

Strengthening the Human Rights Treaty Body System Today: Achievements and Challenges

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Abstract—The article focuses on the ongoing process to strengthen the effectiveness of the human rights treaty body system. While demonstrating the growing significance of these mechanisms in the human rights protection, the author provides the historical legal analysis of the initiatives to address challenges impeding the effectiveness of the treaty bodies. Taking stock of the current stage of the strengthening process, the author critically analyses the developments taking place in the system during the realization of the 2014 UN General Assembly resolution – the outcome document of the intergovernmental process on strengthening and enhancing the effective functioning of the human rights treaty body system (2012-14). The author determines a number of challenges posing a risk to the effective functioning of the system in the ongoing strengthening process and responses to them that are suggested to be considered in frames of the 2020 UN comprehensive review of the progress achieved in enhancing the system.

Keywords—UN; Human rights; Human rights treaty bodies

I. INTRODUCTION

The creation of the human rights treaty bodies has become a breakthrough in the development of the control mechanisms in the field of human rights at international level [10]. Being established to monitor the implementation of nine core international human rights treaties, these bodies, numbering in ten, today play a “fundamental role in promoting and protecting human rights due to the legal nature of their mandates”.¹ The treaty bodies (hereinafter also referred to as “committees”) provide an authoritative guidance on human rights standards, advise on how treaties should be applied in specific cases, inform the States parties on the activities that in the best way would ensure that all people enjoy their human rights as well as generate advocacy platforms for national human rights institutions and civil society actors.

The results of the activities of treaty bodies in the form of concluding observations adopted after the consideration of reports of States parties, views on individual communications dealing with alleged violations of rights set forth in the

respective treaties, recommendations after conducting inquiries, as well as general comments are forming a conceptual basis for the protection of human rights at national level and are largely applied in the work of the Universal Periodic Review (UPR), Special Procedures of the UN Human Rights Council (HRC), International Court of Justice, Commission of International Law, regional human rights mechanisms and national governmental bodies and civil society. The committees have significantly contributed to the assessment of the achievement of Millennium Development Goals (MDGs) (2011 - 15) and realization of Sustainable Development Goals (SDGs) (2016 - 30) [2].

Although largely funded through the UN regular budget and required to submit reports to the UN General Assembly (UN GA), the treaty bodies should not be considered as the UN bodies established under the UN Charter. They are created by the international instruments adopted by the United Nations and their legal force emanates from the acceptance of legally-binding treaties by States parties². The independence of treaty bodies is their distinctive feature, that guarantees objectivity and a non-selective approach to all human rights, removes them from political context.

Over decades of years “treaty body after treaty body was created without a relationship to each other” [6]. Nonetheless, the committees “without substantial coordination, over some 40 years, as the various treaties came into force and their separate monitoring bodies assumed their various specific functions, have developed into a system”.³ Treaty bodies today form an interlinked system due to them performing similar functions, tendencies of convergence and harmonization in their methods of work as well as common challenges impeding the effectiveness of their activities.

These challenges have generated the view that the treaty body system would benefit from institutional and other forms of changes in order to render it more efficient and effective and stimulated the process of strengthening the system, which

¹ Marrakech Statement on strengthening the relationship between national human rights institutions and the human rights treaty bodies system, June 2010, at para 5, available at <http://www.ohchr.org/EN/HRBodies/HRTD/Pages/Documents.aspx> [last accessed on 27 June 2018].

² The only exception is the Committee on Economic, Social and Cultural Rights which was established under the Economic and Social Council resolution.

³ The Dublin Statement on the Process of Strengthening of the United Nations Human Rights Treaty Body System, November 2009, at para 4, available at <http://www.ohchr.org/EN/HRBodies/HRTD/Pages/Documents.aspx> [last accessed on 27 June 2018].

started from the beginning of work of first treaty bodies and continues today.

The present research paper will provide the analysis of the current functioning of the system, examine past proposals to enhance the effectiveness of the committees and focus on the ongoing period of strengthening process - implementation of measures suggested in the outcome document of the UN intergovernmental process (UN General Assembly resolution 68/268).

II. THE GROWTH OF THE HUMAN RIGHTS TREATY BODY SYSTEM AND ITS CHALLENGES

The human rights treaty body system is experiencing positive developments today. The unprecedented growth of the system constitutes its greatest achievement and demonstrates that the treaty bodies have an immense potential. Since 2000 the number of ratifications of core international human rights treaties has increased by over 50%. Comparing to 2004 the human rights treaty body system has doubled in size with the establishment of four treaty bodies (CMW, CPRD, SPT and CED) and the introduction of five new procedures of individual communications. Interestingly, there exist some views that new legal instruments with international monitoring may be adopted in the future, for example on the protection of human rights of older persons [8].

However, despite these positive aspects, the system is facing a number of difficulties that impede its effective functioning. The human rights treaty body system has become a victim of its own success as its growth has adversely affected the work of treaty bodies.

