International
Commission
of Jurists

Study on the Reform of the United Nations Human Rights Treaty Body System

International Commission of Jurists

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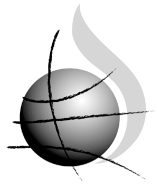

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The Study by the International Commission of Jurists (ICJ) on the Reform of the United Nations Human Rights Treaty Body System was researched and written by Penny Parker, Claire Callejon, Lukas Machon and Federico Andreu-Guzmán. The Study was edited by Priyamvada Yarnell.

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The Study shall serve as a background document to a series of consultations with various stakeholders, with the aim to identify feasible and practical short, medium and long-term measures to render the treaty body system more effective, visible and accessible.

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FOREWORD

The United Nations human rights treaties stipulate specific obligations for the States parties to promote and protect human rights. Implementation of these obligations is reviewed by the system of the UN treaty monitoring bodies. The treaty bodies exercise three basic functions: review the implementation of States parties´ obligations on the basis of periodic reports; specify the content of human rights and freedoms through the general comments; and where authorized, determine on the basis of individual communications whether individual's rights may have been violated in specific situations. Some of the treaty bodies exercise complementary functions, including through inquiries of gross and systematic violations or country visits.

The treaty body system has developed empirically, without clear vision of the intended role for the system as a whole. As a result, individual treaty bodies often exercise different and distinct functions and do not operate through the uniform working methods. Due to a variety of reasons, only incremental reforms have been possible so far, including the harmonization of the reporting guidelines for the common core documents and focused periodic reports.

With the increase in number of States parties and reporting burden, establishment of the ninth treaty body and continual differences in function and operation of individual committees, the system reaches its limits both in terms of serviceability and effectiveness. Systematic reform to establish a holistic and integral treaty body system has yet to take place. This study attempts to contribute to such reform with the analyses of experience made so far. It suggests some key functions for the future treaty body system to become more effective, visible and accessible.

The study focuses on several of the key issues, without concluding what should be the future structure of the treaty body system. Central is the question how to ensure equal implementation and standardized monitoring of all human rights obligations.

It will require both improving the quality and timeliness of reporting, as well as enhancing access to the system for individuals by making all human rights set out by the core treaties subject to communications procedures. Operational and uniform working methods would also render the system more effective and transparent. Improving visibility of the system is another challenge, as treaty bodies´ recommendations and views have remained known to and used only by a few professionals. Raising the awareness and greater use of international jurisprudence in domestic proceedings would help foster the observance of international law domestically. But for the future treaty body system to make a real difference, it will require an increased capacity to deal with urgent country situations, including through the systems of early-warning and urgent action procedures with a set of targeted country visits.

I. INTRODUCTION

The system of the United Nations treaty bodies (treaty body system) aims at monitoring the compliance of States parties with their human rights obligations under the respective UN human rights treaties. At the heart of this system's construction is the research to assist States parties in ensuring effective implementation of their human rights obligations and to guarantee the human rights stipulated in these 'core treaties'[1] to those who are or may become affected by their violations.

The core treaties are:

1) The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD),
2) The International Covenant on Economic, Social and Cultural Rights (ICESCR),
3) The International Covenant on Civil and Political Rights (ICCPR),
4) The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),
5) The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT),
6) The Convention on the Rights of the Child (CRC),
7) The International Convention on the Protection of the Rights of Migrant Workers and Members of their Families (ICRMW), and
8) The Convention on the Rights of Persons with Disabilities (ICRPD).[2]

There is one more treaty, the ninth human rights Convention that has been adopted, and which awaits entry into force: the International Convention for the Protection of All Persons from Enforced Disappearance (ICED).

In addition to the 'core treaties', there are other human rights instruments known as Protocols, which set out substantive rights or States` obligations. However, these instruments do not establish new and specific treaty monitoring bodies: Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (ICCPR-OP2); Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OP-CRC-SC); Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (OP-CRC-AC). There are also other human rights treaties, one of which establishes the eight treaty monitoring body - the Subcommittee on Prevention of Torture (SPT), or that institute procedures for individual communications. Neither these treaties are considered as 'core treaties' as they do not define substantive human rights obligations:

1) Optional Protocol to the Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment (OP CAT), establishing the Subcommittee on Prevention of Torture;
2) Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR-OP1);
3) Optional Protocol to the Convention on the Elimination of Discrimination against Women (OP-CEDAW); and
4) Optional Protocol to the Convention on the Rights of Persons with Disabilities (OP-CRPD).

One more procedural instrument was adopted by the UN General Assembly on 10 December 2008; The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, which provides for individual and inter-state communications.

[1] Those United Nations treaties which define substantive obligations and provide for the establishment of a committee to control their implementation by States parties are sometimes referred to as the 'core treaties', as opposed to other treaties which do not provide for such a body, which the expert of the former UN Sub-Commission on the Promotion and Protection of Human Rights on the universality of treaties has called the 'orphan Conventions'.

[2] The CRPD and the OP-CRPD entered into force on 3 May 2008.

This system has grown since its beginning thirty-eight years ago to become one of the most significant mechanisms internationally for the promotion and protection of human rights. All UN Member States are parties to at least one of the eight core human rights treaties and 75% of States have ratified four or more of these treaties, including the two International Covenants.[3]

The work of these independent expert bodies constitutes some of the most substantial work in the UN human rights system, anchored in the legal instruments accepted by States. The UN treaty body system has made a valuable contribution to the promotion and protection of human rights. Treaty bodies have provided important recommendations on the measures that States parties must take to guarantee human rights. Various States have adopted, repealed or modified legislation following the advice of the treaty bodies. Treaty bodies have also offered a very useful international source of protection for victims of human rights violations. Through their jurisprudence and general comments, they have interpreted, clarified and adjudicated rights of individuals, and specified the obligations of States parties. In several countries and more frequently, national courts of justice refer and adhere to treaty bodies' country recommendations, jurisprudence and general comments in their judgments.

However, for several years, the treaty body system has faced various problems and challenges, which undermine its current, and even, its future capacity and efficiency. These shortcomings are of a different nature and States parties, the United Nations and NGOs, differently perceive them.

The trend towards universal ratification, which implies extra work for the treaty bodies, has certainly exacerbated the difficulties, which the treaty body system has faced for some time. Since the mid-1980`s, the General Assembly and the former Commission on Human Rights have been dealing with the increased demands.[4] Nevertheless, the response has been only partial. The main efforts have been geared towards finding a solution to the reporting system that is to say the administrative control function. This approach was primarily justified by an already existing backlog in the submission and consideration of reports, as well as in the States' limited view of what has to be an international treaty body system for the protection of human rights. So started an incomplete treaty bodies' reform process as the measures taken so far have responded only in part to a need for a systematic reform.[5]

Consequently, the fundamental question remains unanswered: how to establish a treaty body system, which is efficient, in terms of ensuring full implementation of human rights obligations through monitoring, prevention, protection and assistance, and which can be effective and operational, given the expected universal ratification of the universal human rights treaties?

Although the reform of the treaty body system has for a considerable time been under discussion among treaty body experts, governments, human rights non-governmental organizations and academics, there has been little agreement on an overarching vision of the system in the future. This study aims to develop the International Commission of Jurists´ (ICJ) position and ideas as a contribution to the debate, in the framework of the broader reform process of the United Nations human rights system. As stated in a previous document on UN reform, the ICJ considers reform of the human rights treaty body system to be of paramount importance, very much as compelling as reinforcing the Charter-based system, through the establishment of the Human Rights Council and its mechanisms. The ICJ believes it is high time for States to make a political commitment in the

[3] However, there is a reluctance to ratify certain treaties, in particular the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, on part of several countries, including Asia-Pacific and English speaking Caribbean countries, which constitutes an obstacle to the envisaged universal ratification of the United Nations human rights treaties.

[4] See e.g. the General Assembly resolution 41/121 of 4 December 1986, resolution 42/105 of 7 December 1987 and resolution 43/115 of 8 December 1989 and Commission on Human Rights resolution 1989/47.

[5] *Reforming the Human Rights System: A Chance for the United Nations to Fulfil its Promise*, ICJ, June 2005, p. 11

context of reinforcing the UN human rights machinery with the establishment of the Human Rights Council, to reinvigorate a *process* for treaty body reform, to enhance implementation of treaty based human rights obligations through improving treaty bodies monitoring, interpretation and adjudication role.

The existing mechanisms correspond to a historical evolution. Since the entry into force of the Convention providing for the creation of the CERD, nine treaty bodies[6] have been established, out of which eight are operational, and one more treaty body will be established in the following years.[7] The multiplicity of treaty bodies is specific to the United Nations human rights treaty system. At the regional level, the evolution of the human rights protection systems has been marked with the unity of bodies in charge of the multiple treaties and protocols dealing with substantive rights (although there are two different bodies in certain systems, a commission and a court). While regional systems have distinguished the two separate issues of substantive rights on the one hand, and the control mechanism on the other hand, the United Nations has dealt with these two issues at once. As a result, each treaty body monitors a different treaty relating to certain substantive rights.

The route taken by the United Nations was not unavoidable. The General Assembly had decided in 1950 that there would only be a sole "International Covenant on Human Rights", which would enshrine civil, cultural, economic, political and social rights, as well as gender equality.[8] This decision was reversed in 1952,[9] following a request by the ECOSOC,[10] paving the way for a multi-treaty-body approach. The present situation has not been the result of formidable legal disputes nor procedural obstacles. But it is largely the consequence of ideological and political confrontation, which characterised the UN functioning between the 1950`s and the 1980`s.

The expansion of the treaty bodies control functions should also be reflected upon in this connection. The first instruments only envisaged treaty bodies' action in terms of administrative control (monitoring) and quasi-judicial control (communication procedures). In this regard, it is noteworthy that even communications, sometimes referred to as complaint procedures, were not fully welcomed. On the contrary, States parties have demonstrated their hostility or at least their reluctance[11] to these protection mechanisms. Slowly and unequally, improvements however have been introduced to the "classic" treaty bodies' functions, such as the recognition of communications submitted by "groups of individuals",[12] or the strengthening of protection through interim measures.[13] Over time, new functions have been established for certain treaty bodies. For example certain instruments have provided the corresponding treaty bodies with functions of inquiry in

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[6] In a chronological order: the Committee on the Elimination of Racial Discrimination (CERD), the Committee on Economic, Social and Cultural Rights (CESCR), the Human Rights Committee (HRC), the Committee on the Elimination of Discrimination against Women (CEDAW), the Committee against Torture (CAT), the Committee on the Rights of the Child (CRC), the Committee on Migrant Workers (CMW), the Subcommittee on Prevention of Torture (SPT), and the Committee on the Rights of Persons with Disabilities (CRPD). It should be noted that the CESCR is not a treaty body as such, as it was not created by a treaty but by the ECOSOC resolution No. 1985/17 of 28 May 1985. However, States parties consider it as a treaty body since it monitors the implementation of the International Covenant on Economic, Social and Cultural Rights.

[7] Under the International Convention for the Protection of All Persons against Enforced Disappearance, adopted by the General Assembly Resolution No. 61/177 of 20 December 2006, the Committee on Enforced Disappearance (CED) will be established to monitor the implementation of the Convention after its entry into force.

[8] Resolution 421 (E) of 4 December 1950.

[9] Resolution 543 (VI) of 5 February 1952.

[10] Resolution 384 (XIII) of 29 August 1951.

[11] See, *inter alia*, General Assembly resolution 421 (F) of 4 December 1950, where it requested that the elaboration of the "International Covenant on Human Rights" provide for a complaint mechanism for "individuals and organizations"; the debate about the Optional Protocol to the ICCPR on individual communications. The complex procedure enshrined in article 14-2 of the ICERD, with the issue of a "body within [the] national legal order to consider the claims before their relegation to the CERD" is another illustration.

[12] Article 2 OP-CEDAW.

[13] Article 5 OP-CEDAW; Article 31 ICED.

cases of gross or systematic human rights violations,[14] with a procedure to undertake visits *in situ*,[15] with urgent procedures of a humanitarian nature[16] and with the possibility of transmission of concerns to the General Assembly in cases of crimes against humanity.[17]

Consequently, it is difficult to find genuine coherence in the system of United Nations human rights treaty bodies. Indeed, treaty bodies have different functions. The present situation is the result of an empirical construction of the system, which has been built with no architect to give any direction or overview.

This disparate and empirical evolution, combined with the creation of new functions, have resulted in a lack of coherence and clarity, thus implying lower efficiency of the system in terms of protection of the human rights guaranteed in the 'core treaties'. Moreover, a reflection on the hopeful expectation of universal ratification of these human rights treaties is also urgently needed. Therefore, the need for reform continues to be imminent.

Two different approaches, not necessarily incompatible, have progressively taken shape. The historically first approach consists of promoting reform which aims at giving more efficiency to the current system, in order to enable these mechanisms to fulfil their mandate in a much more effective manner. It was Kofi Annan, the former UN Secretary-General, who proposed, while acknowledging that "treaty bodies…need to be much more effective and more responsive to violations of the rights they are mandated to uphold",[18] that "[h]armonized guidelines on reporting to all treaty bodies should be finalized and implemented so that these bodies can function as a unified system". This first approach aspires to consolidate the present system to provide it with more institutional coherence and efficiency.

