

POLICY BRIEF

THE OUTCOME
OF THE GENERAL
ASSEMBLY'S TREATY
BODY STRENGTHENING
PROCESS:

**An Important Milestone on a Longer
Journey**

Christen Broecker and Michael O'Flaherty



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PREFACE

This policy brief on recent efforts to reform the United Nations' system of expert 'Treaty Bodies' reflects the direct experiences of its two authors. Christen Broecker of the Jacob Blaustein Institute for the Advancement of Human Rights observed the UN General Assembly's intergovernmental process on the Treaty Bodies from its inception in 2012 through its conclusion in 2014, participated in the three 'civil society' consultations organised in that process, and interacted with key participants throughout. Professor Michael O'Flaherty, Director of the Irish Centre for Human Rights, National University of Ireland, Galway, himself a member and vice-chair of the Human Rights Committee (one of the Treaty Bodies) from 2004-2012, and a current vice-chair of the Universal Rights Group, convened two of the seminal consultations of the 2009-2012 Treaty Body 'strengthening' effort initiated by the UN High Commissioner for Human Rights, which became known as the 'Dublin Process', and provided input into the General Assembly's process as a 'resource person' on three occasions. The policy brief explains the origins of the 2009-2014 reform efforts by the High Commissioner and General Assembly, assesses the impact of the 9 April, 2014 resolution concluding the General Assembly process, and makes recommendations for future actions to strengthen the Treaty Bodies' contribution to the promotion and protection of human rights.

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"General Assembly Holds Informal Meeting on Human Rights Treaty Body System" by Eskinder Debebe/UN Photo # 519575 (02 July 2012); "GA Opens Discussion on Human Rights Treaty Body System" by JC McIlwaine/UN Photo # 520960 (16 July 2012); "General Assembly Holds Informal Meeting on Human Rights Treaty Body System," by Eskinder Debebe/UN Photo # 519576 (2 July 2012); "GA Opens Discussion on Human Rights Treaty Body System," by JC McIlwaine/UN Photo # 520959 (16 July 2012); "Kyung Wha Kang, Deputy High Commissioner for Human Rights and Michael O'Flaherty, member of the Human Rights Committee, at Dublin 2 meeting", from Michael O'Flaherty; "Info-graphics designed by Carolina Rofriguez".

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EXECUTIVE SUMMARY

The UN's human rights treaties and their ten associated bodies of independent experts – the 'Treaty Body system' – are a critical component of the international human rights framework. The Treaty Bodies play an indispensable role in promoting implementation of the international human rights treaties and catalysing greater protection for rights-holders worldwide. Over the years, however, the Treaty Bodies have faced challenges including low rates of compliance by states – both procedural and substantive – with their treaty obligations. Lack of adequate resources is also a serious concern: meeting time and resource constraints have caused some Treaty Bodies to amass backlogs of state reports and individual complaints. The Treaty Bodies also suffer from low levels of public awareness of their work, insufficient coordination, and inadequate follow-up on the implementation of recommendations. The Treaty Bodies themselves have taken steps to address these challenges, as has the UN more broadly through a number of system-wide reform efforts.

In 2009, the UN High Commissioner for Human Rights, Navi Pillay, launched a multi-stakeholder process aimed at strengthening the Treaty Body system. This effort prompted a series of consultations, dubbed 'the Dublin Process', and provoked substantial reflection by current and former Treaty Body experts, civil society organisations, national human rights institutions, the UN secretariat, academics and member states. In June 2012, the High Commissioner published a report on strengthening the Treaty Body system, largely based on the Dublin Process consultations. The report's recommendations were primarily aimed at increasing state engagement with the Treaty Bodies and compliance with their treaty obligations. The report also called on the Treaty Bodies to operate as a 'system' and to bring their procedures into greater harmony so as to make engagement less onerous.

In February 2012, prior to the conclusion of the High Commissioner's process, the General Assembly adopted, with 85 states in favour, none against and 66 abstentions, a resolution establishing an intergovernmental process on 'strengthening and enhancing the effective functioning' of the Treaty Bodies. The resolution was put forward by the Russian Federation, following objections raised by some states that the Dublin Process had not adequately reflected states' views on the best way forward for the Treaty Body system.

The intergovernmental process, to which all UN member states were invited, began in July 2012. Treaty Body experts and national human rights institutions provided input, with non-governmental organisations contributing through 'separate, informal arrangements'.

On 9th April 2014, following two years of difficult negotiations, the General Assembly adopted resolution 68/268 concluding the intergovernmental process. The resolution institutes significant changes to the Treaty Body system, many of which will come into force as of 1st January 2015. It also directs a series of recommendations to the Treaty Bodies themselves.

Resolution 68/268 devotes significant attention to the High Commissioner's proposals on harmonisation and simplification of working methods, in most cases endorsing her recommended way forward. It encourages Treaty Bodies to offer, and states to consider accepting, procedures that could make it easier for states to comply with their reporting obligations, such as the 'simplified reporting procedure'.

The resolution also reflects the concerns of a group of states known as the 'Cross-Regional Group' (CRG). The CRG, which included those countries that originally called for the establishment of the intergovernmental process, sought to give states a more formal role in setting treaty body working methods. The resolution notes their concerns, but it does so using language that is not binding on the Treaty Bodies. The General Assembly did not endorse a controversial proposal for a 'Code of Conduct' for Treaty Body experts and an 'Ethics Council' to examine alleged breaches of the Code. Instead, in language put forward by the African Group, the resolution explicitly reaffirms Treaty Body independence and their self-regulatory 'Addis Ababa Guidelines' on independence and impartiality.

In an effort to facilitate the harmonisation of Treaty Body working methods, the resolution endorses the 'Poznan Formula', which strengthens the role of Treaty Body chairpersons, empowering them to make procedural decisions providing they have discussed the issue beforehand with their respective committees. The resolution also recommends that the chairpersons assume a role to address concerns about independence and impartiality.

Probably the most significant impact of resolution 68/268 relates to the reallocation and rebalancing of resources. At the insistence of donor states including the US, EU, Canada and Japan, the resolution generates significant cost-savings through measures that limit Treaty Bodies' use of the UN's document production, translation, and interpretation services (conference services), which account for around 65 per cent of the system's costs. These measures will lead to a projected \$19.2 million in cost savings in 2015 alone.

The resolution reinvests these cost-savings into the broader system, providing for an increase in Treaty Body meeting time of more than 20 per cent (from a total of 74 weeks of meeting time for all the treaty bodies combined in 2012 to 90.6 weeks in 2015). Under a formula proposed by the EU, the meeting time and staff resources allocated to each Treaty Body will

be determined biennially based on the number of reports and communications received. The resolution enhances staff support for the Subcommittee on the Prevention of Torture, the Treaty Body that undertakes field visits rather than considering state reports. These and other changes will take effect as of January 2015 and do not result in any significant increase in the overall budget for the Treaty Bodies.

Resolution 68/268 regrettably fails to endorse proposals that would have urged states to honour their reporting obligations and implement recommendations. For example, it alludes to, but does not fully embrace, a key recommendation of the High Commissioner: that states should establish national mechanisms to coordinate their interaction with the Treaty Bodies. Notwithstanding (and reflecting a priority of the African Group and CARICOM), the resolution does divert some of the system's resources to create an expansive capacity-building programme to assist states in meeting their reporting obligations, to be implemented by OHCHR.

On the issue of enhancing Treaty Body accessibility for non-state stakeholders, the resolution offers rhetorical support for webcasting of Treaty Body meetings but does not provide funds for this purpose, leaving it to OHCHR to use extra-budgetary funding. Disappointingly, the resolution recommends that Treaty Bodies apply word limits to submissions they receive from non-governmental organisations, even though the contributions from such organisations do not entail the use of UN resources. And although it condemns reprisals against those who interact with Treaty Bodies, it uses a narrower definition of 'reprisals' than that employed in other UN documents.

The Dublin Process and the High Commissioner's report drew attention to the significant challenges facing the Treaty Body system and offered recommendations that, if implemented, would go a long way towards addressing those challenges. The outcome of the General Assembly's intergovernmental process represents an important milestone on this journey, but there is a long way still to go.

With the ink now dry on resolution 68/268, attention must shift to consideration of the decisions and recommendations set down therein, and to advancing the goals of the broader reform effort as laid out by the High Commissioner. In that regard, all stakeholders, including states, the Treaty Bodies, OHCHR and civil society must play a role.

The Treaty Bodies, without compromising their independence, need to consider how to react to the recommendations concerning their methods of work. Operating in a more systemic fashion will require a correct application of the 'Poznan Formula'.

States should look to make use of the opportunities presented by the resolution, for example the simplified reporting procedure, to strengthen their engagement with Treaty Bodies and improve their compliance with their human rights obligations. They should do so in cooperation with Treaty Bodies, while fully respecting the latter's independence.

Although the General Assembly outcome failed satisfactorily to address implementation of and follow-up on Treaty Body recommendations, states, Treaty Bodies, OHCHR and NGOs should continue to focus on this. They should, for example, take steps to mainstream Treaty Body recommendations across the work of the United Nations, ensuring coordination and cooperation with other international and regional bodies, and by establishing, or encouraging states to establish, standing national reporting and coordination mechanisms.

In the longer-term, it will be necessary again to consider deeper and more fundamental reforms of the system, within an inclusive, cooperative and respectful process of consultations involving states, Treaty Body members, civil society and other stakeholders. Whatever further reforms are considered, they should be guided by a single overarching goal: to strengthen the promotion and protection of all human rights.



INTRODUCTION

The UN's human rights treaties and their ten associated bodies of independent experts are essential components of the international human rights framework. The Treaty Bodies carry out critical functions including clarifying the scope of the rights laid out in the treaties and evaluating states' compliance with them. Yet Treaty Bodies face a number of challenges that must be met in order for them to fulfil their important role.

To address these challenges in a systemic manner, the UN has, over the past thirty years, undertaken a number of reform exercises. In 2009, the UN High Commissioner for Human Rights, Navi Pillay, launched her own initiative: a multi-stakeholder process aimed at strengthening the Treaty Body system (dubbed 'the Dublin Process'). In 2012, the High Commissioner published a report endorsing many recommendations arising from the consultations.

In February 2012, anticipating the publication of the High Commissioner's recommendations and seeking to assert greater control over the future direction of Treaty Body reform efforts, a small group of states successfully pressed the UN General Assembly to initiate its own 'intergovernmental' review process. This state-led process concluded on 9th April 2014 with the adoption of General Assembly resolution 68/268 on 'strengthening and enhancing the effective functioning of the human rights treaty body system'.

Resolution 68/268, which was adopted by consensus, contains language reflecting many of the different (and often competing) aims and perspectives of states. Considering the divergent positions and perspectives of key states and other actors, and the difficult atmosphere before and during the negotiations, the outcome represents, on balance, an important contribution to the Treaty Body strengthening effort. Much will now depend on the degree to which relevant stakeholders, including states parties to the treaties, civil society, national human rights institutions, OHCHR, the broader UN system, and the Treaty Bodies themselves, are able to work individually and collectively to consider the decisions and recommendations contained in the resolution, but also to advance the goals of the broader reform effort as set down by the High Commissioner.

This Policy Brief explains the origins of the 2009-2014 reform efforts, assesses the impact of the 9th April 2014 resolution concluding the General Assembly process, and makes recommendations for future actions to strengthen the Treaty Bodies' contribution to the promotion and protection of human rights.

PART I

BACKGROUND

THE TREATY BODY SYSTEM

The Treaty Body system is composed of ten expert committees¹ established by the human rights treaties, supported by the UN's human rights secretariat (the Office of the High Commissioner for Human Rights, OHCHR) and primarily funded by the UN General Assembly. Each of the Treaty Bodies has between 10 and 25 unpaid experts and convenes for up to 14 weeks per year.² Experts are nominated and elected by states parties to the treaties but are expected to serve in their personal capacities. The Treaty Bodies have the authority to establish their own rules of procedure and working methods, allowing them to be operationally independent from states. This emphasis on the independence of Treaty Bodies and their members distinguishes the mechanisms from, for example, the Universal Periodic Review (UPR) procedure, which is state-led.

The Treaty Bodies monitor state compliance with their human rights obligations in several ways. Nine of the ten bodies³ consider periodic reports submitted by states describing their efforts to ensure compliance with treaty obligations.⁴ States are required by the treaties to submit these reports at varying periodicities, generally every four to six years. Once they have received and read a given state's written report, the relevant Treaty Body will produce a written 'list of issues' and send this to the reporting state several months before it is due to present its report to the committee (Treaty Body), requesting a written response prior to the in-person dialogue. This procedure is designed to make the reporting process more focused and efficient. However, there is now a growing practice of Treaty Bodies providing the option for states to respond to specific questions in writing in lieu of sending a full periodic report (the so called 'list of issues prior to reporting procedure', or 'simplified reporting procedure'). For a schematic overview of the reporting procedures, **see Figure 1**.

After receiving a state party's periodic report and its subsequent written response to the list of issues (or, in the case of the simplified procedure, after receiving a response to the list of issues prior to reporting), the relevant Treaty Body will hold a

public in-person dialogue with high-level state officials, typically over the course of two half-days. Previously, these dialogues took place either in Geneva or New York, depending on the particular Treaty Body's location. However, today all the Treaty Bodies hold their meetings in Geneva, generally at the Palais Wilson. During the dialogue, once the head of the state delegation has formally presented its periodic report to Treaty Body members (experts) and other participants, the experts offer comments and questions based on the state's report/responses to written questions, alongside further information including reports provided by non-governmental organisations (NGOs) and national human rights institutions (NHRIs). The state party then responds to these comments and questions as appropriate.

After this exercise, known as the 'interactive dialogue', the Treaty Body publishes concluding observations and recommendations. These are designed to recognise progress, highlight areas where the reporting state is not fully complying with its treaty obligations and recommend steps to strengthen compliance. Some of the Treaty Bodies have developed written 'follow-up' procedures whereby they request written updates from states on the implementation of key recommendations (these requests are made six months to a year after the consideration of report).

Treaty Bodies have a number of other important functions in addition to overseeing the treaty reporting process. For example, most of them have the power to consider complaints from individuals alleging violation of their rights. Nearly all Treaty Bodies also prepare 'general comments' interpreting provisions of the treaties they monitor. And some have 'inquiry procedures' which permit confidential visits to states where there is evidence of systematic violations. Some have developed early warning procedures that are intended to serve a preventive function.⁵ One treaty body – the Subcommittee on the Prevention of Torture (SPT) – carries out visits to places of detention and advises national preventative mechanisms established under the Optional Protocol to the Convention against Torture (OPCAT).

