

Expert Workshop on  
Reform of United Nations  
Human Rights Treaty Monitoring Bodies

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## Report

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***Workshop Convened with the support of  
The Government of Ireland  
and  
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## Acronyms

CAT	Committee Against Torture
CEDAW	Committee on the Elimination of Discrimination against Women
CERD	Committee on the Elimination of Racial Discrimination
CoE	Council of Europe
CHR	Commission on Human Rights
CMW	Committee on the Protection of the Rights of All Migrant Workers and Members of their Families
CRC	Committee on the Rights of the Child
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ESC	European Social Charter
HRC	Human Rights Council
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
NGOs	Non-governmental Organisations
NHRIs	National human rights institutions
OHCHR	Office of the High Commissioner of Human Rights
TMB	Treaty monitoring body
UK	United Kingdom
UN	United Nations
UTMB	Unified Treaty Monitoring Body

## **1. Introduction**

An Expert Workshop on Reform of UN Human Rights Treaty Monitoring Bodies (TMBs) was convened by the University of Nottingham Human Rights Law Centre and held at the Senate Chamber of the University of Nottingham on 11-12 February 2006. The workshop benefited from the generous financial support of the Irish and United Kingdom Governments.

The workshop was organised following the call made by the UN High Commissioner for Human Rights' 2005 *Plan of Action: Protection and Empowerment* for the creation of a unified standing treaty body. Its primary purpose was to consider strategies and pathways towards further reform of the TMB system, in light of the High Commissioner's proposal and other current reform initiatives.

The workshop brought together TMB experts, diplomats, civil society representatives, academics and personnel of the Office of the High Commissioner for Human Rights (OHCHR). Discussion took place in a series of plenary debates, introduced by comments from selected panels of participants, and three break-out sessions. Chatham House Rules applied.

This report seeks to capture the range of discussion at the workshop and reflect the spectrum of views expressed. The sometimes colloquial forms of expression have been retained in order to better reflect the lively nature of the debate. The report does not draw conclusions or make recommendations. Though completed following consultation with workshop panellists, the report remains an output of the University of Nottingham Human Rights Law Centre.

A List of Participants is at Annex I. The workshop's Agenda is at Annex II. An Informal Background Paper produced by the University of Nottingham Human Rights Law Centre is at Annex III, and Annex IV summarises two presentations given at the workshop on recent reforms to rights protection bodies in the UK and within the Council of Europe system.

On behalf of the University of Nottingham Human Rights Law Centre, I sincerely thank the participants and panellists of the workshop. We express our appreciation to the Governments of Ireland and the United Kingdom for their generous financial support. We also thank the Workshop Secretariat, particularly Ms Claire O'Brien who provided invaluable support for preparation of background papers and this Report.

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## **2. Treaty monitoring bodies in the service of the implementation of human rights**

Acknowledging what TMBs have already achieved must be the first step in developing proposals for further reform of the UN treaty monitoring system. TMBs were not originally intended by States Parties to have 'teeth'. Yet, over their lifespan, TMBs' contribution to global human rights accountability, and the support they can provide to States in national-level human rights implementation, has gradually strengthened. By progressive refinement and innovation, TMBs have positively developed, for example, systematic review of compliance with human rights treaty obligations via the State reporting process; their interpretation of human rights, for instance, through General Comments and determination of individual complaints; and their promotion of human rights awareness. These, and other achievements within the UN human rights treaty system, need to be more widely communicated.

Moreover, the diversity and specificity that have emerged through TMB practice and, in particular, under the specialist UN human rights treaties (International Convention on the Elimination of Racial Discrimination (CERD), Convention on the Elimination of Discrimination Against Women (CEDAW), Convention on the Rights of the Child (CRC), Convention Against Torture (CAT), and the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW)) have enriched human rights protection within the UN framework and beyond. Any reform of the TMB system should not endanger this specificity, nor jeopardise the depth and quality of protection it currently helps to secure for rights-holders in different spheres.

However, TMBs today face problems that are preventing their full potential to support national human rights capacity and accountability from being realised.

First, information and coordination gaps impede TMB engagement with the wider network of actors whose concerted efforts are required for effective national implementation, including OHCHR field offices and UN specialised Agencies, State-level public administrations, national human rights institutions (NHRIs), global and national NGOs. In addition, in most cases, TMBs are neither sufficiently nor systematically apprised of each other's insights and efforts at country-level.

Variable quality and effectiveness in the review process constitute a second area of challenge. At the input stage, the variety of procedural requirements imposed by the existence of seven different TMBs can act as a barrier to access and participation by States and civil society alike. In the typical case, dialogue between TMBs and State representatives in the context of reporting needs more extensive advance preparation and much sharper focus.

The major outputs of the reporting process, Concluding Observations, are often insufficiently detailed to give national Governments and civil society the actionable directives they need to improve human rights practice in concrete ways. Neither are Concluding Observations reliably integrated with parallel programmes of other UN or regional human rights entities. For the most part, continuity of TMB engagement with individual States across reporting cycles is also poor.

Despite improvements to working methods introduced by individual TMBs, and an impetus towards harmonization across treaty bodies in recent years, at the system level TMBs' capacity to agree on and achieve coordinated change remains restricted. If cross-TMB measures are approved, the pace of their implementation is often 'geological'. Even small, apparently routine improvements, such as advance

publication of Lists of Issues and TMB meeting schedules have remained unimplemented, notwithstanding repeated recommendations made over many years.

Chronic resource shortfalls are clearly implicated in a number of these deficiencies. The OHCHR Secretariat budget falls far below those of other treaty systems, such as the Council of Europe. The part-time, unremunerated nature of service on TMBs poses another significant constraint. Equally, States' political commitment – of fundamental importance to the TMB system's success – cannot always be assured.

Augmenting TMB resources, enhancing TMB appointments, and reinforcing States' political engagement must remain key targets for future campaigning and advocacy efforts. However, past and current experience can be seen as suggesting that a fundamental structural change of the TMB system as a whole may be needed if the quality and efficiency of its activity, and the contribution it makes to building national human rights capacity and empowering rights-holders, are to be further enhanced.

## **2.1 Specific challenges facing the current system**

National human rights implementation is a never-ending process and requires the involvement of a variety of actors. TMB review, therefore, needs to become more deeply and systematically integrated, with both the initial phase of in-State report preparation and a sustained and holistic follow-up process.

Changes are needed to enhance TMBs' accessibility to civil society. At present, many national-level NGOs are effectively excluded by the complexity and variety of TMB procedures. Greater outreach to currently marginalized constituencies (such as indigenous peoples) is required, along with proactive inclusion measures (for example, for persons with disabilities).

Many less developed countries and small countries face obstacles in preparing TMB reports. Technical assistance therefore needs to be made more widely available, with greater flexibility to cope with such States' diverse needs.

Ensuring that dialogue in the reporting process is constructive must be another core task. Committed efforts by States, or entities within States, such as NHRIs, towards reporting and implementation should be positively acknowledged. Engagement with TMBs has the capacity to confer global recognition on national level actors for endeavours to implement and promote human rights, and this can be significant in nurturing national human rights constituencies. Such engagement may also promote greater awareness and discussion about human rights inside States. However, consistency, and appropriate use of information received from all sources, remains crucial to TMBs' overall credibility.

Concluding Observations urgently need to be made more focussed and concrete so that their recommendations are more meaningful for national administrations. Greater 'actionability' might stimulate a higher profile for Concluding Observations in global media as well as in public discussions at the national level. In turn, this ought to assist in raising currently low levels of public knowledge about TMBs and the UN human rights system.

Direct engagement with national actors is needed to instil deeper respect for TMB determinations under communications procedures. To date, compliance (for example, by national judiciaries) has frequently been delayed and/or incomplete.

