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PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL, POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS, INCLUDING THE RIGHT TO DEVELOPMENT

Report of the Office of the United Nations High Commissioner for Human Rights on the rectification of the legal status of the Committee on Economic, Social and Cultural Rights

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Summary

The present report is submitted pursuant to resolution 4/7 of the Human Rights Council of 30 March 2007 in which the Council decided "to initiate a process to rectify, in accordance with international law, in particular the law of international treaties, the legal status of the Committee on Economic, Social and Cultural Rights, with the aim of placing the Committee on a par with all other treaty monitoring bodies". In the same resolution, the Human Rights Council requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) "to seek the views of States and those of all other stakeholders on this issue, and to prepare a report containing these views, as well as an input from the Office of Legal Affairs in this regard, for submission to the last session of the Human Rights Council in 2007".

The report reflects the replies received in response to the request for information sent by OHCHR to Member States, the Office of Legal Affairs (OLA), and other stakeholders (United Nations agencies and programmes and non-governmental organizations). Replies were received from the Governments of Australia, Bosnia and Herzegovina, Canada, Colombia, Cuba, Denmark, Dominican Republic, Finland, Guyana, Ireland, Japan, Liechtenstein, Mauritius, Mexico, Pakistan, Philippines, Switzerland, Turkey, and the United States of America. The report also includes, in an annex, the input received from OLA, setting out legal options to place the Committee on Economic, Social and Cultural Rights on a par with other treaty monitoring bodies.

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Introduction

1. In its resolution 4/7 of 30 March 2007, the Human Rights Council decided "to initiate a process to rectify, in accordance with international law, in particular the law of international treaties, the legal status of the Committee on Economic, Social and Cultural Rights, with the aim of placing the Committee on a par with all other treaty monitoring bodies". In the same resolution, the Human Rights Council requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) "to seek the views of States and those of all other stakeholders on this issue, and to prepare a report containing these views, as well as an input from the Office of Legal Affairs in this regard, for submission to the last session of the Human Rights Council in 2007".

2. The present report reflects and summarizes the replies received from the Governments of Australia, Bosnia and Herzegovina, Canada, Colombia, Cuba, Denmark, Dominican Republic, Finland, Guyana, Ireland, Japan, Liechtenstein, Mauritius, Mexico, Pakistan, Philippines, Switzerland, Turkey, and the United States of America. The report also includes, in an annex, a paper entitled "Legal Options for Placing the Committee on Economic, Social and Cultural Rights on a Par with other Treaty monitoring Bodies", prepared by the Office of Legal Affairs (OLA). While OHCHR had sent out requests for information to United Nations agencies and non-governmental organizations, no responses were received from them.

I. VIEWS ON THE INITIATIVE TO RECTIFY THE LEGAL STATUS OF THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

3. The Government of **Australia** indicated that it was not convinced of the need to give serious consideration to the legal status of the Committee on Economic, Social and Cultural Rights (CESCR), noting the significant resource implications that any such exercise would have. Australia noted that it was not aware of any evidence that the creation of CESCR by a resolution of the Economic and Social Council (ECOSOC) had resulted in any adverse impact on the effective implementation of economic, social and cultural rights, and that further consideration should only be given to this issue should further analysis demonstrate and substantiate that the legal status of CESCR has resulted in such a negative impact.

4. The Government of **Bosnia and Herzegovina** indicated that it strongly supported rectifying the legal status of the CESCR, considering that the United Nations treaty bodies had contracting character and that the procedures of changing its status needed the opinions of all States parties on this issue.

5. The Government of **Colombia** indicated that the proposal to modify the legal status of the CESCR was coincident with national programmes and plans, in line with the United Nations Millennium Goals, to ensure the effective enjoyment of economic, social and cultural rights. From this perspective, the modification of the Committee's legal status could serve to give impetus to the promotion of economic, social and cultural rights in Colombia and in other States parties to the International Covenant on Economic, Social and Cultural Rights (ICESCR), bearing in mind the special importance of the concept of progressive realization of these rights in developing countries like Colombia.

6. The Government of **Cuba** noted that the current legal status of CESCR is inferior to that of the Human Rights Committee. Even if in practice the CESCR carried out similar functions as its counterparts, it would be very beneficial to initiate a process to make the legal status of the Committee equal to that of the other human rights treaty bodies, especially the Human Rights Committee. The fundamental basis for this initiative lay in the indivisible and universal character of all human rights.

