



Academic Platform on the 2020 Review of the Treaty Body System

Second Regional Workshop, Eastern Europe
Moscow

November 2016

Report of the meeting

The Regional Workshop was organised and hosted in Moscow by the Institute of Legislation and Comparative Law, www.izak.ru in cooperation with the Geneva Academy. This Workshop represented the continuation of the global consultations under the Academic Platform lead by the Geneva Academy for the 2020 Review of the operation of the UN human rights treaty body system under the General Assembly's 2014 Resolution A/Res/68/268 on Strengthening and enhancing the effective functioning of the human rights treaty body system. The meeting was mainly attended by academics from the region, as well as observers from government and civil society. The participants discussed many aspects of the treaty body system and this report is a summary of the main issues addressed at the meeting.

I. Introduction

- 1.** The meeting began with a roundtable introduction of all participants, and a brief overview of the background to the project was given, along with a summary of the discussions that took place at the earlier regional consultation in Dublin in July 2016. Another regional consultation was due to take place the following day in San Jose, Costa Rica.
- 2.** During the early part of the meeting the importance of the strengthening exercise under GA Resolution 68/268 was highlighted along with the need to ensure that no initiatives be considered that could undermine the effective functioning of the treaty bodies. The key role played by the treaty bodies in helping states to meet their obligations under the relevant treaties was underlined by several participants. The importance of preserving the independence, specificity and autonomous nature of the treaty bodies throughout the strengthening process was emphasized. The general thrust of the observations was that the functioning should be improved at a procedural level without necessarily rethinking the legal framework. Some suggestions in this regard are set out more fully below.
- 3.** It was also observed that higher levels of transparency and openness within responsible ministries and departments in-country should have benefits for the work of states and the treaty bodies in making information more accessible to the public, civil society and the treaty bodies. The universalisation of all of the human rights treaties was also suggested as a means of ensuring a more holistic approach. At the same time, it was considered that one of the aims of the strengthening process is to ensure the credibility of the human rights treaty body system and to promote higher levels of trust and between the treaty bodies and states parties.

I. Areas of improvement within the current arrangements

1. Suggestions relating to the state/treaty body interface

- 1.1** Among the key issues addressed was the consideration of the presentation of a single report by states to all of the relevant treaty bodies. It was thought that this could be done without any major budget implications and with only relatively minor adjustments to practice. Some participants showed openness to this proposal of streamlining reporting to treaty bodies, and it was also mentioned that any such report would be much lengthier. It was also mentioned that there could be risks if a single report was required and redefinition of the parameters of the treaties and that it could threaten the independence, specificity and autonomous nature of each treaty body.
- 1.2** Some participants underlined the importance of treaty bodies not going beyond the mandate of the treaty concerned, and highlighted the fact that their role is principally to assist states. It was stated that they should not impose any additional or new obligations on states, and that they are not international courts.
- 1.3** The suggestion was also made to increase dialogue between treaty bodies and states and to have this twice a year instead of annually and organised in such a manner so as to ensure a better the dialogue with states. In addition, treaty bodies often produce questions for states immediately before the sessions and there is insufficient time to address these properly. It would be preferable to have any such questions much more in advance.
- 1.4** It was also proposed that consideration could be given to the production of unified questionnaires produced for all the states for the single report. However the difficulty that not all states are parties to all relevant treaties may complicate this, but should not be a fundamental

obstacle. The specificity of terminology of each treaty was also invoked as a possible impediment in this regard. The idea that treaty bodies could coordinate their interactions including questionnaires for states where there are several treaties to which the state is a party and where there are cross-cutting issues such as discrimination, would again be worthy of consideration. The fact that such activities are not foreseen by the treaties should not be seen as a precluding obstacle. Examples exist that this is possible. For instance, the CERD early warning procedure was an example of a practice that is not established by the treaty but has been adopted by a committee.

1.5 Another alternative might be cross-thematic questionnaires and it was suggested that a table of cross ratification could be elaborated. It was said that the European Human Rights institutions have used such techniques (e.g the European Committee against Torture and the European Court of Human Rights have used similar questionnaires).

1.6 It was suggested that inter-committee sessions may be a good way in which to reduce the backlog of reporting and offer a middle ground between separate reports and a unified report.

1.7 It was also suggested that it would be helpful to states if the treaty bodies were to publish best practices concerning reporting so as to facilitate states' work in preparing. It was further proposed that online learning platforms could be prepared in a number of different language versions so that persons could be trained without personal attendance, which would lower costs and enable a much larger uptake. The possibility that the OHCHR could produce free matrices of reporting and put them online was also mentioned.

2. Suggestions with regard to the organisation of the work of the treaty bodies

2.1 There was a lengthy discussion on various aspects of modern technology usage which could be used by treaty bodies, states and civil society to increase the visibility and effectiveness of the work of treaty bodies. This could include the publication on-line of best practices on treaty implementation which could improve their work and avoid duplication. It was highlighted that information relating to treaty bodies' findings can be very difficult to access particularly for civil society and academics, and that this could be improved.