## **2.2 Specific challenges for current reform efforts**

Contemporary proposals to reform TMBs must take into account a number of important contextual factors.

First, *Strengthening the United Nations and In Larger Freedom* identified TMB reform as an explicit goal. In addition, however, they suggested new agendas and priorities for UN bodies in general, for example, in light of the Millennium Development Goals. One important question, therefore, is how TMB reform should be designed so that it can both support, and draw strength from, wider UN reform. Is there potential for example, to capitalise on these initiatives' momentum, in order to reinvigorate attitudes and efforts towards TMB reform that have for years been static - and which threaten to remain so even now?

A major component of wider reform to the UN human rights system, the proposed establishment of a Human Rights Council (HRC) will inevitably impact on TMBs. Reflection is therefore needed on how the respective objectives and performance of HRC 'peer review' and TMB review can be mapped and related in future. One obvious goal would be ensure that there are synergies between these processes whilst avoiding duplication and overlap.

The effects of general trends in human rights protection on TMBs must also be considered. As the level of ratification of the UN human rights treaties tends towards universality, it can be argued, for example, that it is now appropriate to establish a unified standing treaty body.

Different scenarios for the future evolution of UN TMBs' 'competitor' bodies, such as regional human rights bodies, but also inter-State and transnational legal systems with inherent human rights competences, such as the ICJ, must be deliberated. Likewise, the possibility of novel institutions should be envisaged, such as a World Court on Human Rights with binding jurisdiction over communications under the UN treaties, and with capacity to issue Advisory Opinions.

## **3. Identifying TMB reform options: principles and analysis**

With these issues in mind, the projected establishment of two new treaty bodies (to monitor future treaties on disappearances and the rights of persons with disabilities) may be seen as providing an opportune moment for a strategic choice: between undertaking 'structural' reform to the TMB system, or maintaining the current trajectory of less-ambitious 'technical' reform inside the existing institutional frame.

However, to identify and understand different TMB reform options, and to be able to exercise a fully informed and rational choice between them, new analysis and transparent evaluation is needed, on a number of issues.

Both national human rights implementation and the distinctive role of the TMB system in achieving it must be precisely defined. Self-evidently, this definition must take full account of functions already or better performed by other UN human rights entities, such as the Special Procedures, and actors beyond the UN, including NHRIs, NGOs, civil society, and regional protection systems.

Second, as the overall objective of reform is to go *beyond* the level of human rights protection currently achieved by TMBs, and not to dilute it, the positive qualities of existing TMB structure and practice must be assessed, so they can be safeguarded

and strengthened. An explicit commitment that reform will not retreat from existing levels of protection – in other words, a commitment to *non-regression* – could act as a polestar in designing and implementing reform. It could also serve as an important assurance for stakeholders.

Third, a sober assessment is needed of past and live TMB reforms to ascertain in which areas they have added value, in terms of supporting national human rights implementation and delivering benefits to rights holders. In almost all cases, previous reforms have been ‘technical’ rather than ‘structural’ (consider, for example, unification of OHCHR Secretariat support, parallel scheduling of TMB meetings, and reporting harmonization). Surveying the impacts of such measures could thus provide an important foundation for evaluating whether another wave of ‘technical’ reform could yield further advantage.

In all cases, the political dimension of reform must also be assessed. A single TMB, by concentrating resources and expertise, might enjoy greater authority and prominence with States. An alternative viewpoint would be that a better response, in terms of State compliance, implementation, and awareness, results from the more widely dispersed set of ‘pinpricks’ that separate TMBs produce.

Overall, it must be accepted that any single reform plan is unlikely to be able to answer all the shortcomings of the present system. Nor will any particular model meet *all* the risks posed by departing from the status quo. All parties to reform must therefore be prepared to engage in open-minded deliberation, and compromise, in the interests of constructing a system that is ultimately better geared to the diversity and needs of rights-holders.

Lastly, neither debate about TMB reform, nor negotiation about the implementation of ‘transformational’ change, if that is the route selected, can be allowed to forestall technical improvements already underway, or that are immediately achievable. By the same lights, all parties to reform must be categorical that, pending decisions on large-scale change, no ‘go-slow’ or suspension of reporting or other State obligations under UN human rights treaties can be entertained.

## **4. Major reform options**

### **4.1 Structural reform**

A unified standing treaty body (UTMB) is one option. Its potential benefits include enhanced coordination in information gathering and follow-up, more systematic prioritisation, and greater authority inside the UN system and beyond.

Turning to the internal organisation of a unified treaty monitoring body (UTMB), a single panel could be established. On one view, such a scheme might best achieve coherence across TMB operations. It has also been suggested that even at present Committees under the two general UN treaties (ICESCR and ICCPR) sometimes issue more detailed, actionable recommendations on specific rights in their Concluding Observations than do the specialist treaty bodies themselves. Taking this into account – and to anticipate one criticism applicable to UTMB models in general - it may be argued that consolidation does not necessarily incur a less specific mode of human rights protection.

In light of existing TMBs' experiences, however, a single panel might be less efficient than a chamber-based structure. Under this option, the different chambers of a UTMB could each be given comprehensive competence, covering all UN human rights treaties; a treaty-specific competence; a cross-treaty thematic competence (grouping rights, for example, as does the European Charter of Fundamental Rights); or competence with a functional basis so that, for instance, different chambers are given responsibility for individual communications and/or follow-up. Additionally, a UTMB Follow-Up Unit, if established, could produce a systematic record of all TMB recommendations to any given State, thus maintaining a clear basis for integrated action by State authorities, civil society organisations, and UN bodies to achieve them.

By permitting a concentration of specialist expertise, functionally-based chambers might promote quality in the performance of TMB activities, such as adjudications under treaty body communications procedures. At the same time, it may be suggested that functional chambers would forego the benefits that TMBs currently derive from their members' simultaneous engagement in both promotion and implementation activities. Arguably, this drawback might be mitigated, at least in part, by an appropriate revision of TMB membership criteria and election processes.

To ensure efficiency, any model based on separate chambers or panels must however guarantee that plenary approval for decisions taken by such subsidiary bodies be readily obtainable; alternatively, the requirement to obtain it should be dispensed with.

A range of options short of complete unification can also be canvassed. For instance, a standing Executive Bureau, comprising members of existing Treaty Committees, each retaining a discrete identity and mandate, could be established.

Alternatively, partial unification could aggregate the execution of particular TMB functions, such as determination of communications, into new structures. On this basis, for example, a Treaty Implementation Committee responsible for follow-up could be established. By contrast, it may be suggested that the HRC's peer review process will become the 'natural home' for follow-up action, on the lines of the Council of Europe's Council of Ministers. It might further be argued, HRC peer review might eventually assimilate TMBs' follow-up role. However, it must be acknowledged that TMBs' independent expert status has in general served to insulate their activities from politicisation, which may be thought a strong reason for retaining the follow-up function within a single TMB.

With specific reference to partial unification models that would shear away TMB communications procedures, thus creating a 'bifurcated' system of adjudication and review, two further questions are raised. First, where should responsibility lie for interpretation of the human rights treaties, including the elaboration of General Comments? And second, would a single treaty adjudications committee, if established, be given binding jurisdiction? While the latter would increase effectiveness and be likely to benefit rights-holders, it might plausibly also attract opposition from States.

As a third option, different TMBs' activities on cross-cutting themes could be consolidated. As with all proposals for partial unification, however, such a model must convincingly answer the charge that it fails to match the efficiency and coordination gains of complete unification while nonetheless incurring a comparable risk of loss of diversity in protection.