Despite the fact that ratifications of international treaties grew in numbers, the backlog in the consideration by the committees of State reports increased, significant delays in the examination of individual communications appeared. At the same time, States are still demonstrating significant delays in submission of reports. Additionally, discrepancies and duplication in the interpretation of similar provisions of international treaties by treaty bodies, as well as divergences in their approaches related to working methods and rules of procedure became more visible.

All this is taking place against the backdrop of a chronic lack of resources (time, finances and service personnel), providing no solution to react to the expansion and increase in the volume of treaty bodies' work, as well as the imbalance in the membership of the committees which is uneven in terms of independence and impartiality, geographical and gender composition.

Furthermore, the activity of treaty bodies and its results received poor media attention, is little known at the level of state executive bodies, national courts, practicing lawyers, civil society organizations, as well as rights holders, who rarely perceive the treaty bodies as an accessible and effective mechanism for change.

These challenges, particularly backlog in consideration of reports and late submission by States parties, have become visible long ago and stimulated the main stakeholders of the

system (treaty bodies, States parties, UN) to search for their solutions in frames of initiatives to improve the effectiveness of the system.

III. STRENGTHENING INITIATIVES (1980-s - 2009)

As mentioned earlier, the question of improving treaty bodies is being discussed since the creation of the first treaty body (CERD started its work in 1969) and received increased attention starting with 1980-s, when problems caused by the backlog in the consideration of reports by treaty bodies and late submission of reports by States have become pressing for all committees and therefore became the subject of consideration within the UN GA. After the adoption of its resolution 37/44 on 3 December 1982, the UN GA was constantly keeping under review the issue of the effective implementation of international human rights instruments, including reporting obligations in accordance with international instruments.

Since 1984 under the initiative of the UN GA the issue of enhancing the treaty body system was subject to consideration at the level of meetings of treaty bodies' chairpersons held from 1994 till present time⁴ and inter-committee meetings held from 2002 until 2011. During these meetings, the suggestions on harmonization of methods of work of treaty bodies, especially related to the reporting procedure, were elaborated.

In parallel with these initiatives various proposals have been developed since 1990 within the UN system and at the academic level. A significant contribution in this regard was made by an independent Expert Philip Alston appointed by the UN Secretary-General. Mr. Alston served in this position from 1989 to 1996 and produced his Final Report on enhancing the long-term effectiveness of the UN human rights treaty system in 1997. Some further studies commissioned by the UN were conducted by Bayefsky [1], Heyns and Viljoen [3], who mainly focused on "factors and barriers determining treaty bodies' role in the effective domestic implementation of international human rights" [6].

In the early 2000s, the UN Secretary-General Kofi Annan launched the initiative on the reform of the UN. In his report on the strengthening of the United Nations, he emphasized the need for "greater cross-committee coordination, involving standardisation of reporting requirements and procedures, with a view to an eventual transition to a single state report."⁵ However, this idea was rejected by the majority of members of the treaty bodies, States, NGOs and other stakeholders.

In 2005 the former UN High Commissioner for Human Rights Louise Arbour, indicated that she would elaborate proposals for measures to reform the treaty body system in

⁴ Official web-page "Annual Meeting of Chairpersons of Human Rights Treaty Bodies" available at <http://www.ohchr.org/EN/HRBodies/AnnualMeeting/Pages/MeetingChairpersons.aspx> [last accessed on 27 June 2018].

⁵ UN Secretary-General, "Strengthening of the United Nations: An Agenda for Further Change," 9 September 2002, UN Doc A/57/387.

response to an invitation from the Secretary-General.⁶ She developed a proposal for a unified standing treaty body. However, the proposal did not receive great support and was not implemented.

Another proposal, which also deserves attention, is the idea for the creation of a world human rights court. This initiative was actively developed in 2011, when the Government of Switzerland with the support of a number of famous jurists proposed the establishment of a permanent human rights court at universal level on the basis of an international treaty, which would deal with the consideration of complaints on the violations of human rights, set forth in most important international human rights treaties, committed by States and non-State actor. The suggestion was elaborated in the Draft Statute of a World Court of Human Rights, elaborated by renowned human rights experts⁷ [7, 4]. This idea was afterwards developed by the CERD in its proposal for the unified treaty body to deal only with individual communications under the different human rights treaties or its alternative proposal for a joint inter-committee working group on communications. While these ideas were not implemented, they are still discussed at the current stage of strengthening process as well as proposals for a unified treaty body and single state report.

The experience of these initiatives demonstrated their inability to enhance the effectiveness of the treaty bodies for the reason that their main focus is the extensive unification of the committees' work through proposals targeted at reforming - changing of the legal basis of the functioning of these mechanisms - the treaties. Such efforts undermine the value of the systemic character of functioning and independent status of treaty bodies as well as infringe on the established specialization of the activities of each treaty body, ensuring decentralized and autonomous approach to protect various human rights and rights of different vulnerable individuals and groups of individuals.