The second approach corresponds to a search for deeper reform of the treaty bodies system, in order to achieve better coherence, in terms of monitoring, prevention, protection and assistance that could render the new treaty body system more effective and operational to protect human rights. In this regard, the former High Commissioner for Human Rights Louise Arbour not only proposed a functional change but also an institutional one with the suggested establishment of a "unified standing treaty body".[19] As justified in her "Concept Paper", "[t]he proposal for a unified standing treaty body is based on the premise that, unless the international human rights treaty system functions and is perceived as a unified, single entity responsible for monitoring the implementation of all international human rights obligations, with a single, accessible entry point for rights-holders, the lack of visibility, authority and access which affects the current system will persist. The proposal is also based on the recognition that, as currently constituted, the system is approaching the limits of its performance, and that, while steps can be taken to improve its functioning in the short and medium-term, more fundamental, structural change will be required in order to guarantee its effectiveness in the long term….".[20]

This second approach is a more ambitious and involving not only consolidation, but also an expansion of the functions and competencies of the treaty body system. As a consequence, the treaty bodies could be turned into a universal human rights body ensuring equal protection of all human rights.

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[14] Article 20 CAT; Article 8 OP-CEDAW.
[15] Article 11 OP-CAT; Article 32 ICED.
[16] Article 30 ICED.
[17] Article 34 ICED.
[18] Report of the Secretary-General, *In Larger Freedom: towards development, security and human rights for all*, UN document A/59/2005 of 21 March 2005, para. 147.
[19] In her *Plan of Action*, UN document A/59/2005/Add.3, para. 147, the High Commissioner for Human Rights indicated that she will develop proposals for a unified standing treaty body and invite States parties to the seven human rights treaties to an intergovernmental meeting in 2006 to consider options.
[20] *Concept Paper on the High Commissioner's Proposal for a Unified Standing Treaty Body*, UN document HRI/MC/2006/2 of 22 March 2006, para. 27.

II. DESCRIPTION OF THE SYSTEM

At present, the system comprises eight operating treaty bodies: the Committee on the Elimination of Racial Discrimination (CERD), the Committee on Economic, Social and Cultural Rights (CESCR), the Human Rights Committee (HRC), the Committee on the Elimination of Discrimination against Women (CEDAW), the Committee against Torture (CAT), the Committee on the Rights of the Child (CRC), the Committee on Migrant Workers (CMW) and the Subcommittee on Prevention of Torture (SPT).[21] The additional treaty body, the Committee on the Rights of Persons with Disabilities (CRPD) will soon become operational, following the elections of its members on 3 November 2008. One other committee - the Committee on Enforced Disappearance (CED) will be established pursuant to the International Convention for the Protection of all Persons from Enforced Disappearance that has yet to enter into force.[22] Thus the treaty body system will in the near future comprise ten treaty bodies.

A. Membership and Operation

The nine treaty bodies are each composed of 10 to 23 members. Each meets, or will meet, for either two or three sessions per year. Each session lasts generally for three weeks. However, it is not a set rule. The Committee on Migrant Workers (CMW) has been an exception, meeting in its start-up phase in two annual sessions, in one two-week and one one-week session. CEDAW, CESCR and CRC also meet in one-week pre-sessional working group to prepare lists of issues or questions with respect to the States parties´ reports that are due to be considered by the Committee.

Members on each treaty body

CERD:	18 members
HRC:	18 members
CESCR:	18 members
CEDAW:	23 members
CAT:	10 members
CRC:	18 members
CMW:	10 members (14 once 41 States parties)
SPT	10 members (25 once 50 States parties)
CRPD	12 members (18 once 60 States parties)

Members on future treaty bodies

CED	10 members

The States parties to the treaties, in staggered elections held every two years, select experts to each Committee for four-year terms. For example, half of the members of the Human Rights Committee were elected (or in some cases re-elected) in a States parties meeting held in New York on 5 September 2008. On 3 November 2008 a conference of States parties in New York elected first members of the Committee on the Rights of Persons with Disabilities.

Each expert serves without salary, receiving travel and per diem expenses. There are presently 125 experts in this system, with the number of experts growing up to 162 if all pending instruments also come on line in this same mode.[23]

[21] For the purpose of this document, the Subcommittee on Prevention is considered a full-fledged treaty body established by the Optional Protocol, despite the fact that it does not have an administrative function, i.e. the mandate to receive and consider States parties´ reports. Instead, the SPT monitors incidents of torture and other ill-treatment through a system of regular visits to places where people are deprived of their liberty.

[22] The International Convention for the Protection of All Persons from Enforced Disappearance, UN document A/61/488, was adopted by the General Assembly Resolution No. 61/177 of 20 December 2006. As of 30 October 2008, 78 States are signatories to the Convention, of which 5 are party to it. The CED will be effectively established following the entry into force of the Convention on the thirtieth day after the deposit of the twentieth instrument of ratification or accession, in accordance with article 39 of the Convention.

[23] In addition to the 125 present independent experts, the Committee on Migrant Workers will expand from 10 to 14 members once the ICRMW enters into force for its 41st State party, the Subcommittee on Prevention of Torture will expand from 10 to 25 members once the OP CAT enters into force for its 50th State party and the Committee on the Rights of Disabled Persons will expand from 12 to 18 members once the CRPD enters into force for its 60th State party. The Committee on Enforced Disappearance will consist of 10 members.

Treaty body sessions in 2008

CERD	two 3-week sessions
HRC	three 3-week sessions
CESCR	two 3-week sessions
CEDAW	two to three 3-week sessions
CAT	one 2-week, one 3-week session
CRC	three 3-week sessions
CMW	one 1-week, one 2-week session
SPT	three 1-week sessions
TOTAL	50 weeks*

*This becomes 58 weeks if pre-sessional working groups are also included

Two Committees (CEDAW and CRC) have received approvals to temporarily meet and have until recently met in additional sessions, in order to catch up in their current work backlogs. These additional sessions have included, in the case of both CEDAW and CRC, the opportunity to work in parallel chambers (half the members in each chamber), and in the case of CEDAW, an additional three-week session and pre-sessional working group meetings in 2006 and 2007.[24]

The Office of the High Commissioner for Human Rights provides the secretariat and staff support for eight of the treaty bodies when they meet in Geneva or in New York - in case of the HRC and the CEDAW.

A. Mandates

As a result of their empirical creation, treaty bodies have different functions. In accordance with the different conventions and others sources of mandate of the treaty-bodies,[25] treaty bodies monitor implementation of the treaties by exercising different functions. It is traditionally considered that treaty bodies exercise "three core functions": administrative control or reports analyses (through the examination of States´ report), quasi-judicial (through both the system of individual communications and interstate complaints) and interpretative (through General Comments or Recommendations on legal issue or dispositions of each treaty).

However, not all treaty bodies exercise the three core functions: for example, the CRC does not exercise the quasi-judicial control, neither on the basis of individual communications nor inter-state communications. The SPT is not mandated to receive and review States´ reports as it monitors compliance with States´ obligations through a system of visits to places where people are deprived of their liberty.

Also, operating or new treaty bodies are provided with other relevant functions, such as the ability to conduct inquiries in case of grave, widespread or systematic violations of human rights,[26] procedures to undertake missions to the countries,[27] urgent humanitarian procedures,[28] and procedure to inform the General Assembly in case of crimes against humanity.[29]

It should be noted that inquiry procedures are meant to provide the Committees (the CEDAW, the CAT and the CRPD) with the competence to address widespread and systematic violations of human rights, whereas the humanitarian procedure enshrined in article 30 of the International Convention for the Protection of all Persons from Enforced Disappearance aims at requesting the

[24] These CEDAW sessions were approved by resolution A/RES/60/230 of the General Assembly on 23 December 2005.
[25] In the case of the CESCR, which is regarded as a treaty body, the source of its mandates and functions is the resolution of the ECOSOC No. 1985/17.
[26] Article 22 CAT, article 8 OP-CEDAW and articles 6 and 7 of the OP-CRPD.
[27] Article 1 OP-CAT and article 32 of ICED.
[28] Article 30 ICED.
[29] Article 34 ICED.

Committee for urgent action to look for and find a disappeared person. The scale of the violation thus may vary from a single violation to massive violations, although the objective, which is fulfilled, is the same, that is to say protection in individual situation and prevention of similar human rights violations. Another function aiming to prevent violations is the transmission to other UN bodies, be they the Secretary-General, the General Assembly or other relevant UN bodies, in order to draw their attention with a view to prevent widespread or systematic violations, such as crimes against humanity. In this regard, the CERD early-warning measures and urgent procedures provide the Committee with the ability to draw the attention of the Secretary-General, the Security Council or other relevant bodies. However, this procedure finds its source in a working paper of the Committee, which has never been integrated to the Committee's rules of procedure. For its part, the ability of the CED to transmit the matter to the attention of the General Assembly, through the Secretary-General, is enshrined in article 34 of the Convention against Enforced Disappearance.

In addition, certain treaty bodies review member states´ implementation of their human rights obligations in the framework of communications procedures. However, it should be noted that the communications procedures are optional and therefore pertain only to those States parties that have expressly recognized the Committees´ competence to determine whether the rights set forth in particular human rights treaties may have been violated in the individual situation. Lastly, treaty bodies provide guidance and interpretation of treaties' provisions through General Comments, thus contributing to the implementation and evolution of international human rights law.

Table 1. Treaty bodies` functions

	REPORTING	QUASI-JUDICIAL CONTROL		INTERPRE-TATION	OTHER FUNCTIONS			
Treaty body	**Examination of State party reports**	**Indivi-dual commu-nications**	**Inter-State commu-nications**	**General Comments and Recommen-dations**	**Visits/ Missions in the field**	**Inquiries**	**Humani-tarian Procedure**	**Transmission to other UN bodies in case of crimes against humanity**
CERD	X	X	X	X				X
HRC	X	X	X	X				
CESCR	X	X*	X*	X		X*		
CEDAW	X	X		X		X		
CAT	X	X	X	X		X		
SPT				**	X			
CRC	X			X				
CMW	X	X	X	X				
CED	X	X	X	X	X	X***	X	X
CRPD	X	X		X		X		

* These functions will be established through the OP CESCR that was adopted by the UN General Assembly on 10 December 2008.
** No provision of the OP CAT precludes the SPT to adopt interpretative General Comments in the future.
*** The International Convention for the Protection of All Persons from Enforced Disappearance will establish such procedure once it will enter into force.

1) Administrative control (reporting)

The reporting process constitutes an obligation for every State party to inform on the steps taken to give effect to the human rights treaties. In the case of the International Covenant on Economic, Social and Cultural Rights, this function is exercised by the CESCR in the framework of follow-up to the ECOSOC resolution 1985/17. Through this function, treaty bodies analyse the reports that States parties submit to them and make an evaluation of the measures taken by States parties to implement their treaty obligations. This review modality consists of elaboration of reports by States parties, which are submitted to and considered by the relevant Committee. The State party takes part in the Committee's deliberations on the report, in order to clarify any legislative, administrative

and other measures it has taken to give effect to the treaty and answers the Committee's questions asked on the basis of the report. As an outcome, the Committee adopts concluding observations containing recommendations to the State party aimed at improving the implementation at national level of the treaty provisions.

The periodicity of reporting varies between the Committees. Two of the treaty bodies, the HRC and the CESCR have a degree of discretion in deciding, when States parties should submit periodic reports.[30] The HRC has set a four-year period and the CESCR expects a report within five years of the consideration of the previous report. The date when the next periodic report is due is indicated in the concluding observations. CERD prescribes a two-year period, but the Committee has allowed for joint reports where the period between the date of examination of the last periodic report and the scheduled date for the submission of the next periodic report is less than two years, expanding thus to a four-year reporting cycle (A/56/18, para. 477).

Table 2. Periodicity of reporting under the treaties

Treaty	Treaty-Body	Legal Source	Periodicity
ICERD	CERD	Article 9	Initial report within 1 year, periodic reports every 2 years and further whenever the Committee so requests
ICESCR	CESCR	Article 17 gives ECOSOC discretion to establish its own reporting programme	Initial report within 2 years, periodic reports every 5 years according to the CESCR's practice
ICCPR	HRC	Article 40 gives the HRC discretion	Initial report within 1 year, periodic reports every 4 years according to the HRC's practice
CEDAW	CEDAW	Article 18	Initial report within 1 year, periodic reports every 4 years and further whenever the Committee so requests
CAT[31]	CAT	Article 19	Initial report within 1 year, periodic reports every 4 years and further as the Committee may request
CRC	CRC	Article 44	Initial report within 2 years, periodic reports every 5 years and further whenever the Committee so requests
OP-CRC-AC	CRC	Article 8	Every 5 years or with the next report to the CRC and further whenever the Committee so requests
OP-CRC-SC	CRC	Article 12	Every 5 years or with the next report to the CRC and further whenever the Committee so requests
ICRMW	CMW	Article 73	Initial report within 1 year, periodic reports every 5 years and further whenever the Committee so requests

[30] Article 40 of the ICCPR gives the HRC discretion to decide when periodic reports shall be submitted ("whenever the Committee so requests"). HRC set a four-year periodicity by Rule 66 and 70 A of the Rules of Procedure. Article 17 of the ICESCR does not establish a reporting periodicity, but gives ECOSOC discretion to establish its own reporting programme. A five-year reporting cycle has been set by Rule 58 of the CESCR´s Rules of Procedure.

