Reforming the United Nations (UN) treaty bodies

We've talked about the powers of the treaty bodies – the various ways in which their mandates allow them to enforce rights. And we've already pointed to some of their weaknesses.

These problems might be summarized as follows:

Inadequate capacity

Treaty bodies meet for 9-10 weeks each year, some for less. The amount of time they can devote to scrutinizing a state report is minimal, and it grows less so with each new ratification; more states joining the treaty doesn't mean the treaty body has more time to meet.

They are poorly serviced.

The Office of the High Commissioner for Human Rights (OHCHR), which acts as a secretariat in support of the treat bodies, is thinly stretched – just a few staff are available for each of the treaty bodies to support all of the work.

Weak follow up capacity

The efficacy of the treaty body monitoring system hinges on the recommendations for reform that they make actually being followed up on. But the fact of the over-stretched secretariat, and the fact that the treaty body itself meets for such a short period each year, means they have limited capacity to seriously follow up to see if these recommendations are being implemented.

Insufficient expertise

Some treaty body members are excellent – hard-working, well-informed, diligent in unearthing the facts, and skilled in applying the law. But not all. Remember, the treaty body members are nominated and elected by states. Sadly, too many of members of the treaty body lack the requisite expertise (or at least sufficient expertise) to play an effective role in scrutinizing state behaviour.

The problems faced by the treaty bodies are compounded by the problems states face in fulfilling their various reporting obligations. The system of periodic reporting requires states to prepare comprehensive reports on the ways in which their laws, policies and regulations fulfill their treaty obligations. Given the comprehensiveness of the issues addressed by the treaties, especially those covering a range of human rights, this is a big undertaking and becomes more so as a state ratifies more treaties.

There are now ten treaty bodies in operation; many states must report to more than 5, 6, 7 or 8 of them. Though the so-called "burden" of reporting can be exaggerated – by states who simply don't want to be scrutinized – even well-meaning states with generally good human rights records and with a history of close co-operation with the treaty bodies, even these states complain that the proliferation of treaty bodies is creating quite burdensome reporting obligations.

States also often complain that recommendations made by the treaty bodies lack sufficient specificity, or that the treaty body members have insufficiently understood the factual or legal issues at play when they made these recommendations. Of course, again some of this disingenuous, but not all of it; it is very difficult given their limited resources for treaty bodies to go really "deep" on difficult issues. They lack the time and sometimes the expertise.

The weaknesses of the treaty bodies, together with the many complaints about the reporting process, have led to a long-standing debate on treaty body reform. Your materials include some background on this. At this point I simply wanted to share with you some thoughts on a process I was involved with in 2005. In response to the complaints made by states and those criticizing the treaty body system – and as part of a general UN reform process that was initiated by Secretary-General Kofi Annan – in response to this, the UN High Commissioner for Human Rights Louise Arbour proposed to create a **single, unified treaty body**.

The idea was simple: there would be a single human rights treaty body. It might include some 15-20, maybe even 25 members, appointed full-time and in paid positions (although still elected by states). The duties and functions of existing treaty bodies would be subsumed in the new body. A method would be found to consolidate reports, so that states might submit a single report to a single body or a single general report every 5, 6 or 7 years, perhaps with smaller and specific reports for particular issues (rights of the child, torture, women, etc).

The new unified treaty body might create "chambers" (as a court would). A chamber would be like a sub-committee where some members of the unified treaty body would be delegated to cover the particular focus of the existing treaties. For example, there would be a sub-committee on the rights of the child or a sub-committee for the prevention of torture and this would maintain expertise in this small group within the larger treaty body, in relation to those particular, specialized issues that some of the treaties cover.

There were other ways proposed to ensure expertise on particular treaties could be brought within the general and unified treaty body. The clear advantages to a unified treaty body would be to streamline the reporting process, to increase the capacity and expertise of the body, and to gain capacity in the secretariat, because there would be clear economies of scale if staff were brought together and consolidated to support one treaty body.

But additionally – and importantly – a single, unified treaty body might gain considerable stature and prestige; it might increase the interest, especially of the media, in covering the treaty body's work; and it might encourage States to take the reporting process just a little more seriously.

Further, you will recall that one of the most interesting developments regarding the treaty bodies is their enhanced ability in the past 10 or 20 years to undertake investigations at their own initiative, not just reviewing state party reports, but being able to launch an enquiry when they see a serious pattern of human rights abuse emerging, and in some cases to conduct on-site investigations, (as you know is the case with the sub-committee on the prevention of torture created by the optional protocol in the Convention Against Torture.)

Now both these techniques – the inquiry and the on-site investigation – both these techniques are time-consuming, so both would be better served by a properly resourced, full-time body.

Louise Arbour, as High Commissioner, advanced this proposal in 2005 and 2006. What was the result? Well, there was some discussion among states of the High Commissioner's proposal, but unfortunately it was relatively quickly shelved. Some minor reforms (since 2005) have been undertaken, including allowing states to submit a "core report" that is used by various treaty bodies. And it prompted treaty body members to begin a process of reflection, some meetings and discussions on reform and, as a result, there have been some minor changes, but by and large the existing system, with all its weaknesses, remains intact.

Why was there so little support for the idea? It was a combination of factors:

- Few states felt passionate enough about reform to put the energy into building support among other states. In order to create the unified treaty body, there's likely that some amendments to the existing treaties would be required, and much work would be required to prepare the ground for a conference of state parties to agree to these treaty amendments. No state or group of states stepped forward to lead that process.

- Second, many states opposed strongly the idea of a unified treaty body. Though various reasons were given, it is clear that there was little enthusiasm for a larger, perhaps more visible, perhaps less easy to ignore treaty body.
- Third, members of the existing treaty bodies voiced their objections. Many of those sitting on rights-specific treaty bodies that dealt with specific issues (children, women, torture, for example) feared that attention to the specific issue would be lost or diminished in one, general and unified body.
- Human rights NGOs were also less than enthusiastic, for two reasons. NGO coalitions have formed around specific issues, like child rights, and therefore around the Committee on the Rights of the Child, and this distinct treaty body (for Child Rights NGOs) is seen as being accessible and giving focus to their work. Like some members of the treaty bodies, these NGOs feared their specific issues would be diminished in this larger, unified body and that they might find such a body less accessible or perhaps even less knowledgeable concerning this specific issue.

Secondly, some NGOs, some international lawyers, fear any process that opened the core human rights treaties for amendment – even though the amendments would just be procedural – they feared this process because they felt there was a risk that some states would take the opportunity to weaken substantive rights in the treaties.

The lack of NGO support for treaty body reform was particularly damaging. And it was hard to generate a campaign on the theme. "Reform the treaty bodies" is hardly a slogan behind which thousands will rally. A unified treaty body, in contrast to other international legal initiatives – to establish an international criminal court or to ban landmines– a unified treaty body seems dull, technical, and procedural.

But the truth is the treaty bodies are at the very core of the UN system for protecting human rights. States have ratified treaties and it is the treaty bodies that are entrusted with the task of commenting on their compliance and monitoring the steps they take to do so. These treaty bodies could do so much more effectively. The reform of the treaty bodies is very much an agenda issue that won't disappear. The weaknesses of the system – that I summarized earlier – will continue to undermine the credibility and effectiveness of the human rights program.

Perhaps a unified treaty body is a step too far, or too soon. But reforms are urgently needed to make the treaty bodies work in more timely and more effective fashion.

I ask you to look at the readings in the module on Open Global Rights that have been suggested around this issue.

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