IV. STRENGTHENING PROCESS LAUNCHED BY THE UN HIGH COMMISSIONER FOR HUMAN RIGHTS (2009 - 2012)

The discussed proposals helped to shape the framework for the further strengthening initiatives - the process of strengthening the human rights treaty body system launched by the UN High Commissioner for Human Rights N. Pillay (2009-12) and the UN GA intergovernmental process on strengthening and enhancing the effective functioning of human rights treaty body system (2012-14), which helped to ensure a unified systemic approach to enhancing the work of the treaty bodies. Based on the experience of former initiatives, these processes aimed at strengthening rather than reforming the treaty body system. Strengthening is a smooth approach that entails a step by step process of improving the functioning of the treaty body system without so-called reforming -

⁶ UN High Commissioner for Human Rights, "The OHCHR Plan of Action: Protection and Empowerment," May 2005, available at <http://www2.ohchr.org/english/planaction.pdf> [last accessed on 27 June 2018].

⁷ J. Kozma, M. Nowak and M. Scheinin, *A World Court of Human Rights - Consolidated Draft Statute and Commentary*, 2010, available at <http://www.eui.eu/Documents/DepartmentsCentres/Law/Professors/Scheinin/ConsolidatedWorldCourtStatute.pdf> [last accessed on 27 June 2018].

bringing structural changes leading to re-thinking of the legal basis of their activities - treaties. Therefore, the key principle of the strengthening initiative is the inadmissibility of amending the texts of international treaties, which is still being maintained at the present stage of the process (after the finishing of the intergovernmental process in 2014).

Therefore, after 2009 it was decided to move in the direction of step-by-step improvement of the work of treaty bodies, aimed at strengthening the procedures of treaty bodies, but not at a fundamental change of the legal basis of their functioning.

The initiative of the UN High Commissioner and the intergovernmental process were aimed at the elaboration of concrete proposals to address the mentioned challenges to the treaty body system. Their distinctive feature, in comparison with other initiatives to improve the system, is their consultative nature, which provided for the participation of all stakeholders in negotiations and consideration of their proposals in the results of the processes. The consultative approach may be regarded as "a novel feature of the strengthening process which then ensued and which distinguishes it from previous reform initiatives" [9].

In light of the growing pressure put on the treaty body system by systemic challenges, identified earlier, the UN High Commissioner Navi Pillay in September 2009 decided to launch the initiative to strengthen the human rights treaty body system. In her speeches to the UN Human Rights Council and the UN GA the High Commissioner "called on States parties as well as on other stakeholders to initiate a process of reflection on how to streamline and strengthen" the treaty bodies in order to achieve better coordination among them and "in their interaction with special procedures and the universal periodic review."⁸

Acting in response to the call of the High Commissioner, the OHCHR has encouraged and facilitated a dialogue among various stakeholders to develop ideas for strengthening the treaty body system. The consultation process held from 2009 to 2012 included: 1) formal meetings (inter-committee meetings and meetings of chairpersons); 2) consultations within and among treaty bodies (the consultations in Avenieres and Bossey for different committees during their sessions in Geneva); 3) informal meetings organized around the world among States parties, treaty body members, national human rights institutions, civil society organizations, academics, UN entities and specialized agencies and multi-stakeholder consultations.

Taking account of the outcome of the consultation process, the High Commissioner issued a report in June 2012 representing a compilation of proposals on measures to strengthen the treaty body system. The objective of this compilation was "to identify synergies, linkages and areas for mutual reinforcements, and potential for future common

⁸ Informal Technical Consultation with States parties on treaty body strengthening, Sion, Switzerland, May 2011, at 17-18, available at http://www2.ohchr.org/english/bodies/HRTD/docs/Sion_report_final.pdf [last accessed on 27 June 2018].

ground that began to emerge through the consultation process”.⁹

V. INTERGOVERNMENTAL PROCESS ON STRENGTHENING AND ENHANCING THE EFFECTIVE FUNCTIONING OF THE HUMAN RIGHTS TREATY BODY SYSTEM (2012 - 2014)

The next strengthening period has started with the intergovernmental process launched by the UN General Assembly resolution 66/254 of 23 February 2012 adopted under the initiative of the Russian Federation supported by a group of States. In February 2012 the GA adopted Resolution 66/254 that addressed the President of the GA with a request “to launch, within the framework of the Assembly, an open-ended intergovernmental process, no earlier than in April 2012”¹⁰ and to appoint two co-facilitators to assist him. Following this decision, the President of the GA launched the new phase of the process of strengthening the human rights treaty body system and appointed the Ambassadors of Iceland and Indonesia as co-facilitators.