[31] For information, States parties must provide the Subcommittee on Prevention of Torture, established by the OP CAT, with all relevant information whenever it so requests, in accordance with article 12 of the Protocol.

ICED	CED	Art 29	No fixed periodicity; initial report within 2 years, periodic reports at the request of the CED
CRPD	CRDP	Art 35	Initial report within 2 years, periodic reports at least every 4 years and further whenever the Committee so requests

The present handling of States reports absorbs the majority of the time of the current treaty body system and has therefore received imminent attention in the calls for, and in the subsequent reform exercise. The harmonization of reporting guidelines for the common core document and the focused periodic reports has been an initial step in reforming the reporting function. Harmonization will further require developing an equal and standardised monitoring of implementation of all treaty provisions, to be complemented through reinforced access to the system on the basis of individual communications.

Despite the predictions of catastrophic collapse during the past 20 years, the reporting system has been resilient to over-burdening with reports and other deficiencies caused mainly by a lack of secretarial support. However, other problems typically identified, such as poor or superficial reporting record by some States, prevalence of backlogs and delays in the review by some of the Committees, and a lack of implementation of concluding recommendations, are among the major sources of limited effectiveness of the treaty body system. Although the State reporting process would be facilitated by the new harmonized guidelines, the Committees have yet to standardize their methods of operation, especially in regard to the contents of periodic reports, examination of reports, and the format of the list of issues, review procedures in the absence of reports and early warning and urgent action procedures. The quality and independence of Committee's membership would also deserve separate attention.

Overdue reports
[as of November 2008]

CERD	387
HRC	100
CESCR	198
CEDAW	128
CAT	186
CRC	216*
CMW	25
Total	1240

*Includes reports under the two CRC optional protocols

It is important to establish some perspective and balance regarding the problems of the State reporting function. Reporting has its essential monitoring role but should not monopolise all the time and thinking of each treaty body. In the ICJ view it may not be the only or even the primary reason for major treaty body reform. Today the State reporting function continues to overwhelm the process, undermining attention to the substance of the other important functions.

The treaty bodies are receiving about 70% of the volume of reports they should be receiving if all States, which had ratified the treaties were submitting reports on time. Individual treaties experience different rates of compliance (for example, reporting under CRC is about 95%). In 2006, 3417 reports were submitted, while 1442 reports were overdue. Some 1240 reports are overdue in 2008 for the total count of 1298 States parties to the human rights treaties. Twelve years earlier, in 1996, there were 957 overdue reports in the system (from a total of 853 States parties).[32] In 2005 this number was 1399 overdue reports for a State parties´ count of 1213. Although in 2005 the rate was worse than it was 10 years earlier (1.12 overdue reports per a State party in 1996; 1.15 overdue reports per a State party in 2005), the rate of overdue reports by States parties in 2008 has slightly improved against 2005 (0.96 overdue reports per a State party).

[32] See Final report on enhancing the long-term effectiveness of the United Nations human rights treaty system, by the independent expert, Mr. Philip Alston, report to the UN Commission on Human Rights, E/CN.4/1997/74 (27 March 1997), p.16.

However, if all overdue reports were submitted at once, it would take the treaty bodies, with the maximum possible length of sessions as at present, about eight years and three months at the current pace to get through the backlog. If instead the compliance with the state reporting obligation slowly improved, together with more ratifications and at least one more treaty to enter into force (i.e. International Convention for the Protection of All Persons from Enforced Disappearance), the time that treaty bodies allocate to States reports would still need to double in the next 8 years (at the current pace of approximately 2.5 meetings per a State report).

Assuming a universal ratification scenario in seven years, treaty bodies would experience the following increases in a number of States reports to be received per year.

Table 3. Increase in reports per year, assuming universal ratification by 2015

Treaty	Actual no. of States parties in 2008 (% of all)	Projected no. of States in 2015	Increase
ICERD	173 (89%)	194	11%
ICCPR	162 (83%)	194	17%
ICESCR	158 (81%)	194	19%
CEDAW	185 (96%)	194	4%
CAT	145 (75%)	194	25%
CRC	193 (99%)	194	1%
CRC OP-SC (1)	126 (65%)	194	35%
CRC OP-AC (2)	120 (62%)	194	38%
ICRMW	39 (20%)	194	80%
CRPD	41 (21%)	194	79%
ICED (3)	5	194	n/a
TOTAL			31%

(1)Optional Protocol on the sale of children, child prostitution and pornography
(2)Optional Protocol on the involvement of children in armed conflict
(3)This instrument is not yet in force, so a percentage increase is not meaningful

In other words, while the system as a whole would experience a growth of States parties and their reports for 31%, the bulk of the new work would come mainly from the three latest human rights treaties and therefore primarily impact the work of the three treaty bodies – CRMW, CRPD and CED.

The future needs of the system can also be analysed by examining the impact of universal ratification at different levels of reporting compliance. The current compliance rate is approximately 70%, but one would hope that this compliance percentage would improve over time. For example, at 80% and 100% reporting rates, and with universal ratification, the number of States reports received each year would be as follows:

Table 4. Increase in reports to be considered annually between 2008 and 2015, given the current and prospective compliance rate and assuming universal ratification by 2015

Treaty	2006 (compliance at 70% of the current States parties)	2015 (compliance at 70% of all States parties)	2015 (compliance at 80% of all States parties)	2015 **(compliance at 100% of all States parties)**
ICERD	22	34*	38*	48*
ICCPR	12	27	31	39
ICESCR	10	27	31	39
CEDAW	27	34	38	48
CAT	14	34	38	48
CRC	39	27	31	39
CRC OP-SA	14	27**	31**	39**
CRC OP-AC	18	27**	31**	39**
ICRMW	6	27	31	39
CRPD	0	34	38	48
ICED	0	34***	38***	48***
TOTAL	162		376	474

Footnotes to Table:

*Assumes a 4-year reporting cycle under the ICERD, not the 2-year cycle prescribed by the treaty (since the 4-year interval has been observed in practice by the Committee in recent years).

**It is anticipated that the reporting under the two optional protocols to the CRC will eventually be consolidated with a State's initial or periodic reports, but the numbers are separately identified in this table to show the modules or units of reporting that would be required, regardless of whether they are in standalone or consolidated reports

*** Reporting cycle will be established by the Committee on Enforced Disappearance

While it may be optimistic to assume full universal ratification by 2015, it would seem to be realistic to expect major progress toward ratification in this time period, as well as the growing adherence of many new States parties to the ICRMW, expected reporting under the CRPD and the entry into force of the ICED, which will all increase a reporting burden.

By reviewing where we are today in terms of ratifications and reporting under the eight operating treaties, while reflecting on the fact that the CRPD establishes the CRPD, which will be functional only as of 1 January 2009, and by projecting where we would be in ten years under various universal implementation scenarios for the eight existing and one new treaty (ICED), we can develop a continuum of possible outcomes and indicators that can help guide the design of the new treaty body system. As mentioned earlier, today's record is approximately 70% reporting compliance and 71% ratification by States parties. Certainly we wouldn't anticipate 100% compliance and 100% ratification by 2015 (although it is useful to see what capacity loads might result from that scenario). A more likely mix might be 80% compliance (376 reports) and 90% ratification (427 reports), which under the above analysis would result in a 2.6 times increase of overall reporting for the system (from 162 reports in 2006 to 427 reports in 2015 [note: 90% of 474 = 427]).

2) Quasi-judicial control (communication procedures)

It has already been indicated that not all existing and operating treaty bodies are provided with the dual function of individual and inter-State communication procedures.

However, one of the most significant and recent achievements has been the adoption of the draft Optional Protocol to the ICESCR by the UN Human Rights Council and the UN General Assembly on 10 December 2008, which provides for communications by individuals and their groups, inter-State communications and inquiry procedure.

The control exercised through the communication procedures, both individual and inter-State communications, is even more restricted since the States not only have to have ratified the treaty, but also have to declare they recognise the Committee's competence to receive and consider such communications, through a declaration recognizing the competence of the Committee (CAT, CERD, CMW and the future CED) or the ratification of a protocol (OP ICCPR, OP CEDAW, OP CRPD and the OP CESCR). On the one hand, under the individual communication procedure, individuals under the jurisdiction of the State party are entitled to send communications to the Committee, claiming they are victims of a violation of the provisions of the treaty by that State party. This crucial function finds its basis in the idea that the guarantee of individual human rights is meaningful only when those affected by human rights violations are themselves granted a right of complaint before an international authority.

The other procedure, the inter-State communication procedure, provides for the Committee to receive and consider communications to the effect that a State party claims that another State party is not fulfilling its obligations under the treaty. Interestingly, States have never made use of this mechanism.

In this regard it is important that significant gap between the number of States parties to the different treaties and the number of States parties that have recognized the competence of the corresponding Committees to receive and consider communications, as demonstrated by the following table:

Table 5. Recognition of the treaty bodies competence to receive and consider communications[33]

Treaty	Treaty Body	States Parties to the Treaty	Inter-state Communications	Individual Communications
ICCPR	HRC	162	48 Article 41	111 (OP-ICCPR)
CAT	CAT	145	60 Article 21	61 Article 22
ICERD	CERD	173	No declaration required Article 11	51 Article 14
CEDAW	CEDAW	185	none	93 (OP-CEDAW)
ICRMW	CMW	39	1 Article 76	1 Article 77
CRPD	CRPD	41	none	25 (OP CRPD)

The treaties regulate differently inter-State communication procedures. The Convention against Torture, Other Cruel, Inhuman or Degrading Treatment or Punishment[34] and the International

[33] As of November 2008.
[34] Article 21.

Convention on the Protection of the Rights of All Migrant Workers and Members of their Families[35] set out a procedure for the relevant Committee itself to consider communications from one State party which claims that another State party is not fulfilling its obligations under the Convention. The International Convention on the Elimination of All Forms of Racial Discrimination[36] and the International Covenant on Civil and Political Rights[37] set out a more elaborate procedure for the resolution of disputes between States parties over a State's fulfilment of its obligations under the relevant Convention/Covenant through the establishment of an *ad hoc* Conciliation Commission. The procedure normally applies to all States parties to ICERD, but applies only to States parties to the ICCPR that have made a declaration accepting the competence of the Committee in this regard. Despite those differences the various procedures are characterised by their confidentiality. In this sense, they are close to conciliation unlike the quasi-judicial procedure. It is worth recalling the commentary to the draft Convention against Enforced Disappearance by the Working Group on Enforced and Involuntary Disappearance of 2000, where it considered that "[t]he inter-State communication procedure in article 29 [of the draft International Convention for the Protection of All Persons from Enforced Disappearances, elaborated by the Sub-Commission for the Promotion and Protection of Human Rights], notwithstanding minor improvements, still seems to follow a fairly inefficient model of articles 11 to 13 of the International Convention on the Elimination of All Forms of Racial Discrimination of 1965 and articles 41 and 42 of the International Covenant on Civil and Political Rights of 1966. The Working Group cannot understand why one would wish, 10 years after the end of the cold war, to restrict the powers of the committee to the exercise of a mere arbitration and conciliation function and the submission of only a brief final report containing the facts and submissions of the States parties, as envisaged in article 29 (h) (ii), rather than to authorize it to decide on the alleged violations as in the individual communication procedures or in comparable inter-State complaints procedures under the European Convention on Human Rights or relevant treaties of the International Labour Organization."[38] It should be underlined that the International Convention for the Protection of All Persons against Enforced Disappearance sets out a procedure of inter-state communications, which is much more flexible, transparent and open.

Each Treaty or Protocol, and the respective internal rules of procedure, regulate individual communications procedures for each treaty-body. Despite certain existing differences in the procedures, the system of individual communications is generally similar.[39] Principles of non-anonymity of the plaintiff, non-duplicity with other similar procedures, exhaustion of domestic remedies and non-abuse of the individual communication procedure govern the procedures of all treaty bodies. For the last years, treaty bodies have introduced some changes to their working methods, mainly by amending rules of procedure to improve their efficiency, follow-up to their decisions and to reduce the delay in dealing with communications. The OHCHR has established several mechanisms to further improve treaty bodies' capacity in exercising this quasi-judicial function. For example, communications addressed to the HRC, the CAT, the CERD and the CEDAW (and those that will be addressed to the CMW and the CRPD), are processed by the Petitions Unit of the OHCHR.