7. The Government of **Denmark** noted that it had no objections to the idea of rectifying the legal status of the CESCR with the aim of placing it on a par with all other treaty monitoring bodies, on the understanding that no changes were foreseen in the mandate and/or powers of the Committee.

8. The Government of the **Dominican Republic**, as a participant in the 1993 Vienna World Conference on Human Rights, at which the universality, indivisibility and interdependence of human rights was reaffirmed, considered it appropriate to modify the legal status of the CESCR.

9. The Government of **Finland** noted that it considered very important the process initiated by the Human Rights Council to rectify, in accordance with international law, the legal status of the Committee, and that it looked forward to continued discussions in the Council on the matter.

10. The Government of **Guyana** noted that the rectification of the legal status of the CESCR would signal the international community's commitment to the equal application, promotion, respect and protection of human rights and to their universality, indivisibility, interdependence and interrelatedness.

11. The Government of **Ireland** considered that the issue of giving treaty-based status to the CESCR was particularly acute in the light of the negotiations within the Open-ended Working Group on an optional protocol to the International Covenant on Economic, Social and Cultural Rights. It noted that one possible disadvantage of conferring treaty status on the CESCR was that it may cut across proposals to reform the treaty monitoring bodies; one possibility might be to include a provision similar to article 27 of the International Convention for the Protection of All Persons from Enforced Disappearance explicitly providing for the possibility of treaty body reform.

12. The Government of **Japan** requested OHCHR to carefully consider rectifying the legal status of CESCR, including its necessity and possible ways to proceed with it.

13. The Government of **Liechtenstein** noted that given the cumbersome and lengthy procedure required to change the legal status of CESCR, it did not, at this stage, favour a change in the legal status of the Committee. The Government noted that in monitoring the implementation of the Covenant, the Committee had placed itself on par with the other human rights treaty bodies. While the work of the Open-ended Working Group on an optional protocol to the ICESCR aimed at levelling out any differences that might exist in the perception of the rights guaranteed by the Covenant and those contained in other human rights treaties, there was no such difference in perception with regard to the standing of the Committee in its monitoring role compared to that of the other treaty bodies. The most substantive difference between CESCR and the other expert bodies consisted in the manner in which their members were elected. The introduction and

common application of objective criteria for the submission of candidatures would level out differences in respect of the electing bodies, without having to resort to a lengthy signing and ratification process.

14. The Government of **Mauritius** indicated that it was in favour of aligning the legal status of the CESCR with that of other treaty monitoring bodies.

15. The Government of **Mexico** noted that the modification of the legal status of CESCR was consistent with the universality, interdependence and interrelatedness of all human rights, and underlined that the modification of the legal status should be made with the strict aim of making consistent the political and juridical recognition of the equal importance of the rights recognized in the two international Covenants on human rights, without reducing or negatively affecting the functions and work already developed by the CESCR.

16. The Government of **Pakistan** indicated that it fully supported efforts to rectify, in accordance with international law, the legal status of the CESCR with the aim of placing it on a par with all other treaty monitoring bodies.

17. The Government of **Switzerland** indicated that in its view it was not necessary at this stage to rectify the status of CESCR. The Committee had provided reliable and quality work for more than two decades and there was no indication that its different legal status had affected its authority or legitimacy. Neither was the Committee's particular status - as a subsidiary organ of ECOSOC - necessarily a disadvantage, since the expenditures of the Committee were covered by the regular budget of the United Nations and did not depend on contributions from States parties. The moment chosen to examine this question was inopportune as it coincided with the negotiation of an optional protocol to the Covenant dealing with the modalities for an individual complaint procedure. Just as the modalities chosen to define the role of the CESCR in the oversight of an eventual optional protocol could lead to a reappraisal of the *acquis* of the Committee, the rectification of its status could result in similar risks. Moreover, Switzerland expressed the view that it was not for the Human Rights Council, but rather for the States parties to the Covenant, to emit an opinion on this issue.

18. The Government of **Turkey** indicated that it shared the concerns about the ambiguous status of the CESCR. Noting the element of legal uncertainty concerning the future of the Committee, as its current legal status depended on a resolution of ECOSOC, Turkey welcomed any initiative aiming at addressing existing deficiencies that caused concern about the protection and realization of human rights.