The fundamental reasoning behind the initiative to launch an intergovernmental process was that the views of States as main beneficiaries of the system were not fully considered during the consultation process launched by the High Commissioner with more attention given to the position of the OHCHR and civil society organisations. In a letter addressed to the OHCHR the Permanent Representative of the Russian Federation to the United Nations Office and other International Organizations in Geneva Mr. M. Lebedev pointed that during the consultations of the High Commissioner the inclusiveness of negotiations was questioned. Therefore, it was reasonable to move the process at intergovernmental level.¹¹ Analogous letters were received from other States.¹²

The opposing views were, on the contrary, stressing that the intergovernmental process impedes the contribution of the civil society and national human rights institutions providing for using their experience on an informal basis [9].

Nonetheless, the idea of the intergovernmental process was supported by the UN GA. It seems necessary to further discuss the legal nature of this process. It is clear that the leading role in the launched process was given to States. Since the intergovernmental process was initiated within the framework of the UN GA, it is necessary to scrutinise the competence of the UN GA to discuss the issues related to the functioning of the treaty bodies. Under Article 10 of the UN Charter, the GA “may discuss any questions or any matters within the scope of

⁹ Report of the UN High Commissioner for Human Rights, 26 June 2012, A/66/86, at 10.

¹⁰ GA Res 66/254, 23 February 2012, A/RES/66/254.

¹¹ Letter from the Deputy Permanent Representative of the Russian Federation Mikhail Lebedev to Ibrahim Salama, Director, Human Rights Treaty Division, Office of the High Commissioner for Human Rights, 11 October 2011, available at

<http://www2.ohchr.org/english/bodies/HRTD/docs/submissions2011-12/states/RussiaFederation.pdf> [last accessed on 27 June 2018].

¹² See, for instance, Views of the Chinese Government regarding the human rights treaty body strengthening process, HRC/NONE/2011/184, available at <http://www.ohchr.org/RU/HRBodies/HRTD/Pages/StatesPartiesSubmissions.aspx> [last accessed on 27 June 2018].

the present Charter or relating to the powers and functions of any organs provided for in the present Charter and may make recommendations to the Members of the United Nations”.¹³ Therefore, the GA may request its subsidiary bodies, particularly OHCHR, and UN entities to undertake certain measures within their mandate in order to strengthen the functioning of the treaty body system. Secondly, the GA may recommend the States parties to adopt concrete measures to improve the efficiency of the treaty bodies within their respective role in the system. Moreover, the GA is empowered to decide on the funding of the treaty body system.

At the same time, the UN GA may “initiate studies and make recommendations for the purpose of assisting in the realization of human rights”.¹⁴ This entails that the GA is competent to make recommendations to the treaty bodies as well. The UN GA is the only UN body that may guide the treaty bodies in the questions related to their functioning and even their mandate. However, the treaty bodies are independent to decide on the matters of their work. Therefore, the treaty bodies may consider the recommendations put forward by the UN GA in the course of the intergovernmental process with a view to their possible implementation, but the final decision regarding the methods of work is only in the hands of the treaty bodies.

The intergovernmental process was set up with a view to conduct open, transparent and inclusive negotiations on how to strengthen and enhance the effective functioning of the human rights treaty body system. It is important that the process took into account the relevant proposals on improving the effective functioning of the human rights treaty body system, including the measures contained in the reports of the Secretary-General and the High Commissioner’s report. The inclusive character of the process means that it should benefit from the inputs and expertise of the human rights treaty bodies, national human rights institutions and relevant non-governmental organizations. Remarkably, the process should build upon efforts to improve the effectiveness of the working methods of the human rights treaty body system that were already undertaken by the treaty bodies.

Within their respective mandate, the co-facilitators of the process held a number of consultations with various stakeholders, particularly, Member States, the members of the treaty bodies, the chairpersons of the treaty bodies representatives of national human rights institutions and civil society.

Following the request of the co-facilitators, the UN GA decided to extend the intergovernmental process until its 67th session “to build upon the discussions held thus far with a view to identifying in the upcoming session of the Assembly concrete and sustainable measures needed to strengthen and enhance the effective functioning of the human rights treaty body system”.¹⁵

After the extension of the intergovernmental process, the co-facilitators engaged with the stakeholders and held

¹³ Charter of the UN, October 24, 1945, 1 UNTS XVI, Article 10.

¹⁴ *Ibid.*, Article 13 (1).

¹⁵ GA Res 66/295, 17 September 2012, A/RES/66/295.

numerous consultations and briefings with the Member States, representatives of civil society, experts of the treaty bodies, including their chairpersons.

On 9 April 2014 the UN GA adopted resolution 68/268 “Strengthening and enhancing the effective functioning of the human rights treaty body system” as an outcome document of the two-year long intergovernmental process.¹⁶ The resolution takes note of a number of proposals, put forward in the UN High Commissioner’s report, as well as reports of the UN Secretary General on further improvement of effectiveness, harmonization and reform of the human rights treaty bodies.