CHALLENGES FACING THE TREATY BODIES

Over the years, the Treaty Bodies have faced a number of challenges to their operational effectiveness. In 2006,⁶ the then High Commissioner for Human Rights, Louise Arbour, identified some of the key issues as follows:

- The phenomenon of states accepting the human rights treaty system on a formal level, but not engaging with it in a meaningful way, either as a result of lack of capacity or lack of political will;
- The ad hoc manner in which the Treaty Body system has grown, with an overlap of provisions and competencies, resulting in duplication;
- The growth in the number of treaties and ratifications, resulting in a steep increase in the workload of the Treaty Bodies and the secretariat, backlogs in the consideration of reports and individual complaints, and increasing resource requirements;
- The low levels of public awareness of the Treaty Body system outside specialist communities, and the perception that it is inaccessible and struggles to generate real on-the-ground change;
- The differing levels of expertise and independence of Treaty Body members;
- A lack of coordination and collaboration among the Treaty Bodies resulting, inter alia, in a heightened risk of contradictory jurisprudence;
- The variable quality of state party reports submitted to Treaty Bodies and the frequent failure of the reporting process to achieve its objective of providing regular opportunities for individual states to conduct comprehensive reviews of their treaty compliance;
- The fact that Treaty Bodies often have insufficient information to enable them to undertake a full analysis of country situations, which may result in their recommendations lacking the precision, clarity and practical value necessary to allow effective implementation; and
- The absence of effective, comprehensive follow-up mechanisms for recommendations.

The problem of procedural compliance on the part of states is particularly acute: as of 2012, some two-thirds of state party reports (across all Treaty Bodies) were more than a year overdue.⁷ At present, the Treaty Bodies review states in the absence of a report only in exceptional situations and they lack a mechanism to compel states to submit overdue reports. One (perverse) result of this situation is that states that comply with their reporting obligations are scrutinised more frequently than states that do not report on time (or at all).

Lack of adequate resources is also a serious concern. Over the last 10 years, 4 new human rights treaties have come into force, each establishing a corresponding Treaty Body. As a result, the number of Treaty Body experts has risen from 97 in 2000 to 182 in 2013.⁸ Moreover, each year the Treaty Bodies receive more and more periodic state reports, requiring them to meet for longer periods of time – from a total of 51 weeks across all Treaty Bodies in 2000 to 74 weeks in 2012 – and to produce significantly more documentation.⁹ As of 2012, the annual cost of servicing the Treaty Bodies was nearly \$56 million, about \$51 million of which was supported by funding from the UN's regular budget, and about \$5 million of which OHCHR provided from voluntary contributions.¹⁰

In the past, the General Assembly has responded to the increasing needs of the Treaty Bodies in an ad hoc manner, by authorising them to meet for greater periods for time per year. Despite this, some Treaty Bodies have accumulated a sizeable backlog of reports and individual communications. This in turn results in substantial delays between the submission of a state party report or an individual complaint and its review by the concerned Treaty Body.¹¹

In response to these resource constraints and their mounting workload, Treaty Bodies have, with the support of OHCHR, accelerated longstanding efforts to harmonise and streamline their procedures.¹² However, it is clear that such harmonisation efforts, while making it easier for stakeholders to engage with the Treaty Bodies, will generate only modest savings in terms of time and money. Moreover, due to the UN's accounting structure, which provides for separate budgets for conference services and OHCHR, even where the Treaty Bodies have managed to reduce levels of documentation and their use of translation and interpretation services, the resulting savings have had no automatic impact on the resources made available to them.

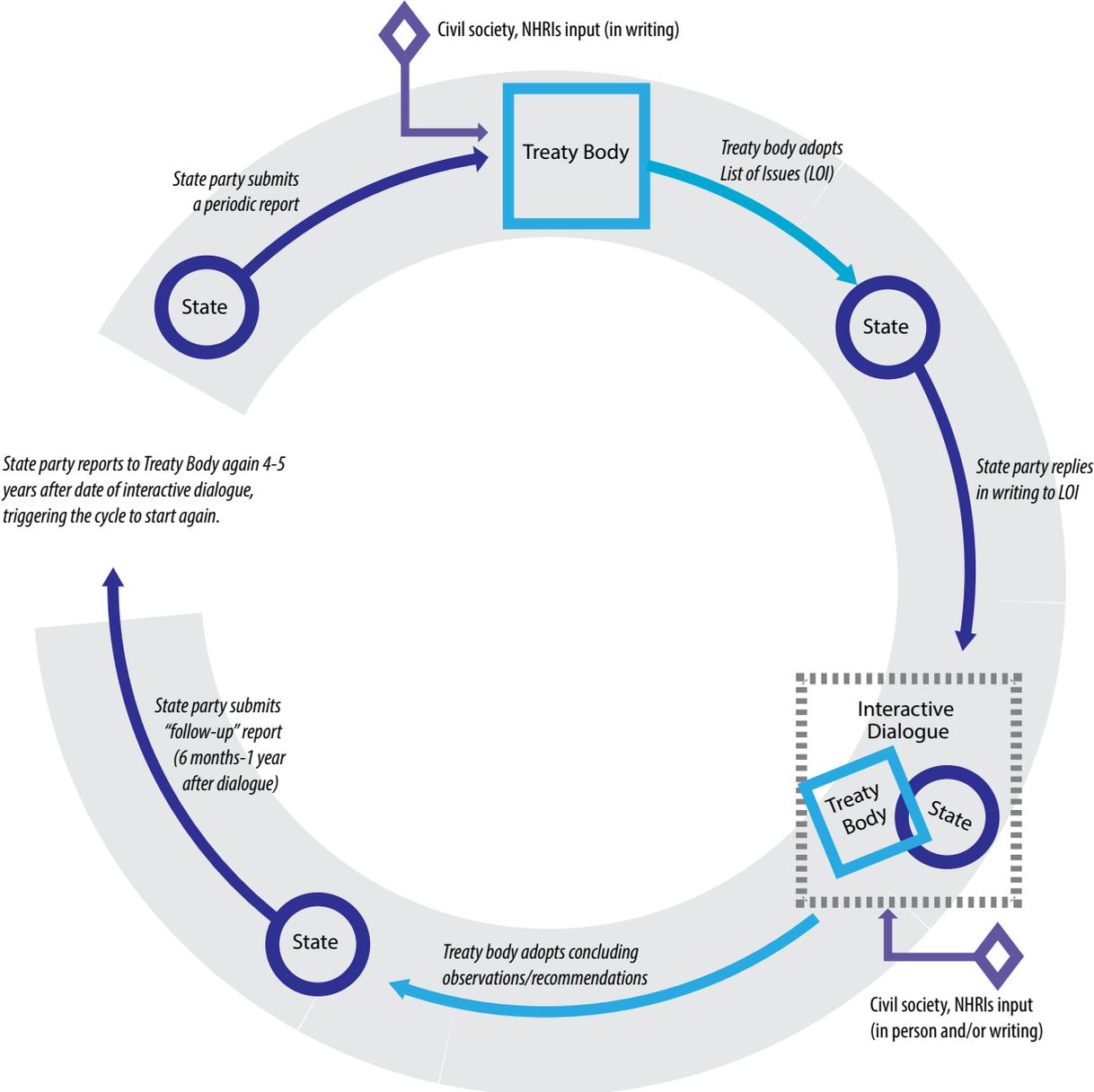
THE HIGH COMMISSIONER'S TREATY BODY STRENGTHENING PROCESS

Former High Commissioner Louise Arbour proposed a radical solution to the problems facing the Treaty Body system. She suggested that the current system be done away with entirely and replaced with a single, integrated and standing body. As has been described and analysed elsewhere,¹³ this proposal was never adopted, in part because it was tabled without any meaningful process of consultation with states, civil society and Treaty Body members.

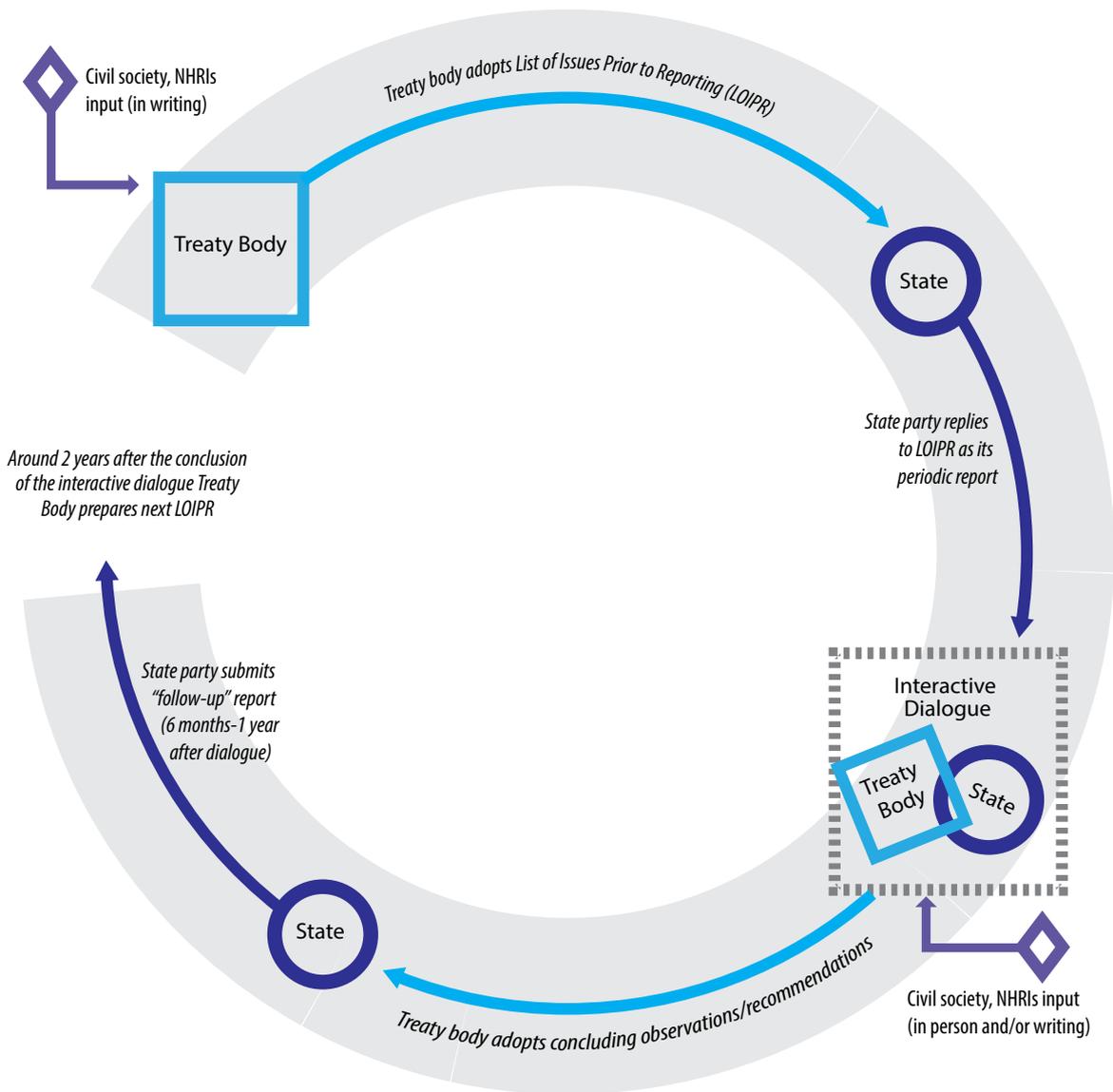
Unfortunately, the comprehensive rejection of the idea of a single Treaty Body also ended a more general reflection of how to improve the system. Louise Arbour's report contained many sensible ideas, such as improvements in the selection process for Treaty Body members, but these were overlooked once her radical concept was rejected. Crucially, as the High

FIGURE 1: REPORTING LIFE-CYCLES FOR STATES PARTIES TO THE HUMAN RIGHTS TREATIES

OPTION 1 (IF THE STATE PARTY DOES NOT ACCEPT THE SIMPLIFIED REPORTING PROCEDURE):



OPTION 2 (IF THE STATE PARTY DOES ACCEPT THE SIMPLIFIED REPORTING PROCEDURE):





General Assembly Opens Discussion on Human Rights Treaty Body System

Commissioner herself noted, her prescription may not have been accepted, but nobody had challenged her diagnosis of a system in crisis.

In Autumn 2009, High Commissioner Navi Pillay called on all stakeholders to reflect on ways to strengthen the Treaty Bodies. From the outset, the High Commissioner identified two primary concerns: the need to address the burdens placed on Treaty Bodies and OHCHR as a result of their increased workload, and the need for greater coordination between the Treaty Bodies, the Special Procedures of the Human Rights Council, and the new Universal Periodic Review process.

Stakeholders reacted to the High Commissioner's call by convening a series of informal consultations on the subject of strengthening the Treaty Bodies.¹⁴ This became known as the 'Dublin Process'. The consultations began in November 2009 with a meeting of Treaty Body experts and other observers in Dublin, convened by the second author of this Policy Brief, at which participants adopted a 'road map' for the reform process dubbed the 'Dublin Statement.' A group of NGOs issued a written response to that text the following year. After the Dublin meeting, two consultations (in Poznan, September 2010 and in Geneva,

October 2011) as well as a number of informal briefings and retreats were convened for Treaty Body chairpersons and experts, for national human rights institutions (Marrakesh, June 2010), for human rights experts (Geneva, November 2010), for civil society (Seoul, April 2011 and Pretoria, June 2011), for member states (Sion, May 2011), for academics (Lucerne, October 2011), for UN entities (Geneva, October 2011) and regional experts (Geneva, November 2011), and for multi-stakeholder groups (Bristol, September 2011 and Maastricht, November 2011). In November 2011, current and former Treaty Body members reconvened in Dublin, again under the chairmanship of the second author of this Policy Brief, in what was intended to be a culminating event for the multi-stakeholder consultations. The meeting ended with the adoption of a statement on the Treaty Body strengthening process (the Dublin II Outcome Document). This aimed to synthesise the proposals and recommendations that had emerged up until that point. The High Commissioner then convened two additional consultations with states during 2012. For a timeline summarising the various meetings of the Dublin Process and the subsequent intergovernmental (New York) process, **see Figure 2.**

Even as these multi-stakeholder consultations were taking place, some states tabled further ad hoc requests for additional Treaty



Body meeting time at the General Assembly. While approving two such requests in 2010, the General Assembly asked the Secretary-General to prepare a report on proposals that would allow the Treaty Bodies to 'better manage their workloads.'¹⁵ In autumn 2011, the Secretary-General delivered the requested report. It called on member states to consider allocating substantial additional meeting time to the Treaty Bodies to deal with the backlog of reports and, in the longer-term, suggested that states adopt a fixed calendar for the Treaty Bodies. This, it was claimed, would ensure 100% compliance with reporting obligations. It further called on the General Assembly 'to undertake a comprehensive review of the resources for the treaty body system as a whole.'¹⁶

At around the same time as the publication of the Secretary-General's report, OHCHR began circulating to states a 'non-exhaustive list of emerging proposals' from the multi-stakeholder consultations, anticipating that the High Commissioner would publish her final report on the process in early 2012. The non-paper listed dozens of proposals, drawing nearly equally from among the various stakeholder groups and identifying the consultation(s) from which each had emerged.¹⁷

