working group on communications

Each treaty body should entrust some of its members who are lawyers and have experience in the relevant human rights case law with the responsibility to sit with other members from different treaty bodies in the joint working group on communications. Such an expert working group would provide high quality preparation of the *views* on individual communications that would then be formally adopted by the respective treaty bodies.⁹⁰

In order to implement the measure, research on the alternatives of the functioning of such a working group needs to be undertaken, the best option chosen and endorsed by the GA. The existence of the working group needs to be integrated into the rules of procedures of the committees. The role of the chairpersons would be important in order to facilitate implementation of this measure. In addition, introducing this measure would also help to tackle the backlog of the treaty bodies (problem no. 3).

b) Prioritizing

Drawing on the experience of the European Court of Human Rights, the working group should consider prioritizing certain types of cases in order to consider them as soon as possible. The prioritization should be triggered if the alleged violation is of a high gravity or of a systemic nature, when the problem could result in a large number of similar violations.⁹¹

⁹⁰ OHCHR report, A/66/860, 22 June 2012 at 69–70. The proposal is more closely discussed in Egan, *supra* n 80 at 229. In addition, this idea was discussed at the regional workshop in Dublin. See *Report of Dublin Workshop*, at para 27, available on the Academic Platform on Treaty Body Review 2020, *supra* n 60.

⁹¹ *Ibid.* at para 16.

7. Insufficient or non-existent follow-up procedures

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

The follow-up of the treaty bodies should be significantly strengthened by introducing an HRC Special Rapporteur on follow-up to the work of the human rights treaty bodies. The HRC Special Rapporteur would communicate with committee-specific rapporteurs on follow-up in each treaty body and would be required to elaborate annual reports on follow-up to the work of the treaty bodies. As a result of that, one reader-friendly report would be introduced that would serve as a reliable source of information on follow-up with regard to different states.⁹²

In this regard, it is interesting to point out that in the European system of human rights protection, a political body (Council of Ministers) is entrusted with supervision of the execution of judgments.⁹³ The peer pressure in this body relatively successfully supports compliance by states with the mechanism. The report of the HRC Special Representative on follow-up to the work of the treaty bodies should be presented and discussed during the HRC session under one of its agenda items, or as a new separate agenda item.

b) Harmonized follow-up procedures

With regard to state reports, introducing the comprehensive reporting calendar would enable regular follow-up within the subsequent review. However, in relation to some particular pressing issues, it proved useful to request that a state party reply on measures taken already after one year from the review. In general, not all treaty bodies have introduced formal follow-up procedures yet.⁹⁴ Therefore, with the help of the OHCHR the chairpersons should coordinate efforts with the aim of achieving common follow-up procedures within all relevant treaty bodies.

⁹² The options of finding synergies between the treaty bodies and the HRC mechanisms were discussed in the past. See O’Flaherty and O’Brian, ‘Reform of UN Human Rights Treaty Monitoring Bodies: A Critique of the Concept Paper on the High Commissioner’s Proposal for a Unified Standing Treaty Body’ (2007), 7 (1) Human Rights Law Review 141 at 163. Furthermore, see Egan, *supra* n 80 at 237. In addition, *Report of Dublin Workshop*, at para 26, available on the Academic Platform on Treaty Body Review 2020, *supra* n 60.

⁹³ Article 46 para 2 of the ECHR.

⁹⁴ Six committees have some form of a follow-up procedure. See Follow-up to Concluding Observations, OHCHR <<http://www.ohchr.org/EN/HRBodies/Pages/FollowUpProcedure.aspx>> accessed 1 August 2017.

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

c) Grading systems

With regard to follow-up, the Human Rights Committee and the Committee against Torture developed grading systems in order to evaluate the level of implementation of the selected recommendations.⁹⁵ Introducing such grading systems in all treaty bodies should be part of the harmonized follow-up procedures. It is important to emphasize that the respective follow-up procedures including grading the level of implementation should not concern only concluding observations, but also communications.

d) Synchronization with UPR

In case the Integrated Treaty Body System was taken up and the Human Rights Committee would monitor both covenants, the impact of the review should be strengthened by synchronizing it in the way that the UPR would take place right between the reviews of the particular state by the Human Rights Committee. This would provide additional follow-up on the implementation of the committee's recommendations.

8. Low awareness of the system

a) Permanent Human Rights Committee

If the Integrated Treaty Body System was implemented, the Human Rights Committee monitoring the whole spectrum of human rights would create a visible permanent human rights body at the universal level that would be more comprehensible for media, lawyers, as well as rights holders.