2.2 The widespread advances in E-government with reports and commitments available from across government and online should be used to improve the transparency and efficiency of the system, and offers a means to hold states to more effective scrutiny of the fulfilment of their obligations. This exchange of information could also be part of the state commitments, for example, when they wish to become members of the Human Rights Council, and could be published on the website of the ohchr.org under each country profile.

2.3 The example was given of the working methods of the Venice Commission of the Council of Europe. This has developed extensive practices of information sharing, working on-line in between sessions and making their work more available and better known – which in the point below related it to the suggestion of a unified treaty body. The papers are made available to members of the Commission up to 6 weeks in advance and actual meeting time is kept very short as much of the work is done beforehand and simply approved in the meetings. The roles of the rapporteurs and lawyers in preparatory work are important in this regard.

2.4 The establishment of a unified calendar for reporting was also discussed and the fact that reporting may be due under different time periods for different treaties should not be an obstacle to this proposal.

2.5 The view was also expressed that the members of treaty bodies should meet at least once a year in a forum to share experiences.

II. A unified treaty body

3.1 Among the key issues addressed was the consideration of whether the creation of a unified treaty body would represent an improvement or a threat to the system as a whole, and thus present risks. It was suggested that past proposals on reform had failed due to the need to redefine the parameters of the treaties and that what matters now is to improve the functioning without modification of the treaties. It was also important to maintain the independence, autonomy and specificity of the treaty bodies individually and there was concern this could be undermined by the establishment of a unified body.

3.2 Positive advantages of a single treaty body were thought to include cost saving as meeting time could be drastically reduced and only one report produced and subject to translation. With single reports emanating from the treaty bodies too it would be easier for states to report to treaty bodies and others to find information. Work could be more concentrated and the degree of overlap that currently occurs could be eliminated. If current resources were maintained and distributed differently there could be a significant increase in the efficiency of the system without cost increase. This would also facilitate more comprehensive communication with the public could be imagined.

3.3 One of the challenges that could arise however was the need for an increased professionalization of the members of the treaty bodies, and it was acknowledged that the current system is challenged by the need for members to juggle their professional life with the obligations of being a member, often for several months a year. The question was also raised as to whether the experts are given proper conditions of work to enable them to work independently. There was one reference of the need for a separate secretariat of the treaty bodies, either under OHCHR or independent of it in order to service the unified treaty body but this was not explored in depth.

3.4 Independently of the challenges and advantages mentioned above it was emphasized that a clear strategy for transition must be elaborated for a transitional period of negotiations should a unified treaty body be developed in order to avoid vacuum. In particular careful reflection was required on the role of existing jurisprudence and how to transfer it meaningfully to the new body.

III. Additional issues addressed

4.1 There was some discussion of the role and purpose of General Comments and questions were asked about their utility and how do they should be formulated.

4.2 It was also highlighted that decisions taken during the meetings of Chairpersons are not endorsed by all members. Some consider that they lack legitimacy. Greater consultation within the committees was required for this to be more transparent and inclusive, and consequently carry greater weight and this consultation should be conducted well in advance of the meetings. It was also recommended that the Chairpersons adopt summaries of their meetings. The usefulness of inter-committee meetings was also discussed briefly. The idea of replacing meetings of chairpersons with inter-committee

meetings observing the principle of equitable geographical distribution for the composition of these meetings was also mentioned.

4.3 The idea that inter-state cooperation should be encouraged, a sort of inter-country “coaching”, might help those states with greater experience help those with less in meeting their obligations.

4.4 The question of a platform for elections was discussed. It was suggested that the 2012 OHCHR proposal for this platform could be analysed and reconsidered. A common practice for all treaty bodies could be considered especially based on the fact that some treaties already provide for limited terms for committee members. However, some participants underlined the need to respect the exclusive competence of states to nominate and elect members of treaty bodies.

4.5 Finally, cross-referencing among regional and universal bodies was suggested but it was recognised that there could be some practical obstacles arising from the fact that not all the regions have equivalent regional bodies.

V. Follow up: Conclusion

5.1 The meeting was concluded with an indication of the next steps that would be taken in the process, including the fact that two types of workshops might be organised in 2017-2018 from which a first draft of a final report might emerge: additional regional workshops (Asia and Africa) and perhaps some thematic workshops which would be prepared with the benefit of dedicated research on issues that have emerged in all the regional workshops. Such issues may include complementarity in the work of treaty bodies, and non-conventional mechanisms, the potential for states to submit a single report and

issues touching on the questionnaires they complete, as well as the elements to consider with regard to a unified treaty body.

5.2 The participants were reminded that the call for papers is available on the Academy's website and academic partners were encouraged to submit papers along with questions discussed in the workshops and outside. The reports of the different regional and other workshops, as well as any papers submitted in response to the call for papers, will be published on the website of the Academy.