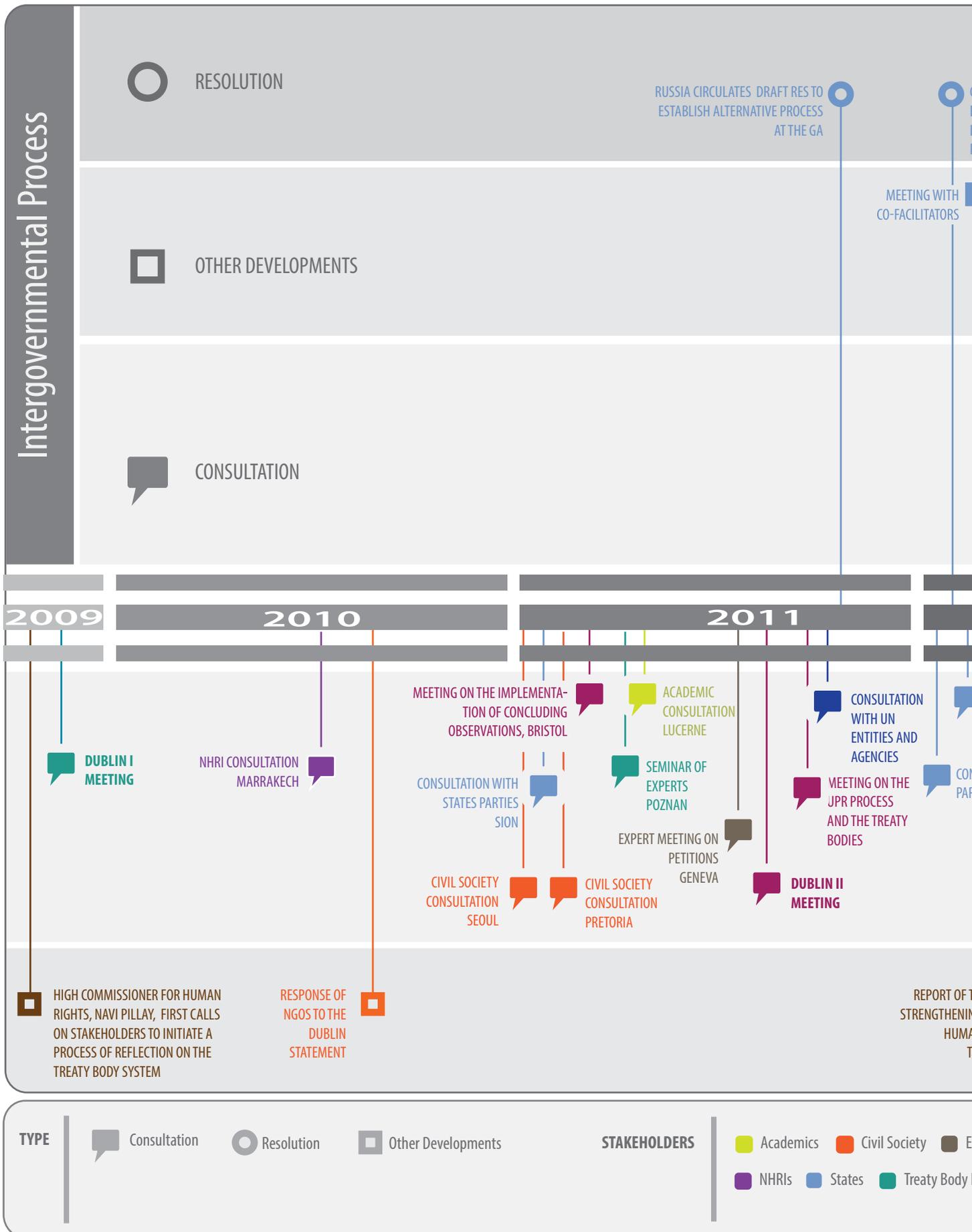
In June 2012, the High Commissioner published her comprehensive report on strengthening the Treaty Body system.¹⁸ The final version, while in large part reflecting the recommendations found in the Dublin Outcome Document, differed in important ways from the earlier non-paper. Helpfully, it directed its many recommendations to those stakeholder(s) responsible for carrying them out. However, it also omitted some proposals that had appeared in the non-paper, particularly proposals generated during the consultations with civil society groups and NGOs.¹⁹ Such gaps notwithstanding, the document was ambitious. It set out a 'vision for the future of the treaty body system' designed to make the system 'effective and sustainable...contributing to a national debate and international dialogue through predictable, periodic... expert-led independent review... harmonized with other human rights mechanisms... and enhancing the protection of human rights for all.'²⁰ In one example of the report's ambition, the High Commissioner envisioned the creation, by all states, of national mechanisms that would report to the Treaty Bodies, carry out multi-stakeholder consultations, evaluate the implementation of Treaty Body recommendations, and generate national debates on human rights protection.

Controversially, in a step unreflective of the conclusions of earlier consultations, the High Commissioner afforded high priority to a proposal to increase state engagement with the Treaty Bodies by undertaking a complete overhaul of the Treaty Bodies' meeting procedures. Whereas the Treaty Bodies presently wait to receive reports from states before including them on the calendar for review, the High Commissioner's 'Master Calendar' proposal would have established a schedule according to which every state would report under every treaty to which it is a party once every five years, with states reporting to no more than two treaty bodies per calendar year. Under this scheme, a Treaty Body would review a state even if it failed to submit a report on schedule. The proposal would have required the General Assembly to provide the Treaty Bodies with at least 124 weeks of meeting time per year, 51 weeks more than their 2012 allocation. This would have required an additional \$52 million annually, bringing the total cost of the Treaty Body system to \$108 million.²¹

THE GENERAL ASSEMBLY'S TREATY BODY REFORM INITIATIVE

In late 2011, as the High Commissioner's multi-stakeholder consultations were reaching their anticipated conclusion, some member states began objecting to aspects of the Treaty Body strengthening process. This foreshadowed a challenge to the High Commissioner's vision from states with a different understanding of what 'strengthening' the Treaty Bodies should entail.

FIGURE 2: TREATY BODY STRENGTHENING PROCESS



GA ADOPTS RES 68/268 "STRENGTHENING AND ENHANCING THE EFFECTIVE FUNCTIONING OF THE HUMAN RIGHTS TREATY BODY SYSTEM" BY CONSENSUS

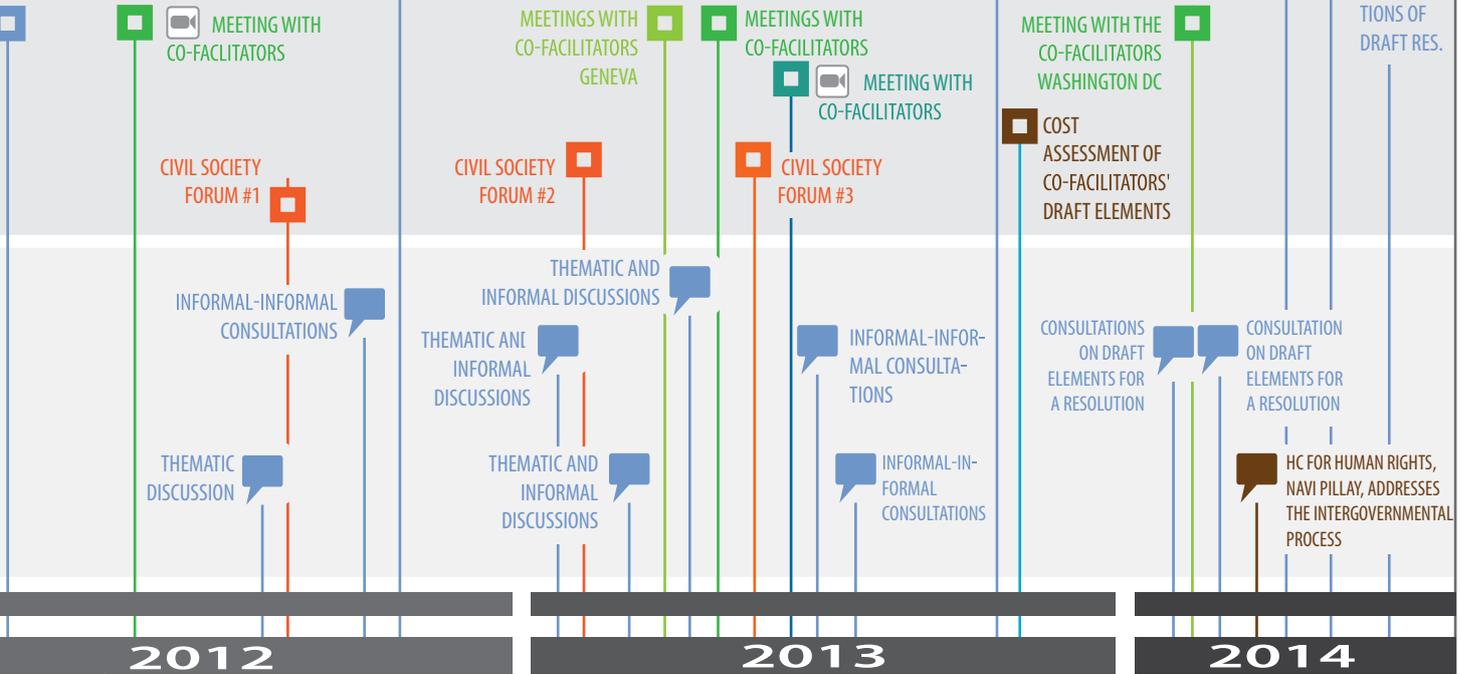
GA ADOPTS RES 66/254 ESTABLISHING THE INTERGOVERNMENTAL PROCESS

GA ADOPTS RES 66/295 EXTENDING THE INTERGOVERNMENTAL PROCESS

GA ADOPTS RES 68/2 EXTENDING THE INTERGOVERNMENTAL PROCESS

DRAFT RESOLUTION SUBMITTED TO THE PRESIDENT OF THE GA

GA'S 5TH COMMITTEE CONSIDERS FINANCIAL IMPLICATIONS OF DRAFT RES.



CONSULTATION OF STATES PARTIES, NEW YORK

CONSULTATION OF STATES PARTIES, GENEVA

CONSULTATION



THE HC ON THE UN HUMAN RIGHTS TREATY BODY SYSTEM

OTHER DEVELOPMENTS



Dublin Process

Experts High Commissioner for Human Rights Multi-stakeholder

Experts Treaty Body Experts (Chairs) Treaty Body Experts, States and Civil Society UN

UN GENERAL ASSEMBLY - GA
HIGH COMMISSIONER - HC
RESOLUTION - RES
NATIONAL HUMAN RIGHTS INSTITUTIONS - NHRI
UNIVERSAL PERIODIC REVIEW - UPR
VIDEOCONFERENCE

In a letter sent to the High Commissioner in October 2011, the Russian Federation questioned her multi-stakeholder approach, arguing that 'the process of strengthening or reforming the treaty bodies should primarily be subject to an interstate discussion.'²² In a subsequent letter to OHCHR (December 2011), Pakistan also noted that 'while all stakeholders have a role to play, the States parties are clearly the most important and cannot be placed on par with civil society organisations or NHRIs', and concluded that 'as useful as all these interactions have been...they are no substitute for a formal intergovernmental process...'²³ OHCHR received a similar letter from China,²⁴ calling for 'an open-ended intergovernmental working group' to reform the Treaty Body system.

The critiques offered by these states went beyond a demand for greater harmonisation of working methods. Russia, for example, asserted that the backlog of reports and resource deficits were partially a result of the assumption by Treaty Bodies of 'additional responsibilities not envisaged in the...treaties.'²⁵ It objected to proposals to convene regional sessions outside Geneva, to strengthen follow-up procedures, to call on states to take actions aimed at better implementation of Treaty Body recommendations, and to place OHCHR field staff in regional offices to monitor the implementation of recommendations.²⁶ Russia also objected to a proposal for the Treaty Bodies to follow-up on recommendations by Special Procedures, though it expressed interest in taking steps 'to unify Universal Periodic Review and treaty body goals, modalities, and methods of work.'²⁷

China's main concern was to stop Treaty Bodies from 'go[ing] beyond the activities authorized by the treaties, and avoid politicization and selectivity in their work.' In this regard, it criticised the Treaty Bodies' follow-up procedures as 'burden[ing] the States parties with extraneous obligations.'²⁸ China also called for limits on the Treaty Bodies' use of 'unverified information' from non-governmental organizations²⁹ and proposed that states negotiate a 'code of conduct for committee members...to prevent abuse of authority and misconduct'³⁰. It also called for the addition of a 'general debate' agenda item during the annual meetings of states parties that would allow states to comment on Treaty Body methods of work.³¹

In late December 2011, in the midst of these expressions of discontent, Russia circulated a draft proposal among states to establish an 'open-ended Working Group of the General Assembly' to carry out negotiations on the reform of the Treaty Body system. In an effort to accommodate states' concerns, OHCHR announced two additional Treaty Body strengthening consultations for states, in February 2012 in Geneva and in April 2012 in New York. Nevertheless, in February 2012, Russia formally tabled a draft resolution at the General Assembly that would establish an intergovernmental process on 'strengthening and enhancing the effective functioning' of the Treaty Bodies.³² On presenting the resolution, Russia argued that '[i]t is unacceptable to ignore the views of Member States'³³.

When the General Assembly moved to consider the draft resolution, the United States called for a vote. The resolution was, however, adopted, with 85 states voting in favour, none against, and 66 abstaining.³⁴

Abstaining states expressed concern about the timing of the initiative given that the High Commissioner's process had not yet reached its conclusion.³⁵ They noted the need for any Treaty Body reform process to take into account the views of all

relevant stakeholders, including Treaty Body experts, civil society organisations, and national human rights institutions. Abstaining states also argued that the intergovernmental process should not result in the adoption of proposals that would have a detrimental impact on Treaty Body independence.³⁶ Notwithstanding these concerns, many states recognised that action by the General Assembly would, in the end, be necessary anyway, in order for changes to be made to the funding arrangements for Treaty Bodies.

General Assembly resolution 66/254³⁷ requested the President of the General Assembly to launch an intergovernmental process, to consist of 'open, transparent and inclusive negotiations on how to strengthen and enhance the effective functioning of the human rights treaty body system.' It called on the President to appoint two co-facilitators to assist in leading the process, which was to begin 'no earlier than April 2012.'³⁸ That month, the President appointed the Permanent Representatives of Iceland and Indonesia as co-facilitators of the intergovernmental process. In November 2013, the Permanent Representative of Tunisia was appointed as a co-facilitator, replacing Indonesia. The co-facilitators would come to play a key role in identifying areas of general agreement and facilitating the negotiation of carefully calibrated language covering those issues where disagreements were most acute.

The intergovernmental process consisted of several informal meetings to which all UN member states were invited. These began in July 2012, following the publication of the High Commissioner's report.³⁹ In the late summer of 2013, the co-facilitators elaborated their first draft of a proposed outcome resolution for the intergovernmental process.⁴⁰ In early February 2014, states came to an agreement on a draft outcome resolution, the financial implications of which were confirmed by the General Assembly's Fifth (Budgetary) Committee on 28th March 2014.⁴¹ The General Assembly formally adopted the resolution on 9th April 2014. The resource changes it calls for will take effect as of 1st January 2015.

