
UPDATE ON TREATY BODY REFORM

Discussion moves to the General Assembly



Photo: UN Photo/Paulo Filgueiras

The UN High Commissioner for Human Rights speaks at a treaty body strengthening consultation for States, held in New York on 2 April 2012. From left to right: Ivan Simonovic, Assistant Secretary-General in the Office of the High Commissioner for Human Rights; Nassir Abdulaziz Al-Nasser, President of the General Assembly; Navanethem Pillay, the High Commissioner; and UN Secretary-General, Ban Ki-moon.

Since late 2009, strengthening of the UN treaty body system has been on various UN bodies' agendas. What started out as an initiative by current and former members of treaty bodies, lead into a multi-stakeholder consultation coordinated by the Office of the High Commissioner for Human Rights (OHCHR) – dubbed the Dublin process.

But in 2012, treaty body reform saw major developments. As the 'Dublin process'¹ was due to culminate in a report by the High Commissioner for Human Rights, the issue became politically charged when certain Member States in New York launched a rival 'intergovernmental process' in the General Assembly. Human rights defenders in particular suffered a significant setback, as the intergovernmental process did not provide adequately for their participation.

This article aims to provide an overview of key developments in treaty body reform over recent months and outlines the prospects for future developments.

THE INTERGOVERNMENTAL PROCESS

The idea for an intergovernmental process was originally raised by China in the General Assembly Third Committee in November 2011.² However, most did not anticipate such an idea would progress, and several States were caught off guard when a resolution calling for the creation of such a working group was circulated by the Russian Federation 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 such an intergovernmental process.

Following two months of intense negotiation, the General Assembly passed a resolution on 23 February 2012 creating the 'Intergovernmental process of the General Assembly on strengthening and enhancing the effective functioning of the human rights treaty body system.'³ The controversial Resolution 66/254 was tabled by Russia.⁴

The resolution requested 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. Furthermore, it requested the PGA to appoint two co-facilitators to assist him in that regard. After several months of deliberation, the PGA appointed the ambassadors of Iceland and Indonesia to these roles.

The process was to commence 'no earlier than April 2012' and the PGA was to report on the 'deliberations and recommendations' by the end of the 66th session of the General Assembly,⁵ with a possible extension of the process at that point.

1 <http://bit.ly/Rftgij>.

2 <http://bit.ly/UEuXsi>.

3 <http://bit.ly/wd3sW2>.

4 Co-sponsored by Algeria, Bangladesh, Belarus, Bolivia, China, Cuba, Democratic People's Republic of Korea, India, Indonesia, Iran, Nicaragua, Pakistan, Russia, Syria, Sudan, Tajikistan, Thailand, Venezuela, Vietnam, and Zimbabwe.

5 September 2012.

Though the resolution was passed with 85 votes in favour, 66 States made their procedural and substantive concerns 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, and the Latin American and Caribbean (GRULAC) groups. The Western European and Others (WEOG) and Eastern European (EEG) groups abstained for the most part. Forty-two States were absent.⁶

Part of the controversy stemmed from the fact that the inter-governmental process began as the OHCHR-led 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 report⁷ by the High Commissioner 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.⁸ In the meantime, the inter-governmental process was launched, leaving its relationship with the Dublin process and the High Commissioner's report ambiguous. Ultimately the High Commissioner's report was released at the end of June, following which the co-facilitators of the intergovernmental process held consultations with States on 2 July and again from 16 to 18 July 2012.

THE JULY 2012 CONSULTATIONS

While States continued to argue about the relevance of the High Commissioner's report,⁹ the co-facilitators of the inter-governmental process essentially used it as the basis for drawing up a list of issues for discussion during the State consultations. The debate amongst States covered four broad areas, which included the proposal for a comprehensive reporting calendar;¹⁰ methods of work; the reporting process; and capacity to implement treaty body obligations.

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 were also in favour of the High Commissioner's suggestions to increase the visibility and

accessibility of the treaty bodies through webcasting and videoconferencing.¹¹

Non-governmental organisations (NGOs), including ISHR, voiced their concerns with a 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 States¹² welcomed the report's focus on reprisals, in particular the suggestion to establish treaty body focal points on reprisals as a first step.

Several less progressive States also put forward negative proposals. A group of countries calling themselves 'the cross-regional group' or 'CRG'¹³ presented a unified front in the consultations. Their shared goals seemed to be to limit the independence of the treaty bodies and increase State oversight of the bodies' work. 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, and had little substantive counterweight to offer. One of the chief difficulties for the treaty body-friendly States was, and still is, a lack of consensus on the need for additional resources. While many have consistently called for increased resources, which would be necessary to implement some of the proposed reforms, others, particularly the United States and the United Kingdom, have strongly opposed the idea of increasing financial commitments.