Without any consolidation of TMBs or their functions, a single entry point for NGOs and other parties, such as NHRIs, could be established. This proposal aims to respond to concerns about loss of specificity, as well as the practical question of whether the members of any one TMB are equipped with the expertise necessary to justify absorption of responsibilities under additional human rights treaties. In line with other partial unification models, though, it can be suggested that a single entry point might be as complicated to implement as unification, while offering less significant gains. Arguably, recent experiences in harmonizing TMB working methods demonstrate the difficulty in reality of harnessing TMBs' potential to act as a 'unified system' while as decision-making bodies they continue to lead 'separate lives'.

Yet, it may still be thought that, without altering current institutional arrangements, greater convergence in TMB working methods and coordination of priorities is possible and might deliver concrete benefits. If this is accepted, establishing a Permanent Bureau of TMBs (perhaps building on the Special Procedures Coordinating Body model) could be considered. By meeting inter-sessionally, such a body might help to quicken the pace of existing reforms. But by increasing attendance requirements, any proposal for a Permanent Bureau would need to address issues of remuneration of TMB members.

As to the functions of a reconfigured TMB system, one view is that structural reform also presents an opportunity for the treaty monitoring system to incorporate, and further develop, innovative practices emerging within the TMB system (such as preventative field visits under CAT's Optional Protocol) and by other UN human rights entities (including inquiries, urgent action and early warning procedures). Others, however, caution against duplicating in TMBs modalities of human rights implementation that are already embodied elsewhere in the UN system, or in other international, regional or national settings. From this viewpoint, TMB 'mission creep' and fresh overlap between TMB activities, and those of bodies such as OHCHR, ICRC, ICC, and NHRIs, are to be avoided.

Whatever its overall architecture, any revised TMB framework must possess the flexibility to accommodate new specific human rights instruments given the likelihood that these will continue to be drafted. Proposals for a unified treaty body, for instance, could provide for Committees under any new UN human rights instruments to enjoy a period of free-standing existence before their subsequent inclusion in a single TMB. In this way, such new instruments might be guaranteed a strong identity and specific normative base, while the overall efficiency and effectiveness of the system would equally be safeguarded.

Finally, to reiterate, all proposals recommending structural reforms must build on the achievements of the treaty monitoring system to date, and serve to strengthen the quality, effectiveness and authority of the TMB process.

## **4.2 Modalities for reform**

Most of the 'structural' reform options discussed above would be highly likely to require amendment of the relevant UN human rights treaties. Though in principle, treaty amendment could deliver the fastest and most elegant TMB reform, it must also be recognised that the necessary agreement of States Parties may in practice be impossible to achieve. This consideration applies with equal force to two other potential avenues for legal change. First, a short amending Protocol, reallocating certain TMB functions to a newly consolidated body or bodies could be promulgated. Second, the human rights treaties themselves could be amalgamated. The latter

option, it has been suggested, could be implemented in such a way as to avoid affecting the substance of protected rights in any way. As a third route, a meeting of States Parties to the UN human rights treaties could be convened and an amendment proposed, this time with votes allocated according to the number of each State's treaty ratifications. Whether all States would find this supportable as a mechanism for legal change may, however, be questioned.

If amendment of the human rights treaties is pursued, one view is that the opportunity should also be seized to make subsequent treaty amendment easier. This, it can be argued, would confer greater flexibility and responsiveness on the TMB system overall. One possibility in this context might be to separate out the treaties' substantive and procedural elements, establishing new, less demanding requirements for alterations to the latter, while preserving the 'sanctity' of the former.

The possibility of undertaking reform by means of an action of the General Assembly might also be considered. For instance, a General Assembly resolution might serve to establish a cohort of TMB members as a single pool from which individual panels would be selected on a rotating basis. While this approach may have the merit of avoidance of the need to formally dissolve existing TMBs, it may at the same time be queried whether a treaty body formed on the basis of a General Assembly resolution would possess a sufficiently authoritative and impartial foundation.

Even if, on balance, it is thought unwise to seek change at treaty level (on grounds that the likelihood of success is slim, while the risks of opportunistic exploitation are high) certain structural reforms could still be introduced. A single Treaty Committee could conceivably be established *de facto* by means of changes to TMB Rules of Procedure. In line with the current Inter-Committee Meeting such a "Committee" could draw equal numbers of members from each existing Committee, and might assemble twice-yearly. Alternatively, CESCR, as the legally 'least-protected' Committee (being established by a resolution of ECOSOC, rather than by treaty) could be merged with the Human Rights Committee.

Whether reform proceeds via means of treaty amendment, alternative legal measures or merely administrative reorganisation, an analysis of the full range of potential reforms, the different pathways to their achievement, and projected time schedules in respect of each, should be produced and disseminated. To accompany this, an evaluation of the risks and opportunities carried by the different reform options should be undertaken. In addition, and to the extent possible, the different components of reform should be severable, so that stalemate on any particular issue does not block progress on all fronts. Only on the footing of such analysis and its wide dissemination can the overall reform process be rendered transparent and legitimate.

### **4.3 Technical and administrative action**

Certain improvements to TMB processes and practice, many of which are widely supported, can be introduced immediately and without legal change.

With respect to harmonization of TMB working practices, the Expanded Core Document and Harmonized Reporting Guidelines should be concluded without delay. Their adoption by treaty bodies and implementation by States should be vigorously promoted – for instance, through technical assistance, and individual States acting as 'pathfinders' by sharing experience and lessons in their introduction and use. TMB petitions groups can also be brought together to coordinate their approaches. As CEDAW's location poses an obstacle to its involvement in joint-working, the requisite

steps should be taken to relocate its meetings and to transfer responsibility for its support to OHCHR without further delay.

To enhance the effectiveness of TMB monitoring and review, mechanisms could be established to obtain systematic feedback from States and other actors, for instance, on the usefulness of different types of Concluding Observations. Such information might feed into an ongoing process to actively evaluate TMB actions. In this regard the establishment of an OHCHR Evaluation Unit is noted with interest.

The further development, on a cross-Committee basis, of policy and practice relating to Focussed Reports based on Lists of Issues should also be a priority. One objection that has been raised against Focussed Reports is that 'low-level' human rights issues may 'drop out' of the reporting process altogether if review is based solely on previous Lists of Issues. In answer to this objection, however, it may be argued that preserving scope for new topics to be added to Lists of Issues throughout the reporting cycle, for example in response to NGO information, ought to be a straightforward matter. Any distortion of monitoring priorities, for instance as an accidental result of review schedules, should therefore be avoidable.

More experimentation should be undertaken in relation to joint-TMB working. The Inter-Committee Meeting could launch initiatives on a trial basis to develop, for instance, a joint General Comment; joint consideration of country reports; and/or joint thematic workshops.

Individually and collectively, there is also scope for TMBs to undertake more 'outreach' activities, for example, through holding review meetings and good practice workshops in different geographical regions. Such measures could be highly beneficial in terms of constituency-building and raising awareness.

#### **4.4 Criteria for TMB membership and elections**

TMB membership has long been a topic attracting stakeholders' attention and concern. In recent years, as a rash of new human rights institutions with more robust appointment procedures have been established, the need to ensure comparable legitimacy for TMB members has been underlined. In this context a number of suggestions may be made.

First, criteria and selection procedures need to guarantee greater diversity in TMB membership, particularly with respect to gender-balance. A fair geographical distribution is also necessary, though strict geographical criteria that would deprive the selection process of any competitive element should be avoided. An appropriate mix of professional backgrounds must be secured. Accordingly, weight should be attached to candidates' track record and experience in human rights, rather than focussing on professional qualifications or government status alone. Nonetheless, in light of the quasi-judicial nature of individual communication procedures, a significant proportion of TMB members ought to have professional legal experience. At the same time, the TMBs need more members with specific experience of public administration, whereby Concluding Observations might be better targeted.

