

**Canada and the United Nations
Human Rights Council:
At the Crossroads**

**Interim Report
Standing Senate Committee
on Human Rights**

The Honourable Raynell Andreychuk
Chair

The Honourable Joan Fraser
Deputy Chair

May 2007

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THE SENATE

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At the Crossroads**

Interim Report

Standing Senate Committee on Human Rights

The Honourable A. Raynell Andreychuk, *Chair*
The Honourable Joan Fraser, *Deputy Chair*

MEMBERSHIP

The Honourable A. Raynell Andreychuk, Chair

The Honourable Joan Fraser, Deputy Chair

And

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In addition, the Honourable Senators George Baker, P.C., Sharon Carstairs, P.C., and Terry Stratton have participated in aspects of this study relating to the UN Human Rights Council.

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Josée Thérien, Clerk of Committee

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Vanessa Moss-Norbury

Clerk of the Committee

ORDER OF REFERENCE

Extract from the Journals of the Senate, Thursday, April 27, 2006.

The Honourable Senator Andreychuk moved, seconded by the Honourable Senator Keon:

That the Standing Senate Committee on Human Rights be authorized to examine and monitor issues relating to human rights and, *inter alia*, to review the machinery of government dealing with Canada's international and national human rights obligations;

That the papers and evidence received and taken on the subject during the First, Second and Third Sessions of the Thirty-seventh Parliament and the first session of the Thirty-eighth Parliament be referred to the Committee; and

That the Committee submit its final report to the Senate no later than March 31, 2007, and that the Committee retain until May 31, 2007 all powers necessary to publicize its findings.

After debate,

The question being put on the motion, it was adopted.

Paul C. Bélisle

Clerk of the Senate

Extract from the Journals of the Senate, Thursday, March 29, 2007.

... to extend the date of presenting its final report from March 31, 2007 to March 31, 2008 and that the Committee retain until June 30, 2008 all powers necessary to publicize its findings.

The question being put on the motion, it was adopted.

Paul C. Bélisle

Clerk of the Senate

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FOREWORD

With an ongoing mandate to examine issues relating to human rights and to review the machinery of government dealing with Canada's international and national human rights obligations, the Standing Senate Committee on Human Rights took great interest in the launch of the United Nations Human Rights Council in June 2006. Recognizing that human rights are an issue of great importance to Canada and Canadians, the Committee looked to the creation of the new Council as a potentially significant step forward for the international community in this regard.

Bearing in mind that many countries, including Canada, understood that the United Nations General Assembly had simply come to an agreement on broad principles, the real work of setting up the Council would fall to the Council's members. However, the media, advocacy groups, and governments, soon began to express concerns about the role being taken on by the Council and about its future sustainability as a viable instrument for ensuring the effective protection of human rights in the international sphere.

The Senate Human Rights Committee accordingly took up a study of the Human Rights Council in its monitoring of Canada's international human rights obligations. *Canada and the United Nations Human Rights Council: At the Crossroads* is the Committee's publication of that study's preliminary findings. While continuing to monitor the issue, the Committee sought to release its preliminary report before the one year anniversary of the Council passed in order to equip the Government of Canada with recommendations that may help it to build a more effective Human Rights Council into the future.

I would like to thank each of the Senators who worked with the Committee on this study for bringing their wide variety of expertise to our discussions and hearings. I would also like to give special recognition and appreciation to Laura Barnett, the Committee's Library of Parliament Analyst, the Committee Clerks, Vanessa Moss-Norbury and Josée Thérien, as well as the support staff for their assistance in carrying this study forward.

CHAPTER 1 – INTRODUCTION

In May 2001, the Standing Senate Committee on Human Rights (“the Committee”) was given a mandate to examine issues relating to human rights, and, *inter alia*, to review the machinery of government dealing with Canada’s international and national human rights obligations. This mandate went on to frame the majority of the work undertaken by the Committee over the next six years, beginning with the Committee’s first substantive report, *Promises to Keep: Implementing Canada’s Human Rights Obligations*.¹ Throughout its work, the Committee has placed considerable emphasis on the need to effectively implement Canada’s international human rights obligations and to enhance the role of parliamentarians in this process. The Committee has also taken an in-depth look at Canada’s role with respect to, and relationship with, various international human rights mechanisms.

As such, it was only natural that, following the United Nations reform process announced in 2005, the Committee turn its attention to the United Nations Human Rights Council when it took over the role of the former Commission on Human Rights. The Human Rights Commission was one of the primary fora for human rights protection in the UN system and the new Council is currently negotiating and implementing its new operational procedures. Canada also has a new and important role to play as one of 47 members on the Council.

Faced with real and proposed upheavals to the UN human rights system, the Committee has asked whether the new Council will be able to resolve the difficulties that plagued the former Human Rights Commission. What role will Canada play in this process and how can our country ensure that it most effectively exerts its voice and influence? What are the larger geo-political issues at stake and how can they be most effectively addressed within the context of the Human Rights Council? The Council’s first months in action raised a number of warnings that the Committee believed needed to be dealt with urgently. The Council is at a crossroads in terms of creating a viable framework for human rights protection, and the issues enumerated above may have a

¹ Report of the Standing Senate Committee on Human Rights, *Promises to Keep: Implementing Canada’s Human Right Obligations*, December 2001, available at: <http://www.parl.gc.ca/37/1/parlbus/commbus/senate/com-e/huma-e/rep-e/rep02dec01-e.htm>.

dramatic impact on the way that the Canadian government deals with its international human rights obligations into the future. Proposals have also been made to reform the UN treaty body system as a whole. Having received testimony on this issue in the past, the Committee wanted to see what progress had been made and what viable solutions were being proposed.

Between January and April 2007, the Committee heard from a variety of advocates, academic, former diplomats and government officials in Ottawa with respect to UN human rights reform and the Human Rights Council. The Committee also undertook a fact-finding mission to the UN Headquarters in Geneva in March 2007 to interview officials from the Canadian Permanent Mission; the UN Office of the High Commissioner for Human Rights, including the High Commissioner; ambassadors from around the world; members of the UN Committee on the Elimination of Racial Discrimination; the International Committee of the Red Cross; and various non-governmental organizations tracking proceedings at the Human Rights Council.

This report is the Committee's preliminary analysis of actions taken since the Human Rights Council was formed in June 2006, including recommendations with respect to Canada's role and involvement with the Council, as well as with respect to larger proposals to reform the UN treaty body system. The Human Rights Council is currently at a critical point. The Committee's objective is to ensure that Canada can effectively inspire the international community to move forward in this forum in order to provide a strengthened framework for the protection of human rights in the UN system. The Committee will continue to monitor the evolution of the Council in the hopes of seeing positive change and new avenues for Canada to enhance respect for its international human rights obligations at home while remaining an integral part of the international human rights system at the UN.