Treaty bodies' decisions adopted on individual communications (referred to as views) must be implemented by the concerned States parties, in accordance with the relevant treaty's provision or optional protocols by which States parties have recognised the committee's competence to receive and consider such communications. It should be noted that a few countries have passed legislation

[35] Article 74.
[36] Articles 11 – 13.
[37] Articles 41 – 43.
[38] UN Doc. E/CN.4/2001/68 of 18 December 2000, see Annex III, p. 35.
[39] For example, the OP CEDAW, the ICERD and the OP CESCR allow for communications from individuals or groups of individuals; the OP CEDAW and the ICED had incorporated the interim measures of protection in the treaty. The treaty bodies in their internal rules of procedure introduced other differences: for example, the HRC can take a decision on admissibility and merits in one decision.

providing for direct applicability and binding effects to these views.[40] As a result of treaty bodies' decisions, some States have amended laws that were challenged through the individual communication procedure.[41]

Individual communication procedures are accessible and flexible, facilitating, in principle, a fairly timely action from treaty bodies. Moreover, they are accessible and not very expensive since they are only written procedures without any public hearing. The length of the procedure may vary, depending on how complex the cases are. Nonetheless, experience shows that, the most time-consuming issue is the exhaustion of domestic remedies. Furthermore, the existing extra work, notably with regard to administrative control, as well as the resource deficit in terms of administrative support contributes to delay the procedures notwithstanding important efforts made by the OHCHR. Hence, in practice, the communication proceedings generally drag on for about three years and often longer.

Since 1977, when the HRC started its work under the Optional Protocol to the ICCPR, the HRC has registered 1800 communications concerning 82 States parties: 635 communications were concluded with decision on merits, including 503 in which violations of the ICCPR were found; 504 were declared inadmissible under the criteria of the Protocol; 251 were discontinued or withdrawn; and 110 remained pending in July 2008.

Table 6. Human Rights Committee - Communications dealt with, 2000-2007[42]

Year	New cases registered	Cases concluded[a]	Pending cases at 31 December 2007
2007[b]	206	47	455
2006	96	109	296
2005	106	96	309
2004	100	78	299
2003	88	89	277
2002	107	51	278
2001	81	41	222
2000	58	43	182

[a] Total number of all cases decided (by the adoption of Views, inadmissibility decisions and cases discontinued).
[b] As of 31 July 2007.

Until November 2008, the CAT has registered 338 communications with respect to 26 countries. Out of these 338 communications, 93 of them were discontinued and 58 were declared inadmissible. The Committee adopted final decisions on the merits with respect to 149 communications and found violations of the Convention in 45 of them. Overall, 33 communications remain pending for consideration.[43] Regarding individual communications concerning violations of the CEDAW, and taking into account that the OP-CEDAW entered into force on 22 December 2000, the Committee has examined only a small number of communications. Out of the 18 registered communications, 6 remain pending. The Committee adopted final decision on the merits with respect to 1 communication - see the annual report of the CEDAW (UN doc. A/63/38) on the *Fortieth session* (14 January – 1 February 2008) and *Forty-first session* (30 June – 18 July 2008). In the case of the ICERD, the low level of recognition of the Committee's competence to deal with individual complaints, as

[40] For example Colombia.
[41] For example Spain and Australia.
[42] *Report of the Human Rights Committee -Volume I: Ninety-first session (15 October- 2 November 2007), Ninety-second session (17 March - 4 April 2008), Ninety-third session (7 – 25 July 2008),* UN Doc. Supplement No. 40 (63/40).
[43] *Report of the Committee against Torture: Thirty-ninth session* (5-23 November 2007) *Fortieth session* (28 April – 16 May 2008), UN Doc. Supplement No. 44 (A/63/44), para. 81.

opposed to the high number of States parties to the Convention (in July 2008, 51 of the 173 States parties to the Convention had made the declaration envisaged in article 14 of the ICERD), is one of the main factors explaining why the individual communications procedure is underutilised. Indeed, till July 2007, the CERD had adopted decisions concerning 40 communications, out of which 28 were views on the merits, 10 of which concluded the violation of the ICERD.

Treaty bodies' performance in terms of individual complaints, which have been received and considered, is not very satisfactory. Nevertheless, it would be unfair to hold treaty bodies themselves responsible for this situation. Other explanations have to be provided. On the one hand, the low rate of recognition by States parties of the competence of treaty bodies to receive and consider individual complaints has to be acknowledged (See table 5). On another hand, regional systems, which are provided with *stricto sensu* legally binding judicial procedures, such as the European or the Inter-American Courts of Human Rights, or quasi-judicial bodies such as the Inter-American Commission on Human Rights or the African Commission of Human and Peoples' Rights are fairly efficient and thus constitute another explanation. Moreover, stakeholders are more familiar and have more expectations from the regional systems and procedures than with the United Nations mechanisms, thus contributing to the under-utilisation of treaty bodies' communications procedures.

Surprisingly, the issue of individual communications has generally been absent, or given very little attention in the debate and reform proposals (with the exception of the proposal by the CERD) for the human rights treaty body system.

3) Interpretative function

All operating treaty bodies may adopt General Comments,[44] which are meant to interpreting the content of the rights and the obligations contained in the treaties. The treaty bodies have occasionally addressed thematic issues, methods of work or other issues, such as reservations to the treaties. This interpretative function of the treaty bodies finds its legal basis in provisions of the treaties themselves or, in the case of CESCR in ECOSOC resolution (See table 1).

Through these General Comments, treaty bodies have developed important doctrine clarifying the scope and meaning of the provisions of the treaties, human rights and States parties' obligations. Although they are not legally binding documents, General Comments – perhaps with the exception of those addressing methods of work or procedural issues (such as the preparation of reports) - are reference documents of international human rights law, providing an authoritative source of interpretation of law. More and more national tribunals and courts of justice use the treaty bodies' General Comments in their judgments as interpretative source of international human rights law. The International Court of Justice, as well as the courts and bodies of human rights at the regional level, refer to these interpretative statements in their decisions, judgments and advisory opinions.[45] General Comments provide a useful guide to the normative substance of international human rights obligations. National Human Rights Institutions and national authorities use them frequently.

Table 7. Treaty Bodies' interpretative function

Treaty Body	Legal sources	Number of General Comments adopted (as of November 2008)
CERD	Article 9 (2) ICERD	31
HRC	Article 40 (4) ICCPR	32

[44] The names given to these general comments are different: General Comment (HRC, CESCR, CAT and CRC), General Recommendation (CEDAW and CERD). The Committee on Migrant Workers and the Subcommittee on Prevention of Torture have not yet adopted any General Comments.

[45] See *International Court of Justice: "Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories", Advisory Opinion of 9 July 2004, para. 106;* and *" Legality of the Threat or Use of Nuclear Weapons" Advisory Opinion of 8 July 1996, para. 136.*

CESCR	Para. 1 (f) ECOSOC Resolution 1985/17	19
CAT	Article 19 (3) CAT	2
CEDAW	Article 21 CEDAW	25
CRC	Article 45 (d) CRC	10
CMW	Article 74 (7) ICMW	0

With regard to this function, the performance has not been the same for the various treaty bodies. The HRC, CERD, CEDAW and CESCR have produced numerous General Comments, which constitute valuable sources of interpretation of the international human rights law. Since 2003, the inter-committee meetings have addressed the possibility for treaty bodies to issue joint General Comments, in view of the considerable overlap between provisions of different treaties monitored by different treaty bodies. So far, this way has not been explored yet. However, a practice has been developing whereby the treaty bodies preparing the General Comments share the drafts with the other treaty bodies to improve consistency and complementarities of interpretation across the treaty system. Nonetheless, some inconsistencies in interpretation among the treaty bodies are remaining. Such problems often exist within the same treaty body, especially as there exist different interpretations provided through the General Comments and the views on individual communications.

4) Other functions

Over the last 20 years, with the adoption of new treaties, such as the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984), the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (1999), the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (2002) and the International Convention for the Protection of All Persons against Enforced Disappearance (2006), respective treaty bodies have been mandated with new functions in response to specific patterns of human rights violations. However, the other treaty bodies have the mandates to deal with the similar violations, notwithstanding the lack of specific procedural functions. Such a gap in procedural instruments should be closed so that the future treaty body system would operate in a coherent and transparent manner.

a) Inquiry procedure

The CAT,[46] the CEDAW,[47] but also the CRPD to be soon operating and the future CED,[48] as well as the OP CESCR, that was adopted on 10 December 2008, are or will be provided with an inquiry procedure in cases of gross or systematic violations of human rights obligations, which can be triggered *ex officio*. This function has been differently established for each treaty and has been gradually strengthened.

Under the CAT's provisions, the inquiry procedure may apply in case of systematic practice of torture, while under the OP-CEDAW the procedure may apply in case of "grave or systematic violations by State Party of rights set forth in the Convention". Concerning the CED, the inquiry procedure is more comprehensive, in as much as it includes "grave violations by a State Party of this Convention". The provisions of the CAT, the OP-CEDAW and the ICED allow treaty bodies to undertake visits to the field in the framework of the inquiry procedure. In accordance with the CAT and the CEDAW, the procedure is confidential, but the result can be made public. According to the three proceedings, cooperation of the State party concerned must be sought throughout the inquiry.

[46] Article 20 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
[47] Articles 8 to 10 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.
[48] Article 32 of the International Convention for the Protection of All Persons against Enforced Disappearance.

The CAT has conducted several inquiry procedures.[49] However, due to the confidentiality of the procedure, it is hard to find how many situations of systematic practice of torture have been examined. Those known are the ones that the CAT has decided to make public.

b) Preventive visits or inspections in the field

Apart from the case of field visit in the framework of inquiry procedures, as noted above, the OP-CAT establishes a new function: a system of regular inspections of places of detention by the Subcommittee on Prevention of Torture (SPT) with a preventive aim *vis-à-vis* torture and other cruel, inhuman or degrading treatment or punishment of persons deprived of their liberty. Since the entry of the OP-CAT into force, the SPT has undertaken numerous visits and made recommendations to prevent torture and ill-treatment in places of detention. Although the procedures of the SPT and the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) are different in many aspects, the activities of the CPT, which has conducted 206 visits (128 periodic visits and 78 *ad hoc* visits) till February 2006, might be assessed as to what impact these may have on the system of regular inspections of places of detention by the SPT.

c) Individual Humanitarian Request or Humanitarian Urgent Action

The ICED establishes a new humanitarian procedure, inspired from the communication procedure of the former UN Commission on Human Rights and the UN Human Rights Council's special procedures, and in particular from the Working Group on Enforced and Involuntary Disappearances.[50] Under this procedure, the CED does not aim at invoking the responsibility of the State. Its aim is rather to help prevent an occurrence of enforced disappearance, to obtain the release of the victim or to elucidate the fate and whereabouts of the victim. This is a function of emergency protection for humanitarian purposes, of a prompt nature and neutral character, to seek and find persons who have "disappeared". This procedure is distinct from the quasi-jurisdictional proceedings. The CED may request the State party to take interim measures without the requirement of exhausting domestic remedies. As the ICED has not entered into force, this new procedure has not been tested yet. However, the inter-sessional Working Group charged with the elaboration of the Convention has highlighted that this innovative function and procedure will provide an important means to protect people from enforced disappearance.

d) Early-warning procedure or function in connection with gross human rights violations (Preventive function in case of gross, widespread, systematic or massive human rights violations)

Only two treaty bodies are provided with this function: the CERD and the future CED. In both cases, the function has been established in different ways. The CERD has established "early-warning measures and urgent procedure" through the adoption of a working paper. The nature of this procedure is preventive with the aim to urgently respond to problems requiring immediate attention to prevent or limit the scale or number of serious violations of the ICERD. In the framework of this procedure, the CERD adopts decisions, statements or resolutions. Moreover, on two occasions, the treaty body has conducted field visits and has drawn the attention of the Secretary-General, the Security Council or other relevant bodies in relation to six States parties. Since 1993, the "early-warning procedure" has been used in relation to more than twenty States parties. The ICED sets up a special procedure according to which, in case of "well-founded indications that enforced disappearance is being practiced on a widespread or systematic basis in the territory under the jurisdiction of a State Party", the Committee may urgently bring the matter to the attention of the General Assembly of the United Nations, through the Secretary General of the United Nations.[51]

[49] Serbia-Montenegro, Mexico, Egypt, Peru, Sri Lanka and Turkey.
[50] Article 30 ICED.
[51] Article 34 ICED.

III. CRITICISMS AND SHORTCOMINGS OF THE CURRENT SYSTEM

The treaty body system has come under frequent criticism – some legitimate, other ill-founded, for a number of years. It must be recognised that the treaty body system suffers from a number of deficiencies and faces numerous obstacles that decrease its efficiency. States reports absorb the most time in the treaty body system: backlog and burden are frequently invoked, but more than a consequence of the treaty bodies` machinery, these are largely the result of poor reporting compliance by States parties. Criticisms of the treaty body system are essentially concentrated on the States' reporting procedure. In addition to the problems of complexity and lack of visibility of the system, as well as shortcomings linked to overlapping, observers have raised three main arguments.

Firstly, one has to acknowledge the consequences of the improving rate of ratification. This evolution logically leads to a multiplication of the number of States' reports, as well as an increasing number of communications that the different Committees have to deal with. Therefore, as treaty bodies are not permanent bodies, the few weekly sessions are no longer sufficient to fulfil their tasks properly.

Secondly, several problems arise regarding the reporting process. Some States parties do not submit any report. Others do report, but generally late. Some 1,240 reports are now overdue. If all overdue reports were submitted at once it would take the treaty bodies more than eight years at the current pace to get through the backlog. Others report more or less in time, but the reports often lack substance. These factors hinder the treaty bodies from correctly and timely evaluating the human rights situation in the country.