Prior to their nomination reports on candidates should be made publicly available. The UK process of seeking nominations for TMB membership via generally published advertisements followed by interviews should be generally adopted. A second possibility, suggested by the Rome Statute of the ICC, would be to establish an advisory committee on nominations. As regards elections, in practice, candidates for TMB positions already campaign for selection. In this regard, an official dialogue to

assess all candidates for appointment should be introduced, whereby their competence might be assessed in a more systematic and transparent way. Greater engagement by NGOs throughout the nomination and election process would contribute valuably to this end.

Consideration should be given to introducing performance assessment for TMB members and especially for members seeking re-election. Evaluation could encompass, for example, TMB members' meeting attendance record, in-Committee responsibilities, as well as any regional or constituency outreach activities undertaken. Such assessment is not standard practice in international tribunals. Notwithstanding, in the UN context, introducing performance assessment could offer a positive platform on which to persuade States at last to introduce remuneration for TMB posts. If resources could be secured to finance the *ad hoc* participation in TMB activities of external specialists, this would be an additional bonus.

Both the length and renewability of TMB terms of membership should be reviewed in line with best practice standards of other international and regional human rights bodies. Initiating a longer but non-renewable term of appointment might be preferable to imposing an age limit. Though age restrictions apply to many judicial posts (for example, 70 years in the European Court of Human Rights (forthcoming)) they may also be discriminatory.

For serving members more training should be made available. In unification scenarios where existing members are required to take on responsibilities in new fields of expertise such training could take on particular importance. However, overall, the main emphasis must be on attracting and selecting individuals of appropriate calibre and qualifications to TMB office in the first instance.

#### **4.5 Identifying and building on good practice**

Existing TMB procedure and working methods provide a rich bank of experience from which the most successful need to be identified and disseminated so that, in so far as appropriate, they can be put into effect across all TMBs. Such a practice would generate immediate improvements for the system while also providing a firm methodological foundation for any consolidated body that may be established.

A TMB Best Practice Manual, supplementing OHCHR's own internal best practice guide, would be a valuable tool. Such a manual should include, in particular, guidelines addressing the following issues: how to structure and facilitate pre-review dialogue (for instance, drawing on processes developed around the CRC NGO Platform); focussed reporting (incorporating recent innovations by HRC); follow-up measures (such as a 12-month status report on implementation of Concluding Observations, building on CAT practice); tactics for reducing backlogs and making efficient use of Committee meeting time; systematising information and relationships with other UN bodies, such as UN human rights field offices; involving NHRIs in review and implementation; producing and disseminating reports of TMB proceedings; and using electronic media as an aid both to increase accessibility and to facilitate inter-sessional working. Best practice guidelines for States, for instance, on report preparation, civil society involvement, and implementation of recommendations, should also be developed.

In further support of best practice, individual TMBs might more systematically review practice developments at their own sessions, as is the CRC practice.. Also, NGOs should better coordinate and articulate their views on areas where immediate

improvements can be made (following the example set in the CMW NGO Manual). Individual States can also assume a leadership role, by sharing with others successful models for implementation and experiences of lessons learned. Such a practice, which was instrumental in accelerating ratification of the Rome Statute of the ICC, could also promote wider and quicker adoption of harmonized reporting.

It must be acknowledged that good practice models are still lacking in a number of areas. Notable amongst these are the evaluation of state-level outcomes of TMB activity; cross-TMB coordination (for example, in preparing General Comments); the relationship of TMBs and the rest of the UN human rights system; and TMB engagement with national-level institutions, such as parliaments, NHRIs, and the different elements composing public administrations. Finally, individual TMBs and the treaty system as a whole need more coherent and effective media and communications strategies.

## **5. Making reform progress: next steps**

Most crucially, rather than merely repeating past recommendations, TMB reform discussions must now move forward. Identifying concrete actions to improve the quality, depth and outcomes of systematic state review, in parallel with TMBs other activities, must be a key goal. To achieve this it will be essential to build on TMBs' existing achievements, their continuing leadership, and on stakeholders' willingness to engage.

A twin-track approach should be followed. First, debate over proposals for 'structural' reform, its objectives, and modalities, and future-oriented thinking about the strategic aims of the TMB system must be advanced and brought to a definite conclusion in the near-term. Secondly, incremental improvements to TMB process, in many cases long-agreed on, must be put into effect. Pursuing both quests simultaneously – for a new long-range TMB strategy, and short-term 'quick wins' – is both feasible and necessary.

All reform proposals must be SMART: Specific, Measurable, Achievable, Realistic and Time-bound. They must mobilise the full range of actors participating in human rights implementation and ensure their concerted action.

So that structural reform and, in particular, the idea of TMB unification can either be progressed, or finally laid to rest, clearing the way for an alternative reform programme, clear policy analysis is now essential. This must include: a comprehensive and credible assessment of TMBs' current strengths and weaknesses; evaluation of the effects of past TMB reforms and coordination measures (including Meetings of Chairpersons and Inter-Committee Meetings); a precise specification of the aims of reform focussed on benefits to rights-holders; and analysis of the extent to which - if at all - various structural reform options represent an advance on current arrangements. Relevant cost estimates should be prepared. All such evidence will be critical to marshalling fresh political support for reform –

A programme of meetings should be immediately convened to investigate specific components of reform. Such meetings can serve to accelerate information exchange between all relevant players inside and outside the UN setting, build collective understanding amongst stakeholders, and ensure continuing transparency and public legitimacy for the reform process overall.

## ANNEX I: LIST OF WORKSHOP PARTICIPANTS

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Prof Sir Nigel Rodley	Human Rights Committee
Patrizia Scannella	Amnesty International
Prof Bill Schabas	Irish Centre for Human Rights
Mr Markus Schmidt	Office of the High Commissioner of Human Rights
Ms Sangeeta Shah	University of Nottingham
Mr Lasro Simbolon	Indonesia
Amb Mike Smith	Australia
Ms Laura Theytaz-Bergman	NGO Group for the Convention on the Rights of the Child
Amb Christian Wenaweser	Liechtenstein
Amb Mary Whelan	Ireland
Amb Makarim Wibisono	Indonesia

A small number of observers were also present at the meeting.



**Reform of the United Nations Human Rights Treaty Bodies**

**Expert Workshop**

**University of Nottingham, 11-12 February 2006**

**AGENDA**

Day 1

- |        |   |  |
|--------|---|--|
| 9.00   | Introduction to the workshop,<br>introduction of participants.  | Michael O'Flaherty   |
| 9.30   | Treaty bodies in the service of the<br>implementation of human rights:<br>challenges facing both the current system<br>and current reform efforts.  | Rachel Brett<br>Felice Gaer<br>Karin Lucke<br>Plenary discussion     |
| 11.00  | Coffee / tea.   |  |
| 11.15  | Identification of clear options for<br>further reform.  | Jane Connors<br>Nicholas Howen<br>Nigel Rodley<br>Plenary discussion |
| 13.15. | Lunch.  |  |
| 14.15  | Plenary convenes in order for workshop to<br>break into three groups:<br><br>i. Issues of national level implementation:<br>impact for treaty body reform.<br><br>ii. Identification of reform initiatives<br>which may/may not require treaty amendment. | (Facilitator:<br>Nathalie Prouvez)                                   |

## ANNEX II – WORKSHOP AGENDA

		(Facilitator: Dominic McGoldrick)
	iii. Towards enhanced methods for election of treaty body members in the context of treaty body reform.	(Facilitator: Wilder Taylor /Mariette Grange)
15.30	Plenary reports from groups.	
16.30	Tea.	
16.45	Possible lessons from analogous reform / unification experience (UK and Europe).	Claire O'Brien David Harris Plenary discussion
17.45	Close of day 1.	
20.00	Dinner.	CAST Restaurant (Nottingham)
<b>Day 2</b>		
9.00	Review of day 1.	Michael O'Flaherty
9.15	Making reform progress: next steps.	Markus Schmidt Cees Flinterman Christian Wenaweser Plenary discussion
11.15	Review of draft elements of workshop report.	
	discussion	Plenary
12.00	Close of meeting Lunch	



## ANNEX III – ANALOGOUS EXPERIENCES OF RIGHTS PROTECTION BODY REFORM

### **Possible lessons from analogous reform / unification experience**

#### **A) United Kingdom**

Recent developments in the UK concerning unification of different rights protection bodies manifest certain parallels to current discussions of TMB reform.

