

## General Assembly extends intergovernmental process on treaty body strengthening

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The intergovernmental process began with General Assembly [resolution 66/254](#) on 23 February 2012. That Russian-led resolution and the intergovernmental process it created were marred with controversy and 66 States abstained from the vote. Click [here for an earlier ISHR news story on the adoption of that resolution](#).

Part of the controversy stemmed from the fact that the intergovernmental process began as the OHCHR-initiated 'Dublin process' on treaty body strengthening was still ongoing. The Dublin process involved a series of multi-stakeholder consultations since late 2009 and was to culminate in a [report](#) by the UN High Commissioner on Human Rights in early 2012. The [report](#), which was to provide a basis for decisions by all stakeholders on which proposals to implement and how, was delayed to allow for further consultations with States.<sup>[1]</sup> In the meantime, the intergovernmental process was launched, leaving its relationship with the Dublin process and the High Commissioner's report unclear. Ultimately the High Commissioner's report was released at the end of June, following which the co-facilitators of the intergovernmental process (Iceland and Indonesia) held consultations with States on 2 July and again from 16-18 July 2012.

### **The July 2012 consultations**

While States continued to argue about the relevance of the High Commissioner's report,<sup>[2]</sup> the co-facilitators of the intergovernmental process essentially used it as the basis for drawing up a list of issues for discussion during the State consultations. The discussions amongst States covered four broad areas: the proposal for a comprehensive reporting calendar;<sup>[3]</sup> methods of work; the reporting process; and capacity to implement.

Several states supported the idea of a comprehensive reporting calendar in principle but voiced concerns that the proposed cycle of reporting would be unsustainable and very costly. A number of states also supported the High Commissioner's suggestions to increase the visibility and accessibility of the treaty bodies through webcasting and videoconferencing.<sup>[4]</sup> Several NGOs, including ISHR, voiced their concerns with the suggestion in the High Commissioner's report that formal sessions between treaty bodies and NGOs be public, as this would heighten the risk of reprisals against those cooperating with the treaty bodies. In that regard, many NGOs and States<sup>[5]</sup> welcomed the focus on reprisals in the High Commissioner's report, in particular the suggestion to establish treaty body focal points on reprisals as a first step.

Several hard-lined States also put forward negative proposals. A group of States calling themselves "the cross-regional group" or "CRG"<sup>[6]</sup> presented a unified front in the consultations. Among other things, the CRG called for a code of conduct and accountability mechanism for treaty body experts, equitable geographical representation in the treaty bodies, and increased transparency of interaction between the treaty bodies and non-state stakeholders. Though States supportive of the independence and strengthening of the system were vocal in their opposition to such measures as a code of conduct, they were in general less coordinated in their response.

### **NGO participation**

Another troubling aspect of the intergovernmental process from the start was the inadequate provision for the participation of key non-state stakeholders, in stark contrast to the broad consultations facilitated by OHCHR

in the context of the Dublin process. Resolution 66/254 requested the President of the General Assembly (PGA) 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”. Several states who abstained from resolution 66/254 continued throughout the consultations to call for greater participation of other stakeholders.<sup>[7]</sup>

In the end, two NGO representatives were invited by the co-facilitators to participate in panels during the State consultations in mid-July<sup>[8]</sup> and NGOs were able to observe the discussions amongst States and take the floor during side events. Separate NGO consultations were also held on 4 September 2012. NGOs without ECOSOC accreditation<sup>[9]</sup> were subjected to a procedure whereby States could object anonymously to their participation without providing a reason or any recourse to the concerned NGO.<sup>[10]</sup> This was particularly controversial as language limiting participation to ECOSOC accredited NGOs was negotiated out of resolution 66/254 and NGO engagement with the treaty bodies has never been limited in such a way.<sup>[11]</sup> *Alkarama*, an NGO that regularly contributes to the work of the treaty bodies, was prohibited from participating because of an objection from Algeria. During the NGO consultations, USA, Canada, Switzerland, Israel and the EU challenged the ‘non-objection’ procedure, stating that there was no agreement on its use, while China, Russia and Algeria argued that the rule is well established for non-accredited NGOs in General Assembly proceedings.