Despite the non-state origin of the great majority of the recommendations that were to be discussed, the General Assembly consultations accorded only a modest participatory role for non-state stakeholders. Indeed, the General Assembly resolution creating the intergovernmental process expressly required the co-facilitators to 'work out separate informal arrangements' with stakeholders other than states.⁴² Despite such strictures, a number of external voices were heard during the discussions. For example, Treaty Body experts briefed states during the first informal consultations in July 2012 and were invited, alongside representatives of national human rights institutions, to contribute during consultations in early 2013.⁴³ Civil society, however, was not allowed a voice at the consultations and had to make do with separate avenues of engagement created by the co-facilitators.⁴⁴ At the urging of NGOs, led by Amnesty International and the International Service for Human Rights, the co-facilitators convened a side event during the July 2012 consultations at which an NGO representative was invited to speak, followed by three 'civil society forums' in New York, with a videoconference link to Geneva - the last one of which was held in May 2013.⁴⁵ And on a number of occasions the co-facilitators met with members of the Treaty Bodies, including their chairs, both in person in New York and Geneva and via videoconference.⁴⁶



Kyung Wha Kang, Deputy High Commissioner for Human Rights and Michael O'Flaherty, member of the Human Rights Committee, at Dublin 2 meeting

PART II

OUTCOME OF THE INTERGOVERNMENTAL PROCESS

The intergovernmental process was characterised by difficult negotiations between groups of states with significantly divergent positions on key issues. Some states sought to require Treaty Bodies to reform their procedures in order to create a role for states in articulating those procedures and to strengthen states' oversight of the Treaty Bodies' work. Others opposed these efforts, emphasising the importance of protecting Treaty Body autonomy and preserving their essential function, the independent assessment of state compliance with treaty obligations. Some states acknowledged that the Treaty Bodies required resources for more meeting time and staff support, but were reluctant to increase overall funding levels significantly and instead sought to find ways to limit operating costs and improve efficiency. These and other areas of debate meant that the co-facilitators faced a daunting task in trying to reach a consensus outcome.

WORKING METHODS AND INDEPENDENCE

The High Commissioner's report called on the Treaty Bodies to take a number of steps towards harmonising and simplifying their working methods in order to make it easier for states to comply with their reporting obligations. To this end, the High Commissioner called on Treaty Bodies to offer states a simplified reporting procedure, streamline their concluding observations, and align their methodologies for dialogues with states, interactions with stakeholders and the elaboration of 'general

comments.’ In order to facilitate these harmonisation efforts, the High Commissioner endorsed a recommendation from the Poznan consultation to empower Treaty Body chairpersons to make procedural decisions on behalf of the Treaty Bodies they represent (provided they have previously discussed the matter with their respective memberships), with the option for an individual Treaty Body subsequently to dissociate itself from the decision (the ‘Poznan Formula’). On the issue of conduct of individual members, the High Commissioner recommended that the Treaty Bodies adopt the ‘Addis Ababa Guidelines,’ a document endorsed by the Treaty Body chairpersons at their annual meeting just weeks prior to the publication of the High Commissioner’s report.⁴⁷

The High Commissioner directed these recommendations on harmonising and streamlining working methods to the Treaty Bodies themselves. States were not called upon to impose any of the recommendations on the Treaty Bodies; rather, states were requested to comply fully with the new procedures once adopted by Treaty Bodies and to provide funding where necessary in support of the changes.⁴⁸ This approach reflected a determination to uphold the operational independence of Treaty Bodies, in line with the human rights treaties, which make clear that the legal competence to determine working methods and rules of procedure lies solely with the Treaty Bodies themselves.

Despite the High Commissioner’s finely balanced treatment of Treaty Body working methods, the issue became a central focus of intergovernmental negotiations in New York, as it lay at the very heart of different state conceptions of the nature and role of the Treaty Body system.

Some states expressed interest in addressing working methods because they hoped to encourage the Treaty Bodies to make the changes proposed by the High Commissioner. They were aware of concerns that their commentary could be seen as infringing on Treaty Body independence and sought to avoid this by only ‘recommending’ the changes.

On the other hand, it became evident from the outset of negotiations that a small group of states (including those that had called for the establishment of the intergovernmental process) known as the ‘Cross-Regional Group’ [CRG]⁴⁹ considered reform of working methods to be the primary objective of the exercise. These states objected to the Treaty Bodies’ development of practices and procedures that in their view were not conducive to promoting constructive dialogue between states and the system. The CRG, together with some members of the Association of Southeast Asian Nations (ASEAN), argued that certain Treaty Body practices exceeded the mandates accorded to them by their respective treaties. This included the Treaty Body practice of interpreting the scope of treaty provisions in their ‘general comments,’ and the creation of new procedures including efforts to ‘follow-up’ with states on the implementation of recommendations.

The CRG put forward a range of proposals on Treaty Body working methods. While the goal of strengthening dialogue between Treaty Bodies and states through improved working methods was not without merit, the CRG’s proposals nonetheless raised concerns vis-à-vis the operational autonomy of Treaty Bodies. For example, some proposals were articulated as directives to the Treaty Bodies rather than as recommendations, while others sought to give states a formal role in setting working methods. If adopted, these proposals would have urged Treaty Bodies to work with states to

align their various procedures, called on them always to request new information from states in writing and in advance of a dialogue rather than during it, and called on states parties to evaluate the working methods of the Treaty Bodies at their annual meetings/conferences. These proposals were opposed by a number of members of the Western European and Others (WEOG) group.

The CRG also expressed concerns about what it viewed as the lack of objectivity and impartiality on the part of some experts. As an example, it noted the practice of explicitly citing information submitted by NGOs. In response, in April 2013, the CRG proposed the adoption of a draft ‘Code of Conduct’ for Treaty Body experts (similar to that established in 2006-2007 for Special Procedures) and throughout the remainder of the negotiations pressed for the inclusion of such a Code in the outcome. The proposed Code of Conduct would set down basic parameters of behaviour covering, inter alia, Treaty Body interaction with ‘influence groups, including civil society institutions’, the consideration of information that is not ‘objective’, and the exercise of ‘restraint, moderation, and discretion’ in their interaction with states parties.⁵⁰ Of particular concern vis-à-vis the independence of the Treaty Bodies, the proposal called for the establishment of an ‘Ethics Council’ made up of state party and Treaty Body representatives that would examine alleged breaches of the Code.

While taking account of these differing positions, the final General Assembly resolution remained broadly reflective of the High Commissioner’s original approach. The resolution encourages Treaty Bodies to continue reforming their working methods to bring



General Assembly Holds Informal Meeting on Human Rights Treaty Body S

them in greater harmony with one another and to take steps such as offering a 'simplified reporting procedure'. It also encourages states to consider accepting the simplified reporting procedure and submitting and updating a 'common core document'. Such steps could, in theory, reduce states' reporting burdens by enabling them to address issues relevant to multiple human rights treaties in a single, periodically updated common core document rather than repeating such information in their reports to multiple different treaty bodies. The resolution also invites Treaty Bodies and OHCHR to 'continue to work to increase coordination and predictability in the reporting process... with the aim of achieving a clear and regularized schedule for reporting by States parties'.

The CRG's concerns are addressed through what might be termed 'hortatory observations' that are not binding on the Treaty Bodies. For example, the CRG's position regarding working methods is reflected in the resolution's call for Treaty Body activities to 'fall under the provisions of the respective treaties, thus not creating new obligations for states parties,'⁵¹ and frequent references to the need for the Treaty Bodies to respect their 'specific mandates.' Similarly, the resolution's preamble reflects the CRG's opposition to adversarial scrutiny by the Treaty Bodies, identifying the need for human rights activities to be 'based on the principle of cooperation and genuine dialogue.' And the resolution frequently encourages the Treaty Bodies to 'bear in mind' states parties' views on their procedures – such as the methodologies adopted for dialogues with states, for developing concluding observations, and for drafting General Comments – as they pursue their harmonisation efforts.⁵² The resolution also recommended more efficient and

effective use of meetings with state parties, including as a forum for states to raise concerns related to working methods and rules of procedure.⁵³

The resolution did not endorse the CRG's argument that the Treaty Bodies should curtail activities other than the review of state reports and individual communications. Indeed, the resolution acknowledges the important role played by General Comments⁵⁴ and is notably silent on the issue of Treaty Body follow-up procedures, which had been singled out for particular criticism.⁵⁵

However, it does recommend that states parties make 'more efficient and effective use' of meetings of states parties which at present (with the exception of Committee Rights of Persons with Disabilities) are only convened for the purpose of electing members.⁵⁶ During negotiations, the CRG indicated that it interprets this provision as recommending that meetings of states parties discuss concerns about Treaty Body working methods.

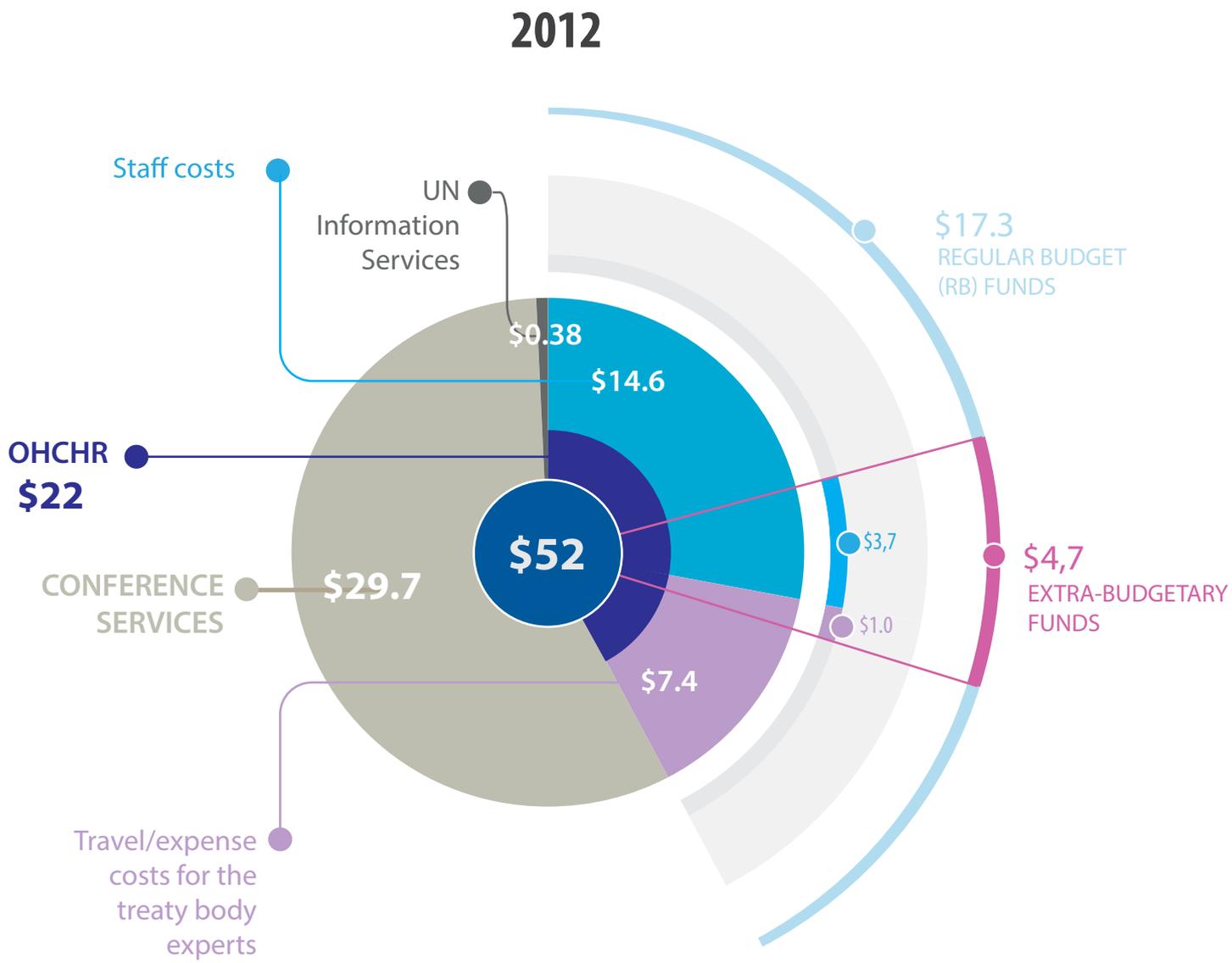
Importantly, the resolution reaffirms the 'importance of the independence and impartiality' of Treaty Bodies,⁵⁷ noting that all stakeholders, 'including the Secretariat,' should respect Treaty Body independence and avoid any act that would interfere with the exercise of their functions.⁵⁸ The adopted text does not include a Code of Conduct, following strong opposition to the proposal on the part of many member states. In finely balanced wording, the resolution takes note of the adoption of the 2012 Addis Ababa Guidelines on the independence and impartiality of Treaty Body members and encourages Treaty Bodies to implement them,⁵⁹ but also encourages Treaty Bodies to 'consider and review' them taking into account the views of states parties and other stakeholders.⁶⁰ This language was proposed by the African Group as an alternative to the Code of Conduct proposal, and gained the support of CARICOM states and some of the members of ASEAN.⁶¹

Finally, resolution 68/268 expressed support for measures to strengthen the role of chairpersons, both to encourage streamlining and harmonisation of working methods and to address concerns about independence and impartiality. In particular, the resolution supports the so-called 'Poznan Formula' that would give chairpersons greater authority over the Treaty Bodies' procedures.⁶² The resolution also 'invites' the chairs to keep states parties updated on the implementation of the 'Addis Ababa Guidelines'.⁶³ Interestingly, in language that was added in the final days of negotiations (at the CRG's insistence), the resolution goes beyond the 'Addis Ababa Guidelines' by recommending a role for the Treaty Body chairpersons in ensuring the independence of individual Treaty Body experts. It addresses this by encouraging the Treaty Bodies to use the annual meeting of the chairpersons as 'a forum for open and formal interactive dialogue in which all issues, including those related to the independence and impartiality of treaty body members, may be raised by States parties in a constructive manner.'⁶⁴ The resolution can be seen as positioning the meeting of treaty body chairs as an accountability mechanism for treaty body experts, not unlike the Special Procedure Coordination Committee's 'Internal Advisory Procedure'. It remains to be seen how the Treaty Bodies will receive this recommendation.