19. The Government of the **United States of America** indicated that the CESCR, having been established by an ECOSOC resolution, as a practical matter monitored implementation of the Covenant in a manner similar to the Human Rights Committee's monitoring of the International Covenant on Civil and Political Rights. The Government noted that if the goal was to give the Committee a legal status identical to other treaty monitoring bodies and nothing more, then such a change was unlikely to be worth the cost borne and effort required by the international community. There would be little or no practical consequences of "rectifying" the legal status, and there would be a significant risk of protracted negotiations and new legal complications and uncertainties. Moreover, the United States considered that the Human Rights Council was not the appropriate forum for advancing this issue, as the Council did not have jurisdiction to amend the

legal status of CESCR or to revoke an ECOSOC decision. According to the international law of treaties, all States parties to the Covenant had a right to participate in any decision as to whether to amend the Covenant so as to include provision for the CESCR. As not all States parties to the Covenant were members of the Human Rights Council, further action on this issue by the Council would not be consistent with the international law of treaties. A more appropriate forum might be a meeting of States parties to the Covenant.

II. VIEWS ON OPTIONS FOR AND IMPLICATIONS OF RECTIFYING THE LEGAL STATUS OF THE COMMITTEE

20. The Government of **Australia** noted the need for a further detailed legal analysis of the modalities for effecting the proposal to give CESCR treaty-based status. Any amendment of the Covenant would only be binding on those States parties who accepted the amendment, and this could result in parallel legal regimes (should ECOSOC resolution 1985/17 not be revoked) or in the absence of any mechanism for the consideration of reports of States parties which did not accept the amendment. Moreover, Australia considered that should an amendment of the Covenant be contemplated, the opportunity should also be taken to undertake systematic treaty body reform.

21. The Government of **Canada** indicated that if it was decided to give CESCR equivalent legal status to that of the other human rights treaty bodies, amendments would be required to the Covenant. In article 29 of the Covenant, States parties had already agreed to an amendment procedure, and the importance of economic, social and cultural rights in international law required that the proper legal procedure set out in article 29 be followed. However, as stipulated in article 29, paragraph 3, once amendments had come into force, they were only binding on those States parties which had accepted them. There was therefore the possibility of two bodies operating in parallel: the current Committee created by ECOSOC and, once in force, the new treaty body. Canada looked forward to receiving clarifications on measures to address issues such as different reporting requirements for States parties which did not ratify the amendments to the treaty.

22. The Government of **Cuba** indicated that one possible solution would be to establish the CESCR by an amendment to the Covenant through a protocol. States parties to the Covenant would then be able to become States parties to this protocol, and, once the protocol entered into force, the current Committee established by ECOSOC resolution 1985/17 would cease to function.

23. The Government of **Finland** indicated that when considering the way forward it would be very important to ensure that this was done in full consultation with the CESCR. It also noted the need to avoid a gap in the promotion and protection of economic, social and cultural rights and a two-track situation where some States parties would be monitored under the existing system and some under a new one. Finland was interested in continuing the discussion on the best ways to avoid this problematic situation and would find useful further legal views on the matter and on options available.

24. The Government of **Ireland** indicated that it would appear logical that the legal instrument conferring treaty status to the CESCR be an amendment of the parent treaty rather than an optional protocol. The Government noted that amendments in relation to the structure

(as opposed to the functions) of treaty monitoring bodies had been by way of amending the parent treaty, rather than by means of an optional protocol (e.g. the increase in the size of the Committee on the Rights of the Child, changes in relation to meeting times of the Committee on the Elimination of Discrimination against Women, and the granting of emoluments to members of the Committee on the Elimination of Racial Discrimination and the Committee against Torture), whereas the conferral of additional functions to treaty bodies were being affected by means of optional protocols.

25. The Government of **Liechtenstein** noted the link between the process of changing the legal status of CESCR and the ongoing discussions on treaty body reform.

26. The Government of **Mauritius** noted that in order to change the legal status of the Committee, consideration may be given to making the required amendments to the ICESCR in light of the present report.