There is also a tremendous backlog of State reports and individual communications. However, a backlog of State reports is partly attributable to the delays in the reporting process. As a result, treaty bodies are unable to review State reports and communications in a timely manner. These delays undermine the relevance of information given by the State party and therefore the Committee's conclusions. Regarding communications, all individuals sending communications are entitled to be given a decision within reasonable time. In this regard, delays constitute obvious limitations to the system's credibility and efficiency as described in the adage "*Justice delayed is justice denied*". In 2004, the Human Rights Committee examined an average of 15 reports per year, the Committee against Torture 13, the Committee on the Elimination of Racial Discrimination 20, the Committee the Elimination of Discrimination against Women 15 and the Committee on the Rights of the Child 25.[52] Several countries merge 4 or 5 late reports into one single report to a same Committee, so that 10 years may pass without the country being subject to any control by that Committee.[53] In this way, the former independent expert on the protection of human rights and fundamental freedoms while countering terrorism, Robert K. Goldman, has highlighted that "[t]he periodicity of State reporting and the widespread phenomenon of late reporting seriously undermine the possibility for timely and effective monitoring."[54] Lastly, concluding observations adopted by the Committees, following the review of State parties' reports, have been criticized, often unjustly, as not been clear and precise enough, regarding observations and recommendations made to the State party.

Table 8. Average number of reports examined yearly by the treaty bodies

Treaty body	Average no. of examined reports
CERD	19

[52] See *report of the Independent Expert on the protection of human rights and fundamental freedoms while countering terrorism, Robert K. Goldman*, UN Doc. E/CN.4/2005/103, of 7 February 2005, para. 82.

[53] Recently some Committees have begun to examine countries in the absence of a report. For example, the Human Rights Committee has considered the situation of Central African Republic and the Gambia in the absence of State reports, during its 81st and 74th sessions respectively.

[54] *Report of the Independent Expert on the protection of human rights and fundamental freedoms while countering terrorism, Robert K. Goldman*, UN Doc. E/CN.4/2005/103, of 7 February 2005, para. 82.

HRC	12
CESCR	10
CEDAW	27
CAT	14
CRC	39
CMW	6

A. Proposals for the Modification of the Treaty Body System

To address these problems, various proposals have been made, by different stakeholders, including academics[55], non-governmental organisations,[56] States and the UN Secretariat. ICJ only examines some of them, as they have had more impact on the debate on the treaty bodies' reform.

Australia's proposals were the most far-reaching out of the State parties suggestions. Following conclusions and findings by three Committees, the CERD, the HRC and the CESCR, Australia initiated a general and comprehensive reflection on treaty body reform. That time, the ICJ expressed its concern.[57] Australia repeatedly intervened in the debate, *inter alia* in a letter dated 11 September 2000 to the CAT and to the HRC, where the Permanent Representative of Australia made several suggestions in order to improve the effective operation of the treaty bodies. The issues were, in its point of view: the need for better resources, the problem of overlap and duplication, the periodicity of the reporting procedure, the need for the use of panels to consider the reports, follow-up to Committee recommendations, the number of Special Rapporteurs, the need for more time to consider communications, the use of current chambers, and the need for the amendment of the Optional Protocol of the ICCPR.

In 1989, the Secretary-General appointed an independent expert[58] to identify measures that could be taken to improve the functioning of the treaty body system. The three reports of the independent expert, in 1989, 1993 and 1997,[59] resulted in a series of recommendations and improvements, including a study of overlapping provisions in treaties, annual meetings of treaty body chairpersons, cross referencing in reporting, amendments in budget funding for some treaty bodies, adoption of interim budget measures for several treaty bodies, extension of meeting time for some treaty bodies, advance preparation of lists of issues to facilitate dialogue with States parties, better electronic documentation systems, broader acceptance of documentation by treaty bodies including NGO information, the regular adoption of concluding observations by all treaty bodies, and a regular publication of an inventory of standard setting activities.

Despite the improvements, a number of continuing problems were identified, including growing backlogs (almost three years before a State report was heard), serious gaps in universal

[55] Several academic studies have addressed this issue. For more information, see, *inter alia*, A. F. Bayefsky, *The UN Human Rights Treaty System: Universality at the Crossroads*, Kluwer Law International, The Hague, London, New York, 2001; *The UN Human Rights System in the 21st Century*, Kluwer Law International, The Hague, London, New York, 2000; Philip Alston and James Crawford (eds.), *The Future of UN Human Rights Treaty Monitoring*, Cambridge University Press, 2000.

[56] See papers by non-governmental organisations, including *Treaty Monitoring Bodies: Mechanisms to be supported*, International Federation for Human Rights (FIDH), n°322/2, December 2002 and *United Nations Proposals to Strengthen the Human Rights Treaty Bodies*, Amnesty International, September 2003, AI Index: IOR 40/018/2003.

[57] *ICJ expresses concern at Australian Position on UN Treaty Bodies*, press release of 30 August 2000.

[58] Refer to the mandate in accordance with the General Assembly resolution 43/115 and the Commission on Human Rights resolution 1989/47.

[59] Initial report on enhancing the long-term effectiveness of the United Nations human rights treaty system, by the Independent Expert, Mr. Philip Alston, report to the UN General Assembly, A/44/668 (8 November 1989); Interim report to the Preparatory Committee of the World Conference on Human Rights, A/CONF.157/PC/62/Add.11/Rev.1) (22 April 1993); Final report to the Commission on Human Rights, E/CN.4/1997/74 (27 March 1997).

implementation objectives, overdue State reports had increased by 34%, and the number of individual communications had increased with unacceptably high backlogs. He also noted the need to create new individual communication procedures for those treaties, which did not provide for one, in particular to ensure that due attention was paid to economic, social and cultural rights and to the full range of women's rights. Resource constraints for each of the treaty bodies were also at a critical stage. Drastic calls were made to reduce costs and lengths of documents.

The independent expert concluded that the basic assumptions of the treaty monitoring system were sound and remained valid, that considerable achievements had been made, that progress in quality would inevitably be gradual not miraculous, but that the present system was not sustainable at the current status; major reform was required to the overall system.[60] This was due in part to "the immense expansion of the human rights treaty system in a period of less than two decades, the expanding reach and increasing demands of regional human rights systems, the proliferation of reporting obligations in other contexts, especially in the environmental field, and the increasing pressures upon Governments and the United Nations system to reduce their budgetary outlays and streamline their programmes."[61] The independent expert also concluded that "[t]he present supervisory system can function only because of the large-scale delinquency of States which either do not report at all, or report long after the due date."[62]

In his conclusions he urged broader access to electronic information, more advisory services to assist States in complying with the treaty system, major streamlining to reporting requirements, consolidated reports, consolidated treaty bodies, the need for new proactive measures (such as the visits to places of detention under CAT through a new optional protocol), rationalization of the working languages of the treaty bodies, simplifying the process of treaty amendments, and efforts to improve the quality of concluding observations of the treaty bodies concerning State reports.[63]

Having observed the situation of treaty bodies for several years, the Secretary-General proposed two measures to reform or improve the treaty-body system in his report *Strengthening of the United Nations: an agenda for further change*.[64] The proposed measures, which focus on the issue of State parties' reporting, are the following: First, crafting a more coordinated approach to the Committee's activities and standardization of their varied reporting requirements - harmonisation of the reporting guidelines. Second, the Secretary-General suggested, that "each State should be allowed to produce a single report summarizing its adherence to the full range of international human rights treaties to which it is a party".[65] This proposal aimed to satisfy the States' reporting obligations under all treaties to which they are party. The idea of a single report was at the heart of the Secretary-General's proposal. However, consensus favoured expansion of the "core document" to include information on substantive treaty provisions congruent to all treaties, as well as other information of general relevance to all committees. Accordingly, harmonized common guidelines were designed to govern a "common core document" allowing for the preparation of a report on areas of community and congruence among the various human rights treaties; and the "focused periodic reports", to be submitted after the initial report, to comply with the requirement to present a comprehensive report. This "common core document" would be submitted in tandem with targeted treaty-specific report to the relevant treaty body.[66]

The goal sought by the Secretary-General, more than launching a reform process, is a process of "modernisation" in two areas: (1) increasing the coordination between the treaty bodies, including

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[60] Final Report of the Independent Expert Philip Alston to the Commission on Human Rights, UN document E/CN.4/1997/74 of 27 March 1997, at pp. 6-7, paragraphs 9-10.
[61] *Ibid.* at p. 7, paragraph 10.
[62] *Ibid.* at p. 17, paragraph 48, and at p. 35, paragraphs 112-113.
[63] *Ibid*. at pp. 35-37, paragraphs 110-122.
[64] UN Secretary-General's Report, *Strengthening of the United Nations: an agenda for further change,* UN document A/57/387, pp. 12-13, paras. 52-54.
[65] *Ibid*. at pp. 12-13, para. 54.
[66] Harmonized guidelines on a common core document and treaty-specific reports, UN document, HRI/MC/2005/3 of June 2005.

streamlining of working methods; and (2) enhancement of treaty reporting process, including harmonisation of reporting requirements.

The High Commissioner for Human Rights has addressed the issue of the reform of the treaty body system in two complementary ways: strengthening the actual system to improve its capacity and efficiency and addressing the future and sustainability of the system in the anticipation of universal ratification of treaties. In her Plan of Action, the High Commissioner noted the positive achievements of the treaty body system to date and the ongoing efforts to harmonize reporting guidelines, but concluded: "In the long term, however, it seems clear that some means must be found to consolidate the work of the seven treaty bodies and to create a unified standing treaty body".[67] She confirmed this assertion in her statement on 22 June 2005 before the Fourth Inter-Committee meeting. In 2006, a concept paper for a unified standing treaty body was issued to develop this proposal and provide a basis on which options for reform can be explored.

The treaty bodies themselves have expressed concern at the ideas of a single report, an expanded core document, and a unified standing treaty body. The Chair of the CRC has expressed concerns with regard to the idea of a single treaty body, which would dilute the specificity of each treaty. Another proposal would be to establish a permanent bureau, made up of the seven chairpersons of the existing treaty bodies, with the role of coordinating the work of the seven treaty bodies, and of ensuring greater coherence among concluding observations.[68]

B. Reforms to date

In an attempt to make the UN treaty body system more effective, try to resolve problems and remove obstacles affecting the performance of the treaty bodies, many measures have been adopted and improvements made, mainly by the treaty bodies themselves. These have included amendments of rules of procedure and methods of work, exceptionally by amendments to the treaties or by the UN General Assembly resolutions.

Nonetheless, these measures are more adjustments to improve the efficiency of the treaty bodies functioning, rather than genuine reform. These measures are not aiming to revise the treaty bodies' functions, but to increase their performance in the framework of the already existing functions that have been established by each treaty.

These measures fall into two categories: rather general and specific measures dealing with the functioning of each treaty body, generally the reporting function. Thus, certain measures affect the whole system, such as the unified guidelines for reporting, while others have an effect on certain treaty bodies. Although numerous efforts have been made, often with input from the OHCHR, towards coherent and a holistic approach of the treaty body system, the empirical and case-by-case response remains constant. This strategy is due to different elements, particularly the diversity of legal sources of treaty bodies, as well as the imbalance amongst the different treaty bodies' functions. As indicated in Table 1, all treaty bodies are not provided with the same functions.

1. General measures

* **Inter-Committee meeting of the treaty bodies:** Since 2002, treaty bodies inter-Committee meetings have been held on the improvement, streamlining and harmonisation of the working methods. It plays a vital role in the design of general measures of improvement and harmonization of the treaty body system. However, there have been areas of working methods that remain unnecessarily diverging.

* **Coordination between the treaty bodies:** The need for coordination between the human rights treaty bodies was recognized by the General Assembly in 1983, when it called on the chairpersons

[67] OHCHR, *Plan of Action: protection and empowerment*, UN document A/59/2005/Add.3, paras. 99 and 100.
[68] CRC press release 17 January 2006.

of human rights treaty bodies to meet to discuss how to enhance their work. The first Meeting of Chairpersons took place in 1984. Since 1995, the chairpersons of the treaty bodies have met annually. This meeting has identified the non-reporting and late or insufficient reporting as the main issue of concern.

* **Coordination and relations with Special Procedures of the Human Rights Council**: Since 1999, the chairpersons of the treaty bodies have also met with special procedures mandate holders (both thematic and country mandates) of the Commission on Human Rights and its successor, the Human Rights Council. Their discussions have focused on technical questions, such as increasing the exchange of information between treaty bodies and special procedures to strengthen the impact of work on the ground. In the last couple of years, the special procedures mandate holders have engaged more regularly at the treaty bodies´ sessions. This has enabled more systematic interaction with respect to both the assessments of the country situations as well as the follow-up to country recommendations, in particular vis-à-vis the Universal Periodic Review mechanism (HRI/MC/2008/2).

* **Liaison with specialized UN agencies, funds and programmes:** The Inter-Committee meetings have also reiterated previous calls for all treaty bodies to establish functional interaction on country-specific and thematic issues and follow-up with the UN specialized agencies. However, the UN country teams have begun to collaborate to provide information only to some of the human rights treaty bodies, in particular to the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child. As a minimum, the UN country teams have to cooperate with all the treaty bodies.