CHAPTER 2 – THE UNITED NATIONS HUMAN RIGHTS COUNCIL AND TREATY BODY REFORM – A BACKGROUNDER

A. THE UNITED NATIONS COMMISSION ON HUMAN RIGHTS

1. The Commission

To put the UN Human Rights Council into context, it is important to understand the history of its predecessor, the UN Commission on Human Rights (“the Commission”). The Commission was established in 1946 by the Economic and Social Council² under article 68 of the UN Charter, which states that “[t]he Economic and Social Council shall set up commissions in economic and social fields and for the promotion of human rights, and such other commissions as may be required for the performance of its functions.”

The Commission was established to examine, monitor, and report on human rights issues in countries around the world. It first met in 1947 as a subsidiary body of the Economic and Social Council. By the end of its mandate, the Commission was made up of 53 members who were elected by a majority of the Economic and Social Council based on regional blocks³ for three year terms, with no limit on the number of consecutive terms that a member could sit. The Commission met annually for one six weeks sitting; although, in 1992, provision was also made for emergency sessions.

The initial purpose of the Commission was to set international human rights standards for UN Member States. Its first task was to draft the *Universal Declaration of Human Rights*, which was adopted first by the Commission in 1948, and later that year by the UN General Assembly. Over the next number of years, the Commission generated some of the seminal international human rights treaties, including the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social, and Cultural Rights* – together commonly referred to as the International Bill of Rights.

² The Economic and Social Council was established under the UN Charter to coordinate economic, social, and related work of the UN’s specialized agencies, and functional and regional commissions and five regional commissions. It is the UN’s central forum for discussing international economic and social issues, and for formulating policy recommendations addressed to Member States and the United Nations system.

³ The 53 members were comprised of 15 members from African states, 12 members from Asian states, 5 members from Eastern European states, 11 members from Latin American and Caribbean states, and 10 members from Western Europe and other countries (including Canada and the United States).

The Commission also played a role in the implementation of these standards. In 1967, the Commission was tasked with responding to complaints about human rights violations. At first, the alleged violations the Commission dealt with were primarily issues of colonialism and racism, but by 1979, the Commission began to use its mandate more broadly.

Ultimately, the Commission had three mechanisms for dealing with violations of human rights. The first was the 1503 Procedure, allowing for confidential consideration of complaints which appeared to reveal a consistent pattern of gross and reliably attested violations of human rights. Under this procedure, complaints were reviewed by two Working Groups of the Commission, which could then refer a confidential report to the Commission, at which point the Commission would invite the state in question to a closed meeting. After this meeting, the Commission could drop the matter, keep it under review, appoint an independent expert to monitor and report on it, or begin public consideration of it under Procedure 1235. At the end of the confidential deliberations, the Chair of the Commission would also publicly announce which countries were under review. The Commission scrutinized 84 states using this procedure between 1972 and 2006.⁴

The second mechanism was the 1235 Procedure, which allowed the Commission to instigate public debate on a human rights issue, often leading to the appointment of a rapporteur or other individual to investigate the situation in question, or the adoption of a resolution.

Finally, the Commission had the power to appoint rapporteurs or working groups to investigate human rights violations in a particular thematic area or in a specific country. These rapporteurs and working groups acted as a “standards monitoring system”⁵ that were collectively referred to as “Special Procedures”. By the end of its mandate in 2006, the Commission had over 40 rapporteurs, representatives, experts, and working groups (or “mandate holders”) investigating human rights situations – they sought out information with respect to allegations of human rights violations, carried out

⁴ Office of the UN High Commissioner for Human Rights, “Commission on Human Rights: States Examined under the 1503 Procedure,” available at: <http://www.ohchr.org/english/bodies/chr/stat1.htm>.

⁵ Isabelle Duplessis, Associate Professor, Faculty of Law, Université de Montréal, testimony before the Committee, 23 April 2007.

fact finding missions, responded to emergency situations, provided advice and legal analyses to the Commission, and issued country-specific and thematic recommendations.

In addition to these procedures, the Commission created a Sub-Commission on the Promotion and Protection of Human Rights,⁶ which was composed of 26 independent experts elected by the Commission upon the nomination of governments for four-year renewable terms.⁷ Often thought of as the Commission's "think tank," the Sub-Commission most lately met for three weeks annually. Its role was to conduct research on human rights; contribute to the development, and give guidance on the interpretation, of international standards; and monitor and examine issues with respect to the implementation of human rights. To fulfil this role, the Sub-Commission could hear statements from UN Member States and non-governmental organizations, and discuss country situations and adopt country resolutions. However, in 2000, the Sub-Commission's role was limited to only discussing country situations not under consideration by the Commission itself, and it could no longer adopt country-specific or thematic resolutions containing references to specific countries. In 2005, it was decided that the Sub-Commission could no longer undertake any new activities without the Commission's approval, except for the preparation of studies and research.⁸

2. An Assessment

In many ways, the Commission on Human Rights had an enormous, positive impact on the international human rights landscape. For 60 years, the Commission represented the world's pre-eminent human rights body and drafted a number of influential international human rights conventions.⁹

The Commission also brought a number of human rights violations to the world's attention that might have otherwise gone unnoticed, and often managed to generate international consensus with respect to an individual country's human rights reputation.

⁶ Known as the Sub-Commission on Prevention of Discrimination and Protection of Minorities between 1947 and 1999.

⁷ The Sub-Commission was comprised of seven experts from African states, five experts from Asian states, three experts from Eastern European states, five experts from Latin American and Caribbean states, and six experts from Western Europe and other countries.

⁸ Meghna Abraham, *A New Chapter for Human Rights: A Handbook on Issues of Transition from the Commission on Human Rights to the Human Rights Council*, International Service for Human Rights, 2006, available at: <http://www.ishr.ch/handbook/Handbook.pdf>.

⁹ Alex Neve, Secretary-General, Amnesty International Canada, testimony before the Committee, 26 February 2007.

For example, countries that had not ratified international human rights treaties, and thus did not have to report to a UN treaty body (for example, a country that had not ratified the *International Covenant on Civil and Political Rights* and that thus had no obligation to report to the UN Human Rights Committee), could still be put in the spotlight for its violations. Resolutions adopted by the Commission also mobilized public opinion, and often contributed to policy change. The threat of a resolution was often enough to get governments to take steps to address their human rights violations. The Commission also gave legitimacy to, and enhanced protection for, national human rights voices around the world.¹⁰

Finally, the Commission's Special Procedures are perceived by many UN observers to be one of the most effective tools for human rights protection and promotion created by the Commission. Kofi Annan, former UN Secretary-General has referred to them as the "Crown jewels of the system,"¹¹ while Alex Neve, Secretary-General of Amnesty International in Canada, told the Committee that the Special Procedures were the "[b]ackbone of the UN human rights system."¹² Mr. Neve emphasized that over the years the Special Procedures have helped to research and document human rights violations around the world, proposing specific recommendations for change at national levels, identifying regional and global patterns of human rights abuse, and highlighting the need for wider changes. A document prepared by Human Rights Watch notes that "[e]ven the threat of the appointment of a country-specific rapporteur has sometimes encouraged states to make genuine efforts to improve their human rights records."¹³

And yet, despite these human rights advances observers agree that by 2005, the Commission on Human Rights had been largely discredited as politicized and ineffective. The body was frequently and harshly criticized with respect to its credibility deficit.

