What do the treaty bodies do?

In this module you are learning about the UN human rights "treaty bodies" – an odd title, but one that simply refers to those committees that are established by a specific treaty to oversee the implementation of the treaty.

There are nine "treaty bodies" established by nine, separate human rights treaties.

Recall from the background reading – the treaty bodies are made up of experts – who are nominated and appointed by the states party to the treaty – but who are expected to act in an independent capacity. They meet roughly 6 – 8 weeks a year, depending on the treaty.

Each treaty body is assigned specific oversight functions, but they are commonly of five types.

- reviewing states' periodic reports
- receiving and reaching views on individual petitions
- receiving and investigating a complaint raised by one state against another state
- issuing General Comments
- investigating systematic patterns of abuse

In this video clip, I'll explain to you each type of oversight function performed by the treaty bodies.

Periodic reporting

This is the minimum level of scrutiny all states ratifying human rights treaties agree to – to submit a report every few years indicating the extent to which they are respecting the treaty provisions. The treaty body concerned reviews the report and then, in an open meeting, puts further questions to representatives of the state. Following that, "concluding observations" of the treaty body are prepared and published, outlining areas of concern.

I know – it doesn't seem like much. Ask the state itself to report on its compliance with the treaty? Hardly likely to produce a rigorous self-critique!

But recall – this technique of supervision developed at a time - in the 1960s - when more rigorous types of UN scrutiny were unheard of.

Further, the treaty body is not restricted to considering only the information from the state party to the treaty. It can – and does – receive information from non-governmental organizations (NGOs) and this often forms the basis for the detailed follow-up questions put to the state by the committee members. Moreover, while the state party is free to ignore the "concluding observations" – where these have been well–publicized in the local press it may pay a price for doing so.

And, these concluding observations can be used locally by actors in the country:

- by lawyers in a local court
- by parliamentarians working for law reform
- by advocates, NGOs, trying to change government policy
- by the media to criticize the government

Where well-researched and prepared, the concluding observations are an authoritative, international statement of what reforms a government should undertake to come into compliance with the treaty.

Individual complaints

It is possible under some of the treaties, usually by way of the state ratifying an additional or "optional" protocol, or making a specific declaration upon ratification of the treaty, for individuals in those states to lodge a complaint of human rights abuse with the treaty body. This is called the "individual complaint" or "individual petition" procedure.

There are rules in place regarding the "admissibility" of these complaints (many are rejected), and this is hardly a timely process. The treaty body's consideration of the individual complaints it receives often takes years. There is no open 'hearing' analogous to a court; for the most part just written representations by the individual (or those acting on his/her behalf), and written replies by the state.

I think it's fair to say the individual complaint procedure has not lived up to the hopes of human rights advocates.

- many countries – often the worst abusers - haven't opted in
- very lengthy process at conclusion, treaty body provides its "views" (language of "ruling" or "decision" deliberately absent), and these are often ignored by states)
- weak capacity in treaty body system to fully investigate

But in some regional human rights systems – Europe, Organization of American States (OAS) – these systems do work quite effectively.

Inter-state complaints

As with individual complaints, optional protocols or opt-in declarations in the treaties in some cases allow one state party to lodge a complaint to the treaty body alleging a breach of treaty obligations by another state party.

The idea of states lodging complaints against other states and seeking international adjudication of the issue is a familiar tool of enforcing international law. (Think of trade dispute resolution at the WTO, or how states use international tribunals to solve border disputes.)

But in the human rights context it is somewhat unusual – for the state complaining would be doing so not to defend its own interests (narrowly defined) or even the interests of its nationals, but rather the interests of those suffering human rights abuse in another country.

Now, potentially this could be a very powerful enforcement tool. This was shown in the European context, where a similar inter-state complaint mechanism under the European Convention for Human Rights, was used by several countries to bring pressure to bear on the military regime in Greece from 1967-73, and also against the UK regarding aspects of the detention policy in the anti-terror campaign in northern Ireland (again, in the 1970s).

BUT – although this technique is provided for in some of the UN treaties, it has never been used. Why not?

Governments fear doing so would only open them to counter-complaints?
Not seen as a method that would bring results (unlike regional system)?
Prefer to make displeasure known through political bodies – votes in Human Rights Council?

Likely some combination of all these reasons.

General Comments

Treaty bodies also issue "opinions" on the scope and content of various protections or provisions in the treaty. For example, "freedom of expression" in Article 19 of the International Covenant on Civil and Political Rights can be limited in order "to protect the rights and freedom of others". What does that mean? What restrictions would be acceptable, which would be too onerous?

In a domestic context, courts flesh out what the general language of the law means in particular situations, and in a common law system like Canada they create "precedent" by doing so – so that cases in future should be judged in light of previous court's rulings – as the jurisprudence develops.

But there is far too little case-based interpretation done by the UN treaty bodies to allow for meaningful international jurisprudence to develop (although there is a lot in the regional courts) – hence the importance of the General Comments. They amount to authoritative statements by the treaty body on how particular provisions in the treaties should be interpreted.

But, again, as with the concluding observations on states periodic reports, this depends on the general conclusions being put to good use –

- by lawyers in a local court
- by parliamentarians working for law reform
- by advocates, NGOs, trying to change government policy
- by the media

On-site or special investigations

Fifth and finally, some treaty bodies have the authority to independently launch an investigation – regardless of whether an individual complaint has been received, or another state has complained. This allows for a process of engagement with the state concerned, and potentially for the treaty body to visit to that state, and the eventual publication of a report on the situation it's investigating. Such techniques are included in Article 20 of the Convention against Torture and Article 8 of the 1999 Optional Protocol to the Convention on the Elimination of Discrimination Against Women, for example.

The most innovative such mechanism is the committee established by the 2002 Optional Protocol to the Convention against Torture. It has the power to – at short notice – visit prisons and detention centres in states that ratify the protocol, and to conduct regular system of visits.

To sum-up

- 5 different methods for treaty bodies to supervise compliance
- weakness reflects the era in which they were established
- some innovation (e.g. on-site mechanisms) as less concern for sovereignty
- incapacity in system is a key problem
- public campaigning and use domestically of the treaty body outputs is what makes them effective

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