The UN GA approved a complex of measures numbering in 41, that may be classified into the following 5 categories:

- 1) Provision of additional time to the treaty bodies for their sessions as well as provision of the necessary financial and personal resources from the regular UN budget;
- 2) Measures to strengthen the capacity of States to implement their treaty obligations, particularly related to reporting;
- 3) Measures to enhance transparency, visibility and accessibility of the system;
- 4) Strengthening the efforts of the treaty bodies to enhance consistency within the system through harmonizing their methods of work;
- 5) Measures to ensure independence and impartiality of the experts as well as balanced composition of the treaty bodies.

The resolution established a mechanism for reviewing the progress achieved, which includes the preparation of biennial reports by the Secretary General and the comprehensive “review of the effectiveness of the measures taken in order to ensure their sustainability”¹⁷ to be held in 2020 in accordance with para. 41 of the resolution.

VI. CURRENT STRENGTHENING PROCESS (2014 - 2020): ACHIEVEMENTS AND DIFFICULTIES

After the adoption of the resolution the main stakeholders of the system - treaty bodies, States and UN, who are the addressees of the recommendations of the UN GA - started to take concrete steps to implement these recommendations, thus, marking a new stage in the process of strengthening the treaty body system - the decision-making process.

In July 2016 the Secretary General has submitted its first report on the progress achieved in frames of this decision-making process, which contains information on the number of reports submitted by States and reviewed by the committees, on visits conducted and individual communications received and considered, the backlog situation, capacity-building efforts, and on the status of ratification, increased volume of reporting and time for meetings of the treaty bodies as well as proposals on measures designed to intensify the involvement of all States parties to the respective treaties in the dialogue

¹⁶ GA Res 68/268, 9 April 2014, A/RES/68/268.

¹⁷ *Ibid.*, at para 41.

with the treaty bodies, including those made on the basis of information and comments by the States parties. The report of the Secretary General provides a comprehensive picture of current state of the human rights treaty body system against the backdrop of adopting the measures set forth in the resolution 68/268.

It seems further necessary to analyse these measures and reflect on the developments taking place in the system during their implementation.

With regard to the provision of necessary resources to the treaty body system, it should be noted that the official implementation of the resolution with financial implications began since 1 January 2015, when the time for the committee meetings (the duration of sessions and their numbers) was increased by more than 20%, which should contribute to the reduction of the time lapse between the receipt of reports (and communications) and their actual consideration, and also gradually eliminate the number of reports and complaints waiting for consideration by the committees.

As a result, the treaty bodies in 2015 had at their disposal a total of 20.6 weeks of time for meetings, which is much more than before the adoption of resolution 68/268. In general, following the results of 2015, the backlog in the consideration of the reports of States parties by nine treaty bodies was reduced by 15%. In 2015, the treaty bodies adopted 173 concluding observations, which is 26% more than in 2013.¹⁸

On average, the treaty bodies reached the target for reviewing 2.5 reports of States parties under the core treaties per week and exceeded the target for reviewing 5 reports per week under the optional protocols to the Convention on the Rights of the Child. The treaty bodies adopted views on 183 communications, which is 58 % more, than in 2013.¹⁹

According to the resolution 68/268, the issue of the allocated time for committee meetings will be reviewed on a biennial basis,²⁰ taking into account changes in the number of reports submitted, the increase in the number of ratifications and the possible emergence of new treaties in the future.

The provision of the necessary resources to the treaty body system, according to the resolution, is also provided through the introduction of cost saving measures that are expected to cover additional costs associated with the implementation of the resolution. These measures were already undertaken in the work of the treaty bodies with regard to imposing restrictions on the number of words in the documentation submitted by States as well as documents produced by the human rights treaty bodies. The other cost saving recommendation, which is also being implemented, is reduction by half in the number of the official working languages used in the treaty bodies’ work. There are, however, serious considerations with regard to the effectiveness of such measures.

¹⁸ Report of the Secretary-General, “Status of the human rights treaty body system,” Supplementary Information, Annex VI: State party reviews per year and per week in 2013 and 2015, available at www.ohchr.org/EN/HRBodies/HRTD/Pages/TBStrengthening.aspx [last accessed on 27 June 2018].

¹⁹ *Ibid.*

²⁰ GA Res 68/268, 9 April 2014, A/RES/68/268, at para 26.

Restrictions on the number of words in the documentation submitted by States were strictly enforced and all texts exceeding the word limit were sent back to the States for shortening. Meanwhile, the Secretary General in his report argued for the need to introduce the word limit not only for the reports but also for the States' replies to lists of issues within the traditional reporting procedure.

At the same time certain States stress that while the resolution 68/268 provides not only for the limitations on the volume of documents submitted by States but also "calls upon the treaty bodies to set a limit on the number of questions posed, focusing on areas seen as priority issues to ensure the ability of States parties to meet the aforementioned word limits",²¹ the treaty bodies tend to apply selective approach in this regard.

Against the backdrop of strict control over States to prevent them from exceeding the established limits of national reports, the list of questions of experts of the treaty bodies and the degree of their detailing remains virtually unlimited.²² In addition, notwithstanding the GA recommendation to apply the word restrictions to the relevant stakeholders, the volume of information submitted to the treaty bodies by non-governmental organizations ("alternative reports") remains unlimited.