¹⁰ Paula Gerber, "Human Rights Reform in the United Nations: The Good, the Bad and the Ugly" (2006) vol. 31, *Alternative Law Journal*, p. 88; Human Rights Watch, "Human Rights Council: No More Business as Usual," May 2006, available at: <http://hrw.org/backgrounders/un/un0506/un0506.pdf>; Human Rights Watch, "Human Rights Council: New Approaches to Addressing Human Rights Situations," 15 September 2006, available at: <http://hrw.org/english/docs/2006/09/15/global14209.htm>.

¹¹ See testimony of Sandeep Prasad, Human Rights Advisor, Action Canada for Population and Development, testimony before the Committee, 26 February 2007.

¹² Neve testimony.

¹³ Human Rights Watch, "Human Rights Council: No More Business as Usual."

Many concerns with respect to the Commission stemmed from the fact that many of the world's worst human rights abusers served as members. For example, in 2005, Cuba, China, Sudan, and Zimbabwe were members of the Commission, and Libya chaired the Commission in 2003. Louise Arbour, UN High Commissioner for Human Rights, has noted that such countries could be elected to the Commission because "members were pre-selected behind closed doors and then 'elected' by acclamation"¹⁴ by the Economic and Social Council.

Once on the Commission, critics pointed out that such members frequently protected other human rights abusers from scrutiny, and escaped scrutiny themselves by using their power and vote on the Commission, rather than ensuring that human rights concerns received consistent and thorough attention.¹⁵ According to Alex Neve, what lay behind the Commission's resolutions "all too frequently, was not the severity of the human rights concerns but rather the political adeptness and might of the country in question."¹⁶ Paul Heinbecker, former Canadian ambassador and Permanent Representative to the UN, told the Committee that ironically, "[t]o some extent, the Human Rights Commission was a victim of its own success. It put people on the carpet. They realized it was succeeding, so they used their ingenuity to get in there and direct attention at someone else."¹⁷ For many years South Africa's apartheid regime was the target of such attention.

Human Rights Watch has commented that, as a result of this process, there is near universal agreement that the Commission's approach to country situations was significantly flawed. Human rights violations were dealt with selectively and based on double standards – some were singled out for political reasons, while others worthy of attention were ignored.¹⁸ In step with this double standard, critics note that "non-action procedures" were overused by members of the Commission to prevent discussion of

¹⁴ Louise Arbour, "A New Dawn for UN and Human Rights," *The Toronto Star*, 19 June 2006, p. A17.

¹⁵ Neve testimony; Gerber, "Human Rights Reform in the United Nations;" Ladan Rahmani-Ocora, "Giving the Emperor New Clothes: The UN Human Rights Council," (2006) vol. 12, *Global Governance* 15; "The Human Rights Council: A New United Nations Effort to Uphold its Ideals," *International Debates*, May 2006, p. 129.

¹⁶ Neve testimony.

¹⁷ Paul Heinbecker, former Canadian ambassador and Permanent Representative to the United Nations, testimony before the Committee, 29 January 2007.

¹⁸ Human Rights Watch, "Human Rights Council: New Approaches to Addressing Human Rights Situations."

sensitive resolutions. Members were able to use such procedures to call for a vote, which, if passed, blocked any further discussion on that subject. Over time, such procedures were increasingly used to obstruct debate and to block the Commission from performing its core functions.¹⁹

Alex Neve pointed out that even the much lauded Special Procedures did not always work well. He told the Committee that there was a distinct unevenness in the quality of work produced by mandate holders, and in the degree of cooperation that they received from Member States. He said that many governments felt threatened and consistently sought to weaken and undermine the effectiveness of the Special Procedures:

Over the years, for instance, several country-focused special rapporteurs have had their mandates discontinued by a commission vote, not because the human rights concerns have magically disappeared but, rather, because the country concerned had finally been able to rally enough allies to its side and win the commission vote... There are government[s] that treat these UN appointed experts with contempt. They ignore them, undermine them, will not allow them into their countries, insult them...²⁰

Mr. Neve told the Committee that Canada itself had expressed concern about the expansion of the number of mandate holders, who in some cases had unclear or politicized mandates. By 2005, Canadian representatives to the Commission were pressing for the Special Procedures system to be rationalized and better coordinated.

In general, the Commission on Human Rights was accused of being overly bureaucratic and ineffective. Critics argue that the Commission was unable to effectively address urgent country situations, and lacked adequate enforcement mechanisms to follow through with its recommendations and resolutions. The Commission's credibility deficit was not the only driving force behind this reality. Commentators often also point to the Commission's six week schedule as a severe obstacle to the body's flexibility and ability to respond to real emergencies.²¹

¹⁹ Gerber, "Human Rights Reform in the United Nations;" Rahmani-Ocora, "Giving the Emperor New Clothes."

²⁰ Neve testimony.

²¹ "The Human Rights Council: A New United Nations Effort to Uphold its Ideals," *International Debates*; Human Rights Watch, "Human Rights Council: No More Business as Usual;" Rahmani-Ocora, "Giving the Emperor New Clothes;" Louise Arbour, *Toronto Star*; Abraham, *A New Chapter for Human Rights*.

B. THE UNITED NATIONS HUMAN RIGHTS COUNCIL

As a result of such comments and other serious criticism of the UN system, in March 2005, Kofi Annan, then Secretary-General of the United Nations, launched a blueprint for UN reform. In his report, entitled *In Larger Freedom: Towards Development, Security, and Human Rights for All*,²² he announced the creation of a body to replace the Commission on Human Rights – the UN Human Rights Council (“the Council”). The Secretary-General’s goal was to create a body that would be less politicized in its membership and more consistent in its work, and that would ensure greater scrutiny of the human rights records of the Council’s members. Mr. Annan proposed to make the Human Rights Council a standing body, thus according human rights a more authoritative position in the UN, and allow for more in-depth examination of human rights issues. In making the new body a Council, he hoped to put human rights on a par with security and development issues in the UN.²³

In September 2005, a World Summit was held to mark the 60th anniversary of the UN. In the search for consensus on UN reform, states agreed “in principle” on the concept of the Human Rights Council; however, the Council remained an issue of on-going and contentious negotiation. Nevertheless, on 15 March 2006, the UN General Assembly voted to create the UN Human Rights Council.²⁴ In a 170 to 4 vote, only the United States,²⁵ Israel, the Marshall Islands, and Palau disagreed with the resolution, with Belarus, Iran, and Venezuela abstaining.

The new Council was created as a standing body and a subsidiary organ of the UN General Assembly, rather than the Economic and Social Council. Even the title “Council” has greater significance than “Commission” in the UN system. The Council’s

²² Kofi Annan, *In Larger Freedom: Towards Development, Security, and Human Rights for All*, A/59/2005, 21 March 2005.