⁹⁵ Note by the Human Rights Committee on the procedure for follow-up to concluding observations, CCPR/C/108/2, 21 October 2013 at para 17. For comparison of the grading systems of the Human Rights Committee and the Committee against Torture, see Ploton, 'The development of grading systems on the implementation of UN treaty body recommendations and the potential for replication to other UN human rights bodies', International Service for Human Rights <https://www.ishr.ch/sites/default/files/documents/tb_grading_systems_their_replicability_to_other_un_hr_bodies.pdf> accessed 1 August 2017.

b) Webcasting

As the aim of the Integrated Treaty Body System must be to serve the rights holders in the whole world, its public meetings need to be webcasted and archived. For this purpose, use of the relevant technology needs to be supported and properly financed.⁹⁶ This enables all relevant stakeholders including NGOs and media to better understand and inform about the work of the treaty bodies.

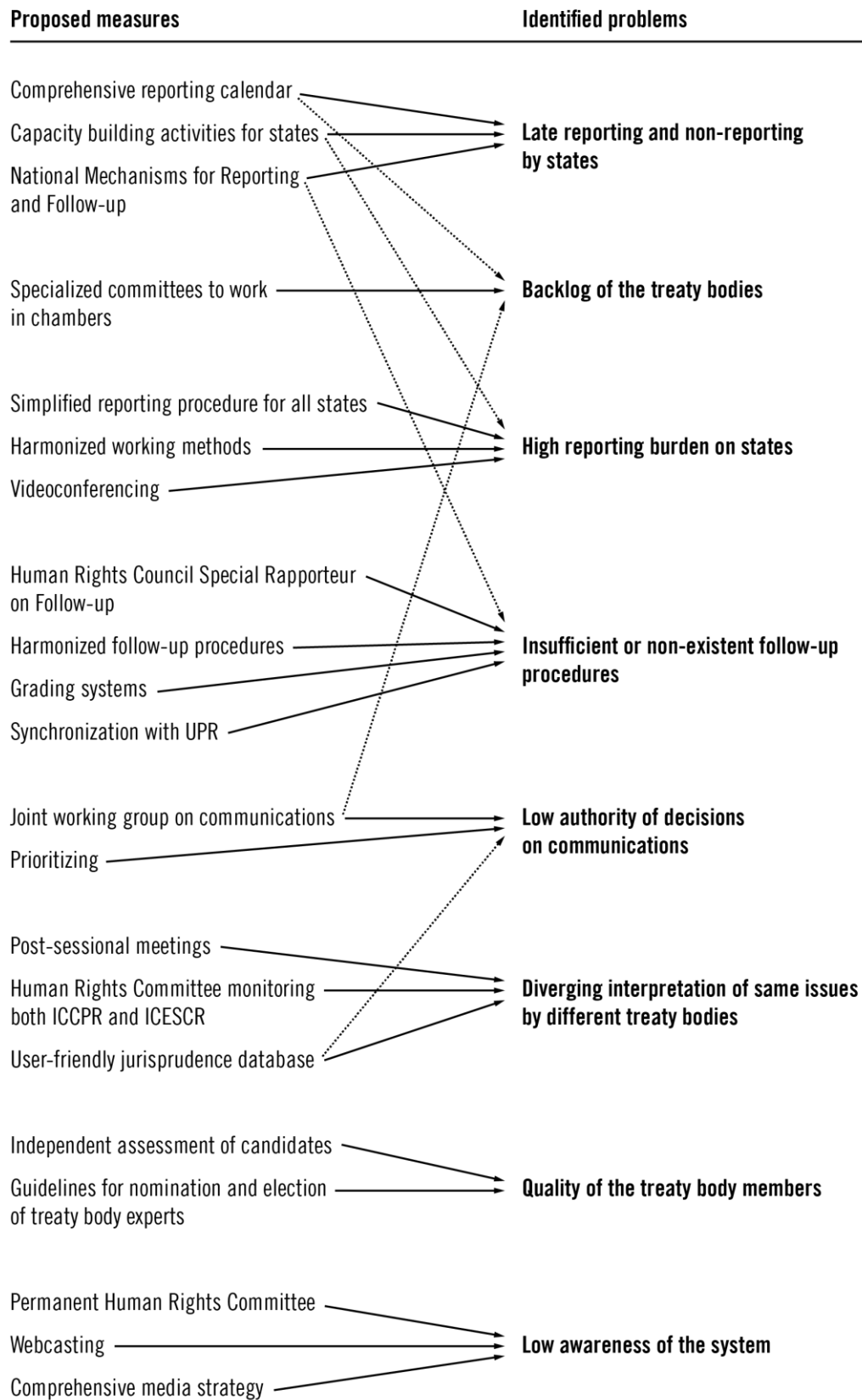
c) Comprehensive media strategy

With regard to visibility, it is necessary to admit that due to its complexity, the system remains unknown to a large extent. However, if the reform efforts are taken seriously, it can provide individuals with valuable protection of their rights. For this purpose, the OHCHR should consult a professional marketing company in order to develop a media strategy with the aim of increasing the visibility and awareness of the system.⁹⁷ The analysis should use the full potential of the role of press releases and the use of social media in order to inform and involve the younger generation.

⁹⁶ Annual costs for webcasting should amount to approximately 530 000 USD. See. SG report (supplementary information), A/71/118 of 18 July 2016 at Annex XX.

⁹⁷ This should include an analysis of how to make the OHCHR web of the treaty bodies more user-friendly, including the possibility of establishing a separate webpage of the treaty body system.

Graph 2: Measures to address the problems



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

The current costs of the system amount approximately to 50 million USD.⁹⁸ Within the proposal for the USTB, it was calculated by the OHCHR that a permanent body of 25 experts would cost 7.7 million USD a year.⁹⁹ As the permanent Human Rights Committee would have only 18 members, the difference would enable experienced legal assistants to be financed, who would support each member. In addition, there would be savings in travel and DSA of the two committees that would proportionally amount to around 2.5 million USD.¹⁰⁰ Out of these savings it would be possible to finance the post-sessional meetings, some additional OHCHR staff, as well as the webcasting.¹⁰¹