Moreover, it seems that the reduction of the number of the working languages contradicts the principle of multilingualism of the UN and the equality of all official languages of the UN and is unlikely to improve the level of implementation by States of their human rights obligations for the benefit of all people. In sharp contrast, it will increase the reporting burden of States due to the need to translate documentation to be submitted to the treaty bodies (periodic reports, replies to the lists of issues), will call into question the effectiveness of constructive dialogue and will not be seen as justified in terms of widespread raising awareness of the activities of the treaty bodies. Such a measure is undermining the authority and credibility of the treaty bodies in the eyes of States, civil society and the rights holders. Furthermore, there are doubts on the reasonability of this measure with regard to economy of resources. The ineffectiveness of this cost-reduction measure is even more visible if we look at how much funding the annual and informal meetings of the chairpersons require. Is it possible to compromise the reduction of the number of languages undermining the visibility of the human rights treaty bodies with the need to find financial support for these meetings? It seems more rational to spend money on ensuring more secretariat support and buying new equipment to organize constructive dialogue with a State, not being able to come to Geneva for the dialogue, through videoconferencing.

Almost the entire resolution 68/268 is imbued with the idea of the need to harmonize the activities of all committees

on the basis of their working methods with a view to strengthening the procedures of the treaty bodies. It is to be noted that some of the measures provided in this resolution, dealing with the harmonization of the working methods, have already been undertaken before the date of its adoption. The UN GA recommended the treaty bodies to integrate into their work the simplified reporting procedure and offer it for acceptance to the States parties, adopt aligned methodology of the constructive dialogue, organize coordinated process of adoption of concluding observations and aligned consultative process for the elaboration of general comments. The aforementioned recommendations were addressed during annual meetings of the chairpersons of the treaty bodies held starting from 2014, who adopted aligned methodologies (frameworks) in these meetings and made recommendations to all treaty bodies to be integrated in their work. The chairpersons are playing pivotal role in respect of harmonisation of working methods, since the GA encouraged "the human rights treaty bodies, with a view to accelerating the harmonization of the treaty body system, to continue to enhance the role of their Chairs in relation to procedural matters, including with respect to formulating conclusions on issues related to working methods and procedural matters".²³

There are concerns raised by some experts that the treaty bodies demonstrate poor reaction towards recommendations to integrate into their procedures the methodologies adopted by the meetings of chairpersons.²⁴ However, it is unacceptable to blame treaty bodies for not implementing decisions of the chairpersons. The challenge is not in the reluctant reaction of the treaty bodies, but rather the inconsistent expansion of powers of the chairpersons of treaty bodies and the status of decisions adopted by them.

The procedure of adoption of documents at the meetings of the chairpersons raises concerns in terms of the mandates given to the chairpersons. Drafts of the documents are prepared by the OHCHR and distributed among the committees not reasonably in advance so that the committees may lack enough time to discuss the text and formulate its position on it. Therefore, the chairpersons adopt a model document, which they recommend the committees to integrate into their work post factum. Therefore, the committees are excluded from the process of elaboration and adoption of these documents, their positions are not being heard.

The abovementioned points to the need to change the procedure and mandate of the meetings of the chairpersons of treaty bodies. It is therefore crucial to provide the committees with the drafts of the relevant documents to be adopted by the chairpersons well in advance to allow all the committees to consider these drafts during their sessions and mandate their chairperson with the relevant position of their committee to be expressed during the meetings of the chairpersons.

²¹ *Ibid.*, at para 16.

²² Information presented by the Russian Federation in response to the questionnaire for States prepared by the Office of the UN High Commissioner for Human Rights with regard to the implementation of the UN GA resolution 68/268, available at: www.ohchr.org/EN/HRBodies/HRTD/Pages/TBStrengthening.aspx [last accessed on 27 June 2018].

²³ GA Res 68/268, 9 April 2014, A/RES/68/268, at para 38.

²⁴ Concept note, Academic Platform Project on the 2020 Review: Strengthening Human Rights Protection by Enhancing the Effective Functioning of the Human Rights Treaty Body System, February 2016, available at https://www.geneva-academy.ch/joomlatools-files/docman-files/Research%20documents/Concept%20Note_2020%20Review%20Academic%20Platform%20English.pdf [last accessed on 27 June 2018].

It would also be reasonable to examine the possibility of to replace the meetings of the chairpersons with the inter-committee meetings or establishing working groups across the committees responsible for the elaboration of proposals on coordination of committees' working methods as was practiced earlier (like working group on the harmonization of working methods of treaty bodies).

Resolution 68/268 contains a package of measures aimed, directly or indirectly, at strengthening the capacity of States to fulfill their treaty obligations - to increase the degree of implementation of specifically their reporting obligations, rather than the implementation of treaty body recommendations, although their importance in protecting human rights at the national level is in no way diminished in the resolution.