²³ Annan, *In Larger Freedom*; Allison Goody and Marcus Pistor, *Reform of the United Nations*, Library of Parliament PRB 05-84E, 24 February 2006; Abraham, *A New Chapter for Human Rights*; Rahmani-Ocora, “Giving the Emperor New Clothes.”

²⁴ A/RES/60/251 – see Appendix A.

²⁵ The US delegation cited numerous concerns when voting against the General Assembly Resolution creating the Human Rights Council. The US felt that the Council should be significantly smaller; that a two-thirds majority vote was necessary for member election; and that firmer exclusionary criteria should be applied in order to keep acknowledged human rights abusers off the Council. Nevertheless, although the US has refused to participate as a member of the Council for the moment, the delegation has agreed to work cooperatively with other Member States to make it as strong and effective a body as possible. Goody and Pistor, *Reform of the United Nations*.

subordinate role to the UN General Assembly is also to be reviewed in five years, at which time the Council may become a principle organ of the UN, like the Security Council.²⁶

From the 53 member Commission, the Council was reduced to 47 members, now to be elected directly by secret ballot for a three year term by a majority of the General Assembly. Members are no longer eligible for re-election after serving two consecutive terms.

As the composition of the UN has changed over the years, the regional membership balance of the Council also differs from that under the Commission. Now thirteen members are to be from African states, thirteen from Asian states, six from Eastern European states, eight from Latin American states and the Caribbean, and seven from Western European and other countries, such as Canada and the United States. The Eastern European and Asian blocs thus have two more members than under the Commission, while the African and Latin American blocs have five fewer members, and Western European and other states were reduced from ten to seven.

To prevent members of the Council from using their membership as a shield from censure, based on a two-thirds majority vote, the General Assembly may suspend the membership rights of any member that commits gross and systemic violations of human rights. Members of the Human Rights Council must pledge to uphold high standards with respect to the promotion and protection of human rights.

The Council is mandated to meet regularly throughout the year – with no fewer than three main sessions – for no less than ten weeks. It may also hold special sessions by request of a member that has the support of one-third of the Council. The intention is to allow the Council to more effectively and rapidly respond to emergency human rights violations, and to shine a spotlight on human rights violators throughout the year.

As outlined in the General Assembly Resolution creating the Council, **the Council is to serve as the UN's primary forum for cooperation on human rights issues**, with a focus on helping Member States meet their human rights obligations through dialogue, capacity building, and technical assistance. The Council is to

²⁶ Adèle Dion, Director General, Human Security and Human Rights Bureau, Foreign Affairs and International Trade Canada, testimony before the Committee, 26 February 2007.

contribute to the prevention of human rights violations, to examine human rights violations, and to respond to human rights emergencies. In consultation with Member States, the Council is to promote the full implementation of human rights obligations, as well as human rights education and learning, advisory services, technical assistance, and capacity building. UN Member States may also be the subject of country-specific resolutions based on more immediate violations, as perceived by members of the Council.

In addition, the Council can make recommendations to the General Assembly for the further development of international law in human rights; and is charged with reviewing and improving all the mandates, mechanisms, functions and responsibilities of the Commission on Human Rights in order to maintain a system of Special Procedures, expert advice and a complaint mechanism. Thus, Special Procedures, complaints procedures, and the Sub-Commission on the Promotion and Protection of Human Rights will continue to exist, but their future and mandates are as yet unclear, and are under review as the Human Rights Council begins its institution-building process.

One of the key features that distinguishes the new United Nations Human Rights Council from its predecessor is the Council's mandate to undertake a "Universal Periodic Review" of all UN Member States' human rights records. This mandate complements those of the seven UN treaty bodies, ensuring that even states that have not signed on to core UN treaties will be subject to scrutiny. The universal review will also allow the Council to move away from the selective scrutiny of which it was accused of under the Commission. The way in which the Universal Periodic Review ("UPR") will be implemented is to be decided by the Council within its first year of operation.

Non-governmental organizations and other national and international agencies and institutions will be able to participate during the Council sessions.

Finally, the General Assembly Resolution creating the Council stipulates that the Council must submit an annual report to the General Assembly and must review its work and functioning five years after its establishment.

C. PROPOSALS FOR A UNIFIED TREATY BODY

The Senate Committee also looked into the Office of the High Commissioner on Human Rights' proposal to unify the seven UN treaty bodies currently in existence, particularly given this Committee's recommendations with respect to ratification and

implementation of Canada's international human rights obligations. The Office of the High Commissioner for Human Rights acts as secretariat for the Human Rights Council, which has been following negotiations on this proposal closely.

There are currently seven core human rights treaties that bind the UN Member States that have ratified them – the *International Covenant on Civil and Political Rights*, the *International Covenant on Economic, Social and Cultural Rights*, the *Convention on the Rights of the Child*, the *Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment*, the *Convention on the Elimination of All Forms of Discrimination Against Women*, the *Convention on the Elimination of All Forms of Racial Discrimination*, and the *Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*. Compliance with these treaties is monitored by seven treaty bodies (such as the UN Committee on the Rights of the Child or the UN Human Rights Committee) that, depending on their mandates, periodically consider country reports, individual petitions and state to state complaints, and inquire into allegations of grave or systematic human rights violations.

In recent years, some concern has been expressed that this treaty body system is not effective. For one, it has developed in an *ad hoc* manner, which weakens its overall impact. Critics emphasize that the mandates of these treaty bodies have expanded greatly over the years, as new Optional Protocols – some accompanied by new complaints mechanisms – are adopted to the various core conventions. The number of treaty bodies has greatly expanded as well. Most recently, two new bodies were created upon the adoption of the *Convention on the Rights of Persons with Disabilities* and the *Convention for the Protection of All Persons from Enforced Disappearance* (both of which are not yet in force).

Others point to Member States' lack of effective and full compliance with their obligations, particularly because meetings and reporting requirements with the various treaty bodies are often complex and overlapping. As of February 2006, only eight of 194 states that are party to one or more of the seven treaty bodies were up to date with the

reporting requirements,²⁷ and in January 2007, Payam Akhavan of McGill University told the Committee that almost 1,500 reports were delayed or had simply not been submitted.

The delays in reporting are not only a logistical issue. Alex Neve told the Committee that:

The treaty bodies themselves are treated with variations of disrespect, disinterest and contempt by governments who do not ratify the key treaties, do not recognize the full breadth of treaty-monitoring powers, make little effort to submit reports to the committees to review at all, let alone on time, and ignore the recommendations and views formulated by the committees.²⁸

However, even if Member States were up to date in their reporting requirements, the High Commissioner for Human Rights has emphasized that the treaty bodies themselves could not accommodate full compliance. The UN committees are dealing with significant backlogs, and some, such as the Committee on the Rights of the Child, have had to expand to two chambers in order to more effectively deal with country reports.²⁹ Professor Akhavan emphasized that if all the delayed reports were submitted at once, the entire system would collapse.