* **Participation of non-governmental organizations:** The Secretariat has assisted increasing the NGO interaction with the treaty bodies. The seventh Inter-Committee meeting has noted the need for broader NGO representation, including better geographical representation, both in the Inter-Committee meetings and at the treaty bodies´ sessions. The Secretariat was invited to facilitate the participation of national NGOs from developing countries and to explore alternative means of facilitation of such participation. One possible option could be the webcasting of treaty bodies´ sessions.

* **Harmonization of the treaty bodies` terminology:** The third Inter-Committee Meeting recommended that the OHCHR, in collaboration with the Division for the Advancement of Women (DAW), submit a proposal to the fourth Inter-Committee Meeting on the standardization of terminology used by the treaty bodies relating to technical elements of their work. Although most of the terminology has been already standardized, this does not apply to the modalities of individual working methods.

* **Salaries for experts:** The General Assembly has already endorsed amendments to two treaties decided by the Conference of the States parties, namely the ICERD and the CAT.[69] More precisely, the General Assembly welcomed the amendment by which the members of the Committees "shall receive emoluments". In accordance with the treaty procedures, acceptance by two thirds of the States parties is required for their entry into force.[70]

2. Specific measures related to certain functions

a) Administrative control or reporting

* **Rationalization and internal division of work:** In accordance with the GA Res. 59/261, the CRC started, in October 2003, considering reports in two parallel chambers. The Committee continued to meet in two chambers in its forty-second and forty-third sessions during 2006. As of its forty-fourth

[69] General Assembly Resolution A/RES/47/111 of 16 December 1992.
[70] General Assembly reiterated and urged States parties to accelerate their domestic ratification of the amendment to the ICERD in its Resolution A/RES/51/80 of 16 December 1996.

session, the Committee resumed meetings in the plenary, which resulted in a reduced number of reports considered at sessions. The Committee found the two-chamber system the most effective instrument to reduce the backlog of reports.[71] Since 2006, the Committee has once again accumulated the backlog, which will inevitably continue to grow as the Committee receives over 50 reports per year and considers around 11 reports per session.

In order to meet the increased workload resulting from the two new optional protocols, Article 43 (2) of the Convention was amended to increase the number of Committee members from 10 to 18.[72] Concerning the CEDAW, it has been announced that, from September 2005 onward, it will work in two groups to prepare the reports that will be considered by the Committee, which will be meeting in two parallel chambers in accordance with General Assembly resolution 59/261.

These measures – examining by the two chambers or working groups – were designed with the aim to reduce the excessive backlog of reports pending consideration by the treaty body.

* **Harmonized reporting guidelines – Guidelines on a core document and treaty-specific documents:** In response to the Secretary-General's call for harmonized reporting requirements and the possibility of submitting a single report, the revised harmonized reporting guidelines were adopted by the fifth Inter-Committee meeting and the Eighteenth-meeting of the chairpersons in 2005 (HRI/MC/2005/3). Only some of the treaty bodies have been in the process of revising their treaty-specific guidelines. Among the modest reforms is the expanded use of "core document", by which States provide information on substantive treaty provisions congruent to all or several treaties, and other information of general relevance to all committees. This "common core document" is to be submitted in tandem with a targeted treaty-specific report to the relevant treaty body. In June 2003, the second Inter-Committee meeting and the fifteenth meeting of chairpersons requested the Secretariat to prepare draft "guidelines on an expanded core document and treaty-specific targeted reports and harmonized guidelines on reporting under the international human rights treaties". The Secretariat drew up guidelines in June 2004[73] and a revised draft was presented in 2005.[74] Several States, including Angola, Timor-Leste, Afghanistan and Burkina Faso piloted the guidelines. Switzerland has also launched a pilot project for a joint report, based on the provisional guidelines. The objective has been to secure that the various reports are compatible at an early stage, so that it will be then possible to pave the way for the preparation of an eventual joint report that meets the provisions of the guidelines. The main goal was to identify redundancies and repetitions contained in past reports, and move them to the common core document.

* **Joint examination of reports:** The CEDAW regularly considers jointly combined reports of a State party.[75] The CERD[76] resorts to this practice when the next periodic report is due in less than two years from the consideration of the previous report. The CAT,[77] although it resorts to this practice whenever a State party simultaneously submits several overdue reports, it has not adopted a formal position in this regard. The CESCR and the CRC accept combined reports, but exceptionally.

* **Review procedure - examination of countries in absence of reports:** According to this procedure, the treaty body considers the situation in a country in the absence of a report from the State party. The procedure is used in cases where the report has been overdue for an excessive period and the State party has not responded to the treaty body's requests for a report. This review procedure was first adopted by CERD in 1991. At its 70th session in October 2000, the Human Rights Committee

[71] Ninth biannual report of the CRC (A/63/41), covering its activities from the *forty-second* to *forty-seventh sessions*, para. 28.
[72] General Assembly Resolution 50/155 of 21 December 1995, which entered into force on 18 November 2002 upon acceptance by two-thirds of States parties.
[73] UN document HRI/MC/2004/3.
[74] UN document HRI/MC/2005/3.
[75] See for example Concluding Observations on the 1st to 6th reports on Bhutan, A/59/39 (Part I), paras. 85-132.
[76] See for example Concluding Observations on the 6th to 11th reports on Burkina Faso, CERD/C/304/Add.41; Concluding Observations on the 7th to 10th reports on Burundi, CERD/C/304/Add.42.
[77] See for example, Concluding Observations on the 4th and 5th reports on Canada, CAT/C/CR/34/CAN.

decided that, when a report was overdue for more than 10 years, the Committee would be entitled to look at the situation in this particular State.[78] Nonetheless, it was decided that the sessions would remain private unless the State was present. Concerning NGO participation, it was decided that the decision to look at a particular situation would be posted on the OHCHR's website, thus allowing NGOs to participate by giving details on the situation within the country. At present, all Committees, with the exception of the CMW, have adopted this practice.

* **Timely examination of urgent and/or serious human rights situations:** Based on the ICCPR[79] and the Convention against Torture[80] respectively, the HRC and the CAT have established in their rules of procedure[81] the ability to request the States parties to submit a report when an urgent and/or serious human rights situation arises. In the case of an exceptional situation when the treaty body is not in session, a request may be made through the Chairperson, acting in consultation with the members of the treaty-body. The HRC has done so with urgent issues in few countries, such as, *inter alia*, Nigeria[82] and Peru.[83]

* **List of issues:** Advance preparation of lists of issues aim to facilitate dialogue with States parties. This practice consists of the submission of a list of issues and questions to the State party in advance of the session at which its report will formally be considered. States may respond to these questions in written form or during the session. Many States parties have welcomed this new practice as a means of preparing itself and making the dialogue with the Committee more constructive and concrete. All treaty bodies have progressively adopted it, although their format and structure substantially differ. The CERD and the CAT were the last Committees to adopt this practice, although CERD leaves the preparation of such its list, which remains an informal document, to the special rapporteur.

* **Follow-up to concluding observations:** All treaty bodies request States parties to provide information on the implementation of recommendations in the concluding observations/comments in their subsequent reports or during the constructive dialogue. Several treaty bodies also have formal procedures to monitor more closely implementation of specific concluding observations. The HRC applies a follow-up procedure systematically, whereby the Committee identifies a number of specific recommendations in its concluding observations as requiring immediate attention, and requests the State party to provide additional information on their implementation within one year. The HRC also appointed a Special Rapporteur on follow-up in 1993, who generally monitors the level of implementation of the Committee's recommendations. The CAT[84] and the CERD have also adopted the practice of requesting from States parties follow-up information on implementation of key recommendations contained in their concluding observations within one year of their publication. The procedure has been successful with a high rate of responses. A similar procedure has been recently established by the CEDAW. The CESCR can request a State party to provide more information prior to the date on which the next periodic report is due. Such information will be analyzed at the next pre-sessional working group.

* **Workshops on implementation:** From 2003, the OHCHR organised workshops on the implementation of the concluding observations of the different treaty bodies. The OHCHR, in cooperation with the Government of Ecuador organised a first Pilot Workshop for Dialogue on the Concluding Observations of the Human Rights Committee in 2002. Many other UN bodies and agencies and several governments participated. The Workshop ended with several

[78] See Rule of Procedure of the Human Rights Committee n° 70 in document CCPR/C/3/Rev.8 of 22 September 2005.
[79] Article 40 (1,b) of the ICCPR.
[80] Article 19 (1) of the CAT.
[81] Rule 66 (2) of the Rules of Procedure of the HRC (CCPR/C/3/Rev.6 of 24 April 2001) and Rule 64 of the Rules of Procedure of the CAT (CAT/C/3/Rev.4, 9 August 2002).
[82] Concluding Observations of the Human Rights Committee on Nigeria , 03/04/96, CCPR/C/79/Add.64
[83] Concluding Observations of the Human Rights Committee on Peru, 25/07/96, CCPR/C/79/Add.67; A/51/40,paras.339-364.
[84] Rule 68 (1) of the Rules of Procedure of the CAT.

recommendations to States parties, the Committee, the OHCHR, international bodies and non-governmental organisations. In particular, they proposed States to report in accordance with guidelines; follow a process of broad participation from all sectors of society; set up the appropriate inter-agency mechanisms to follow-up the recommendations; establish a unit to facilitate contact with the Treaty Bodies Recommendations Unit of the OHCHR; consider appropriate measures to fulfil the concluding observations, and study the possibility of implementing training programmes to follow-up on the recommendations. For the OHCHR the recommendations suggest that it be provided with sufficient resources, that it provide technical assistance to States for implementation, including supporting national institutions` activities relating to implementation. The conclusions also suggest that other bodies of the United Nations System should take the recommendations into account without specifying to what extent. Some members of treaty bodies have undertaken visits to countries, at the invitation of the State party, in order to follow up on the report and implementation of concluding observations. In 2007, national actors in 26 countries benefited from the OHCHR`s project on strengthening the implementation of human rights treaty recommendations through the enhancement of national protection mechanisms.

b) Quasi-judicial control: individual communications

* **Petitions Unit:** The OHCHR has established a Petitions Unit to examine individual complaints received by the CAT, the HRC, and the CERD[85] and most recently by the CEDAW. It has reportedly resulted in a significant reduction in the delay in processing individual complaints. The average time has been reduced, between 2000 and 2001, from 42 to 36 months. The Petition Team processes about 150 individual complaints per year. Of these, the Human Rights Committee, as compared to 78 cases in the previous two years, has considered 114. The processing of correspondence is speedier; in 2002-2003, 170 complaints were registered, compared with 102 in 2001-2002.

* **Simplified complaint procedure:** In 2001, following a growing number of cases where States parties were contesting the Committee's competence to examine individual complaints under the first Optional Protocol to the ICCPR,[86] and claiming their inadmissibility, the HRC amended its rules of procedure for individual complaints' admissibility. Under the Committee's new rules of procedure, the Committee decides on the admissibility and merits of a communication together in order to expedite its work under the Optional Protocol. Only in exceptional circumstances does the Committee request a State party to address admissibility only.[87]

* **Follow-up to the treaty bodies` views:** The HRC, in accordance with its rule of procedure 101, "shall designate a Special Rapporteur for follow-up" to individual communications. The CAT also has adopted a follow-up mechanism, enshrined in rule of procedure 114 and according to which "[t]he Committee may designate one or more rapporteur(s) for follow-up on decisions adopted under article 22 of the Convention, for the purpose of ascertaining the measures taken by States parties to give effect to the Committee's findings". The Optional Protocol to CEDAW already refers to follow-up. Therefore the procedure already exists.

c) Other functions

* **Interpretative function:** In 2005, the fourth Inter-Committee meeting agreed that treaty bodies could consider drafting jointly General Comments on issue of common concern. At this stage, the

[85] CAT/C/SR.439, 15 November 2000.
[86] See, *inter alia*, communication n° 845/1999, *Rawle Kennedy v. Trinidad and Tobago*, CCPR/C/67/D/845/1999 of 31 December 1999. On the ground of a reservation aimed at excluding the competence of the Committee under the Optional Protocol, which was consequently contrary to the object and purpose of the treaty, the State was arguing that "the Committee has exceeded its jurisdiction, and the State party therefore considers the actions of the Committee… to be void and of no binding effect"(para. 4.2). However the Committee decided that the reservation was contrary to the object and purpose of the treaty and that the communication was admissible.
[87] CCPR/C/3/Rev.6 of 24 April 2001, Rule 94. At present, this rule is enshrined in Rule 100 of the latest version of the Rules of Procedure, document CCPR/C/3/Rev.8 of 22 September 2005.

treaty bodies have not adopted any joint General Comment.

* **CERD early warning procedure:** In 1993, the Committee adopted a working paper to guide it in dealing with possible measures to prevent, as well as to respond more effectively to, violations of the Convention (see A/48/18, Annex III). The working paper noted that both early warning measures and urgent procedures could be used to try to prevent serious violations of the Convention. At its 45th session in 1994, the Committee decided that preventive measures including early warning and urgent procedures, should become part of its regular agenda. In recent years the CERD has established a working group of five of its members to consider situations under its early warning procedure.