In 2000, European law created new equality duties on EU Member States (on grounds of age, religion and belief, and sexual orientation). UK domestic law previously prohibited certain forms of discrimination, and three national equality commissions, on race, sex and disability equality already exist, to enforce and promote relevant legislation.

This raised the question of how to provide comparable institutional support for the three new equality 'strands', as well as for human rights duties under the European Convention on Human Rights – adding up to 7 different 'strands' in total.

Three main 'structural' reform options were considered: i) a 'single gateway' – 7 Commissions would operate separately, but a single contact point for information and assistance would be established; ii) an 'umbrella body' – 7 separate Commissions retained, but with inter-Commission working promoted by an a Committee comprising representatives from each, to set overall strategic direction and budgets, and policy and operational decisions left in the hands of separate Commissions; or iii) a fully unified structure, to integrate strategy, policy-making, and operations for all 7 strands into a single new body.

Given amongst its reasons, that partial integration would not, in practice, achieve the coordination, mainstreaming, and holistic approach to understanding and implementing equalities and human rights that was hoped for, the UK government has opted for full unification.

The new single body will include certain features to avoid the risks of lost specificity of protection and diversity.

Though mainly structured internally on 'functional' basis, the single body will have a Disability Committee with Executive Powers (and comprising at least 50% persons with experience of disability) in recognition of the fact that the UK's Disability Rights Commission was established only recently, and that direct knowledge of discrimination can be necessary to understanding and shaping equality policies.

The single body will have a flexible power to establish sub-committees with decision-making powers. Such Sub-Committees may, for instance, have the purposes of engaging external experts; consulting stakeholders; or promoting integrated-working.

Individual members of the single body must be appointed with reference to ensuring diversity of experience and knowledge amongst the body of Commissioners overall.

To reduce disruption, unification is being scheduled some years in advance; a 'shadow' body is being set up now to begin coordination; and today's different Commissions will each integrate at different times.

Wide consultation and stakeholder involvement has been crucial to developing proposals and designs for the single body. Partly as a result of this, the new single body will have a duty to consult stakeholders in setting its strategic priorities.

## ANNEX III – ANALOGOUS EXPERIENCES OF RIGHTS PROTECTION BODY REFORM

### **B) Council of Europe**

The Council of Europe's (CoE) European Convention on Human Rights (ECHR) and European Social Charter (ESC) systems have been extensively reformed, primarily in response to CoE's expanding membership since 1990 and increasing demands on the system issuing from this.

Two originally separate structures under ECHR – a Commission and a Court – have been merged. Membership of the ESC Committee has been enlarged. A proposal is under discussion to tighten admissibility criteria for applications to the ECHR. Unifying ECHR and ESC bodies has not been considered, due to their different orientations.

In parallel, CoE systems are being strengthened. ECHR's individual complaints mechanism is now compulsory for all States Parties; a collective complaints mechanism has been introduced under ECS.

European Court of Human Rights (ECtHR) judges are nominated by states, and then subject to hearings, before being elected by the CoE's Parliamentary Assembly. Elections are 'real', and do not always favour individuals recommended by States. Gender representation is not required on either the ESC Committee or ECtHR, and gender balance has not yet been fully achieved.

A reform is soon to be introduced to substitute the current 6-year, renewable term of office, for a 9-year non-renewable mandate for ECHR judges. This may preclude any risk of members 'looking over their shoulder' when their decisions affect governments.

Secretariat support for CoE systems is much greater than in the UN. The ECtHR, for instance, is supported by 500 lawyers and other staff. There is some scope for applicants to receive legal aid for ECHR applications. A link can be drawn between higher resource levels, greater professionalism and, as a consequence, greater political investment in the CoE system.

An inter-governmental body, the Committee of Ministers, is responsible for monitoring follow-up measures to ECtHR decisions. This body exerts 'peer pressure' and its impact in promoting compliance is significant. Whether a similar dynamic could be mobilised in the UN context needs to be considered. That ECtHR issues binding legal judgments is also important for compliance with them.

Difficulty in amending human rights treaties – whether by amendment or Additional Protocols – is a problem shared by the CoE and UN systems. To circumvent this, the Committee of Ministers has sanctioned the provisional application of a treaty amending the ESC, even though the formal legal requirements for doing so have not yet been fulfilled.

The use of Chambers is well established in CoE systems. In certain cases decisions are made by single judges. Of 45 ECtHR judges, Chambers are composed of 3 or 7 judges. The ESC Committee also uses chambers.

The CoE system's relative effectiveness, including in contributing to interpreting UN specialist treaties (like CRC) underlines the importance of regional protection and implementation. Exhausting regional remedies should ultimately be a precondition for recourse to UN mechanisms. Equally it reemphasises the discrete bases for specific treaties: ESC had emerged as an answer to needs not addressed by ECHR.



**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,<sup>1</sup> as Independent Expert appointed by the Secretary-General, addressed “long-term approaches” for enhancing the “effective operation of existing and prospective” TMBs.<sup>2</sup>

By 1988, though some TMBs had only recently become operational, it was already suggested that the TMB system “[had] reached a critical crossroads”.<sup>3</sup> Like the rest of the UN, they were gripped by an acute funding crisis<sup>4</sup>; States complained of the “growing burden” imposed by the expansion and overlapping of reporting obligations<sup>5</sup>; and non-reporting, delayed reports, inadequate reporting, and backlogs in processing communications were all identified as chronic problems.<sup>6</sup> Relative to the task at hand, TMB Secretariat support was considered nugatory.<sup>7</sup> 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.<sup>8</sup>

The independent expert concluded that, given resource limitations that were in reality unlikely to change, the TMB system was operating unsustainably.<sup>9</sup> 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.<sup>10</sup> 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”.<sup>11</sup> 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.<sup>12</sup>

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<sup>1</sup> “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’.

<sup>2</sup> Initial Report, p.9, para.1.

<sup>3</sup> Id., p.11, para.8.

<sup>4</sup> Addressed at id., pp.26-40, paras.54-99.

<sup>5</sup> Id., p.19, para.6(b); see further pp.21-26, paras.36-53.

<sup>6</sup> Id., and pp.20-21, paras. 34-35.

<sup>7</sup> See text cited n. 5 above.

<sup>8</sup> Id., p.8, para.30; pp.14-15, para.20; and pp.14-15, paras.20-25.

<sup>9</sup> Final Report, paras.9 and 120.

<sup>10</sup> Id., para.83.

<sup>11</sup> Id.

<sup>12</sup> Id., para.84

## ANNEX IV – WORKSHOP INFORMAL BACKGROUND PAPER

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* suggested<sup>13</sup>:

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.<sup>14</sup> 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.<sup>15</sup> 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.

Long term, it appeared that some measure of TMB consolidation might be necessary.<sup>16</sup> In contrast, for example, to the Council of Europe system where, it was suggested, normative scope had been expanded via additional protocols forming

<sup>13</sup> Initial Report, *Summary of Conclusions and Recommendations*, paras.1-33.