With regard to the costs of the comprehensive reporting calendar, although the first OHCHR estimate was relatively high, it was later specified that if a number of measures were respected (strict adherence to page limitations, simplified reporting procedure, working in chambers etc.), the additional costs of implementing the fixed calendar would amount to 12.5 million.¹⁰² The sum of these three items – current costs of the system, remuneration of Human Rights Committee experts and the fixed calendar – amounts to 70.2 million USD.

A new building might be needed for the Human Rights Committee, as the current premises of Palais Wilson in Geneva might not sufficiently accommodate a permanent body. In order to cover such costs, nevertheless, extra-budgetary funding might be involved if several like-minded states were willing to support the reform. In sum, it should be taken into account that the costs of the reformed system appear to be somewhere between 70 and 80 million USD.

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

⁹⁸ Broecker and O’Flaherty, *supra* n 35 at 19.

⁹⁹ Concept Paper of the High Commissioner’s Proposal for a Unified Standing Treaty Body, OHCHR report, HRI/MC/2006/2, 22 March 2006 at 30.

¹⁰⁰ Broecker and O’Flaherty, *supra* n 35 at 19 and 22.

¹⁰¹ Annual costs for webcasting would amount to approximately 0.53 million USD. See SG report, A/71/118, 18 July 2016 at Annex XX.

¹⁰² *Questions and answers on the Comprehensive Reporting Calendar*, OHCHR, November 2012, at OHCHR <<http://www.ohchr.org/Documents/HRBodies/TB/HRTD/QAReportingCalendar.pdf>> accessed 1 August 2017, at 10–11.

If there was an opposition to the proposal solely due to the need for additional resources, further page limitations of the state documentation could be considered or their differentiation according to certain criteria (for example covenants and specialized treaties), as well as moving the treaty body system from Geneva to Vienna.¹⁰³ In this regard, it must be stated that if the planned review in 2020 does not adopt effective measures, it would mean a resignation on the willingness to have a well-functioning treaty-based human rights system at the universal level. Therefore, it is suggested that the proposal for creating the Integrated Treaty Body System be dealt with in the planned treaty body review 2020.

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

- Are there any major legal obstacles to referring the responsibility of monitoring the ICESCR to the Human Rights Committee? In the case of a positive answer, can they be overcome without a need for treaty amendments?
- How to best organize the internal functioning of the Human Rights Committee that would monitor both covenants, including its meetings with specialized committees?
- How to best organize a joint working group on communications without the need for treaty amendments?