Statements at the adoption of the resolution extending the intergovernmental process indicated that States were still divided on NGO participation. Russia on behalf of the CRG called for strict compliance with resolution 66/254 and the intergovernmental nature of the process while the USA stated that NGOs must continue to be included in all aspects of the discussion.

### **The way forward**

The co-facilitators concluded their work in the 66<sup>th</sup> session with a non-substantive progress report to the PGA that describes the State and NGO consultations. In that report, the co-facilitators’ recommend that a comprehensive cost review of the treaty system be provided by the end of 2012.

Regarding the timeline, States were divided in the negotiations about whether the resolution should prescribe a fixed end to the process within the 67<sup>th</sup> session<sup>[12]</sup> or should not be constrained.<sup>[13]</sup> Reflecting the different State positions, the resolution rather vaguely “decides to extend the intergovernmental process ... *with a view to identifying*” concrete and sustainable measures in the next session.

As the General Assembly is now gearing up for its intense Committee work during the autumn, the intergovernmental process has been put on hold until early 2013. In the meantime, the Third Committee of the General Assembly will be confronted by requests from several treaty bodies for temporary additional funding to deal with their backlogs. Language to the effect that the continuation of the intergovernmental process would not prejudice such temporary measures was negotiated out of the resolution, leaving the prospects for those requests uncertain.

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<sup>[1]</sup> OHCHR held consultations with States in New York on 2 and 3 April in an effort to satisfy those that felt States had not been sufficiently consulted in the Dublin process.

<sup>[2]</sup> In particular, hard-lined States responsible for creating the intergovernmental process argued that the High Commissioner’s report should be just one aspect of the basis for discussions.

<sup>[3]</sup> This proposal would organize the current reporting deadlines into a single comprehensive reporting calendar, based on a periodic five-year cycle. Within this five-year period, there would be a maximum of two reports per annum due for a State that is a party to all the treaties.

<sup>[4]</sup> Canada, Costa Rica, Ireland, El Salvador, Japan, Korea, Mexico, Thailand, Switzerland, USA, Liechtenstein, Colombia, the African group and CARICOM. States in the CRG were supportive of webcasting and

videoconferencing only with the consent of the State Party concerned and suggested that all meetings, including those with non-state stakeholders be webcasted.

[5] Including the EU, Australia, Israel, USA, Thailand, and the African group.

[6] Belarus, Russia, Bolivia, China, Cuba, Iran, Nicaragua, Cuba, Pakistan, Syria, and Venezuela.

[7] Including Switzerland, USA, Mexico, Liechtenstein, Costa Rica, and El Salvador, Canada, the EU, New Zealand, Australia.

[8] ISHR participated in a side event on “The role of the UN system and civil society in supporting Member States and their capacity to implement” and Amnesty International participated in a panel discussion on the “Capacity to Implement”.

[9] ECOSOC status provides NGOs with access to a range of fora at the UN and is granted by ECOSOC on the recommendation of the Committee on NGOs. The Committee has come under criticism in recent years as the Committee is known for excessive politicization and the balance of the Committee’s membership tends towards States that do not support a vibrant civil society at the UN. [Click here for an earlier ISHR article about the ECOSOC NGO Committee.](#)

[10] This procedure, whereby decisions to allow NGOs to participate are taken on a ‘non-objection’ basis has become prevalent in a range of meetings at UN headquarters in recent years.

[11] This also resulted in the co-facilitators having to reschedule the meeting from its original date on 31 July because the three working days’ notice they provided was insufficient for Member States to ‘vet’ the non-ECOSOC accredited NGOs wanting to participate.

[12] Including Liechtenstein, Switzerland, Canada, EU, New Zealand, USA, Australia, South Africa.

[13] Including China, the African group, Russia on behalf of the CRG, the Philippines.