27. The Government of **Mexico** considered that the appropriate process of modifying the legal status of the CESCR would be through an amendment to the Covenant, to be approved by a conference of States parties, in conformity with the procedure set out in article 29. The wording of such an amendment should be similar to that of the provisions of the other human rights treaties establishing their respective treaty monitoring body. Mexico noted that there would be a transition period until all States parties had ratified the amendment to the Covenant, and it would be necessary to ensure that this did not negatively affect the continuity of the functions and work of the CESCR. It concurred with the observation of the Committee made in its letter of 18 May 2007 to the President of the Human Rights Council, that it had not been hindered in its functions owing to its status as a subsidiary body of ECOSOC, and also concurred with the Committee as to the importance of ensuring that the process of modifying its legal status would not hinder the ongoing work to elaborate an optional protocol to the Covenant carried out by an open-ended working group of the Human Rights Council. In view of the above, Mexico proposed a double procedure: on the one hand, to proceed with an amendment to Part IV of the Covenant following the procedure set out in its article 29, and on the other, to include a clause in the draft optional protocol which would require States to ratify the amendment to Part IV of the Covenant in order to become parties to the optional protocol. In this way, States parties to the optional protocol would be required to submit their periodic reports to the CESCR under its modified treaty-based legal status.

28. The Government of the **Philippines** indicated that to rectify the legal status of the CESCR and place it on a par with the other treaty monitoring bodies, States parties would have to amend the Covenant to provide for the establishment of a treaty monitoring body in accordance with article 29.

29. The Government of **Turkey** noted that, as mentioned in the report of the Secretary-General (E/1996/101), granting the CESCR a treaty-based status could be done either by amending the Covenant or by adopting an additional protocol to the Covenant. Article 29 of the Covenant and article 40 of the Vienna Convention on the Law of Treaties established the procedure to be followed. The process of amending human rights treaties presented significant difficulties; experience had shown that such processes may be delayed indefinitely and may also pave the way for the renegotiation of a treaty. Bearing in mind these challenges, Turkey considered that adopting an additional protocol appeared to be a more preferable option to grant the Committee a

treaty-based status. In that regard, it referred to the working group under the Human Rights Council mandated to elaborate an optional protocol to the Covenant which would allow the Committee to receive and consider individual communications. This procedure would strengthen the existing status of the Committee and also establish a treaty-based monitoring body. Moreover, Turkey noted that in considering the rectification of the legal status of CESCR, the ongoing treaty body reform process should be taken into account, including the proposal for a unified standing treaty-monitoring body.

30. The Government of the **United States of America** indicated that if the States parties to the Covenant wished to provide the CESCR with a formal legal status equivalent to that of other treaty bodies, States parties should either amend the Covenant or adopt a new optional protocol thereto. Article 29 set out the appropriate procedure for amending the Covenant, a procedure involving, inter alia, the proposal of an amendment by any State party, the convening of a conference of States parties by the Secretary-General, and the approval of the amendments by the conference and the General Assembly. The Government noted that once it entered into force, the amendment would be binding on those States parties which had accepted it. In the absence of a 100 per cent adherence of States parties, it would seem that the Committee would be governed concomitantly by the ECOSOC resolution and treaty law, creating overlapping and potentially inconsistent structures and mandates. Equally, if the goal was to create new competencies of the Committee, this would not seem to justify amending the Covenant, given the separate exercise under way that could establish such new competencies through an optional protocol.

Annex

In response to the request of the Human Rights Council in its resolution 4/7, the Office of Legal Affairs submitted the following paper.

Legal Options for Placing the Committee on Economic, Social and Cultural Rights on a Par with other Treaty Monitoring Bodies

Background

1. The Committee on Economic, Social and Cultural Rights (CESCR) was established by a resolution of the Economic and Social Council (ECOSOC) (resolution 1985/17 of 28 May 1985) to carry out the monitoring functions assigned to ECOSOC in Part IV of the International Covenant on Economic, Social and Cultural Rights.[1]

2. The CESCR consists of independent experts that monitor implementation of the Covenant by its States parties. All States parties are obliged to submit regular reports to the CESCR on how the rights are being implemented. States must report initially within two years of becoming party to the Covenant and thereafter every five years. The CESCR examines each report and addresses its concerns and recommendations to the State party in the form of "concluding observations".

3. The CESCR cannot consider individual complaints, although a draft optional protocol to the Covenant is under consideration that could give the CESCR competence in this regard.

4. The CESCR meets in Geneva and normally holds two sessions per year, consisting of a three-week plenary and a one-week pre-sessional working group. The CESCR also publishes its interpretation of the provisions of the Covenant, known as general comments.

5. Under articles 16 and 17 of the Covenant, States parties undertake to submit reports to the Secretary-General of the United Nations "on the measures which they have adopted and the progress made in achieving the observance of the rights recognized" in the Covenant. The Secretary-General then transmits copies to ECOSOC for consideration under articles 21 and 22. ECOSOC resolution 1985/17 of 28 May 1985 established the CESCR to carry out the monitoring functions assigned to ECOSOC in Part IV of the Covenant.