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. The resolution establishing the inter-governmental process requested the PGA to work out 'separate informal arrangements, after consultation with Member States' that would allow treaty bodies, national human rights institutions and 'relevant' NGOs to provide input and expertise, 'bearing in mind the intergovernmental nature of the process'. Several States that abstained from voting on the

6 A voting record can be accessed at <http://bit.ly/UEkLju>, and breakdown of votes by region at <http://bit.ly/UEkQUK>.

7 <http://bit.ly/Rftgij>.

8 OHCHR held consultations with States in New York on 2 and 3 April 2012 in an effort to satisfy those States that felt insufficiently consulted in the Dublin process.

9 In particular, less progressive States responsible for creating the intergovernmental process argued that the High Commissioner's report should be just one aspect of the basis for discussions.

10 This proposal would organise 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 year due for a State that is a party to all the treaties.

11 Canada, Costa Rica, Ireland, El Salvador, Japan, Korea, Mexico, Thailand, Switzerland, USA, Liechtenstein, Colombia, the African Group and the Caribbean Community (CARICOM). States in the 'cross regional group' (see footnote 13) did not support webcasting and videoconferencing unless the State concerned expressed its consent, and suggested that all meetings, including those with non-state stakeholders, be webcast.

12 Including the EU, Australia, Israel, USA, Thailand, and the African Group.

13 Belarus, Russia, Bolivia, China, Cuba, Iran, Nicaragua, Cuba, Pakistan, Syria, and Venezuela.

resolution continued throughout the consultations to call for greater participation of other stakeholders.¹⁴

In the end, two NGO representatives were invited by the co-facilitators to participate in panels during the State consultations in mid-July,¹⁵ 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. In a particularly concerning move, NGOs without ECOSOC accreditation¹⁶ were subjected to a procedure whereby States could object anonymously to their participation without providing a reason or any recourse to the concerned NGO.¹⁷ This was controversial as language limiting participation to ECOSOC accredited NGOs had been negotiated out of Resolution 66/254, and NGO engagement with the treaty bodies has never been limited in such a way.¹⁸ Alkarama,¹⁹ 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 European Union challenged the 'non-objection' procedure, stating 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.²⁰

Statements at the adoption of the resolution to extend the intergovernmental process indicated 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 strongly supported NGO participation in all aspects of the discussion.

PROSPECTS FOR FUTURE DEVELOPMENTS

The co-facilitators of the inter-governmental process concluded their work in the General Assembly's 66th session with a non-substantive progress report to the PGA, describing the State and NGO consultations. The co-facilitators recommend in that report that a comprehensive cost review of the treaty system be provided by the end of 2012. In the final hours of the session, on 17 September 2012, Member States adopted a consensus resolution extending the intergovernmental process.²¹

Regarding a timeline for the process, States were divided in the negotiations about whether the resolution should prescribe a fixed end date, within the 67th session,²² or should not be constrained.²³ Reflecting the different State positions, the resolution 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 in the middle of its intense Third Committee work, in the last months of 2012, further discussion in the context of the intergovernmental process has been postponed until early 2013. In the meantime, the Third Committee will be confronted by requests from several treaty bodies for temporary additional funding to deal with their backlogs of country reviews.²⁴ However, language providing that the continuation of the intergovernmental process should not prejudice such temporary measures was ultimately dropped from the resolution, leaving the prospects for those funding requests uncertain. ■

14 Including Switzerland, USA, Mexico, Liechtenstein, Costa Rica, and El Salvador, Canada, EU, New Zealand, and Australia.

15 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'; Amnesty International participated in a panel discussion on the 'Capacity to Implement'.

16 ECOSOC status provides NGOs with access to a range of fora at the UN and is granted by the UN's Economic and Social Council on the recommendation of its Committee on NGOs. The Committee has come under criticism in recent years as it is known for excessive politicisation, and the balance of the Committee's membership tends towards States that do not support a vibrant civil society at the UN. See <http://bit.ly/Qj9se9> for an earlier ISHR article on the ECOSOC NGO Committee.

17 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.

18 This also resulted in the co-facilitators having to reschedule the meeting from its original date of 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.

19 www.alkarama.org.

20 While this procedure has become more common in the General Assembly in recent years, it is not universally applied.

21 Resolution 66/295.

22 Including Liechtenstein, Switzerland, Canada, EU, New Zealand, USA, Australia, and South Africa.

23 Including China, the African Group, Russia on behalf of the CRG, and the Philippines.

24 Additional information can be found in ISHR's Alert for the 67th session of the General Assembly, available at <http://bit.ly/RqpK57>.