

66 States abstain on GA resolution creating treaty body strengthening process

24.02.2012

Following two months of negotiations, on 23 February 2012 the General Assembly passed a resolution creating the [Intergovernmental process of the General Assembly on strengthening and enhancing the effective functioning of the human rights treaty body system](#). The resolution was tabled by Russia and co-sponsored by Algeria, Bangladesh, Belarus, Bolivia, China, Cuba, the Democratic People's Republic of Korea, India, Indonesia, Iran, Nicaragua, Pakistan, Russian Federation, Syria, Sudan, Ta

Following two months of negotiations, on 23 February 2012 the General Assembly passed a resolution creating the [Intergovernmental process of the General Assembly on strengthening and enhancing the effective functioning of the human rights treaty body system](#). The resolution was tabled by Russia and co-sponsored by Algeria, Bangladesh, Belarus, Bolivia, China, Cuba, the Democratic People's Republic of Korea, India, Indonesia, Iran, Nicaragua, Pakistan, Russian Federation, Syria, Sudan, Tajikistan, Thailand, Venezuela, Viet Nam, and Zimbabwe.

The resolution requests the President of the General Assembly (PGA) to launch an intergovernmental process to conduct negotiations on strengthening and enhancing the effective functioning of the treaty body system. The resolution requests the PGA to appoint two co-facilitators to assist him in that regard. The process will commence "no earlier than April 2012" and the PGA will report on the "deliberations and recommendations" by the end of the 66th session of the General Assembly,[\[1\]](#) with a possible extension of the process at that point.

Though the resolution was passed with 85 votes in favour, 66 States made their procedural and substantive concerns with the resolution known by abstaining from the vote. No State voted against the resolution. Regional divisions were clear, with the vast majority of votes in favour coming from the African, Asian, as well as Latin American and Caribbean (GRULAC) groups. The Western European and Others (WEOG) and Eastern European (CEIT) groups abstained for the most part. Forty-two states were absent. Click here for the [voting record](#) and a breakdown of [votes by region](#).

The initial draft resolution called for the creation of a working group, an idea originally [raised by China](#) in the General Assembly Third Committee in November 2011. However, several States were caught off guard when a resolution calling for the creation of such a working group was circulated by Russia in late December 2011. Negotiations on the text proved difficult from the beginning, with States deeply divided on key issues such as the mandate, participation and timing of an intergovernmental process.

Many were troubled by the fact that the initial draft completely ignored the ongoing treaty body strengthening process, known as [the Dublin process](#),[\[2\]](#) and the upcoming report of the High Commissioner for Human Rights (HCHR), which would compile the various proposals made during that process. Though the Dublin process is not Geneva-based, many States, particularly those without representation in Geneva, welcomed the opportunity an intergovernmental process in the General Assembly would provide for all States to consider the issue of treaty body strengthening. Though the resolution now decides to take into consideration the upcoming HCHR's report (expected in June 2012), the timing of the intergovernmental process (set to start no earlier than April 2012) leaves the timing and relationship between the two processes unclear.

Other troubling aspects of the initial draft included inadequate provisions on the participation of key non-state stakeholders in the process. The paragraph on participation in the initial draft[\[3\]](#) left out National Human Rights Institutions (NHRIs) and treaty body members entirely, and left the PGA to "work out arrangements" for the input of non-governmental organizations (NGOs). The draft also limited the participation of NGOs to those in consultative status with the Economic and Social Council (ECOSOC), despite the fact that NGO engagement with the treaty bodies has never been limited in such a way.