IV. ICJ ANALYSIS: NEED FOR WIDER REFORM

The High Commissioner for Human Rights has defined five objectives regarding monitoring by the treaty body system, bearing in mind that the overarching purpose is to ensure effective implementation of the provisions of a treaty and that those intended to benefit from the provisions enjoy their protection.[88] The five objectives are: (1) to ensure that diagnosis and understanding of the situation in a country takes place, so that States parties become fully aware of the extent to which the various rights are, or are not, being enjoyed by all individuals; (2) to equip States parties to undertake policy-making and effectively evaluate the extent to which progress has been made; (3) to create opportunities for the establishment of new partnerships between States and rights-holders; (4) to create opportunities for capacity building and awareness-raising; (5) to protect victims of human rights violations.

Through complex action, which combines various functions – administrative control, quasi-judicial control, interpretative function, follow-up procedure, early warning procedure, visits in the field – the system can contribute to the realisation and the protection of human rights, as well as the implementation of obligations by States parties.

A. Old rationale for new situations/unsustainability of the current system

The first treaty bodies were set up at a time where there existed far fewer States and far fewer treaties. It could not be foreseen that today there would be a saturation of the system. Yet, the whole logic remains unchanged. Only recently four further treaties have come into force, bringing new monitoring functions and innovative ways to traditional treaty-bodies' functions: the OP-CRC-SC entered into force on 18 January 2002 and the OP-CRC-AC on 12 February 2002. The OP-CAT that established the Subcommittee on Prevention of torture and ill-treatment, which visits places of detention, entered into force on 22 June 2006.[89] The CMW entered into force on 1 July 2003 and the Committee first met in March 2004. Moreover, there will always be a need for more treaties to fill protection gaps, as international law and consequently standard setting continue to evolve. The most recent example has been the International Convention for the Protection of all Persons against Enforced Disappearance.

Furthermore, the United Nations has always called for the universal ratification of existing human rights treaties. However, within the current system it is clear that there is not a capacity to monitor nine or ten treaties with protocols that have been ratified by all 192 UN Member States.[90]

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[88] OHCHR background conference paper to the Seventh Ad Hoc Committee on the draft Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities, 16 January-3 February 2006.
[89] See http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&id=130&chapter=4&lang=en, status of ratifications as at 19 November 2008.
[90] Moreover, States that are not members to the United Nations have been able to become States parties to United Nations human rights treaties. This has been the case of Switzerland before it became a UN member State on 10 September 2002.

B. Minimalist "reform" approach: practical measures to improve and optimise the performance of the actual treaty body system

As outlined above, the measures – implemented or proposed – aim to resolve or remove various obstacles, which have affected the performance of the treaty bodies in order to improve their functioning. But these measures do not target a substantial reform of the system in order to make it a more efficient and operational, so that it is able to deal with the future challenges and need for a comprehensive monitoring activities.

Several of these measures could be useful to improve the actual performance of the existing treaty bodies. However, they are not miraculous solutions, and some legitimate doubts can be raised about their real practicability and impact.

With regard to the reporting process, the common core document does not address the issues of periodic reporting nor the unwillingness or the incapacity of ratifying states to report and to implement treaty bodies' recommendations. Similarly, the High Commissioner observed that "streamlined reporting will not by itself address all the challenges that the system faces".[91] The problems relating to reporting are peripheral to a larger concern, which is dissemination of and, more importantly, implementation of conclusions and recommendations of treaty bodies by State parties. As the Secretary-General observed, the work of the treaty bodies remains little known and therefore has little impact over domestic jurisdictions.[92] Thus the High Commissioner acknowledged both the reporting and the implementation concerns: "Many States parties fail to report in a timely fashion, or at all, and the committee themselves, as part time body unremunerated, but highly dedicated, members are unable to keep up with the volume of important work that is before them. As a result, reports may sometimes not be considered for at least two years after submission. Similarly, it may be several years after submission that treaty bodies with competence to consider petitions are able to take up complaints. Finally, despite innovations introduced by treaty bodies, the gap persists between the recommendations of treaty bodies and their implementation at the national level". [93]

Concerning the issue of non-reporting or late reporting that the common core document is meant to address, it seems like it is not only a matter of resources, but also a question of political will. This is highlighted by the timely reporting to the Security Council's Counter-Terrorism Committee, demonstrating that States parties are able to report on time as far as they are willing to do so. While one should admit that smaller or poorer states might face serious and real difficulties in reporting as they lack the resources and training to present reports, complaints on the reporting burden by countries like Australia are hardly credible. In this regard, it should be recalled that ratifying States are only required to comply with the obligations they have accepted, in accordance with the different treaties to which they became parties.

Another problem the common core document does not address is the question of implementation of the treaty bodies' recommendations. Frequently, the recommendations of the Committees are kept within the foreign ministries and are not disseminated through the state institutions. Similarly, the new practice of the list of issues, consisting *inter alia* of questions about implementation of last recommendations is insufficient as it is very slow. Therefore it is not a satisfactory method to follow-up the implementation of recommendations.

Based on these assertions that even the current system, without any additional monitoring functions, is not sustainable, the problem statement of the reform opens a window of opportunity.

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[91] HCHR, statement on 22 June 2005 to the Fourth Inter-Committee Meeting.

[92] See, *inter alia*, International Law Association, *Final Report on the Impact of Findings of the United Nations Human Rights Treaty Bodies*, Berlin conference, 2004. For a more optimistic view, see Christine Chanet, "Le système des communications et l'avenir du contentieux", in *Les Nations Unies et les Droits de l'Homme*, Pedone, Paris.

[93] HCHR, statement on 22 June 2005 to the Fourth Inter-Committee Meeting.

The majority of the different past or ongoing measures[94] certainly could improve the work and performance of the treaty bodies. Nevertheless, these measures are meant to optimise the treaty bodies' functioning, rather than actual reform. Consequently, they cannot solve all the challenges the treaty bodies will have to face in the longer term, in the framework of the process of universal ratification of human rights treaties. Indeed, any reform effort should not only aim at improving the current system, rationalising what already exists, but also envisage new solutions, if the system is to meet the challenge.

C. Insufficient functions/Need for creativity to meet the challenges

Although the different treaty bodies exercise important review functions, it does not suffice. Certain vital functions are not covered adequately or at all by the current system, though they are a corollary of human rights protection. Much more needs to be done in this regard. Firstly it concerns the prevention of violations and the possibility to take urgent action. Equally important is the humanitarian function and the ability to react to massive human rights violations in a timely manner. These are the least functions the treaty body system should exercise, as it is part of its rationale.

The first instruments were only envisaging treaty bodies' action in terms of administrative control (reporting) and quasi-judicial control (complaint procedures). Progressively and unequally, through the treaty bodies practice (reflected in changes in their rules of work and procedure) and the adoption of new treaties and protocols, improvements have been introduced to the "classic" treaty bodies' functions and new functions have been established for certain treaty bodies (see Table 1, page 10). However, treaty bodies are provided with different functions (See Table 1). Consequently, a lack of coherence in the system of UN human rights treaty bodies is still prevalent.

Certain treaty bodies do not have functions, which other have, and which would be of greater utility to them when monitoring the treaties and providing effective ways to prevent violations and protect human rights. For instance, it could be envisaged to extend the function of visits and control of places of detention enshrined in the OP-CAT, which the Subcommittee on Prevention of Torture has been charged with, to all treaty bodies, as the deprivation of liberty is not a concern limited to the field of application of the CAT. Persons may be deprived of their liberty because their rights guaranteed by other treaties have been violated, thus implying a need for appropriate reaction by the relevant treaty body.

For example, the Human Rights Committee could be given the ability to undertake visits to places of detention in cases of arbitrary detention,[95] or to check that accused persons are segregated from convicted persons and are treated with humanity and respect for the inherent dignity of the human person.[96] For its part, the Committee on the Rights of the Child could visit places of detention to monitor the implementation by States parties of their obligations to ensure that no child shall be subject to torture or ill treatment, deprived of his or her liberty arbitrarily, and is treated with humanity and in a manner which takes into account the needs of persons of his or her age in case of lawful detention.[97] It could also review the implementation of article 9 of the Convention regarding separation of children from their parents, determined by competent authorities, where children may be taken from their parents to other places.[98] The Committee on Migrant Workers could also be

[94] See the part III.
[95] Article 9 of the ICCPR.
[96] Article 10 of the ICCPR.
[97] Article 37 of the CRC.
[98] Note examples in Romania and the Russian Federation, where hundreds of thousands of children were separated from their parents or their families and placed in institutions. See, in particular, Concluding Observations by the CRC on Romania, CRC/C/15/Add.199, paras. 36-39; Concluding Observations by the CRC on the Russian Federation, CRC/C/15/Add.110, where the Committee is, *inter alia*, "concerned at

provided with the function to conduct visits in the field, to monitor the implementation of articles 16 and 17 of the Convention, related to deprivation of liberty.

Similarly, it could be envisaged to extend the ability that the CERD and the future CED have been provided for – by a working paper for the former, and by the treaty for the latter – to draw the attention of the Secretary-General and/or the General Assembly,[99] in case of serious violations of the corresponding Convention, which may amount to crimes against humanity. Why should this function, designed to tackle human rights violations committed on such a large scale, be limited to the rights guaranteed by two conventions? One can easily imagine that this kind of mechanism could be useful in the framework of other rights enshrined in other instruments, such as extrajudicial executions, slavery, torture, and arbitrary detention etcetera. An early-warning procedure must not be limited to certain rights protected by some of the conventions.

As pointed out by the Secretary-General in his report on United Nations reform, *In Larger Freedom*, "treaty bodies need to be much more effective and more responsive to violations of the rights that they are mandated to uphold."[100] Yet concrete remedial steps which have already been implemented or proposed are oriented to resolve or remove various obstacles which have affected the performance of the functioning of the treaty bodies, within the framework of their current functions. For example, the proposed solution of an expanded core document, together with harmonised guidelines to improve the reporting system, does not address all the issues and is therefore insufficient.

These measures remain superficial and do not contribute to a genuine and deeper reform, which is needed to address the central question:

> How to conceive a human rights treaty body system, operating in an efficient and timely manner, provided with various and necessary monitoring, prevention and protection functions, which would significantly contribute to better promotion and protection of human rights, ensuring the effective implementation of the treaties' provisions for those who are intended to benefit from the rights enshrined in the relevant treaty provisions?

V. ICJ PROPOSAL

As demonstrated above, the present treaty body system is not sufficiently equipped with functions providing global and effective responses to the current needs and challenges of protection and promotion of human rights. As a consequence, the treaty body system, as it stands, will become unsustainable in the future, partly with the trend towards universal, or quasi-universal adherence to the core human rights treaties, which will increase a reporting and processing burden. Therefore, the ICJ believes that significant reforms will be required for the overall system to achieve its objectives.

Beyond incremental reform, a holistic and, more importantly, a functional approach should be adopted when dealing with any reform proposal of the treaty body system. Research in what kind

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allegations of widespread practice of torture and ill-treatment, and conditions amounting to inhuman or degrading treatment, of children living in institutions in general and in places of detention or imprisonment in particular - including acts committed by law enforcement officials involving corporal punishment", para. 28.

[99] As already noted, the CERD has drawn the attention of the Secretary-General, the Security Council or other relevant bodies in relation to six States parties. For its part, Article 34 of the future ICED, in case of widespread or systematic practice of enforced disappearance, provides the Committee with the ability to urgently bring the matter to the attention of the General Assembly, through the Secretary-General.

[100] Report of the Secretary-General, *In Larger Freedom: towards development, security and human rights for all*, A/59/2005 of 21 March 2005, para. 147.

of system is needed, to meet its international protection and promotion goals, should lie at the heart of such reflections. Accordingly, various issues have to be addressed:

1. The definition of the goals we want to be met. In other words, what kind and what nature of treaty body system is needed to ensure effective implementation of the treaties' provisions for those who are intended to benefit from the rights enshrined in these provisions and enjoy their protection.

2. Once the goals have been defined, concluding what functions the system should be provided with, in order to achieve such goals.

3. Determining the feasibility of such a conception of monitoring, considering the functions that the system will require. In particular, practical and technical implications will have to be examined, to explore what is possible to achieve in the framework of the existing treaty body system, if it is necessary to set up a new system, based on a unique body or plurality of bodies.

4. How the present treaty body system could evolve towards a new monitoring system, a system based on existing and future treaty bodies, or a totally new treaty body system.

5. How to improve the present treaty body system and how to ensure a successful transition from the present system to the new one, independently of the question of the body issue (unique body, new bodies, renewed present bodies etc.).

These issues raise complex questions and require thorough answers exploring different aspects and scenarios. The ICJ neither pretends nor intends to answer all these questions. Rather it believes that they deserve reflection amongst all stakeholders and all persons interested in genuine reform. To start with, the ICJ would like to bring in some ways to be explored, especially with regard to points 1, 2 and 5.

A. What purpose should the system serve?

It is undeniable that the system has already proven its usefulness and has many achievements. This basis constitutes solid foundations to build upon. However, the system lacks certain functions at present. This is particularly true with regard to prevention; early warning; referral to political organs in case of gross, widespread, massive or systematic violations; humanitarian functions and country visits.