Other problems underlying the current treaty body system are underfunding, and the occasional problem of the expert members of the treaty bodies themselves. Alex Neve told the Committee that the treaty body system is

made up of some exceptional members of committees but others who are clearly less than exceptional, who are not independent or who do not possess the required expertise... Not having good members is a major part of the problem; it is part of why things get so backlogged and why the quality of the work that comes out of some of the treaty bodies is not what it should be and is thus more easily ignored by some governments.³⁰

In addition, the High Commissioner for Human Rights points out that the provisions of the treaties, and the competencies of the treaty bodies often overlap, and that there is limited coordination and collaboration between them. This situation has

²⁷ *Concept Paper on the High Commissioner's Proposal for a Unified Standing Treaty Body: Report by the Secretariat*, HRI/MC/2006/2, 22 March 2006 – see Appendix B. In March 2006, Canada had one report overdue.

²⁸ Neve testimony.

²⁹ *Concept Paper on the High Commissioner's Proposal for a Unified Standing Treaty Body*.

³⁰ Neve testimony.

given rise to a number of complexities, not the least of which is that the committees have been known to offer differing interpretations of the same human right.³¹

The High Commissioner for Human Rights told the Committee that the system, as it stands now, will eventually “crumble under its own weight.”³² As fragmented as it is, Professor Akhavan emphasized that the treaty body system lacks the visibility, authority, and access that it needs to be credible and viable.

And yet, experts generally agree that the struggle to maintain the treaty body system

is a struggle worth pushing ahead with. The treaties themselves are crucial. They are the very backbone of international law with respect to human rights. There is no question that the major gap with respect to the treaties is implementation, compliance and enforcement. It is easy enough to sign on and ratify. It is quite another thing to force governments to live up to their obligations. A strong and effective system for monitoring those treaties is thus essential.³³

Accordingly, over the last 20 years, a number of experts have examined the treaty body system in an attempt to propose more effective solutions. International law expert Philip Alston was appointed by the Secretary-General in the 1980s to carry out a study on enhancing the long-term effectiveness of the UN human rights treaty system. He submitted a series of reports between 1989 and 1997 in response to this mandate.³⁴ One of his suggestions was the creation of a single monitoring body to deal with all of the core treaties similar to the suggestion put forward by the High Commissioner for Human Rights.

In 2002, the UN Secretary-General released a UN reform report calling on treaty bodies to craft a more coordinated approach, and to standardize their reporting requirements. He said that each state should be allowed to produce a single report summarizing its adherence to all the treaties.³⁵ Jane Connors, Senior Human Rights

³¹ *Concept Paper on the High Commissioner's Proposal for a Unified Standing Treaty Body.*

³² Louise Arbour, High Commissioner for Human Rights, testimony before the Committee, 7 March 2007.

³³ Neve testimony.

³⁴ *Effective Implementation of International Instruments on Human Rights, Including Reporting Obligations under International Instruments on Human Rights*, A/44/668, 8 November 1989; *Status of Preparation of Publications, Studies and Documents for the World Conference*, A/CONF.157/PC/62/Add.11/Rev.1, 22 April 1993; *Effective Functioning of Bodies Established Pursuant to United Nations Human Rights Instruments*, E/CN.4/1997/74, 27 March 1997.

³⁵ *Strengthening the United Nations: An Agenda for Further Change*, A/57/387, 9 September 2002.

Officer at the Office of the High Commissioner for Human Rights, told the Committee that since that time there has been real movement to harmonize working methods within the treaty body system. States now have the option of amalgamating information into one report, either by submitting one document or by submitting a core document accompanied by treaty-specific reports. In his March 2005 report, *In Larger Freedom: Towards Development, Security, and Human Rights for All*, the Secretary-General again emphasized the need to streamline and strengthen the UN treaty body system, as well as to implement harmonized reporting guidelines.

In light of these proposals and the small changes that were already being made, the High Commissioner for Human Rights told the Committee that she decided to raise the bar, noting that small changes take just as much effort as large ones. In an annex to the Secretary-General's report, she proposed a Plan of Action³⁶ to create a unified standing treaty body. She further elaborated on this proposal in a Concept Paper released in March 2006, *Concept Paper on the High Commissioner's Proposal for a Unified Standing Treaty Body*. In this document she argued that:

unless the international human rights treaty system functions and is perceived as a unified, single entity responsible for monitoring the implementation of all international human rights obligations, with a single, accessible entry point for rights-holders, the lack of visibility, authority and access which affects the current system will persist."³⁷

In the paper, the High Commissioner for Human Rights proposed a number of characteristics for a unified treaty body to streamline reporting guidelines to ensure consistency, flexibility and stronger links with other human rights bodies. This paper opened various issues up for discussion without proposing concrete measures. The options include a proposal for a permanent unified treaty body with one or more chambers that could be organized along treaty, thematic, or regional lines. In terms of country reports, the High Commissioner for Human Rights suggested that countries could provide the body with an expanded core document, accompanied by treaty-specific reports. This body would also be equipped with a complaints mechanism, as well as the ability to conduct inquiries, to publish general comments, and to hold days of general

³⁶ A/59/2005/Add.3.

³⁷ *Concept Paper on the High Commissioner's Proposal for a Unified Standing Treaty Body*.

discussion. She said that the unified body also needs to have adequate follow-up mechanisms to make it effective.

How the UN Human Rights Council and this proposal for treaty body reform were received and have evolved over the past year will be discussed in the following chapters.

CHAPTER 3 – A YEAR IN THE LIFE OF THE HUMAN RIGHTS COUNCIL – THE INSTITUTION BUILDING PROCESS

A. INTRODUCTION

The Senate Committee is concerned that the reform processes discussed in the previous chapter are taking place during a troubled time for the UN, when, as noted by Paul Heinbecker, “the international community has never been more divided.”³⁸ While Cold War politics once divided the UN into clear camps, witnesses note that today, the UN is intensely fragmented, with richer developed countries most interested in issues of collective security, terrorism, and civil and political rights, while many other countries focuses on development issues and economic and social rights. But even these larger divisions do not tell the whole story – there is little consensus even within the groups themselves. Mr. Heinbecker emphasized that the “whole situation is fraught with disagreement,”³⁹ and that extraneous issues are being pulled in to influence or distort larger attempts to reform the UN and the Human Rights Council. “The whole UN reform fight – and there is a fight – is a kind of politics by other means.”⁴⁰

Within this context, a great deal of excitement accompanied initial discussion of the Human Rights Council, seen by many Member States and observers as an important part of the larger UN reform package. However, the final framework that emerged in the General Assembly Resolution was the result of significant compromise and negotiation that led to a significantly diluted Council. This was a disappointment to many. The High Commissioner for Human Rights said that the Council, as established, was not “an ideal blueprint.”⁴¹ Kofi Annan pointed out that despite technical differences, “[h]ow different the Council is from the Commission will depend in large part on how committed Member States are to make it better.”⁴²

During and after the negotiation process, Canada came out in support of the Council, stating that although the resolution creating the Council was not ideal, it did

³⁸ Heinbecker testimony.