Though the final language on non-state stakeholder participation was improved by the fact that NHRIs and treaty body experts were included and NGO participation is no longer limited to those with ECOSOC status, in

other respects the final draft is worse. The resolution now requests the President of the General Assembly to work out “separate informal” arrangements, “after consultation with Member States” that would allow treaty bodies, NHRIs and “relevant” non-governmental organizations to provide input and expertise, “bearing in mind the intergovernmental nature of the process”. Ahead of the vote, five international human rights organizations issued a [statement](#) calling on Member States to ensure that the treaty body strengthening process continue to provide for the direct contributions of non-governmental organizations. At the adoption, several states, including some who voted in favour of the resolution, affirmed the importance of ensuring the active participation of non-state stakeholders in the intergovernmental process.[\[4\]](#)

In addition to the issues outlined above, the initial draft of the resolution also suffered from a lack of clarity on the mandate and scope of work to be undertaken, as well as on the respective legal competence of the General Assembly, treaty bodies and States parties to the treaties to address issues related to treaty body reform. All of the States abstaining,[\[5\]](#) as well as some voting in favour[\[6\]](#) addressed the legal competence question, underlining the role of States parties to decide matters related to the treaties themselves, the treaty bodies to decide matters related to their working methods, and the General Assembly to decide matters related to funding.

In addition to Russia, 17 states spoke at the adoption of the resolution.[\[7\]](#) A number of States abstaining from the resolution regretted that greater efforts had not been made to achieve consensus. Co-sponsors rejected amendments put forward by a large, cross-regional group of states[\[8\]](#) the day before the vote. These amendments included revisions to address the participation of non-state stakeholders and the legal competence issue.

Only China, Indonesia and Belarus spoke out unequivocally in favour of the resolution. China’s statement seemed to validate the fear on the part of NGOs and some States that the independence of the treaty body members would be at stake in the coming discussions. Indicating that it was ready with proposals, China noted that “reforms should ensure that treaty bodies comply with the principles of objectivity and fairness, carry out their work in strict observance with existing mandates, promote constructive dialogue and collaboration between treaty bodies and States parties, avoid overlapping duplicating mandates, instances of encroachment, as well as tendencies towards politicization and selectivity.” In that regard, several statements made by other States[\[9\]](#) specifically emphasized the need to respect the independence of the treaty body members throughout the process.

Looking ahead, it is unclear when the intergovernmental process will begin its work, as the resolution stipulates that it is due to begin “no earlier than April 2012” but the HCHR is only expected to release her report compiling the various proposals from the Dublin process in June 2012. In the meantime, OHCHR has arranged a consultation for States parties on 2-3 April 2012 in New York. The PGA is expected to appoint the two co-facilitators in the coming weeks.

[\[1\]](#) September 2012

[\[2\]](#) The Dublin process began in 2009 when the HCHR called on States parties to human rights treaties and other stakeholders to initiate a process of reflection on how to streamline and strengthen the treaty body system. The process has been open to all relevant stakeholders, including treaty body members, National Human Rights Institutions, non-governmental organizations, academics and States parties. It has involved formal meetings, including the annual [inter-committee meetings](#) of human rights treaty bodies and [meetings of chairpersons](#), consultations within the treaty bodies, informal meetings and consultations held around the world, and written submissions. Thus far, a [non-exhaustive list of emerging proposals](#) has been compiled and the process was designed to culminate with the report by the HCHR compiling the various proposals.

[\[3\]](#) “Requests also the President of the General Assembly to work out arrangements that would allow the Working Group to benefit from the input and expertise of non-governmental organizations in consultative status with the Economic and Social Council”.

[4] Switzerland, USA, Denmark, Mexico, Liechtenstein, Costa Rica, Uruguay, Argentina, Norway, Chile, and El Salvador.

[5] Switzerland, the USA, Denmark (for the EU), Mexico, Liechtenstein, Costa Rica, Canada, Norway, Chile and Guatemala.

[6] Uruguay, and Argentina.

[7] Switzerland, USA, Denmark, Suriname, Mexico, El Salvador, Liechtenstein, Costa Rica, Uruguay, Argentina, Canada, Norway, Chile, Guatemala, China, Indonesia, and Belarus.

[8] Mostly from WEOG, CEIT and GRULAC

[9] Switzerland, USA, Liechtenstein, Costa Rica, Argentina

ISHER