<sup>14</sup> Final Report, paras.86-89.

<sup>15</sup> Id., paras.90-101; Initial Report, pp.23-26, paras.43-53.

<sup>16</sup> Initial Report, Part VII, pp.67-74, and pp.68-74, paras. 179-197; and Final Report, para.94.

‘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.”<sup>17</sup>

TMBs, it was suggested, should therefore be folded into one or two new “super-committees”<sup>18</sup> or, at minimum, their number should be stabilised by assimilating supervision of any new instruments into the work of established Committees.<sup>19</sup> 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.<sup>20</sup>

## 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.<sup>21</sup>

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 examining communications and...conducting inquiries.”<sup>22</sup> 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

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<sup>17</sup> Initial Report, p.23, paras.44-45

<sup>18</sup> Id., para.179.

<sup>19</sup> Id., paras.184-192.

<sup>20</sup> Id., paras.182-3.

<sup>21</sup> See *Appendix I* to this paper, “Survey and Analysis of Selected Previous Reform Proposals (1985-2005).”

<sup>22</sup> A. Bayefsky, *The UN Human Rights Treaty System: Universality at the Crossroads* (2001, Ardsley, NY: Transnational Publishers), Executive Summary, p.xvii.

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.<sup>23</sup> Much greater scope existed, in others' consideration, to involve NGOs,<sup>24</sup> and National Human Rights Institutions (NHRIs)<sup>25</sup> in the monitoring process. The authority and quality of TMB adjudication on complaints were also targeted for improvement.<sup>26</sup>

Three objectives attracted almost universal support: increasing resources available for TMBs' and associated Secretariat activity<sup>27</sup>; improving follow-up to State review<sup>28</sup>; and measures, in some fashion, to streamline and simplify activity across all TMBs.<sup>29</sup> 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.<sup>30</sup>

Steps were gradually taken to implement, or partially implement, a number of the changes called for.<sup>31</sup> 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.

<sup>23</sup> 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/IO400182003ENGLISH/\\$File/IO4001803.pdf](http://web.amnesty.org/library/pdf/IO400182003ENGLISH/$File/IO4001803.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.

<sup>24</sup> 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 21<sup>st</sup> Century* (2000, The Hague: Kluwer).

<sup>25</sup> 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.

<sup>26</sup> 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.

<sup>27</sup> 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.

<sup>28</sup> 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).

<sup>29</sup> 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.

<sup>30</sup> See e.g. T. A. Buergethal, "A Court and Two Consolidated Treaty Bodies", in A. Bayefsky (ed.), op.cit. supra n.24, and Evatt, op.cit., supra n.27.

<sup>31</sup> 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>.



## 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*,<sup>32</sup> attributed the problems described above to:

“The current structure of disparate human rights committees – each focussing on important but discrete issues...”<sup>33</sup> 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”.<sup>34</sup>

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.<sup>35</sup>

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 Assembly<sup>36</sup> and Commission on Human Rights<sup>37</sup> 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.<sup>38</sup>

## 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.<sup>39</sup> While affirming the broad goal of practical, flexible measures further to advance implementation of treaties by

<sup>32</sup> “Strengthening the United Nations: An Agenda for Further Change”, UN Doc A/57/387, 9 September 2002.

<sup>33</sup> *Id.*, para.53.

<sup>34</sup> *Id.*, para.52.

<sup>35</sup> *Id.*, para.54.

<sup>36</sup> UN Doc A/Res/57/300, 7 February 2003, para.8.

<sup>37</sup> CHR Res 2004/78, 21 April 2004, UN Doc. E/CN.4/2004/L.11/Add.7.

<sup>38</sup> See for relevant discussion e.g. Report of 16<sup>th</sup> 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>.

<sup>39</sup> 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.

## ANNEX IV – WORKSHOP INFORMAL BACKGROUND PAPER

more effective monitoring, dialogue and follow-up,<sup>40</sup> and to improve TMB coordination, the meeting did not support the specific proposal for a single State report.<sup>41</sup> Comments relating to the latter suggested<sup>42</sup>:

- 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 document<sup>43</sup> 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 reports<sup>44</sup>  
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.
- Periodicity<sup>45</sup>  
Opinions both rejecting and supporting coordinating amendments to treaty periodicity requirements were represented.

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.<sup>46</sup>

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

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<sup>40</sup> Id., para.12.

<sup>41</sup> Id., para.20.

<sup>42</sup> Id., paras.23-27.

<sup>43</sup> Id., paras.29-30.

<sup>44</sup> Id., paras.37-49.

<sup>45</sup> Id., paras.55-65.

<sup>46</sup> 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.

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.”<sup>47</sup> 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,<sup>48</sup> 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.<sup>49</sup> 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.<sup>50</sup> A technical working group, comprising representatives from each TMB had contributed to their finalisation. In June 2005, a Revised Version of the Guidelines was published, taking account of states' and TMB responses.<sup>51</sup>

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”.<sup>52</sup> 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.<sup>53</sup> 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.

<sup>47</sup> *In Larger Freedom: towards development, security and human rights for all*, UN Doc A/59/2005, 21 March 2005, para.147.

<sup>48</sup> 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.

<sup>49</sup> 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.

<sup>50</sup> 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.

<sup>51</sup> 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.

<sup>52</sup> Draft Guidelines, supra n.50, para.8

<sup>53</sup> Revised Draft Guidelines, supra n. 51.

External commentary concerning the recent consolidated reporting proposals has been cautious.<sup>54</sup> 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.<sup>55</sup>

## 2.6 *In Larger Freedom and the OHCHR Plan of Action*

In May 2005, as requested by the Secretary-General in *In Larger Freedom*,<sup>56</sup> the High Commissioner for Human Rights published the *OHCHR Plan of Action: Protection and Empowerment*.<sup>57</sup> 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 functions<sup>58</sup>:

- 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.

<sup>54</sup> 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 listerserv cedaw4change, Jan-Mar 2005, available at [http://list.iwrawap.org/lists/d\\_read/cedaw4change/Expanded%20Core%20Document/CommonReportfinal.pdf](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>.

<sup>55</sup> See e.g. General Assembly Resolution cited supra n.36.

<sup>56</sup> Supra n.47, at para.145.

<sup>57</sup> 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>.

<sup>58</sup> 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 the human rights treaty bodies on their seventeenth meeting, UN Doc A/60/278, 19 August 2005, paras.33-34.

*In Larger Freedom* stated the need to render TMBs “more effective and responsive.”<sup>59</sup> In this context, in the medium term, the *Plan of Action* suggests, the problems identified may be addressed by<sup>60</sup>:

- 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”.<sup>61</sup> The benefits doing so might include<sup>62</sup>:

- 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 parties, UN system partners, NGOs and others, at an informal brainstorming in May 2006; subsequently, at the 5<sup>th</sup> Inter-Committee Meeting and 18<sup>th</sup> 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.<sup>63</sup> 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.<sup>64</sup> 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.

<sup>59</sup> *In Larger Freedom* supra n.47, Executive Summary, Section III.

<sup>60</sup> *Id.*, para.99.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*, and sources cited supra n.58.

<sup>63</sup> High Commissioner’s *Strategic Management Plan 2006-7, Advanced Version*, January 2006, p.8.

<sup>64</sup> For full record of the online discussion and summaries: <http://portal.ohchr.org/tbforum/mvforum/index>

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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:

- 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).<sup>65</sup>

One proposal in this regard suggests merging CESCR with ICCPR<sup>66</sup> 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 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 members<sup>67</sup>
- 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.<sup>68</sup>

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<sup>65</sup> 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*.

<sup>66</sup> 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> .