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[1] All other treaty bodies have been established by the States Parties through provisions in the relevant treaties. See the *International Covenant on Civil and Political Rights, 1966* (ICCPR) (Part IV, arts. 28-45); *Convention against Torture, 1984*, (CAT) (Part II, arts. 17-24); *Convention on the Elimination of All Forms of Racial Discrimination, 1966* (CERD) (Part II, arts. 8-16); *Convention on the Rights of the Child, 1989* (CRC) (Part II, arts. 43-45); *Convention on the Elimination of All Forms of Discrimination against Women, 1979* (CEDAW) (Part V, arts. 17-22); *Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990* (Part VII, arts. 72-78); *Convention on the Rights of Persons with Disabilities, 2006* (not in force) (arts. 34-40); *International Convention for the Protection of All Persons from Enforced Disappearance, 2006* (not in force) (Part II, arts. 26-36).

6. Placing the CESCR on a par with other treaty monitoring bodies would involve the States parties to the Covenant providing for the establishment of such a body in a treaty - either by amendment of the Covenant or through the adoption and entry into force of a new treaty or protocol.

7. The States parties may choose to improve and rationalize the workings of the CESCR by adding provisions to those contained in ECOSOC resolution 1985/17 of 28 May 1985, describing the number, qualifications, election, term and emoluments of experts of the new treaty body; number and venue of meetings of that body; its monitoring functions with regard to the Covenant; the periodicity of reports made by States parties; and the addressees of the annual report(s) of the treaty body. The articles describing a new committee may more closely match those in the International Covenant on Civil and Political Rights, for example.

Amendment of the Covenant

8. The first option to establish a new committee under a treaty regime to monitor implementation of the Covenant would be through an amendment of the Covenant.

9. Any State party to the Covenant may propose an amendment and "file it" with the Secretary-General.[2] The Secretary-General then circulates the proposed amendment to States parties and requests that they notify him whether they favour a conference of States parties for the purposes of considering and voting upon the proposal. In the event that at least one third of the States parties favour such a conference, the Secretary-General convenes a conference under the auspices of the United Nations. Any amendment adopted by a majority of the States parties present and voting at the conference shall be submitted to the General Assembly for approval.

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[2] Article 29 of the Covenant reads as follows:

> 1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.
>
> 2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.
>
> 3. When amendments come into force they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Amendments enter into force upon approval by the General Assembly and the deposits with the Secretary-General of instruments of acceptance by a two-thirds majority of the States parties in accordance with their respective constitutional processes. Amendments are binding only on those States parties which have accepted them. Upon entry into force, those States parties that had not deposited instruments of acceptance with the Secretary-General would remain bound by the provisions of the Covenant in its original form and by any earlier amendment which they have accepted.

10. Following the entry into force of the amendment, any State that subsequently becomes a party to the Covenant will be considered to become party to the Covenant as amended, unless such State expresses a different intention.[3] In addition, a provision would need to be included to address the situation of States becoming party to the Covenant between the time that the amendment, following its adoption, is circulated for approval and the time that it enters into force.

11. Upon the entry into force of an amendment that establishes a new treaty body, and provided that no additional substantive obligations for States parties to the Covenant are created by the amendment, ECOSOC could, by resolution, delegate its duties under the Covenant to the new treaty body for those States parties that have not yet accepted the amendment. Following entry into force of the amendment, those States parties having accepted the amendment would report directly to the new treaty body.

12. The amendment of the Covenant to include provisions creating a treaty body to monitor implementation would be a cumbersome process (the period of time it would take for States parties to accept the amendment, double-regimes within the same treaty after entry into force and before all States parties accepted the amendment, etc.) and its application would be somewhat awkward given the different avenues of reporting.

Adoption of a protocol

13. A second option to establish a new treaty body to monitor the implementation of the Covenant would be to adopt a new protocol open to States parties to the Covenant. A conference of States parties to the Covenant would be convened to negotiate and adopt the Protocol establishing the treaty body, by approval of a majority of the States parties present and voting at the conference.

14. The text of a new protocol would reference the substantive terms of the Covenant, and then create the new committee and describe its mandate and functions. The Secretary-General would be named as depositary to the protocol.

15. The new protocol could be drafted to enter into force either after a certain number or a certain percentage of States parties to the Covenant have ratified it in accordance with their domestic procedures and deposited instruments of ratification, acceptance, approval, accession or consent to be bound with the Secretary-General. To match the amendment provisions in the

[3] See article 40, paragraph 5, of the *Vienna Convention on the Law of Treaties, 1969*.