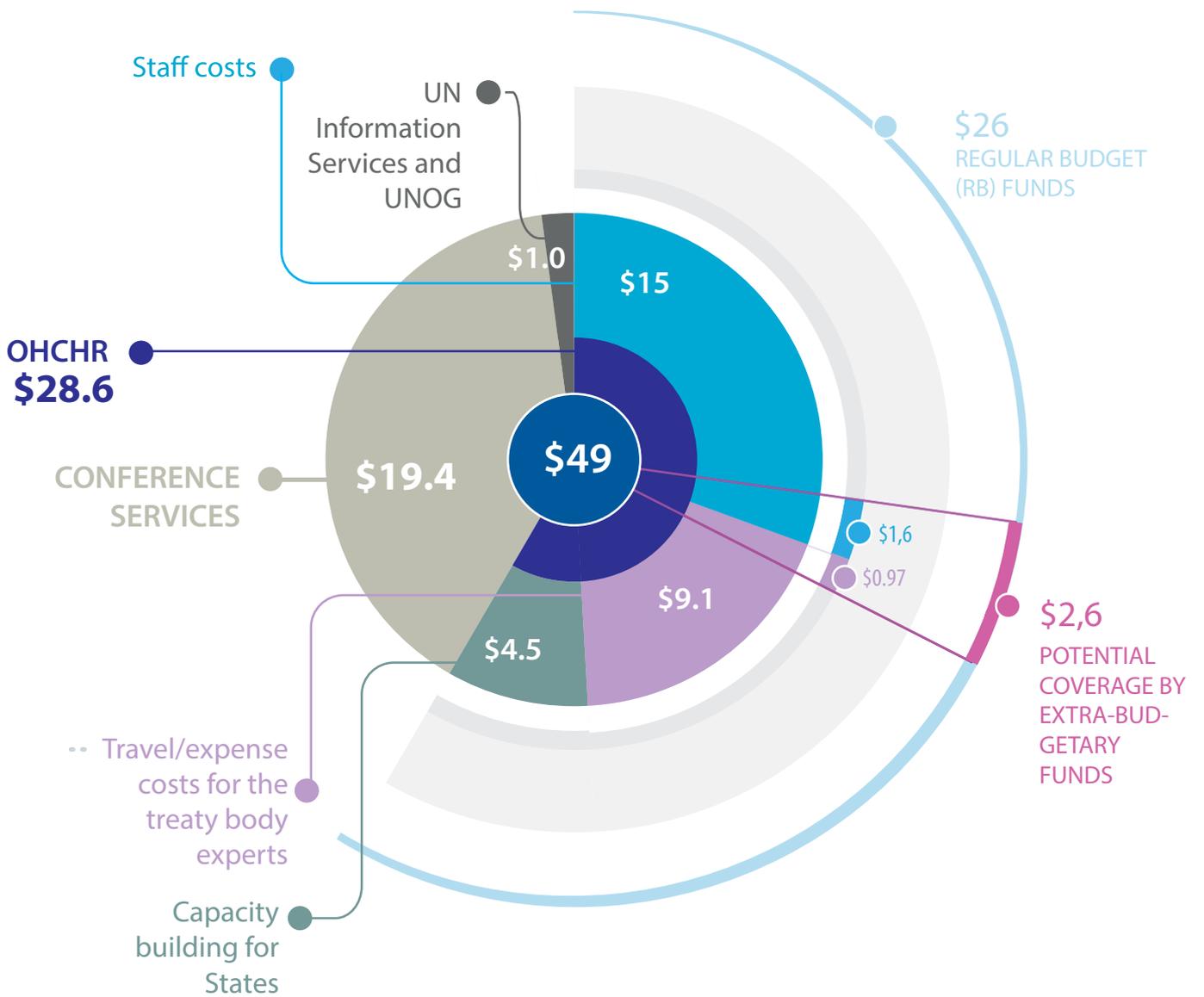
FIGURE 3: PROJECTED* EFFECT OF THE GA RESOLUTION ON UN FINANCING FOR THE TREATY BODIES (MILLION \$US)

HUMAN RIGHTS TREATY BODY SYSTEM'S TOTAL COST



* Note that no data is available for real 2013-2014 cost of TB system. 2012 estimated costs are derived from the OHCHR Financial Report (UN Doc. A/68/606) and 2015 estimated costs are calculated based on the Programme Budget Implications for Draft Resolution A/68/L.37 (UN Doc. A/68/779), and checked against the OHCHR projected budget for 2014-2015 (UN Doc. A/68/6, Section 24). Projection of resources to be provided by OHCHR from extra-budgetary (XB) funds in 2015 is based on 2012 XB funding levels, as impacted by the GA resolution. Actual XB funding for 2015 will be determined at OHCHR's discretion.

2015



REDUCING COSTS, REINVESTING RESOURCES, STRENGTHENING STATE CAPACITY

Many states saw the essential purpose of the intergovernmental process as resolving the resource crisis facing Treaty Bodies by making progress on financial support, meeting time and secretariat support levels. **Figure 3** summarises the financial situation facing the Treaty Bodies before and after the reforms.

Through resolution 68/286, the General Assembly reallocates and rebalances the financial resources that the UN already devotes to the Treaty Body system (in 2012, \$47 million from the regular UN budget and nearly \$5 million from OHCHR's extra-budgetary funds). In essence, the resolution generates considerable cost savings (\$19.2 million per year) from funds previously dedicated to conference services and reinvests these into the broader system.

Donor states including the US, EU, Canada and Japan made clear at the outset of the negotiations that while they recognised the need to provide the Treaty Bodies with adequate meeting time and staff support, they would not agree to provide these unless the resolution simultaneously generated cost-savings to offset the additional resources required. This followed, at least in part, from the some states' determination that there be no absolute increase in the overall UN budget from the 2012-2013 biennium to the 2014-2015 biennium.⁶⁵ These states acknowledged the importance of Treaty Body autonomy and claimed that their proposed changes to working methods did not infringe on the principle.⁶⁶ Nevertheless, the dilemma remained that in order for cost savings to appear in the official statement of budget implications accompanying the resolution – thus making the 'reinvestment' of those resources possible – the resolution could not simply recommend changes to the working methods of the Treaty Bodies, but would need to decide to affect them.

The main target of the cost-saving proposals was clear from the start. 65% of the costs of the Treaty Body system in 2012 came from document production, translation, and interpretation (conference services). This is, in part, a result of the high costs of the UN's conference services.⁶⁷ The High Commissioner had directed a few recommendations to states and Treaty Bodies that would have led to cost-savings in this area, most importantly that state party reports should adhere to recommended page limits (a proposal first made in 2006).⁶⁸ She also recommended that Treaty Bodies adhere to clear word limits when producing documentation, and reduce requests for summary records of certain meetings.

By Autumn 2013, certain states had come to object to the proposal to impose page limits on their reports. Moreover, they were concerned that even if all the cost-cutting recommendations in the High Commissioner's report were

adopted, the savings would not be sufficient to offset the costs of proposed increases in meeting time and capacity building programmes. States thus began to consider a new set of potential cost-saving measures, such as placing page limits on some Treaty Body documents and, more controversially, limiting the Treaty Bodies' entitlement to the UN's translation and interpretation services. A group of states led by the CRG strongly objected to these proposals on the grounds that they violated the UN's principle of multilingualism. They put forward a counter-proposal that would have required Treaty Bodies to carry out all their operations in the six official UN languages. This would have significantly increased the costs of the system, since several Treaty Bodies have already voluntarily limited the number of working languages.

Resolution 68/268 represents a compromise between these various positions. As already noted, the resolution leads to over \$19 million in cost savings in 2015 alone and a similar amount in subsequent years. The most significant cost-saving measure is the decision to issue summary records of Treaty Body meetings in only one UN language,⁶⁹ while providing for the possibility that summary records be translated into another UN language at a state party's request.⁷⁰ This measure is anticipated to save \$5.5 million annually.⁷¹ Although the decision was contested, states also agreed to limit their own contribution to documentation costs by placing word limits on their reports.⁷² This will result in projected savings of \$3.8 million annually.⁷³ The resolution also decided to establish a 10,700 word limit on all Treaty Body documentation⁷⁴ (although in practice this will only limit the length of the Treaty Bodies' annual reports), leading to projected annual savings of \$3.6 million.⁷⁵ The resolution further restricts the Treaty Bodies to a maximum of three official working languages, while allowing them to use a fourth official language on an exceptional basis if they determine that this is necessary.⁷⁶ This is projected to result in annual savings of \$1.1 million in interpretation and \$4.6 million in translation.⁷⁷ The CRG's proposal to require full 'multilingualism' by the Treaty Bodies was not pursued, though its guiding sentiment is reflected in the resolution's preamble.⁷⁸

Resolution 68/268 redirects and reinvests these cost-savings and efficiencies towards priority Treaty Body activities. Approximately \$8.9 million per year from conference services will now be redirected to supporting additional meetings; \$3.7 million per year will be used to rectify a shortfall in General Assembly funding for secretariat support and to provide capacity for additional meetings,⁷⁹ and about \$4.5 million per year will go towards providing an enhanced capacity-building programme for states.⁸⁰ The remaining savings will be reinvested to cover the travel costs of Treaty Body experts attending additional meetings⁸¹ and to provide additional administrative support and technology capacity.⁸²

The overall financial impact of the Treaty Body resolution is a very modest increase in resources: just under \$200,000 in 2015 and \$1.3 million for the 2016-2017 biennium.⁸³ Of the funds already provided to Treaty Bodies by the General Assembly, \$9.9 million previously dedicated to conference services will effectively be provided to OHCHR, which will receive new funding for 35 permanent staff and 3.8 temporary staff, to be divided between support for the Treaty Bodies and support for state capacity-building projects.

An important consequence of the financial resource reallocation will be a significant increase in Treaty Body meeting time, which



General Assembly Holds Informal Meeting on Human Rights Treaty Body System

should in theory allow them to deal with backlogs of state reports and continue their other important functions.

From the outset of the intergovernmental process, many states raised objections to the High Commissioner's proposal to respond to meeting time challenges by developing a 'Master Calendar'. They did so for a variety of reasons including resource concerns, doubts as to the proposal's feasibility (it would have resulted in Treaty Bodies being in session for a substantial portion of the year), and legal concerns (the proposal would have extended the varying reporting periodicities set down in the treaties to at least five years). Several states opposed the proposal's potential to lead to state reviews occurring in the absence of a national report, or even a delegation. They argued that this practice, which some Treaty Bodies already use in cases of egregious non-reporting, is contrary to the aim of promoting 'constructive dialogue' between Treaty Bodies and states parties. As a consequence of these doubts, the General Assembly resolution does not endorse the High Commissioner's proposal, although it does leave some potential for future reform in this direction by inviting Treaty Bodies and OHCHR to 'continue to work to increase coordination and predictability in the reporting process... with the aim of achieving a clear and regularized schedule for reporting by States parties.'⁸⁴

As the extent of the resistance to the High Commissioner's proposal became clear, several states called for the intergovernmental process to identify alternative means of providing additional resources to Treaty Bodies in order to allow them to meet for longer periods of time and to provide them with greater levels of OHCHR staff support. In 2013, the co-facilitators proposed a scheme that would provide adequate time for the Treaty Bodies to review all states parties at least every six years.⁸⁵ This would have required a total of 95 weeks of meeting time for the consideration of state reports (not including time for other functions).⁸⁶ States again rejected this proposal based on resource and legal concerns.

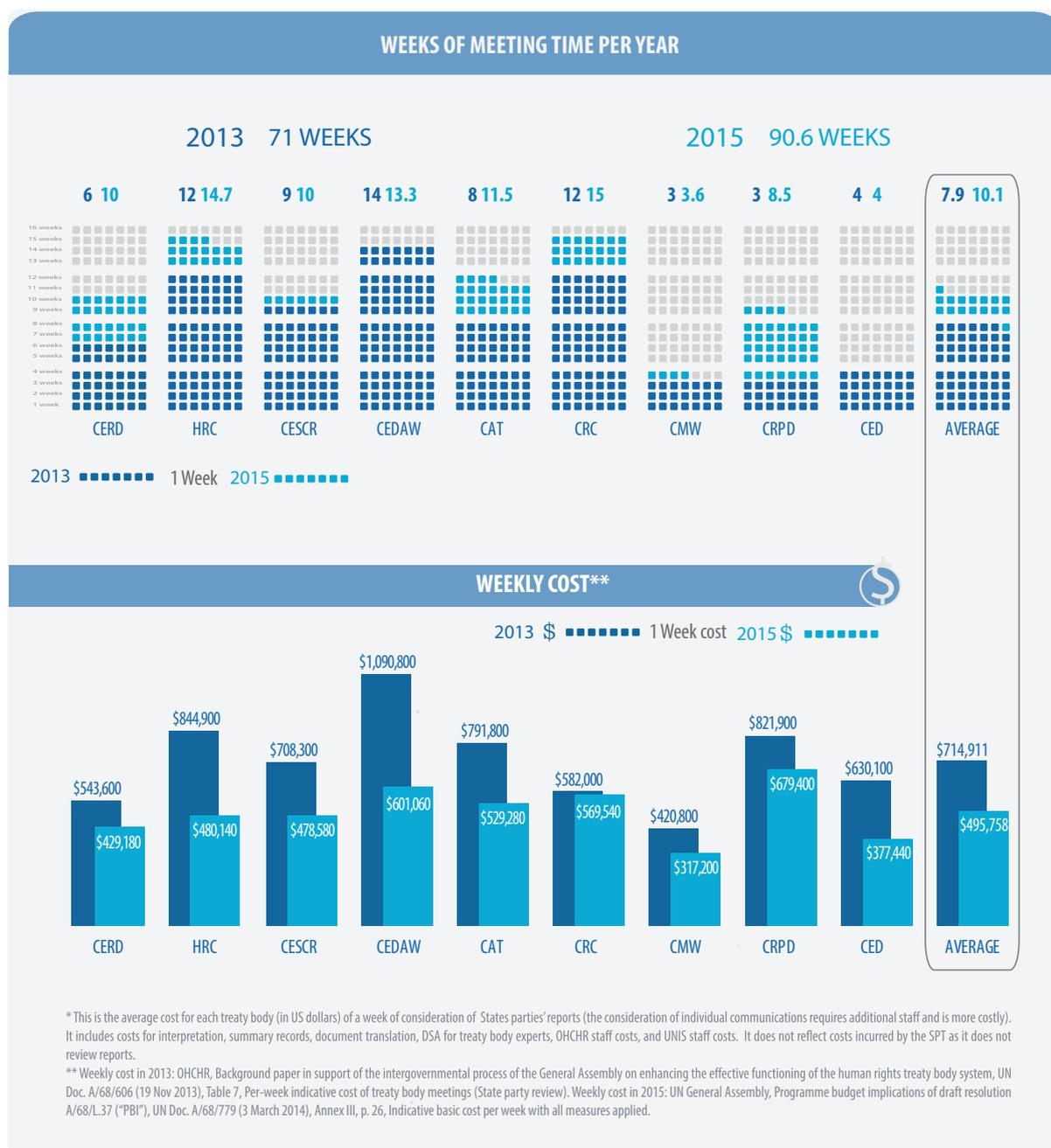
Many states gave a more favourable reception to a proposal by the European Union (EU), first circulated in late summer 2013. In contrast to earlier proposals, which calculated meeting time based on the levels of ratification of the human rights treaties, the EU suggested a calculation based on the rate of reporting to the Treaty Bodies (the average number of reports and communications received by each Treaty Body over the past four years). This formula assumed that the Treaty Bodies would continue to review reports and communications at 'at least' their present rate.⁸⁷ It allocated time for them to perform their other functions and also provided an additional 'margin' of meeting time to be allocated to certain Treaty Bodies to prevent them from accumulating further backlogs of reports and communications. The original articulation of this proposal called for approximately 84 weeks of meeting time (with a 5% 'margin'), though during the final stages of negotiations, in part as a result of concerns that this would be inadequate to prevent the re-accumulation of reporting backlogs, it was amended to provide approximately 90 weeks of meeting time (representing a 15% 'margin') for the period 2015-2017.⁸⁸ The report also provides resources for two OHCHR staff to support the Subcommittee on the Prevention of Torture (SPT), which carries out field visits in place of reviewing reports.⁸⁹

The immediate impact of states' agreement to this formula will be an increase in Treaty Body meeting time from 74 weeks in 2012 to 90.6 weeks in 2015.⁹⁰ From the perspective of the regular budget, which does not reflect resources provided by the General Assembly in response to ad hoc requests, this represents an increase in regularly allotted time of 20.6 weeks,⁹¹ comprising an additional 12 weeks of meeting time to allow the Treaty Bodies to manage their existing workload⁹² and an additional 8.6 week 'margin' of meeting time to be distributed to those Treaty Bodies at risk of accumulating a larger backlog.⁹³ For an overview of the impact of the resolution on the meeting time and operational costs of each of the individual Treaty Bodies, **see figure 4.**