<sup>67</sup> See also V. Leary, *Lessons from the Experience of the ILO*, in P. Alston (ed.), *The United Nations and Human Rights* (1992, Oxford: Clarendon).

<sup>68</sup> See Human Rights Committee, Summary Record (Partial) of the 2296<sup>th</sup> Meeting, UN Doc CCPR/C/SR.2296, 26 July 2005; Committee on the Elimination of Racial Discrimination, Summary Record of the 1726<sup>th</sup> Meeting, UN Doc CERD/C/SR 1726, 9 September 2005; Committee against



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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.

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.

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Torture, Summary Record of the 665<sup>th</sup> 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 23<sup>rd</sup> Meeting, UN Doc CMW/C/SR.23, 19 December 2005.



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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?<sup>69</sup>

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".<sup>70</sup> 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 observations<sup>71</sup>

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<sup>69</sup> 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.

<sup>70</sup> 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>

<sup>71</sup> See e.g. M. O'Flaherty, "The Concluding Observations of United Nations Human Rights Treaty Bodies", *Human Rights Law Review* (forthcoming 2006), *Draft*.

- Information available to State review
- In-country or regional visits / review<sup>72</sup>
- Promoting implementation<sup>73</sup>
  - Links between TMBs: dissemination and coordination
  - Inter-UN coordination
  - Links with States
  - Links with NHRIs
  - Links with NGOs<sup>74</sup>
  - Public awareness and media
  - Technical assistance
- Adjudication<sup>75</sup>
- 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),<sup>76</sup> 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,<sup>77</sup> appointments procedures<sup>78</sup>

<sup>72</sup> See e.g. J. Fitzpatrick, “Human rights fact-finding”, in A. Bayefsky (ed.), *op.cit.*, supra n.24.

<sup>73</sup> 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.

<sup>74</sup> See sources cited supra n.24.

<sup>75</sup> 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.

<sup>76</sup> See e.g. E. Tistounet, “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>

<sup>77</sup> 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.

<sup>78</sup> 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.<sup>79</sup>

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<sup>79</sup> 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.

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**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>

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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>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</p>

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Year	Source	Addressee(s)	Themes	Criticisms, challenges	Positive reform proposals
				Political pressure on Secretariat	UN expert HR bodies Leadership preserving political independence; stronger role for Director of HR Secretariat
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	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	general TMB	Inter-UN HR	Failure to achieve universal ratification	Prioritise 6 core UNRH treaties and adopt strategy to

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	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		coordination; reporting; Secretariat; NGOs; local capacity building; strategic approach; duplication; consolidation	<p>Chronic overdue reports</p> <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>achieve universal ratification by 2000; identify specific implementation target issues, with strategies (eg small states ratifications)</p> <p>Overhaul technical services for late-reporters; undertake assessment in absence of reports; 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>



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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 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>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 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</p>

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Year	Source	Addressee(s)	Themes	Criticisms, challenges	Positive reform proposals
				<p>Public information inadequate</p> <p>NGOs role too tenuous</p> <p>Proliferation of substantive HR rules</p>	<p>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 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>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;</p>

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Year	Source	Addressee(s)	Themes	Criticisms, challenges	Positive reform proposals
				TMB effectiveness not viable in long term given present reporting modality	<p>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 amendment more readily</p>
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>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</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;</p>

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Year	Source	Addressee(s)	Themes	Criticisms, challenges	Positive reform proposals
				<p>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>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 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)	TMB general	Local capacity building; NHRIs; technical assistance; strategic approach	<p>Restricted contact between NHRIs and 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>Proactive engagement by TMBs with NHRIs; involve 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	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	

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Year	Source	Addressee(s)	Themes	Criticisms, challenges	Positive reform proposals
				Duplication of resources where NGOs raise same issue under multiple treaties	
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>Shortage of technical assistance for state reporting</p> <p>Incomplete use of expertise of UN specialised agencies in treaty reporting process</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> <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	Overlaps and discrepancies between different HR treaties; proliferation of HR instruments	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;

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Year	Source	Addressee(s)	Themes	Criticisms, challenges	Positive reform proposals
				<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 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 meeting of chairpersons into Council of the Committees; bilateral TMB communications; overlapping TMB memberships</p>
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>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 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</p>

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				Failure to exploit information technology in Committee operations	<p>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	<p>Undercapacity; chronic budgetary shortfall</p> <p>TMB meeting time too short</p> <p>Incomplete use of information technology</p> <p>Over-specialised Secretariat staff, creating bottlenecks</p>	<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> <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 <sup>st</sup> Century (The Hague: Kluwer)	general TMB	Reporting; independence; media; resources	Inadequate state reporting practice – late reports, incomplete reports, superficial review of reports; Inefficient review of state reports: sessions too short; repetitious, unstructured dialogue; too	Consider radical reform e.g. merger of TMBs, allowing development of uniform standards

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				<p>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>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 <sup>st</sup> Century (The Hague: Kluwer)	general TMB	NGOs; capacity; duplication; consolidation	<p>Weak use of NGOs by some TMBs</p> <p>Under-capacity of TMB system; over-burdened states; overlaps between HR instruments</p>	<p>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</p> <p>Radical reform to consolidate reporting process, either by reducing number of TMBs or through single global report</p>
2000	Brett, R., State Reporting: an NGO Perspective, in Bayefsky, A. (ed), The UN Human Rights System in the 21 <sup>st</sup> 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>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; In longer term, move to single reports for states party to more than 1 treaty; overlapping TMB</p>



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				<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>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 <sup>st</sup> 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 <sup>st</sup> 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 Law, in Bayefsky, A. (ed), The UN Human Rights System in the 21 <sup>st</sup> Century (The Hague: Kluwer)	general TMB	Individual complaints; follow-up; resources; local capacity building	<p>Uneven awareness and access to individual complaints mechanisms across states</p> <p>Slow determination of individual complaints</p> <p>Decisions on individual complaints too brief, opaque</p> <p>Low state follow-up/compliance rates with individual complaints determinations</p> <p>Resource constraints, leading to backlogs</p>	<p>Dissemination concerning pro bono assistance for individual complaints</p> <p>Possibly reduce time limits for parties to individual complaints</p> <p>Extend use of dissenting opinions; longer reasoning</p> <p>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</p> <p>HRC to sit in chambers for determination of individual complaints; joint determination of admissibility and merits; national capacity building for HR adjudication</p>
2000	Clapham, A., Defining the Role of Non-	general TMB	NGOs; media;	Poor involvement by TMBs of NGOs	Contact national NGOs to warn of upcoming reviews;

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Year	Source	Addressee(s)	Themes	Criticisms, challenges	Positive reform proposals
	Governmental Organizations with Regard to the UN Human Rights Treaty Bodies, in Bayefsky, A. (ed), The UN Human Rights System in the 21 <sup>st</sup> Century (The Hague: Kluwer)		inter-UN coordination; independence	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	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 <sup>st</sup> 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 <sup>st</sup> 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 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 <sup>st</sup> 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	general TMB	Follow-up;	Weak follow-up by HR Committee under	Interpret Optional Protocol to extend to follow up;

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Year	Source	Addressee(s)	Themes	Criticisms, challenges	Positive reform proposals
	Before UN Human Rights Treaty Bodies and the UN Mechanisms Beyond, in Bayefsky, A. (ed), The UN Human Rights System in the 21 <sup>st</sup> Century (The Hague: Kluwer)		individual complaints	Optional Protocol  Weak follow-up to concluding observations and periodic reports	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 <sup>st</sup> 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 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 <sup>st</sup> 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 <sup>st</sup> 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	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