Firstly, measures in the area of capacity building and technical assistance addressed to the Office of the UN High Commissioner for Human Rights and to the States themselves, should be mentioned. In line with the resolution 68/268 the OHCHR set up a treaty body capacity-building programme and received positive reactions from States. OHCHR also prepared the training guide on reporting to the human rights treaty bodies containing two parts - manual²⁵ and notes for facilitators.

It is worth further highlighting the proposals addressed to the treaty bodies and the States to eliminate the backlog in the consideration of reports, as well as the recommendation to continue efforts to establish "a clear and regularized schedule for reporting".²⁶

A special role is played by proposals to provide videoconferencing services during constructive dialogue in order to guarantee wider participation of States in this dialogue, and translation of summary records of meetings into the official language of the UN used by the State party concerned.

Measures, aimed at improving the effectiveness of the working methods of the treaty bodies by harmonizing them and taking into account the views of States parties in addressing these issues, also facilitate access by States parties to the procedures of the committees and to encourage their more constructive cooperation. A special attention in this regard should be given to the wide support of the simplified reporting procedure expressed by the States.²⁷

The level of awareness of the activities of the treaty bodies among their stakeholders may be raised and the accessibility of the results of their work may be strengthened in the case of actual implementation of the following recommendations of the UN GA: the provision of webcasts of open meetings of all treaty bodies; the creation of video archives in all the working

²⁵ OHCHR Training Guide on "Reporting to the United Nations Treaty Bodies," Part I - Manual, 2017, available at http://www.ohchr.org/Documents/Publications/PTS20_HRTB_Training_Guide_PartI.pdf [last accessed on 27 June 2018].

²⁶ GA Res, 9 April 2014, A/RES/68/268, at para 34.

²⁷ Report of the Secretary-General on the Status of the human rights treaty body system, 18 July 2016, A/71/118, at 17.

languages of the committees; the organization of videoconferencing services during constructive dialogues; the introduction of physical accessibility standards in the UN premises where the treaty bodies are holding sessions. These measures may result in wider participation of States in the dialogue with the treaty bodies during the reporting procedure and full and effective participation of disabled persons in the work of the treaty bodies.

Resolution 68/268 provides for the measures to ensure independence and impartiality as well as balanced composition of the treaty bodies. These measures are deemed to strengthen the effectiveness of the procedures of the treaty bodies and the quality of their recommendations. These effects would, in turn, generate a positive impact on the authoritativeness of the committees, i.e. will increase the level of credibility to the system by its major stakeholders. Thus, the treaty bodies are recommended to implement the Addis Ababa Guidelines on the independence and impartiality of members of the human rights treaty bodies²⁸ and, at the same time, to consider and analyze these principles, taking into account the views of the States parties.

With regard to proposals to improve the process of nominating experts and their election [5], the resolution encourages the States parties "to give due consideration to equitable geographical distribution, the representation of the different forms of civilization and the principal legal systems, balanced gender representation and the participation of experts with disabilities in the membership of the human rights treaty bodies."²⁹ On the whole, such recommendations have the potential to ensure the independence and impartiality of experts, as well as a balanced composition of the committees, but only with due respect to the exclusive competence of the States parties in these matters.

Meanwhile, the suggested by the UN GA measure to transmit the mandate for the election of the CESCR members from the ECOSOC to the meeting of the States parties to the ICESCR does not seem to be useful in terms of improving the effectiveness of this Committee's work, since such a proposal contradicts the fundamental principle of the intergovernmental process on the inadmissibility of amending the texts of the core international human rights treaties.

Simultaneously with the activities of the UN, treaty bodies and States aimed at implementing the recommendations of the resolution 68/268, there are a number initiatives taken at an academic level with a view to generating new ideas on strengthening the system at present stage of the process. One of such initiative is Academic Platform Project on the 2020 Review of UN Treaty Bodies, launched by the Geneva Academy of International Humanitarian Law and Human Rights.³⁰ While the project is guided by the key principles of the resolution 68/268, including non-amendment of the treaties, there are efforts undertaken to adapt and integrate previous reform proposals into the existing legal framework.

²⁸ Addis Ababa Guidelines on the independence and impartiality of members of the human rights treaty bodies, 25-29 June 2012, HRI/MC/2012.

²⁹ GA Res 68/268, 9 April 2014, A/RES/68/268, at para 13.

³⁰ Available at <https://www.geneva-academy.ch/the-academy/about-us/mission> [last accessed on 27 June 2018].

Among these is the idea on a consolidated state report (consolidated state review).³¹

VII. CONCLUSION

The history of the process of improving the functioning of the human rights treaty body system demonstrated the inability of past ideas on reforming the system to enhance its effectiveness since, if adopted, they would threaten the value of the specificity and independence of each treaty body with its significant experience accumulated in the respective field of human rights protection. This specificity and independence are crucial for preserving the established balance of powers in the universal human rights system between the non-governmental (expert) component represented by the treaty bodies and the intergovernmental component formed by the UN Human Rights Council and the UPR. Lessons learned from previous reform initiatives have led to the need to forward the process of the enhancing the system from the direction of reform to a smooth process (strengthening) that entails a step by step improving the functioning of the system without bringing structural changes leading to re-thinking of the treaties.