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ Louise Arbour, “High Commissioner for Human Rights Urges Support for Human Rights Council,” Office of the High Commissioner for Human Rights, 23 February 2006, available at: <http://www.ohchr.org/english/press/hrc/hrc-hc-english.pdf>.

⁴² Kofi Annan, “Secretary-General’s statement on the Human Rights Council,” 23 February 2006, available at: <http://www.un.org/News/Press/docs/2006/sgsm10357.doc.htm>.

provide a “sound foundation for the establishment of an effective Human Rights Council.”⁴³ Although the Canadian government shared some of the United States’ misgivings,⁴⁴ it was concerned that the entire Commission reform effort could be obstructed if negotiations were reopened or the vote was postponed. The government instead emphasized that Council members now need to work hard to ensure that the Council is effective, calling for enhanced involvement of civil society in the Council’s work.⁴⁵ In a discussion paper submitted for the Council’s first session in June 2006, the Canadian delegation stated that Canada’s

objective is to establish a Council that is efficient, effective, credible and responsive. This means that we should not merely transfer to the new Council the Commission on Human Rights practices of the past, but look for a fresh approach, one that would be in keeping with the elevated status of the Council and the expectations surrounding it.⁴⁶

In this paper the Canadian delegation suggested that focus be placed on the implementation of human rights norms and standards, undertaking substantive exchanges, and making practical decisions to promote cooperation and a common commitment to human rights. The delegation stated that Council members should strive to uphold the highest human rights standards, and highlighted the need to develop facilitative mechanisms on the Universal Periodic Review, the review of mandates, and the possibility of establishing a consolidated mechanism for considering individual complaints.

B. THE HUMAN RIGHTS COUNCIL’S ACTIONS TO DATE

1. Membership

The newly established Human Rights Council met for the first time on 19 June 2006, with Luis Alfonso De Alba of Mexico as President. Canada was elected as a member for a three year term, and 45 other members were elected for staggered terms of one, two, or three years. A list of the Human Rights Council members can be found in

⁴³ Department of Foreign Affairs Canada, “Canada Welcomes United Nations Human Rights Council,” 15 March 2006, available at: <http://news.gc.ca/cfmx/view/en/index.jsp?articleid=201409>.

⁴⁴ See footnote 25.

⁴⁵ Department of Foreign Affairs, “Canada Welcomes United Nations Human Rights Council;” Goody and Pistor, *Reform of the United Nations*.

⁴⁶ Government of Canada, *Human Rights Council Substance and Process: Discussion Paper*, May 2006.

Appendix C.⁴⁷ Having examined the final membership list, the Committee echoes the concern expressed by the High Commissioner for Human Rights that neither the change in number nor the allocation of seats was “positively significant.” While Latin American and Caribbean, African, and Western European and other states had their membership numbers reduced, Eastern European and Asian states increased their membership on the Council. The United States and a number of other UN Member States and observers had campaigned for an appreciably smaller membership so that only those countries with exemplary human rights records would be elected. With 47 members, immediate concern arose with respect to the fact that a number of countries with “questionable human rights records”⁴⁸ were elected to the Council, including Algeria, China, Cuba, Nigeria, Pakistan, and Saudi Arabia. On the other hand, the reforms did appear to ensure that some more conscious linkages were made between membership and human rights records. Some countries did not even bother to run for election, and others were explicitly rejected, such as Iran and Venezuela.

2. Chronology of Events

In order to best analyze the evolution of the Human Rights Council, the Committee finds it useful to provide a brief summary of events, resolutions, and other actions taken by the Human Rights Council since it was established.

a) First Main Session

The first session of the Human Rights Council was held between 19 and 30 June 2006. During this session, the Council voted to extend the mandates of the Special Procedures established under the Commission dealing with thematic and country-specific human rights issues. Six working groups were created to facilitate the institution-building process. These working groups were set up to consider how the UPR should operate; review the Special Procedures; review the complaints procedure; fashion a new expert advisory body to replace the former Sub-Commission; establish the agenda and program of work; and establish the rules of procedures, schedules and working rules of the Council.

⁴⁷ Available at: <http://www.ohchr.org/english/bodies/hrcouncil/membership.htm>.

⁴⁸ Payam Akhavan, Associate Professor, Faculty of Law, McGill University, testimony before the Committee, 29 January 2007.

During this session, the Council adopted two major international human rights treaties, recommending them for adoption by the General Assembly: the *International Convention for the Protection of All Persons from Enforced Disappearance*, which was adopted on consensus; and the *Declaration on the Rights of Indigenous Peoples*, which was adopted by a 30 to 2 vote, with Canada and Russia against.⁴⁹ The Council also adopted two resolutions proposed by the Organization of the Islamic Conference (“the OIC”).⁵⁰ One condemned the defamation of religions, and incitement to racial and religious hatred, and was adopted by a 33 to 12 vote;⁵¹ and one condemned Israeli human rights violations in Palestine and other Occupied Arab Territories, and was adopted by a 29 to 12 vote.⁵² Canada voted against both resolutions.⁵³

b) First Special Session

In addition to the Council’s main sessions, one-third of the Council members also joined together four times to call special sessions on a particular issue.

The first of the special sessions was held between 5 and 6 July 2006, called by the Arab League,⁵⁴ and resulted in the adoption of a resolution condemning Israel’s human rights violations in the Occupied Palestinian Territories, and creating a fact-finding mission to that area. This resolution was adopted by a 29 to 11 vote, with Canada against.⁵⁵ The Canadian delegation noted that Canada might have been able “to support the resolution had the text been more balanced,”⁵⁶ and called “on Israel and the Palestinian Authority to fully respect international humanitarian law and principles... We

⁴⁹ Algeria, Argentina, Bahrain, Bangladesh, Ghana, Jordan, Morocco, Nigeria, and the Philippines abstained from the vote.

⁵⁰ See Chapter 3, Section C for a discussion of the Organization of the Islamic Conference.

⁵¹ Canada, Czech Republic, Finland, France, Germany, Japan, the Netherlands, Poland, Romania, Switzerland, Ukraine, the United Kingdom voted against this resolution, and the Republic of Korea abstained.

⁵² Canada, Czech Republic, Finland, France, Germany, Japan, the Netherlands, Poland, Romania, Switzerland, Ukraine, and the United Kingdom voted against this resolution, and Cameroon, Ghana, Guatemala, Nigeria, and the Republic of Korea abstained.

⁵³ See the following two sections and footnote 75 for an explanation of Canada’s reasoning on these issues.

⁵⁴ See Chapter 3, Section C for a discussion of the Arab League.

⁵⁵ Canada, Czech Republic, Finland, France, Germany, Japan, the Netherlands, Poland, Romania, Ukraine, and the United Kingdom voted against this resolution, and Cameroon, Mexico, Nigeria, the Republic of Korea, and Switzerland abstained.