There is an undeniable institutional gap at the universal level for individuals to invoke the human rights that are guaranteed by the 'core treaties'. Implementation of rights enshrined in any legal instrument has to be adequately monitored and enforced, in order not to be merely an aspirational document.

What is needed is a well functioning treaty body system that monitors both the general level of enjoyment, as well as the enjoyment in individual situations, of human rights and fundamental freedoms enshrined in the United Nations human rights 'core' treaties. This system should allow for an integral and global control of all rights guaranteed in these treaties and all States parties' obligations.

It should also respond to different needs, particularly in terms of prevention (early-warning procedure, humanitarian inquiry in the field, visits *in situ*), and provide for urgent action and reaction in seeking protection, special and urgent reporting on implementation of requested measures as well as for technical assistance. Moreover, this system should be interacting with other relevant parts of the UN human rights system, and other UN organs and bodies.

To this end, the treaty body system should have the following features:

✓**Holistic nature:** The treaty body system should ensure equal and standardized monitoring of all human rights guaranteed by the UN human rights 'core' treaties to promote universality, indivisibility and equal promotion and protection of all rights. Standardized reporting requirements, focused and coherent reporting would contribute to all rights enshrined in these treaties being treated as indivisible and inter-related in any treaty body system. Reaching this objective would require, among other measures, an extension of an individual communication procedure to all the 'core' treaties. The first important step in this respect was represented by the adoption of an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights by the UN General Assembly on 10 December 2008.

✓**Accessibility:** The treaty body system should be accessible and of use to rights holders, including through NGOs, human rights defenders, national courts, national human rights institutions and ombudspersons. Accessibility for these purposes requires adequate visibility, so that the system is better known, thus more and better utilized. For the time being, observers and even treaty bodies agree to say that some aspects of the current system are underutilized, such as the communication procedures.[101] It is not only because, as highlighted by the Table 5, far fewer States have recognised the Committee's competence to receive and consider communications than there is the number of States parties to the different treaties. It is also because, as the Secretary-General has acknowledged, the system itself, including its mechanisms and its results, "remains little known"[102] by the rights holders themselves. In that respect, very simple, concrete and efficient steps could be taken, such as the publication and systematic promotion and awareness raising of the bodies' analyses, interpretation and jurisprudence at the national level. This valuable documentation should be also easily accessible at a user-friendly and intelligible web-site database. For instance, a regularly updated database available in all UN official languages where one could access all General Comments by the treaty bodies, country concluding observations and decisions relating to specific rights and freedoms, States parties' obligations or legal issues would be very helpful.

✓**Adequate response:** The treaty body system should be able to provide an efficient and adequate response to the different situations it deals with. This implies that all the bodies be equipped with functions to fulfil its monitoring, protection and assistance mandate in all necessary fields and provide adequate responses to the different challenges.

✓**Timely action**: The treaty body system should be able, not only to respond to violations of human rights in a timely manner, but also to act in time before the human rights situation in a particular country degenerates. As a system based on treaties, it should be able to provide States parties with guidance dealing with escalating violations of human rights guaranteed by the treaties they are party to. The requirement of timely action thus implies that the system is able to consider reports and communications in a timely manner, and provide for interim measures of protection and early-warning and urgent action.

✓**Flexibility and Capacity to Adapt to New Challenges:** The treaty body system should be flexible and adaptable to changes, especially as regards increase in workload, sharing best practices or reaction to mounting violations of human rights. For example in terms of reporting, one could wonder whether the strict adherence to the provision on the periodicity for reporting provided for in certain treaties (see Table 2), is relevant in situations of persistent and chronic human rights violations in some of the States parties. Though several treaty bodies adjusted their follow-up procedures to monitor progress regarding key human rights concerns within one year from the country considerations, perhaps in those cases, reporting should be quasi-permanent. In other

[101] See, for example CERD's annual report for 2007, UN document A/62/18, paras. 512 – 520.
[102] Report of the Secretary-General, *In Larger Freedom: towards development, security and human rights for all*, UN document A/59/2005, para.147; see also the Concept Paper on the High Commissioner's Proposal for a Unified Standing Treaty Body, UN document HRI/MC/2006/2 of 22 March 2006, para. 21.

situations, particularly where the States have been parties to a treaty for many years without major difficulties, reporting could be less frequent, such as is the case of the CERD.

✓**Interaction with UN human rights and other related bodies:** The treaty body system should also be able to interact effectively with other present and future components of the UN human rights system, be they independent mechanisms (Special Procedures of the UN Human Rights Council), political bodies (Human Rights Council, General Assembly) or Secretariat (UN Secretary-General). In this regard, other mechanisms should better use the treaty body system's work. For example, the Human Rights Council, as well as its mechanisms, including the Universal Periodic Review, should take into account the treaty-body system's recommendations whenever dealing with the human rights situation in a particular country. It would provide the Council with the necessary expert analysis of the human rights situation. In return, these bodies would contribute to the enhanced implementation of these recommendations. Besides, the treaty body system should be able to draw the attention of components of the UN system, including the General Assembly, and where relevant the Security Council and the Secretary-General, to particular situations. Interaction with other UN bodies and entities would enable mobilization of national human rights constituency, verification of information and strengthening of follow-up and technical assistance.

✓**Coherence of functions:** The treaty bodies will genuinely function as a system, once its working methods and means of operation provide for consistent, coherent and efficient response to violations of human rights protected by the treaties. The methods of work and functions remain to be harmonized more effectively, so that all human rights are equally protected. In this regard, the system should avoid overlap, duplication of work or unnecessary differences of working methods.

B. What functions should the system have to meet its objectives?

In order to meet the requirements, the ICJ believes that the treaty body system should be able to carry out the following functions:

Administrative control: reporting
The administrative control function is essential to the system. Unlike the quasi-judicial control – which is subject to acceptance by States parties – it concerns all States parties to the human rights treaties. The examination of the situation in a particular country should remain possible and carried out by all bodies of the treaty-based system. This function should be exercised even though States parties do not report on time or at all. In this regard it would be advisable for all the Committees to develop the review procedures. The legal basis is precisely the failure of States parties to comply with their obligation to submit initial and periodic reports to the relevant body. Besides, follow-up to treaty body concluding observations and recommendations should be systematized for the sake of system's efficiency, including through the use of Special Rapporteurs for follow-up to interact with relevant UN and other bodies. Lastly, as mentioned above, this control should be more flexible in terms of reporting periodicity to allow for review of follow-up in urgent situations.

Quasi-judicial control: communication procedures
The communication procedures should continue to rely on recognition by States parties of the system's competence, as it is the case of international jurisdictions.[103] However, this function should be extended throughout the whole system, so that violations of all human rights enshrined in the 'core' treaties may be equally challenged before the treaty bodies. This function represents a last resort for victims, once they have exhausted all available and effective domestic remedies. States´ cooperation with the Committee under the communication procedure should be enhanced and follow-up to the bodies' jurisprudence improved and systematized, including through the

[103] At the regional level, the European, the Inter-American and the African systems provide individuals with a complaint procedure, in accordance with Article 34 of the ECHR, Articles 61-62 of the ACHR and Article 34 (6) of the ACHPR. The individual complaint mechanism is optional before the Inter-American and the African Courts, as complaints can only be referred to the Court if they concern a State Party to the Convention that has accepted the jurisdiction of the Court. On the contrary, the individual complaint mechanism is compulsory in the European system.

observance of interim measures of protection. It could also be envisaged that views adopted by the bodies bear more authority and have direct legal effect in the State party concerned, as they are essential means of interpretation of the Covenant's rights, in accordance with its article 40. As the competence by the Committee to determine violations of any rights set forth in the Covenant has been accepted through an international treaty, it must be fulfilled in *bona fide*.

Interpretative functions. Firstly, the treaty bodies should be able to continue their interpretative functions *ex officio.* As the UN human rights treaties' provisions are the result of compromise and consequently vague, the interpretative function of an institution that monitors such treaties is essential. This corresponds to the present ability of the treaty bodies to draft and adopt general comments. The treaty bodies´ interpretative doctrine, although non-binding, is vital to the proper implementation of the treaties' provisions. It helps States parties to understand the scope of their obligations and enables rights-holders to know the nature and scope of their rights. In the future, the treaty bodies would also be encouraged to devise their general comments in consultation among one another, to reach necessary coherence of interpretation of individual treaty provisions across the treaty body system. General Comments might also more rigorously uphold the treaty bodies´ interpretation as contained in the views on the individual communications.

Secondly, the system could carry out interpretative functions upon request. It would be legitimate for the treaty body system to deliver "advisory opinions" upon request of a State party or relevant United Nations organs or bodies. As States parties have never used the inter-state complaints procedures available under the different "core human rights treaties", this function would provide them with an alternative solution.[104] The treaty bodies could render advisory opinions, which would be authoritative, though non-binding, without entering an adversary procedure. This function is important, as it would provide States, i.e. the primary entities responsible for the implementation of the international human rights law, with an additional tool to seek guidance with a view of achieving compliance with their obligations.

Function of control of treaties' integrity: The system should provide the various treaty bodies with the ability to make interpretation of reservations. This function should be institutionalised, and no longer an *ad hoc* practice of the Committees. As treaty organs, it should be legally recognized that treaty bodies are competent to interpret reservations to treaties, since it impacts on the scope of their functions.[105]

Inquiry procedure for gross, massive or systematic human rights violations or persistent or grave violations of treaty obligations: It is clear that serious human rights situations deserve more regular and focused examination. Accordingly, in case of all gross, massive or systematic, as well as persistent or grave violations of treaty obligations, the treaty bodies should be equipped with an inquiry procedure. This procedure, like the existing ones for the CAT, the CEDAW, the CRPD and the future CED as well as for the CESCR, should allow treaty bodies to undertake an inquiry, including country visits to inquire and verify *in situ* allegations of violations of human rights guaranteed by the relevant treaties. This procedure should remain conducted in close cooperation with the concerned State party.

Country visits: Visits *in situ* constitute a priceless tool to fulfil several functions, which could be used by the treaty bodies for different purposes, when examining if and how States parties implement their treaty obligations. Firstly, visits to the field can be used by treaty bodies to assist in national evaluations to what extent the human rights treaty obligations have been met. Such visits may also serve to double check information provided by States parties' reports, thus contributing to draw a diagnosis of the situation of human rights protected by the relevant treaty in a country.

[104] Based on the experience of the International Court of Justice (ICJ) for example, which Article 65 (1) of its Statute authorizes it to render advisory opinions. Advisory opinions of the ICJ are authoritative legal pronouncements, generally not binding on States, concerned with particular controversies.
[105] Particularly, when reservations made by States parties are related to the competence or functions of the treaty bodies.

Thirdly, visits *in situ* are also an efficient tool to follow-up the treaty bodies recommendations and views.[106] Visits have already served and should pursue to provide governments with the advisory services requested to assist them in preparing reports and in adapting their legislation and policies to the requirements of the treaties.[107] As treaty bodies have not established formal guidelines or criteria for country visits other than before the consideration of reports by the Committees, the United Nations High Commissioner for Human Rights is requested to endorse guidelines for invitations to treaty bodies by States parties for all of the above stated categories of visits.

More concretely, visits should consist of all Committees going to places of detention. This would help prevent human rights violations, such as arbitrary detention or enforced disappearance from occurring. Similarly, treaty bodies could also be able to visit places of internment of children when separated from their parents. This function exercised by the treaty bodies would, by definition, neither overlap nor duplicate with those of the Special Procedures of the Human Rights Council. Indeed, the purpose of the visits would be related to the implementation of the treaty provisions and the scope of the treaty bodies is already different from the mechanisms of the Human Rights Council, as it would rely on States parties' obligations under the treaties.

Functions of prevention - alert, early warning and urgent action procedures: Treaty bodies should be well equipped to act on an urgent basis, either to prevent gross, massive or systematic human rights violations from happening, or to react promptly to an individual humanitarian complaint. In this respect, all treaty bodies should be equipped with an early-warning procedure, which would allow them to prevent or limit the scale or number of serious violations of the different treaties. To this end, they should be able to draw the attention of the relevant political bodies of the United Nations system at the highest level, such as the General Assembly, the Security Council or even the Secretary-General, if the situation so requires. Unlike the early-warning procedure, which concerns grave violations of human rights, the humanitarian procedure, which has been referred to as a kind of "international *habeas corpus*", aims to address individual urgent situations often through preventive means.

Advisory function to other UN bodies and agencies: Provided that the treaty body system would more regularly and effectively interact with other parts of the United Nations system, the UN bodies and agencies could benefit from treaty bodies' analysis of country situations. For example, other UN bodies, such as the Secretary-General or the DPKO, or other bodies such as the UNDP or the UNICEF could seek advice from the treaty bodies in relation to the country situation concerned. DPKO and other parts of the Secretariat as well as agencies such as UNICEF or UNDP could seek advise from the treaty bodies when planning and providing technical assistance to a concerned country or where assisting in evaluation of the situation on the ground.

[106] See, for example, Rule 115 of the CAT. The CERD has also adopted a new follow-up procedure to concluding observations involving visits to the countries. The first one took place in Ireland in April/May 2006.

[107] See, for example, Report of the CERD's Country Rapporteur on his technical assistance mission to Croatia (CERD/C/45/Misc.6 and CERD/C/45/Misc.10).

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