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Year	Source	Addressee(s)	Themes	Criticisms, challenges	Positive reform proposals
				<p>Late reports, missing reports, delinquent states</p> <p>Resource constraints</p> <p>Poor compliance / follow-up</p> <p>Low visibility and accessibility of TMB system overall, to public, media, NGOs</p> <p>Lack of coordination between TMBs; overlapping instruments and reporting requirements; overburdened states</p>	<p>comprehensive discussion; greater cooperation and information exchange between TMBs on state performance;</p> <p>Technical assistance for reporting; substitute TMB own reports where reports missing</p> <p>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</p> <p>Computerization of TMB documentation</p> <p>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</p>
2000	Buergenthal, T. A., A Court and Two Consolidated Treaty Bodies, in Bayefsky, A. (ed), The UN Human Rights System in the 21 <sup>st</sup> Century (The Hague: Kluwer)	general TMB	Consolidation; capacity; duplication; inter-TMB coordination	Undercapacity; overlapping reporting requirements; overburdened states	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
2000	Bayefsky, A. F., Conclusions and Recommendations, in Bayefsky, A. (ed), The UN Human Rights System in the 21 <sup>st</sup> Century (The Hague: Kluwer)	general UNHR, general TMB	Reporting; inter-UNHR coordination; strategic approach; individual communications ; follow-up; TMB appointments; consolidation	<p>Ineffective state reporting process: overdue reports; backlogs of reports</p> <p>Poor coordination between TMBs</p> <p>inadequate TMB meeting time</p>	<p>Establish inter-committee thematic working groups</p> <p>Higher coordination between TMBs, including Joint General Comments; harmonized reporting 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</p>

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Year	Source	Addressee(s)	Themes	Criticisms, challenges	Positive reform proposals
				<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>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; between TMBs and rest of UN, and Special Procedures</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 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</p>

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Year	Source	Addressee(s)	Themes	Criticisms, challenges	Positive reform proposals
				<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>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;</p>

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Year	Source	Addressee(s)	Themes	Criticisms, challenges	Positive reform proposals
				<p>Late reports</p> <p>Weak concluding observations</p>	<p>greater use of UN Information Centres for 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;</p> <p>Identify technical assistance needs for reporting during TMB Chairpersons' annual general meeting; discussions with states</p> <p>Clearer, more specific, concluding observations; monitor states' dissemination of concluding observations</p>
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 <sup>th</sup> 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	<p>Under-capacity for reporting</p> <p>Non-reporting and late reporting</p> <p>TMB system not integrated into wider UN</p>	<p>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</p> <p>Automatic scheduling for long-overdue reports; liaison with systematic late reporters; strengthened technical cooperation; institutionalised follow-up, involving UN Field Offices</p> <p>Establish links including to MDGs, PRSPs, special procedures</p>

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Year	Source	Addressee(s)	Themes	Criticisms, challenges	Positive reform proposals
				system and goals	
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 TMBs; Uneven expertise of TMB members; Inadequate dissemination of TMB outputs Weak concluding observations;	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 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, <a href="http://www.law.monash.edu.au/castancentre/publications/ohchr-submission.pdf">http://www.law.monash.edu.au/castancentre/publications/ohchr-submission.pdf</a>	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



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**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>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>

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Year	Source	Organs addressed	Themes	Criticisms, challenges	Positive reform proposals
				<p>Sporadic contact between states and HRC</p> <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 towards continuous dialogue between states and HRC</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., The Committee on the Elimination of Discrimination against Women, 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 –</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</p>

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Year	Source	Organs addressed	Themes	Criticisms, challenges	Positive reform proposals
				too many direct government representatives	governments
1992	Alston, P., The Committee on Economic, Social and Cultural Rights, in Alston, P. (ed), <i>The United Nations and Human Rights</i> (Oxford: Clarendon)	CESCR	Reporting; resources; Secretariat	<p>Non-reporting, late-reporting</p> <p>Non-appearance of state party for review</p> <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>Black-listing chronic late/non-reporters</p> <p>Adopt practice of reviewing report in state party's 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., The Committee against Torture, 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</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>

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Year	Source	Organs addressed	Themes	Criticisms, challenges	Positive reform proposals
				interpretation	
1999	Arambulo, K., Strengthening the Supervision of the International Covenant on Economic, Social and Cultural Rights: Theoretical and Procedural Aspects (Oxford / Antwerp: Hart Intersentia)	CESCR	Reporting	Scarcity of NGOs and NHRIs addressing ESC rights  Lack of complaint mechanism  Complexity and scope of information required to supervise compliance with ICESCR	Optional protocol to ICESCR establishing complaint mechanism
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	HRC adjudications opaque, truncated, lack substantive reasoning or interpretation  Mandatory jurisdiction to decide admissible communications inapposite to scope of application of ICCPR and HR violations worldwide – concentrates resources inefficiently onto few cases	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  Move to discretionary jurisdiction over adjudication of communications
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	Weak powers of TMB Chairpersons over proceedings  Slow reporting proceedings; inefficient use of meeting time  Committee membership unremunerated; differential impact on access to membership of experts from LDCs  Low ratification of Optional Protocol to CERD on individual communications  Lack of sanctions against state parties failing to pay assessments or submit reports  Backlog of reports	Advance circulation of written proposals; improve committee working practices to reduce repetitive or over-lengthy questioning  Consider suspending states parties' participation rights as sanction for breach of obligations  Seek extended meeting time; harmonize and coordinate meeting times across TMBs
2000	Bustelo, M. R., The Committee on the Elimination of Discrimination against Women at the crossroads, in Alston, P. & J.	CEDAW	Gender; independence; inter-UNHR	Low visibility of CEDAW  Politicised appointments of Committee	

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Year	Source	Organs addressed	Themes	Criticisms, challenges	Positive reform proposals
	Crawford (eds), The Future of Human Rights Treaty Monitoring (Cambridge: Cambridge University Press)		coordination; NGOs	<p>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 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>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; 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	TMB general; CESCR	Independence; duplication;	Overall system too focussed on reporting as mechanism of human rights	

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Year	Source	Organs addressed	Themes	Criticisms, challenges	Positive reform proposals
	change in a system needing reform, in Alston, P. & J. Crawford (eds), <i>The Future of Human Rights Treaty Monitoring</i> (Cambridge: Cambridge University Press)		resources; follow-up; local capacity building	<p>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>Low accessibility, efficiency and resource-starvation of TMBs</p> <p>Poor reporting follow-up</p>	<p>Independent, long-term Committee appointments required</p> <p>Improve reporting guidelines</p> <p>Increase resources for HR TMBs; expand Secretariat support;</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., <i>Country-oriented procedures under the Convention against Torture: Towards a new dynamism</i> , in Alston, P. & J. Crawford (eds), <i>The Future of Human Rights Treaty Monitoring</i> (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., <i>The Reporting Procedure under</i>	HRC	Reporting;	Lack of specificity of analysis in	More detailed identification and analysis of factors

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Year	Source	Organs addressed	Themes	Criticisms, challenges	Positive reform proposals
	the Covenant on Civil and Political Rights: Practice and Procedures of the Human Rights Committee (Oxford / Antwerp: Hart Intersentia)		resources; Secretariat; inter-TMB coordination	<p>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 Assembly</p> <p>Resource restrictions; inadequate Secretariat support</p> <p>HRC decision to refuse to account other TMBs' findings and jurisprudence</p>	<p>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> <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 <sup>st</sup> 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</p> <p>Lack or variable quality of reasoning for decisions on communications; reluctance to interfere with Rapporteur's assessment of communication</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>

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Year	Source	Organs addressed	Themes	Criticisms, challenges	Positive reform proposals
				<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>	
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 <sup>st</sup> 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>	Need to evolve creative, non-traditional working methods, including cooperation with NGOs