⁵⁶ Government of Canada, *Statement in Explanation of Vote by the Delegation of Canada*, 6 July 2006.

cannot accept the Council focussing all of its criticism on Israel while ignoring that party's legitimate security concerns."⁵⁷

In the final result, this mission was not granted the visas necessary to accomplish its task.

c) Second Special Session

The second special session was held on 11 August 2006, called by the Arab League and the OIC, and resulted in the adoption of a resolution condemning the human rights situation in Lebanon caused by Israeli military operations. This resolution was adopted by a 27 to 11 vote, with Canada against.⁵⁸ The Canadian delegation noted that despite the opportunity to focus on human rights resulting from the conflict, the resolution was "manifestly one-sided, and does not condemn that indiscriminate launching of Hezbollah rockets into Israel, a democratic member of the United Nations, aimed solely to kill civilians."⁵⁹ The delegation said that the resolution was "not constructive," adding that "[w]e believe that this body's procedures and its output must respect the principles upon which the Council was founded. Rather than fall back into its non-productive habits, it must work to ensure universality, objectivity, and non-selectivity in the consideration of human rights issues, and to eliminate double standards and politicization."⁶⁰ The Committee strongly agrees with the Canadian delegation's position on this issue.

d) Second Main Session

The Council's second session was held between 18 September and 6 October, and 27 to 29 November 2006. During this time, the Council adopted a large number of resolutions. These included:

- A resolution sponsored by the OIC and Cuba stating that all measures taken by Israel to alter the character and legal status of Golan were null and void, and constituted a

⁵⁷ Government of Canada, *Statement by the Delegation of Canada*, 5 July 2006.

⁵⁸ Canada, Czech Republic, Finland, France, Germany, Japan, the Netherlands, Poland, Romania, Ukraine, and the United Kingdom voted against this resolution, and Cameroon, Gabon, Ghana, Guatemala, Nigeria, Philippines, the Republic of Korea, and Switzerland abstained.

⁵⁹ Government of Canada, *Statement by Ambassador Paul Meyer of Canada to Special Session of the UN Human Rights Council*, 11 August 2006.

⁶⁰ *Ibid.*

flagrant violation of international law. This resolution was adopted by a 32 to 1 vote, with Canada against.⁶¹

- A resolution sponsored by the OIC and Cuba urging Israel to reverse its settlement policy in the Occupied Palestinian Territories and to prevent the installation of any new settlers. This resolution was adopted by a 45 to 1 vote, with Canada against.⁶²
- A resolution sponsored by Cuba on the effects of economic reform policies and foreign debt on the full enjoyment of all human rights, in which the Council requested the High Commissioner for Human Rights to convene an Expert Consultation to discuss the proposed draft general guidelines. This resolution was adopted by a 33 to 15 vote, with Canada against.⁶³
- A resolution proposed by Canada and amended by the OIC calling for effective implementation of international instruments on human rights, in which the Council took note of the High Commissioner for Human Rights' proposal for a unified treaty body, and encouraged the High Commissioner to undertake a study on various options for reforming the treaty body system, to seek the views of states and other stakeholders in this regard, and to report back to the Human Rights Council. This resolution was adopted on consensus.
- A resolution proposed by Brazil on the incompatibility between democracy and racism, in which the Council requested that the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, when submitting his report, include the issue of political participation and representation of groups that are vulnerable to racism, racial discrimination, xenophobia and related intolerance in the decision-making process in national governments, parties, parliaments and civil society in general. This resolution was adopted on consensus.
- A decision proposed by Finland on behalf of the European Union, welcoming the significant improvement of the human rights situation in Nepal, and emphasizing the need to address challenges ahead. This decision was adopted on consensus.
- A decision proposed by Germany and Spain on human rights and access to water, in which the Council requested that the Office of the High Commissioner for Human Rights conduct a detailed study on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation. This decision was adopted on consensus.
- A decision proposed by France on human rights and extreme poverty, in which the Council took note of the draft guiding principles on extreme poverty and human rights and requested their circulation. This decision was adopted on consensus.
- A decision proposed by Switzerland on persons deprived of liberty in the context of counter-terrorism measures, in which the Council recalled that states must ensure that any measures taken to combat terrorism comply with their obligations under international law, in particular human rights law, refugee law and humanitarian law. This decision was adopted on consensus.

⁶¹ Cameroon, Czech Republic, Finland, France, Germany, Guatemala, Japan, the Netherlands, Poland, Republic of Korea, Romania, Switzerland, Ukraine, and the United Kingdom abstained.

⁶² Cameroon abstained.

⁶³ Canada, Czech Republic, Finland, France, Germany, Japan, the Netherlands, Poland, Republic of Korea, Romania, Switzerland, Ukraine, and the United Kingdom voted against this resolution, and Peru abstained.

One of the most controversial resolutions during the second session related to the situation in Darfur. After significant negotiation, the Council voted 22 to 20⁶⁴ to reject a resolution proposed by Canada and members from the European Union demanding that the Sudanese government prosecute those responsible for the situation in Darfur. On a 25 to 11 vote, with Canada voting against,⁶⁵ the Council instead adopted a resolution submitted by Algeria on behalf of the African group of members calling on the warring parties to put an immediate end to the human rights abuses and violations of international law being perpetrated in the region.

Finally, Algeria on behalf of the African group proposed a Draft Decision on the Intergovernmental Working Group on the Review of Mandates proposing that a code of conduct be drafted to regulate the Special Procedures. This decision was adopted by a 30 to 15 vote, with Canada against.⁶⁶

e) Third Special Session

The third special session was held on 15 November 2006, called by the Arab League and the OIC, and resulted in the adoption of a resolution condemning the violation of human rights emanating from Israeli military incursions into the Occupied Palestinian Territories, and creating a fact-finding mission to Beit Hanoun. This resolution was adopted by a 32 to 8 vote, with Canada against.⁶⁷ The Canadian delegation reiterated its concerns from the earlier Special Sessions about balance and insisted that rocket attacks against Israel need to stop, as well as urging Israel to act with restraint and take all measures possible to protect civilians.⁶⁸

⁶⁴ Algeria, Azerbaijan, Bahrain, Bangladesh, China, Cuba, Djibouti, Gabon, India, Indonesia, Jordan, Malaysia, Mali, Morocco, Nigeria, Pakistan, Russian Federation, Saudi Arabia, Senegal, South Africa, Sri Lanka and Tunisia voted against this resolution, and Brazil, Mauritius, the Philippines and Zambia abstained.

⁶⁵ Canada, Czech Republic, Finland, France, Germany, the Netherlands, Poland, Romania, Switzerland, Ukraine and the United Kingdom voted against this resolution, and Argentina, Ecuador, Ghana, Guatemala, Japan, Mauritius, Peru, the Republic of Korea, Uruguay and Zambia abstained.