The strengthening process starting from the 2009 initiative of the UN High Commissioner, followed by the intergovernmental process launched by the UN GA (2012-2014) and continuing with new stage of implementation of the recommendations of the UN GA in its 68/268 resolution (outcome document of the intergovernmental process) has reached a momentum when the effectiveness of the measures already taken may be assessed and the proposals for improvement of the current process may be put forward.

Since 2014, in the course of the realization of the 68/268 resolution, the treaty body system has reached a higher level of efficiency and effectiveness, as evidenced by the increased number of reviews of States parties' reports, individual communications and field visits examined, as well as reduction in the number of late States parties' reports. The capacity building program for cooperation with the treaty bodies was developed and implemented by the OHCHR and received positive feedback from States. States are undertaking efforts to submit reports in accordance with the simplified reporting procedure and in line with rules on word limitations.

At present stage of the strengthening process, considering the progress achieved, the UN GA will have to address the issue of provision of necessary resources to the system. In this respect the UN GA will need to revise the time allocation reserved for meetings of the treaty bodies, as well as ensure the necessary resources to support the reporting procedure, individual communications and field visit procedures. In addition, the activities of the treaty bodies, not related to the consideration of reports, as well as the webcasting of open meetings of the treaty bodies should be provided with the

necessary resources.

Notwithstanding the progress achieved and the necessity to address the issue of provision of adequate resources, the current strengthening process is facing a number of challenges of a conceptual character that touch upon the key aspects of treaty bodies' activities and threaten their effectiveness. These challenges are contingent on the following factors:

1) The inclusion of the provisions in the text of the 68/268 resolution undermining the legal basis of the system and its effectiveness (reduction in the number of working languages, transmitting the mandate for the election of the CESCR members from the ECOSOC to the meeting of the States parties to the ICESCR);

2) Lack of unified understanding of the provisions of the 68/268 resolution and the ongoing processes in the system in frames of its strengthening as well as twisted perception of the proper steps to be taken to implement the GA recommendations (deficient format of harmonization of activities of the committees on the basis of their methods of work in frames of the meetings of the chairpersons; word limits in the documentation of the treaty bodies, the States parties and the relevant stakeholders);

3) Continuing efforts to renew the ideas on the excessive unification of the activities of the treaty bodies, undermining their legal framework and specialization of the work of each treaty body.

The challenges mentioned require appropriate responses.

Firstly, the cost saving measures, such as reduction in the number of treaty bodies' working languages, should be reviewed due to its adverse impact on the accessibility and visibility of the system as well as increased reporting burden of States. All six working languages should be brought back in the work of the committees and thus a shift to reasonable cost-saving approach that would ensure the accessibility and visibility of human rights treaty bodies should be introduced. Furthermore, the word limits should be balanced with the reduction in the number of questions posed by experts and introducing limitations on the volume of the documentation submitted by the civil society.

Secondly, while there are concerns regarding weak reaction of the treaty bodies towards recommendations to integrate into their procedures the methodologies adopted by the meetings of chairpersons, the problem stems not from their reluctant position, but rather from the concerns on the inconsistent expansion of powers of the chairpersons of treaty bodies and the status of decisions adopted by them. Thus, the solution would be to replace the meetings of the chairpersons with the inter-committee meetings or establish working groups across the committees responsible for the elaboration of proposals on coordination of committees' working methods as was practiced earlier.

Thirdly, the recommendation on the replacement of the existing election procedure of experts to the CESR should not be implemented due to the need to prevent the undermining of the specific legal nature of the Committee as a subsidiary body of the ECOSOC and violation of the fundamental principle of

³¹ The Geneva Academy of International Humanitarian Law and Human Rights. Academic platform report on the 2020 review "Optimizing the UN treaty body system," May 2018, available at: <https://www.geneva-academy.ch/joomlatools-files/docman-files/Optimizing%20UN%20Treaty%20Bodies.pdf> [last accessed on 27 June 2018].

the intergovernmental process on the non-amendment of the treaties (and even the Charter of the UN, as the ECOSOC is the main UN organ, established by the UN Charter).

It seems crucial to consider the challenges determined and the solutions suggested in frames of the 2020 comprehensive review. Furthermore, it is vital to ensure that no initiatives to undermine legal basics of the functioning of the treaty bodies, restructure the system or unify the work with imposing the decisions (requirements, measures to be taken) of the treaty bodies at this stage of the strengthening process are taken. Therefore, the renewed proposals for a unified treaty body, joint working groups/chambers, consolidated report procedure and even the world court of human rights should be considered very carefully not only at the level of academia, but treaty bodies themselves, States and the UN, before putting them on the agenda of the 2020 comprehensive review.

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