It is important to note that resolution 68/268 only provides adequate time for Treaty Bodies to review reports and individual communications at approximately the rate that they are presently receiving them; it does not provide the additional 106 weeks of meeting time that the Secretary General's report estimated would be needed to clear their existing backlog of 263 reports (as of late 2011).⁹⁴ Instead, the outcome 'invites' the Treaty Bodies to undertake a 'backlog clearing' exercise in which they would essentially 'reset' the reporting cycle for each state as soon as they are able to consider a 'backlogged' report, at which point the state's reporting cycle will begin anew.⁹⁵

The resolution does not address the practical problems that may arise with implementation of its solutions. For example, the resolution could result in three of the Treaty Bodies convening for more than three months per year.⁹⁶ In practice, these Treaty Bodies dedicate some of their allotted time to 'pre-sessional' meetings that not all experts attend. Nevertheless, the increase in required meeting time will eventually stretch the limits of the availability of the unpaid 'volunteer' Treaty Body experts,⁹⁷ in addition to the availability of meeting facilities in Geneva. Certain Treaty Bodies with larger membership have already taken steps to alleviate the burden by, inter alia, convening in dual (or 'parallel')

FIGURE 4: IMPACT OF THE GA RESOLUTION ON THE WEEKLY OPERATING COSTS AND MEETING TIME PER YEAR OF THE HUMAN RIGHTS TREATY BODIES*



chambers for the consideration of state reports and returning to the plenary for the adoption of conclusions.⁹⁸ Although earlier drafts of resolution 68/268 endorsed this practice, the final text omits all mention of the matter.⁹⁹

As observed above, the outcome of the intergovernmental process delivers new funding for secretariat support, equating to an additional 22.8 (19 permanent, 3.8 temporary) OHCHR staff members dedicated to supporting the Treaty Bodies.¹⁰⁰ Some of the funding will likely be used to 'regularise' the status of those OHCHR staff who already service the Treaty Bodies but who are currently funded with extra-budgetary resources (as of November 2013, it is estimated that around a fifth of secretariat staff are in this position).¹⁰¹ The remainder may be used to create five additional posts (two permanent, three temporary). It is not clear whether OHCHR will continue to use extra-budgetary funds to provide further staff support for the Treaty Bodies.¹⁰²

IMPROVING STATES' COMPLIANCE WITH THEIR TREATY OBLIGATIONS

Many of the recommendations that emerged from the Dublin process focus on the need to improve state engagement and cooperation with the Treaty Body system and their compliance with treaty obligations. The Master Calendar proposal would have made a comprehensive reporting schedule mandatory for states, and the High Commissioner paired this requirement with an offer to provide technical assistance from UN country teams and OHCHR on preparing treaty reports or implementing recommendations whenever needed. She further called on states to provide financial support for OHCHR's capacity-building activities so that it might respond to all requests for support.

The High Commissioner did not endorse every recommendation on implementation that emerged during the strengthening process. In particular, her final report omitted recommendations from NGOs calling for her to strengthen the follow-up process and to plac personnel in each the OHCHR regional offices to serve as 'focal points' monitoring state implementation of Treaty Body recommendations. Yet she did call on states to consider establishing mechanisms to serve as the core national bodies interacting with Treaty Bodies, which the report called 'standing national reporting and coordination mechanisms'.¹⁰³

The intergovernmental negotiations were split on the question of the most appropriate way to encourage greater state compliance with their reporting obligations, with some viewing the problem, primarily, as one of a lack of political will, and others seeing it as a consequence of capacity constraints. States were also divided on the issue of how – and whether – the General Assembly should encourage states to implement Treaty Body recommendations. The CRG expressed the view that the purpose of the Treaty Body system, and the reform effort, should be to strengthen states' capacity to comply with their human rights obligations. Members of the African Group and CARICOM expressed a strong preference for the provision of capacity-building assistance as the primary means of encouraging increased compliance with reporting

obligations. ASEAN states meanwhile argued that the UN should not provide capacity-building assistance unless specifically requested to do so by states and with their consent.

Resolution 68/268 reflects all of these sentiments. The resolution seeks to 'strengthen[] the capacity of Member States to comply with their human rights obligations' by creating 'an expansive programme for OHCHR to assist states in 'build[ing] their capacity to implement their treaty obligations.'¹⁰⁴ This programme will be funded by annually re-investing \$4.5 million of the money generated through cost savings, and will focus on employing 16 new staff to carry out capacity-building activities (with 10 based in OHCHR regional offices).¹⁰⁵ Disappointingly, while earlier drafts of the resolution stated that implementation of Treaty Body recommendations was a legitimate aim of capacity-building assistance provided to states, UN agencies and country teams, such language was deleted in the final draft at the request of the CRG.¹⁰⁶

The resolution also alludes to the High Commissioner's proposal for states to create 'standing national reporting and coordination mechanisms' (SNRCMs). Regrettably, the it fails fully to endorse many of the High Commissioner's useful proposals regarding the establishment of 'SNRCMs,' which have the potential to improve states' compliance with their treaty reporting obligations and the implementation of Treaty Body recommendations significantly. However, the resolution does recognise 'that some States parties consider that they would benefit from improved coordination of reporting at the national level, and requests the Office of the High Commissioner to include among its technical assistance activities relevant assistance in this regard, at the request of a State party, based on best practices.'¹⁰⁷ It remains to be seen how states respond to this proposal and whether they will devote the necessary attention and resources to establish effective and inclusive SNRCMs, with or without OHCHR's assistance, in the future.

Other measures in the resolution may indirectly serve to strengthen states' compliance with their treaty obligations, for example, efforts by the Treaty Bodies to streamline and harmonize their working methods should make the system more predictable, understandable and accessible. The resolution also provides the opportunity for members of state delegations who are not able to travel to Geneva for the interactive dialogue in Geneva 'to participate...by means of videoconference'.



GA Opens Discussion on Human Rights Treaty Body System

INCREASING ACCESSIBILITY AND VISIBILITY, INCLUDING THROUGH TECHNOLOGY

The High Commissioner's Treaty Body strengthening process placed significant emphasis on enhancing the system's accessibility to stakeholders other than states. In contrast, the General Assembly resolution's treatment of the issue is relatively limited. For example, although many participants in the High Commissioner's strengthening process voiced support for webcasting public meetings, the draft resolution provides rhetorical but not financial support for such a step. The resolution 'decides in principle' to establish webcasting of 'relevant' meetings of the Treaty Bodies 'as soon as feasible,' and to this end requests the Department of Information to report on the feasibility of webcasting in all six official UN languages and archiving those webcasts in a searchable and secure manner.¹⁰⁸ This language was the result of difficult

negotiations regarding multilingualism and an insistence, on the part of some states, that periodic reviews should only be webcast with the consent of the reporting state. In the wake of the intergovernmental process, OHCHR expressed an intention to use extra-budgetary funding to establish webcasting of all public meetings in 2015.

A key concern of many actors in the multi-stakeholder process was the issue of reprisals against individuals and groups who interact with the Treaty Bodies. The final resolution condemns intimidation and reprisals and urges states to take all appropriate actions to prevent and eliminate them. However, it does so using language that is less protective than that used in other UN resolutions, narrowing the definitional scope of activities that can give rise to and actors that can be victims of reprisals.¹⁰⁹

In one aspect, resolution 68/268 may actually serve to restrict stakeholder access to Treaty Bodies. The resolution recommends that Treaty Bodies apply word limits to submissions from 'relevant stakeholders.'¹¹⁰ A number of states objected to this, noting that submissions by NGOs and NHRIs are not processed and translated by the UN and thus do not impact on UN resources. Other states, however, argued that page limits were appropriate given the resolution's imposition of limits to state party reports, suggesting that all stakeholder inputs should be limited in order to 'level the playing field.' It remains to be seen whether the Treaty Bodies will implement this recommendation.



INCREASING TREATY BODY COORDINATION WITH OTHER UN ACTORS

One of the issues raised by the High Commissioner when she initiated the strengthening process in 2009 was the need to improve coordination between Treaty Bodies and other relevant parts of the UN system, including other human rights mechanisms and UN agencies. Following-up on this idea, resolution 68/268 encourages OHCHR to work with various UN actors, including UN country teams, to assist states parties (upon their request) in preparing reports to the Treaty Bodies and in developing programmes to support compliance with their treaty obligations.¹¹¹ However, the resolution is silent on the issue of cooperation between Treaty Bodies and other human rights mechanisms such as Special Procedures, perhaps in reaction to statements by the CRG to the effect that such cooperation would be inappropriate given the mechanisms' different mandates.

SELECTION OF EXPERTS

The High Commissioner's report on Treaty Body strengthening, along with the consultations that informed it, devotes substantial attention to improving the quality of Treaty Body membership, primarily by promoting the nomination and election of the most qualified and independent candidates for service. The recommendations endorsed by the High Commissioner had the goal, inter alia, of discouraging states from nominating active diplomats and government officials as candidates for Treaty Body membership.

The paucity of attention to the issue in resolution 68/268 again reflects the very different positions of states. The resolution does not take up a proposal that serving government officials and active diplomats be disallowed from standing for membership.¹¹² It similarly omits proposals for states to adopt 'open, transparent' national processes for selecting candidates. Instead, it 'encourages States parties to continue their efforts to nominate experts of high moral standing and recognized competence and experience' in human rights and

the subject covered by the relevant treaty, and 'as appropriate, to consider adopting national policies or processes' for the nomination of candidates, without recommending that such national policies or processes share any particular qualities.¹¹³ The resolution also omitted a proposal to establish regional quotas for Treaty Body membership.¹¹⁴ Rather, it requests OHCHR, prior to any election, to prepare an information note on the relevant Treaty Body's composition in terms of geographical distribution, gender distribution, professional background and representation of different legal systems,¹¹⁵ and encourages states to give consideration to these and other criteria in electing experts.¹¹⁶

REVIEW MECHANISMS

Resolution 68/268 contains two review mechanisms designed to assess the impact of the decisions taken and recommendations made by member states on the functioning of the Treaty Body system.

First, the resolution establishes that the General Assembly will review the amount of meeting time allocated to Treaty Bodies on a biennial basis, calling on the Secretary-General to recommend the amount of meeting time to be awarded to them on the basis of the number of reports and individual communications received by them during the previous four years. In the same report, the Secretary-General is requested to describe the progress achieved by the Treaty Bodies in 'realizing greater efficiency and effectiveness in their work'.

Second, by no later than 2020, the General Assembly will undertake a comprehensive review of the effectiveness of measures taken 'in order to ensure their sustainability, and, if appropriate, to decide on further action to strengthen and enhance the effective functioning of the human rights treaty body system'.



REFLECTIONS AND NEXT STEPS

The Dublin Process and the High Commissioner's report drew attention to the significant challenges facing the Treaty Body system and offered recommendations that, if implemented, would go a long way towards addressing those challenges, enabling each Treaty Body to fulfil its valuable and unique role in contributing to the promotion and protection of human rights. The outcome of the General Assembly's intergovernmental process represents an important milestone on this journey, but there is a long way still to go.

The most significant reforms introduced by the intergovernmental process relate to financial, time and human resources. Here, savings from reduced spending on conference services have the potential, in the short- to medium-term, to make a real difference to the working methods, efficiency and effectiveness of the Treaty Body system. In the longer-term, however, it is inevitable that the issue of resources will have to be re-visited, including through the review mechanisms built into the final outcome.

With the ink now dry on resolution 68/268, attention must now shift to implementation of its decisions and consideration of its recommendations, and to advance the goals of the broader reform effort as set down by the High Commissioner. In that regard all stakeholders, including states, Treaty Bodies, OHCHR and civil society must play a role.

Treaty Bodies need to consider how to react to the General Assembly's recommendations concerning their methods of work while respecting Treaty Body independence and remaining accessible to non-state actors. Operating in a more systemic fashion will require a correct application of the 'Poznan Formula'. For this to happen, it will be necessary for all proposals that envisage systemic reform to be carefully considered by each Treaty Body before the annual meeting of chairs. Thereafter, Treaty Body members should have another opportunity to discuss any decisions reached.

States should look to make use of the opportunities presented by the General Assembly outcome, for example the simplified reporting procedure and the common core document, to strengthen engagement and improve compliance. They should do so in cooperation and dialogue with Treaty Bodies, while fully respecting their independence and impartiality.

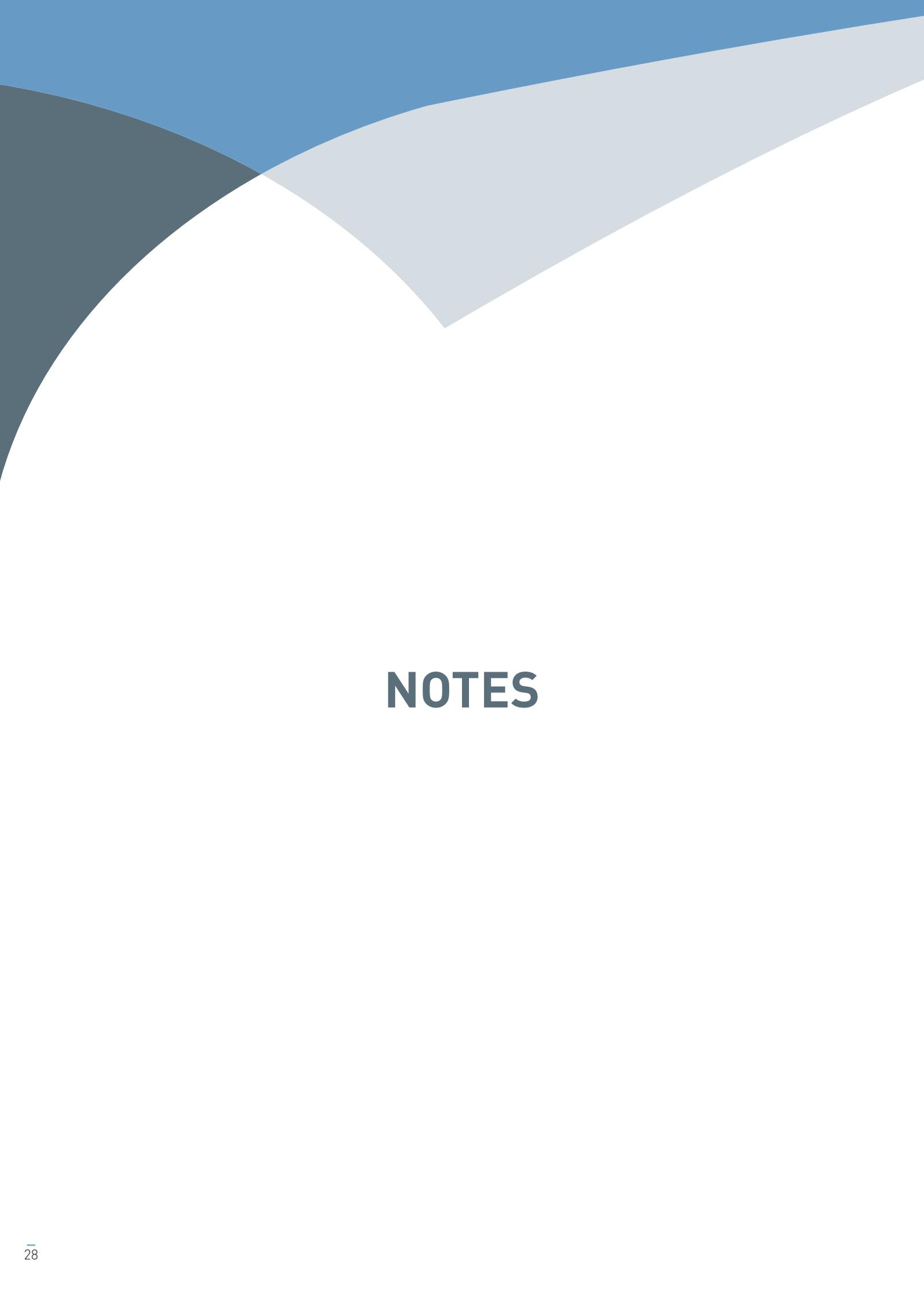
Moreover, all stakeholders should take steps to accomplish the broader goals for 'strengthening' the Treaty Bodies as identified in the Dublin Process and by the High Commissioner. Although the General Assembly outcome failed satisfactorily to address implementation of and follow-up on Treaty Body recommendations, states, Treaty Bodies, OHCHR and NGOs should continue to focus on this, for example by taking steps to mainstream Treaty Body recommendations across the work of the Organisation, ensuring coordination and cooperation with other international and regional human rights mechanisms, and by establishing, or encouraging states to establish, 'standing national reporting and coordination mechanisms'.