In the long-term perspective, it is suggested that in after six years of the operation of the Integrated Treaty Body System – the same period as from the adoption of the GA resolution in 2014 until the review in 2020, the functioning of the Integrated Treaty Body System should be assessed and and if appropriate, the GA should decide on further action. Therefore, three options for a long-term solution should be mentioned. First, the Integrated Treaty Body System would provide for a well-functioning long-term solution, therefore it would operate further, potentially with some further improvements. Second, in case there was a need for further integration, the creation of the Unified Standing Treaty Body (USTB) could be considered.¹⁰⁴ However, in such a case the highly likely need for amending the treaties would represent an important legal obstacle.¹⁰⁵ Third, in case of a support for strengthening the

¹⁰³ However, in this regard it is necessary to point out that the Article 37 para 3 of the ICCPR states that the committee shall normally meet at the headquarters of the UN or at the UN Office in Geneva.

¹⁰⁴ OHCHR report, HRI/MC/2006/2, 22 March 2006. See also Morijn, 'Reforming United Nations Human Rights Treaty Monitoring Reform'. (2011), 58 (3) Netherlands International Law Review 295 at 328.

¹⁰⁵ See the OHCHR report, HRI/MC/2006/2, 22 March 2006 at para 64. For more detail, see the Preliminary non-paper on legal options for a unified standing treaty body, supra n 68.

enforceability of the decisions on individual complaints, the proposal to create a World Court of Human Rights could also be considered in the future.¹⁰⁶ As Manfred Nowak and Martin Scheinin suggest, such an institution would take over the powers of the treaty bodies to consider communications and it would exercise competence to decide on future individual complaints in a legally binding manner.

Nevertheless, for the 2020 review we need to admit the realities of the system, as well as the low support of the states for far-reaching solutions. The treaties establishing the committees are very difficult to amend.¹⁰⁷ Therefore, the question for the review in 2020 is not how we could ideally set up the organizational structure. The practical question now is how we can achieve the maximum under the conditions that the current treaties (and the support of states) allow. It is suggested that an Integrated Treaty Body System should be created that would enable the treaty bodies to handle the steadily rising workload, as well as to address the coherence challenge. It is being argued that under the condition that it would not require treaty amendments, this reform would significantly improve the functioning of the treaty body system while maintaining the focus on specific human rights areas.

Conclusion

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

The paper identified and explained nine major problems of the treaty body system. Furthermore, it presented the results of the treaty body strengthening process in form of the GA resolution 68/268 of 2014. As after two years the SG published a ‘progress report’ on the

¹⁰⁶ Kozma, Nowak and Scheinin, *supra* n 89.

¹⁰⁷ See for example Article 51 of the ICCPR.

treaty body system, including the state of implementation of the GA resolution, the article further assessed to what extent the measures adopted helped to address the long-term weaknesses of the treaty body system. It argued that out of the nine major problems, only one resulted in a considerable improvement (high costs of translations), two resulted in a limited improvement (high reporting burden on states, backlog of the treaty bodies) and six remained basically unaddressed.

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

To meet these criteria, establishing a new Integrated Treaty Body System (ITBS) was suggested. The proposed system would consist of a permanent Human Rights Committee that would monitor both the ICCPR, as well as the ICESCR.¹⁰⁸ The reformed body would integrate experts on civil and political, as well as on economic, social and cultural rights in one committee, whose members would be properly remunerated and exercise their functions as a full-time job. The permanent Human Rights Committee would thus monitor the whole spectrum of human rights.

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

Apart from the institutional shape of the reform, the last chapter also presented a set of reform measures to be supported in 2020. They are, in principle, not dependent on the reform suggested above. In this regard, it is important to emphasize that each of these measures is

¹⁰⁸ For this purpose, the ECOSOC would need to redirect the competence to monitor the ICESCR to the Human Rights Committee. See Article 16 of the ICESCR and the ECOSOC Res. 1985/17, 28 May 1985.

directly linked to one or more of the eight major problems of the treaty body system in order to reduce or eliminate them. The measures contain some that were duly discussed already within the strengthening process, for example introducing the comprehensive reporting calendar, working in chambers or creating the joint working group on communications. Furthermore, some of the proposed measures are relatively new ideas and it is suggested that they are properly discussed in the near future, for example guidelines for nomination and election of treaty body experts, grading the level of implementation of selected recommendations, or appointing a rapporteur of the Human Rights Council to strengthen the follow-up to the work of the treaty bodies.

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