Covenant, for example, a new protocol could provide for two thirds of the States parties to the Covenant to trigger entry into force. The protocol would be binding only on those States that had accepted it. Upon entry into force of the protocol, those States parties that had not deposited instruments of acceptance with the Secretary-General would remain bound by the provisions of the Covenant in its original form.

16. Under the assumption that the new protocol would not involve additional substantive commitments for States parties, it would be most efficient to agree on a simplified procedure for entry into force. A simplified procedure for the entry into force would be binding upon all States parties to the Covenant and would thus maintain a unified legal framework. Such a method would be based on the non-objection over a specified period of time of one or more than a certain percentage of States parties to the Covenant (one third, for example), rather than through a proactive method (such as signature subject to ratification, acceptance, approval, etc.). A solution of this nature was incorporated in article 5 of the Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 12 December 1982. Article 5, paragraph 1, which provides for a simplified procedure to establish consent to be bound, reads as follows:

> "1. A State or entity […] shall be considered to have established its consent to be bound by this Agreement 12 months after the date of its adoption, unless that State or entity notifies the depositary in writing before that date that it is not availing itself of the simplified procedure set out in this article."[4]

17. An additional provision would need to be included to make certain that the Covenant and new protocol are mutually binding on future parties to the Covenant once the protocol enters into force. In addition, a provision should be included to address the situation whereby a State becomes a party to the Covenant between the time that the new protocol, following its adoption, is circulated for approval and the time that it enters into force. In such a case, should a simplified entry into force provision be used, it may be specified that the State concerned should either abide by the same deadline as the other States parties or additional time may be given for objecting to the Protocol.

18. In the event that one State party to the Covenant (or more than a certain percentage) objects to the entry into force of the new protocol within the period allowed, it would fail and not enter into force, unless and until the State party (if only one is required under the protocol) withdraws its objection. Serious political will would be required to ensure previous consensus and avoid this scenario. Should it be expected, however, that there will be universal acceptance by the States parties to the Covenant to the change in status of the CESCR, the simplified procedure for entry into force of a new protocol is recommended.

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[4] See also article 2 of the *Agreement concerning the adoption of uniform technical prescriptions for wheeled vehicles, equipment and parts which can be fitted and/or be used on wheeled vehicles and the conditions for reciprocal recognition of approvals granted on the basis of these prescriptions, 1958*, which provides that a new regulation annexed to the Agreement will be considered adopted unless, within a certain period, a number of parties have informed the United Nations Secretary-General of their disagreement with the Regulation.

Ending the mandate of the CESCR and transferring functions to a new treaty body

19. Once the new treaty body is established, either by amendment to the Covenant or by the adoption and entry into force of a new Protocol, a new ECOSOC resolution could delegate the current functions of the CESCR to the new treaty body. For those States parties that have not accepted the amendment or protocol creating the treaty body under the Covenant, the reporting would continue to be submitted to ECOSOC, and ECOSOC would then forward it on to the new treaty body for review and action. The same or a separate resolution of ECOSOC may abolish the CESCR in its current form.

20. The provisions of the amendment or protocol should also provide for the replacement of ECOSOC in Part IV of the Covenant with reference to the new committee, once all States parties to the Covenant have accepted the amendment or protocol.

21. Given the proposals for a unified treaty body, a provision similar to article 27 of the International Convention for the Protection of All Persons from Enforced Disappearance[5] and article 47, paragraph 3, of the Convention on the Rights of Persons with Disabilities[6] may be included in the amendment of the Covenant or the new protocol in order to facilitate a possible further transfer of monitoring functions to another treaty body.

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[5] Article 27 reads: A Conference of the States Parties will take place at the earliest four years and at the latest six years following the entry into force of this Convention to evaluate the functioning of the Committee and to decide, in accordance with the procedure described in article 44, paragraph 2, whether it is appropriate to transfer to another body - without excluding any possibility - the monitoring of this Convention, in accordance with the functions defined in articles 28 to 36.

[6] Article 47 (3) reads: If so decided by the Conference of State parties by consensus, an amendment adopted and approved in accordance with paragraph 1 of this article which relates exclusively to articles 34, 38, 39 and 40 shall enter into force for all States Parties on the thirtieth day after the number of instruments of acceptance deposited reaches two thirds of the number of States Parties at the date of adoption of the amendment.