In all of this, OHCHR has a vital role to play in ensuring that Treaty Bodies continue to receive the support they need to carry out their work effectively, even as workloads increase. The High Commissioner remains the essential actor to drive the process of Treaty Body strengthening in a manner that is respectful of the Treaty Bodies' autonomy.

Looking at the longer-term, it should be recalled that the current round of reforms is modest by design. As a diplomat at the General Assembly recently said: 'at most this is a sticking plaster – albeit a very large one'¹⁷. In other words, bigger questions related to fundamental deficiencies in the system remain unaddressed, and in the long-term it is likely that problems will re-emerge.

In order to properly address those problems, at some point it will be necessary to consider deeper and more fundamental reforms of the system once again, within an inclusive, cooperative and respectful process of consultations involving states, Treaty Body members, civil society and other stakeholders. More modestly, it may also be necessary to reconsider the idea of a 'master calendar'.

Whatever further reforms are considered, states and other stakeholders must be guided by a single overarching goal: to strengthen the promotion and protection of all human rights. It is within this framework that the Treaty Bodies should be empowered to fulfil their indispensable role within the human rights architecture of the United Nations.



NOTES

1 These include (1) the Human Rights Committee (CCPR), which monitors the implementation of the International Covenant on Civil and Political Rights; the Committee on Economic, Social and Cultural Rights (CESCR); the Committee on the Elimination of Racial Discrimination (CERD); the Committee Against Torture (CAT); the Sub-Committee on the Prevention of Torture (SPT), which monitors the implementation of the Optional Protocol to the Convention Against Torture (OPCAT); the Committee on the Rights of the Child (CRC), the Committee on Migrant Workers (CMW), the Committee on the Rights of Persons with Disabilities (CPRD); and the Committee on Enforced Disappearances (CED).

2 Note that this figure includes time devoted by several treaty bodies for pre-sessional and other working group meetings, in addition to regular meeting time.

3 The SPT does not review reports but rather conducts preventive visits to States parties to monitor their implementation of the OPCAT.

4 See OHCHR, Cost assessment mandated by GA resolution A/RES/68/2, 15 November 2013, table 3 ("OHCHR Financial Report"). Available at http://www.ohchr.org/Documents/HRBodies/TB/HRTD/A-68-606_en.doc. The CRC considered 17 reports under its Convention and 17 reports under two optional protocols thereto in 2013, for a total of 34 reports; CEDAW considered 22 reports under its Convention in 2013.

5 The Committee on the Elimination of all forms of Racial Discrimination (CERD) has developed an early warning procedure whereby UN agencies, special procedures, regional human rights mechanisms, national human rights institutions and non-governmental organizations can bring to the Committee's attention concerns regarding the presence of a "indicators for patterns of systematic and massive racial discrimination." The Committee may take one of a number of measures pursuant to the early warning procedure, including requesting the State party in question to urgently submit information on the situation concerned; requesting the Secretariat to collect information on the situation; adopting a decision expressing concerns about the situation and making recommendations for action to the state concerned and various other UN, regional, and non-state actors; offering to send members of the Committee to provide technical assistance to the state party; and recommending that the state party avail itself of OHCHR's advisory services and technical assistance. See CERD Annual Report, UN Doc. A/62/18 (2007), Annexes, Chapter III.

6 Concept Paper on the High Commissioner's Proposal for a Unified Standing Treaty Body, UN Doc. HRI/MC/2006/2 (22 March 2006).

7 UN High Commissioner for Human Rights, "Strengthening the United Nations human rights treaty body system," UN Doc. A/66/860 (26 June 2012) ("High Commissioner's report"), p. 21 ("only 16 % of the reports due in 2010 and 2011 were submitted in strict accordance with the due dates established in the treaties or by the treaty bodies. When counted with a one-year grace period of twelve months after the established deadline, still only one-third of reports were submitted on time").

8 This resulted from the entry into force of three treaties and one additional protocol (the Convention on the Rights of Persons with Disabilities, the Convention on the Rights of Migrant Workers, the Convention on Enforced Disappearances, and the Optional Protocol to the Convention Against Torture). While treaty body experts do not receive a UN salary or honorarium, the UN reimburses them for travel costs and expenses incurred during their meetings, and the increase in membership has caused these support costs to rise from an average of \$2.2 million per year in 2000-2001 to an average of \$7 million per year in 2012-2013. High Commissioner's report, section 2.3.6

9 This increase is in part an outcome of a longstanding initiative of the High Commissioners for Human Rights to encourage more widespread ratification of the treaties by UN Member States. It is also a result of the Universal Periodic Review process in Geneva, initiated in 2008, in the course of which States have directed recommendations to one another urging greater compliance with their treaty reporting obligations.

10 High Commissioner's report. Approximately 65% of this cost was borne by the UN Division of Conference Management and 35% was borne by OHCHR, which financed around \$5 million of its burden through voluntary contributions rather than the UN regular budget. This voluntary funding from OHCHR was used primarily in the service of providing staff support to the treaty bodies beyond that supported by the regular UN budget. In 2012, of the 61 professionals supporting the

treaty body system, 17 were funded from voluntary contributions. The HRTD has 61 Professionals and 22 General Service posts, including 40 Professional posts (1 D-1, 4 P-5, 15 P-4, 19 P-3 and 5 P-2) and 16 General Service posts funded from the regular budget (RB posts), and 17 Professional posts (1 P-4, 15 P-3 and 1 P-2) and six General Service posts funded from voluntary contributions (XB posts).

11 The High Commissioner's report noted 269 State party reports and 460 individual communications pending review in 2012, leading to a time lag of several years between submission of a State report and its consideration by a treaty body (generally 2-4 but up to 7 years) and between registration of a complaint by an individual and a final decision (2.5-3.5 years). High Commissioner's report, p. 44 (backlog stats), p. 23.

12 Several treaty bodies have voluntarily reduced their working languages, enforced word and page limits on the documentation they produce, and have developed procedures such as the "Simplified Reporting Procedure" intended to streamline the reporting process for States parties.

13 See, e.g., Michael O'Flaherty, « The High Commissioner and the Treaty Bodies », in *The United Nations High Commissioner for Human Rights : Conscience for the World* (Felice D. Gaer and Christen L. Broecker, eds.) (Brill, 2013), . pp. 112-113.

14 See <http://www.ohchr.org/EN/HRBodies/HRTD/Pages/TBConsultations.aspx#msc>.

15 UN General Assembly, "International Convention on the Elimination of All Forms of Racial Discrimination," UN Doc. A/Res/65/2000 (adopted 21 Dec. 2010) and UN General Assembly, "Committee Against Torture," UN Doc. A/Res/65/204 (adopted 21 Dec. 2010).

16 UN Secretary-General, "Measures to improve further the effectiveness, harmonization and reform of the treaty body system," UN Doc. A/66/344, (7 Sept. 2011), para 47 ("UN Secretary-General's report").

17 Office of the UN High Commissioner for Human Rights, "Non-exhaustive list of emerging proposals identified so far in the context of the treaty body strengthening informal consultations (including Dublin, Marrakesh, Poznan, Sion, Seoul, Pretoria, Bristol and Lucerne) and those of the Inter-Committee Meeting (ICM) and Meeting of Chairpersons (MC), as well as other proposals stemming from the process," (November 9, 2011), available at <http://www2.ohchr.org/english/bodies/HRTD/docs/ProposalsTBstrengtheningProcess.pdf>

18 High Commissioner's report.

19 These would have strengthened the treaty bodies' follow-up procedures, encouraged occasional travel by experts to the regional level, and promoted the implementation by States of the treaty bodies' recommendations.

20 High Commissioner's report.

21 *Ibid.*, p. 43.

22 Letter to Ibrahim Salama, Director, Human Rights Treaty Division, dated 12 Oct 2011, from the Deputy Permanent Representative of the Russian Federation, Mikhail Levedev. Available at <http://www2.ohchr.org/english/bodies/HRTD/docs/submissions2011-12/states/RussiaFederation.pdf>. (Russia Letter I).

23 Letter from the Permanent Mission of Pakistan to the United Nations in Geneva, 15 December 2011, available at <http://www2.ohchr.org/english/bodies/HRTD/docs/submissions2011-12/states/Pakistan.pdf>.

24 "Views of the Chinese Government regarding the human rights treaty body strengthening process," UN Doc. HRC/NONE/2011/184, available at <http://www2.ohchr.org/english/bodies/HRTD/docs/submissions2011-12/states/ChinaSubmission.doc> (China Letter)

25 Russia letter I.

26 *Ibid.* See also a second letter from Russia to OHCHR dated January 2012. UN Doc. HRC/NONE/2012/1, available at http://www2.ohchr.org/english/bodies/HRTD/docs/RussianFederationSubmission_en.doc.

27 Russia letter I, p.7.

28 China Letter, para 2.7.

29 *Ibid.*, para. 2.6. China suggested that only NGOs in formal status with the UN should be able to participate in the treaty bodies' work, that treaty bodies should not in any way publicize NGO information submitted to them without the consent of the country under review, and that treaty bodies should not cite to information provided by NGOs in their concluding observations.

30 *Ibid.*, para 2.9.

31 *Ibid.*, para 2.11.

32 In addition to Russia, the resolution was co-sponsored by Algeria,

Bangladesh, Belarus, Bolivia, China, Cuba, India, Indonesia, Iran, Nicaragua, North Korea, Pakistan, Sudan, Syria, Tajikistan, Thailand, Venezuela, Viet Nam and Zimbabwe.

33 Official Records, UN General Assembly, Sixty-sixth session, 98th plenary meeting, Thursday, 23 February 2012, 10 a.m. UN Doc. A/66/PV.98, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/66/PV.98

34 Full voting record available here: <http://www.ishr.ch/sites/default/files/article/files/doc20120223144216.pdf>

35 See Official Records of the General Assembly, 98th plenary meeting, Thursday, 23 February 2012, 10 a.m., New York, UN Doc. A/66/PV.98.

36 *Ibid.*

37 UN General Assembly, Intergovernmental process of the General Assembly on strengthening and enhancing the effective functioning of the human rights treaty body system, UN Doc. A/RES/66/254 [adopted 23 February 2012].

38 The intergovernmental process was extended to 2013 at the close of the 66th session of the GA by a consensus resolution. See UN General Assembly, "Extension of the intergovernmental process of the General Assembly on strengthening and enhancing the effective functioning of the human rights treaty body system," UN Doc. GA/RES/66/295, (10 December 2012). Meetings were convened every few weeks during the first nine months of 2013. The process was again extended at the close of the 67th session of the GA in September 2013, but only to the first half of February 2014 "in order to finalize the elaboration of an outcome. This deadline reflected many States' preference to ensure that any outcome resulting in changes to the resources for the treaty bodies would be incorporated into the UN budget in time to take effect in 2015. See UN General Assembly, "Extension of the intergovernmental process of the General Assembly on strengthening and enhancing the effective functioning of the human rights treaty body system," UN Doc. GA/RES/68/2 [September 2013].

39 Report of the co-facilitators on the open-ended intergovernmental process to conduct open, transparent and inclusive negotiations on how to strengthen and enhance the effective functioning of the human rights treaty body system, Annex I, "Draft Elements of the co-facilitators for a resolution," UN Doc. A/67/995 [16 September 2013] p. 7. In November 2013, at the General Assembly's request, OHCHR produced a detailed cost assessment of the co-facilitators' proposals. See OHCHR Financial Report.

40 UN DPI, "Fifth Committee approves eight texts as it concludes first part of resumed sixty-eighth session," UN Doc. GA/AB/4104 [28 March 2014], available at <http://www.un.org/News/Press/docs/2014/gaab4104.doc.htm>.

41 *Ibid.*, para. 6.

42 The second author of this report participated on three occasions.

43 However, only treaty body experts able to facilitate their own presence in New York were able to participate.

44 Participation in these events was limited to NGOs present in New York or Geneva; NGOs not already in consultative status could only participate on a "no objection" basis. In August 2013, a group of 31 civil society organizations publicly expressed disappointment that opportunities for their participation in the process had been characterized by a lack of regard for their expertise and potential contribution and commitment to include those outside New York and Geneva. See Joint NGO Statement, « UN General Assembly must act to strengthen treaty body system, » http://www.ishr.ch/sites/default/files/article/files/2013-08-07-joint_ngo_statement_tbsp_0.pdf. See also International Service for Human Rights & Amnesty International, Joint Statement, "States Must Not Weaken UN's Treaty Bodies " (8 August 2013).

45 For example, the annual meeting of the chairpersons of the treaty bodies was held in May 2013 in New York, providing an opportunity for the co-facilitators and Member States to interact with the chairpersons. In late January 2013, just prior States' agreement on the draft outcome of the intergovernmental process, the Chairs convened at a meeting in Washington, D.C. at which they prepared a statement outlining their views on the draft text and met together with the co-facilitators to share their views.

46 Guidelines on the independence and impartiality of the member of the human rights treaty bodies ("Addis Ababa Guidelines"), UN Doc. A/67/222 Annex I (June 2012).

47 This is the case with regard to proposals for the installation of technology for the treaty bodies to interact with stakeholders via video-conference and for webcasting of the public meetings of the treaty bodies. High Commissioner's report.

48 The members of the CRG were Belarus, Bolivia, China, Cuba, Iran, Nicaragua, Pakistan, Russia, Syria, and Venezuela.

49 Draft Code of Conduct for the Members of the Human Rights Treaty Bodies, on file with author.

50 UN General Assembly, Resolution 68/268 "Strengthening and enhancing the effective functioning of the human rights treaty body system," UN Doc. A/68/268 (9 April 2014), para 9.

51 For example, the resolution urges the treaty bodies to "bear[] in mind the views of States parties as well as the specificity of the commit-

tees and their specific mandates," as they collaborate on the elaboration of an "aligned methodology for constructive dialogue" with States. GA Resolution 68/268, para 5. It encourages the treaty bodies to "bear[] in mind States parties' views," as they develop common guidelines on their concluding observations. *Ibid.*, para 6. It encourages the treaty bodies to develop an aligned consultation process for the elaboration of general comments, providing for consultations with States parties in particular but also "bear[ing] in mind" the views of other stakeholders. *Ibid.*, para 15.

52 Russia indicated that this was its interpretation of this paragraph at consultations in January 2014.

53 GA Resolution 68/268, para 14.

54 The High Commissioner's report recommends that the treaty bodies simplify and improve their follow up procedures through the adoption of common guidelines, but this recommendation was linked to the report's recommendation to implement the Master Calendar, which would have guaranteed regular reporting by States and made the need for follow-up between reviews somewhat less urgent.

55 55 GA Resolution 68/268, para 7.

56 *Ibid.*, pp 9 and para 35.

57 *Ibid.*, para 35.

58 *Ibid.*, para 36.

59 *Ibid.*, para 37.

60 Intergovernmental process consultations, May 7, 2013.

61 *Ibid.*, para 44.

62 *Ibid.*, para. 37.

63 *Ibid.*, para 39]. In contrast, the Addis Ababa Guidelines indicate that concerns about treaty body members' conduct should be raised with the chairperson of the treaty body in question, not the chairpersons of all of the treaty bodies. Consistent with the principle of self-regulation, the Addis Ababa Guidelines state that accountability for adherence to the guidelines rests with the individual experts, the chairperson of each treaty body, and each treaty body as a whole. Addis Ababa Guidelines, para. 16.

64 In December 2013, in recognition of significant difficulties, the General Assembly adopted a budget for the 2014-2015 biennium that is \$34.72 million lower than the final 2012-2013 budget. The total biennium budget is \$5.5 billion, see <https://www.un.org/News/Press/docs/2013/gaab4096.doc.htm>; http://www.un.org/apps/news/story.asp?NewsID=46841&Cr=general+assembly&Cr1=budget#_UscAyGRDs00.

65 For example, one State representative characterized a successful proposal to limit the treaty bodies to interpretation and translation in three of the UN's six languages, and four in exceptional situations, as "narrowing their options" rather than dictating a particular course of action. 5th Committee negotiations, March 2014.

66 The average full cost of processing one page of text in one language is \$245 and the cost of processing one page into all six official UN languages is \$1,225; the cost of one "week" of interpretation is either \$12,700 or \$16,900, depending on the official UN language. OHCHR Financial Report, UN Doc. A/68/606, para 57 (document processing and translation) and para. 73 (interpretation; Arabic and Chinese are \$16,900 per week and all other languages are \$12,700 per week). The mandate of the intergovernmental process did not extend to considering how these base costs might be lowered.

67 Harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific documents, Report of the Inter-Committee Technical Working Group, UN Doc. HRI/MC/2006/3 (HRI/MC/2006/3).

68 GA Resolution 68/268, para 24.

69 *Ibid.*, para. 25.

70 A related decision to refrain from translating the existing backlog of summary records results in a one-time savings of \$660,000. See PBI.

71 GA Resolution 68/268, para. 16.

72 PBI, para 26.

73 GA Resolution 68/268, para. 15.

74 PBI, para. 26.

75 GA Resolution 68/268, para 30.

76 PBI, table 1.

77 Co-facilitators' "draft elements" paper, UN Doc. A/67/995, para 34. OHCHR Financial Report, UN Doc. A/68/606, para. 26.

78 This includes 18 permanent professional posts, 1 permanent general service post, and 3 temporary professional and 0.8 temporary general service posts for 2015-2017 only.

79 This includes 15 permanent professional posts and 1 permanent general service post.

80 \$1.7 million, see PBI table 2.

81 This second component is comprised of increases for the UN's Department of Public Information of approximately \$330,000 in 2015 (\$660,000 for the 2016-2017 biennium); and in new expenditures for the UN administration in Geneva of \$320,000 in 2015 (\$390,000 for the 2016-2017 biennium.) (PBI para 35, table 3).

82 UN General Assembly, Programme budget implications of draft resolution A/68/L.37, ("PBI"), para 37, table 5).

83 GA Resolution 68/268, para. 34.

84 See Co-facilitators' "draft elements" paper, UN Doc. A/67/995, paras. 28 and 29.

85 *Ibid.*, para. 29. This calculation assumes that the number of weeks of meeting time provided to those treaty bodies not specifically addressed in the proposal remains the same. Current (not including meeting time previously allocated pursuant to ad hoc requests) and proposed treaty body meeting time, in weeks: CRPD 7(9); CAT 6(11); CERD 6(12); CESCR 8(11); CRC 12(15); CEDAW 14(14); HRC 12(13); CMW 3(N/A); CED 4(N/A); SPT 3(N/A). For current treaty body meeting time, see OHCHR Financial Report, UN Doc. A/68/606,, table 2.

86 These rates are 2.5 reports per week and 5 reports to Optional Protocols per week, and 1.3 hours for each individual communication brought to the full treaty body's attention. After the EU meeting time proposal had been incorporated into the text, the CRG sought to add language to it that called on treaty bodies to increase the rate at which they consider reports and communications (implying that they would need to spend less time per report or communication or spend less time performing other functions). The "at least" language was accepted as a compromise.

87 GA Resolution 68/268, para 26. The resulting cost increase of all of these proposals would depend on the allocation of weeks of time to the individual treaty bodies, as their per-week costs vary substantially; the currently average cost of a week of treaty body meeting time is nearly \$800,000. See OHCHR Financial Report, UN Doc. A/68/606,, table 7. At this rate, 24 additional weeks of meeting time would increase the cost of the treaty body system by an average of \$19.2 million.

88 PBI, para 16.

89 This calculation does not account for the meeting time generally provided to the SPT (presently 3 weeks per year). Presumably, this allocation of meeting time will continue unaffected by the resolution, which notes that the treaty bodies should never meet for an amount of time less than that allocated to them as of 2014. GA Resolution 68/268, para 27, see also PBI, Annex I.

90 From 2015-2017, the TBs will meet for a total amount of time per year of (calculations are regular time + "margin" time): CERD 9.2 + 0.8 = 10 weeks; HRCtee 12.7 + 2 = 14.7 weeks; CESCR 8 + 2 = 10 weeks; CEDAW 12.3 + 1 = 13.3 weeks; CAT 10.6 + 0.9 = 11.5 weeks; CRC 14.6 + 0.4 = 15 weeks; CMW 3.6 weeks; CRPD 7.0 + 1.5 = 8.5 weeks; CED 4.0 weeks. TOTAL: 90.6 weeks. See PBI, Annex 1 and PBI para 17 for plus "margin time."

91 OHCHR recommends 3.2 weeks for CERD; 2.6 weeks for CRC; 0.6 weeks for CMW; 0.3 weeks for CEDAW; 3.6 weeks for CAT, plus an additional 1 week for communications; 0.7 weeks for HRC for communications.

92 OHCHR recommends 2 weeks for CESC; 1.7 weeks for HRC plus 0.3 weeks for communications; 1.5 weeks for CRPD; 1 week for CEDAW; 0.9 weeks for CAT; 0.8 weeks for CERD; 0.4 weeks for CRC). PBI para 17.

93 UN Secretary-General's report, UN Doc. A/66/344, p. 12, table 2)

94 GA Resolution 68/268, para 33. Thus, if a treaty body with a four-year periodic reporting requirement is not able to consider a report submitted by a State on its due date in 2012 until 2015, the State's next report, which would normally have been due in 2016, will instead be deemed to be due in 2019. Note that some treaty bodies already engage in this practice.

95 These are the Human Rights Committee (14.7 weeks), the Committee on the Elimination of Discrimination against Women (13.3 weeks), and the Committee on the Rights of the Child (15 weeks).

96 As treaty body members are not paid for their work by the UN, many have other employment out of financial necessity. To the extent that treaty body service requires the experts to be present and working full-time in Geneva for amounts of time greater than one quarter of the calendar year, this will necessarily reduce the pool of qualified individuals willing to serve on such bodies. Over time, sustained meeting time requirements of this length (or greater) could result in an increased percentage of treaty body experts who do not require another source of income; at present, many treaty body members in this situation are former public officials who receive a government pension. This raises troubling implications for the independence and professional balance of treaty body members.

97 This practice allows treaty bodies to consider twice as many reports per week as when meeting in a single chamber, but it also requires nearly two "weeks" of resources. Compare OHCHR Financial Report (November 2013) table 7 to table 9. For example, it costs \$543,600 for CERD to convene for a week in a single chamber and an additional \$478,800 in interpretation, documentation, translation, and staff costs to convene in dual chambers. The GA has previously authorized certain committees to meet in dual chambers for specified periods of time in ad hoc resolutions. See e.g. UN General Assembly, "Committee on the Rights of the Child," UN Doc. A/RES/67/167 (13 March 2013) (authorizing the CRC to meet in dual chambers of 9 members each for 5 working days of one pre-session working group meeting in 2014 and 14 working days of one of its three regular sessions in 2015).

98 Some States raised concerns that the divided chambers might not consist of a balanced composition of experts, with negative implications

for the overall balance of their expertise and familiarity with the legal system and other features of States parties under review.

99 PBI Table 2. 20 P-3 staff (17 regular, 3 temporary), 1 P-2, and 1.8 GS-OL (1 regular, 0.8 temporary)

100 High Commissioner's Treaty Strengthening Report, UN Doc. A/68/606, table 5. 22 staff are funded from voluntary contributions – 1 P-4, 15 P-3, 1 P-2 and 5 GSOL. But see PBI para 18 (indicating that the additional staffing it authorizes is intended "to address the existing staffing shortfall in the Human Rights Treaties Division, to bring it into alignment with the actual requirements to provide the necessary support for the work of the treaty bodies" in addition to accounting for the additional treaty body meeting time authorized by the resolution).

101 For example, the budget estimate accompanying the outcome resolution indicates that the treaty bodies require the assistance of a total of 36 'P-3'-level OHCHR staff and 3 temporary staff. 29 for previously awarded meeting time, 6.2 for additional regular meeting time, 1 for the SPT (PBI para 31). The PBI requests the establishment of (6.2 P-3 and 1 GSOL to address the newly awarded meeting time; 9.8 P-3 to make up for insufficient Secretariat support previously allocated to the treaty bodies) PBI para 31. The PBI also requests an additional 3 temporary P-3 posts and 0.8 temporary GSOL posts to provide support during the meeting time allocated pursuant to the 15% "margin" of extra time for prevention of backlogs from 2015-2017. However, OHCHR's data suggests that 34 'P-3' staff already assist the treaty bodies (19 funded from the regular budget, 15 from voluntary contributions). Compare PBI table 2 to High Commissioner's report table 2.

102 The High Commissioner recommended that States mandate these SNRCMs to respond to all treaty body reporting obligations of the State, as well as to all reporting obligations related to the UPR, the UN's special procedures, and regional human rights bodies; to coordinate the implementation of these bodies' recommendations, including on individual communications; and to systematically engage with national stakeholders including national human rights institutions and civil society groups. High Commissioner's report.

103 GA Resolution 68/268, para. 17.

104 This will result in additional costs for 10 new human rights officers (P-3) posted in OHCHR regional presences and 6 OHCHR staff (1 P-4, 3 P-3, and 1 GS-OL) to carry out other training programs and technical assistance called for in the draft, for a total increase of \$2.5 million in 2015, plus an additional \$2 million in 2015 for equipment and resources to facilitate the carrying out of the capacity building activities and work of the new staff. PBI, para. 33 table 2.

105 It was replaced with language suggesting that capacity building should support States' increased compliance with "treaty obligations."

106 GA Resolution 68/268, para 20.

107 GA Resolution 68/268, para. 22. This carries few cost implications at present (only the \$35,000 associated with the production and translation of the feasibility report). PBI, para. 26 table 1.

108 Compare GA Resolution 68/268 para. 8 with Human Rights Council resolution 24/24, "Cooperation with the United Nations, its representatives and mechanisms in the field of human rights," UN Doc. A/HRC/RES/24/24, 9 October 2013).

109 This language was put in place in the last round of revisions to the draft; it replaces a specific reference to civil society organizations and national human rights institutions. The change was made after several delegations objected to the only specific mention of those stakeholders in the resolution coming in the context of limiting their ability to present information to the treaty bodies.

110 *Ibid.*, para. 19.

111 Instead, it encourages States parties "to continue their efforts to nominate experts of high moral standing and recognized competence and experience in the field of human rights, in particular in the field covered by the relevant treaty." *Ibid.*, para. 10. It further recalls that treaty body members are required to be individuals of high moral standing serving in their personal capacity. *Ibid.*, para. 9.

112 *Ibid.*, para 10.

113 Except in the case of the CESCR, which already has such a quota. Instead, it encourages States parties

114 *Ibid.*, para 12.

115 *Ibid.*, para 13 (encouraging States parties "to give due consideration to equitable geographic distribution, as well as representation of different forms of civilization, the principal legal systems, balanced gender representation and participation of experts with disabilities" in treaty body membership. *Ibid.*, para 13).

116 Discussion with Michael O'Flaherty.

LIST OF IMAGES

GA Opens Discussion on Human Rights Treaty Body System

Navi Pillay, United Nations High Commissioner for Human Rights, speaks at the opening of the thematic discussion of the intergovernmental process. 16 July 2012, United Nations, New York, Photo # 520960, UN Photo/JC McIlwaine.

General Assembly Holds Informal Meeting on Human Rights Treaty Body System

Nassir Abdulaziz Al-Nasser (centre), President of the sixty-sixth session of the General Assembly, speaks at an informal meeting on the intergovernmental process. To the left are the process's co-facilitators, Desra Percaya, Permanent Representative of Indonesia to the UN, and Greta Gunnarsdottir, Permanent Representative of Iceland to the UN. 02 July 2012, United Nations, New York, Photo # 519575, UN Photo/Eskinder Debebe.

General Assembly Holds Informal Meeting on Human Rights Treaty Body System

Nassir Abdulaziz Al-Nasser (centre), President of the sixty-sixth session of the General Assembly, speaks at an informal meeting of the intergovernmental process. To the left are the process's co-facilitators, Desra Percaya, Permanent Representative of Indonesia to the UN, and Greta Gunnarsdottir, Permanent Representative of Iceland to the UN. 02 July 2012 United Nations, New York, Photo # 519576, UN Photo/Eskinder Debebe.

GA Opens Discussion on Human Rights Treaty Body System

Nassir Abdulaziz Al-Nasser, President of the sixty-sixth session of the General Assembly, speaks at the opening of the thematic discussion of the intergovernmental process. Also speaking on the panel are, from left: Abdelhamid El Jamri, Chair of the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW); Navi Pillay, UN High Commissioner for Human Rights; Yusra Khan, Deputy Permanent Representative of Indonesia to the UN; Greta Gunnarsdottir, Permanent Representative of Iceland to the UN; and Mousa Burayzat (far right), Chair of the International Coordinating Committee of National Human Rights Institutions (ICC). 16 July 2012, United Nations, New York, Photo # 520959, UN Photo/JC McIlwaine.





working together to protect universal human rights



Universal Rights Group
Ch. du Grand-Montfleury 48
CH-1290 Versoix
Switzerland

T +41 22 755 14 56

info@universal-rights.org
www.universal-rights.org

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