⁶⁶ Canada, Czech Republic, Finland, France, Germany, Guatemala, Mexico, the Netherlands, Peru, Poland, the Republic of Korea, Romania, Switzerland, Ukraine, and the United Kingdom voted against this resolution, and Argentina and Uruguay abstained.

⁶⁷ Canada, Czech Republic, Finland, Germany, the Netherlands, Poland, Romania, and the United Kingdom voted against this resolution, while France, Guatemala, Japan, the Republic of Korea, Switzerland, and Ukraine abstained.

⁶⁸ Government of Canada, *Statement to the Third Special Session of the UN Human Rights Council (Canada)*, 15 November 2006.

In the final result, this mission, led by Desmond Tutu, was not granted the visas necessary to accomplish its task.

f) Third Main Session

The Council's third session was held between 29 November and 8 December 2006, during which time the Council adopted a series of resolutions. A resolution on the human rights situation in the Occupied Palestinian Territories called for speedy implementation of the related resolution passed during the first session, as well as the immediate dispatch of a fact-finding mission to the area. This resolution was adopted by a 34 to 1, with Canada against.⁶⁹ A resolution sponsored by Algeria on behalf of the African group called on the Council to act as Preparatory Committee for the upcoming Durban Review Conference, and for the review to concentrate on implementation of the Durban Declaration and Programme of Action. This resolution was adopted by a 34 to 12 vote, with Canada against.⁷⁰ A resolution proposed by Pakistan on behalf of the OIC requested that the High Commissioner for Human Rights consult with the government of Lebanon on ways to implement the relevant recommendations contained in the report of the Commission of Inquiry on Lebanon and to report to the Council at its fourth session. This resolution was adopted on consensus.

During this session, the Council also adopted a decision sponsored by Algeria on behalf of the African group on global efforts for the total elimination of racism, racial discrimination, xenophobia and related intolerance and the comprehensive follow-up to the World Conference and the effective implementation of the Durban Declaration and Programme of Action. This decision called for the establishment of an Ad Hoc Committee of the Human Rights Council on the Elaboration of Complementary Standards with a mandate to elaborate complementary standards in the form of a convention or a protocol to the *Convention on the Elimination of All forms of Racial Discrimination*. The intention was to fill existing gaps in the Convention and to provide new normative standards aimed at combating racism, including incitement to racial and

⁶⁹ Cameroon, Czech Republic, Finland, France, Germany, Japan, the Netherlands, Poland, Romania, Switzerland, Ukraine, and the United Kingdom abstained.

⁷⁰ Canada, Czech Republic, Finland, France, Germany, Japan, the Netherlands, Poland, the Republic of Korea, Romania, Switzerland and the United Kingdom voted against this resolution, and Ukraine abstained.

religious hatred. This decision was adopted by a 33 to 12 vote, with Canada against due to difficulties arising from the 2001 Durban Conference.⁷¹

Finally, the Council also considered the reports of various Special Procedures on a number of themes and countries during this session.

g) Fourth Special Session

The fourth special session was held on 12 to 13 December 2006, called by Canada with the support of the European Union. It resulted in a resolution adopted on consensus to send a mission to Darfur to investigate allegations of human rights abuses. In the final result, this mission was not granted the visas necessary; however, the mission accomplished some of its task by interviewing individuals in the countries surrounding Sudan.

h) Fourth Main Session

The Council's fourth session was held between 12 and 30 March 2007. During this time, the Council adopted a large number of resolutions. These included:

- Following presentation of the report of the High Level Mission to the Occupied Palestinian Territories, a resolution calling for implementation of resolutions from the first and third special sessions and for the dispatch of two missions to the territory. This resolution was adopted on consensus.
- Following presentation of the report of the High Level Mission to Darfur,⁷² a resolution proposed by Germany on behalf of the European Union which took note of the Mission's report and regretted that the Mission could not visit Sudan. The resolution expressed concern with respect to the ongoing violations of human rights and international humanitarian law in Darfur and called for a group presided over by the Special Rapporteur on Sudan to work with the Sudanese government and appropriate African Union human rights mechanisms to ensure effective follow-up of the implementation of resolutions and recommendations on Darfur and to contribute to monitoring human rights situation on the ground. This resolution was adopted on consensus.
- A resolution sponsored by Portugal that called on all states to consider signing and ratifying and implementing the *International Covenant on Economic, Social and Cultural Rights*, and to guarantee that such rights can be exercised without discrimination. This resolution was adopted on consensus.

⁷¹ Canada, Czech Republic, Finland, France, Germany, Japan, the Netherlands, Poland, the Republic of Korea, Romania, Switzerland and the United Kingdom voted against this decision, and Ukraine abstained.

⁷² This report placed responsibility for the human rights crimes on the Sudanese government and urged UN Security Council intervention.

- A resolution on the right to development introduced by Cuba on behalf of the Non-Aligned Movement,⁷³ calling for the Council to act to ensure that its agenda promotes and advances sustainable development and the achievements of the Millennium Development Goals, and to agree on a programme of work that would lead to raising the right to development to the same level as other human rights enshrined in the UN's core human rights treaties. This resolution was adopted on consensus.
- A resolution on globalization and its impact on the full enjoyment of all human rights proposed by China, emphasizing that development should be at the centre of the international economic agenda and that coherence between national development strategies and international obligations and commitments would contribute to the creation of an enabling environment for development. This resolution was adopted by a 34 to 13 vote, with Canada against.⁷⁴
- A resolution to rectify the legal status of the Committee on Economic, Social and Cultural Rights proposed by South Africa, with the aim of placing the Committee on a par with all other treaty monitoring bodies. This resolution was adopted on consensus.
- A resolution on combating the defamation of religions proposed by Pakistan on behalf of the OIC urged states to prohibit the dissemination of racist and xenophobic ideas and material aimed at any religion or its followers that constitute incitement to racial and religious hatred, hostility or violence, and also urged states to provide adequate protection against acts of hatred, discrimination, intimidation and coercion resulting from the defamation of religions. This resolution was adopted by a 24 to 14 vote, with Canada against.⁷⁵
- A resolution proposed by China on strengthening the Office of the High Commissioner for Human Rights, that reaffirmed that the tasks of the High Commissioner for Human Rights include promoting and protecting the realization of the right to development, and requests the High Commissioner to enhance international cooperation for the promotion and protection of all human rights. This resolution was adopted by a 35 to 0 vote, with Canada abstaining.⁷⁶
- A decision proposed by Cuba on behalf of the Non-Aligned Movement on human rights and unilateral coercive measures requesting the UN Secretary-General to bring the decision to the attention of all states and to seek their views and information on

⁷³ See Chapter 3, Section C for a discussion of the Non-Aligned Movement.

⁷⁴ Canada, Czech Republic, Finland, France, Germany, Japan, the Netherlands, Poland, the Republic of Korea, Romania, Switzerland, Ukraine and the United Kingdom voted against this resolution.

⁷⁵ Canada, Czech Republic, Finland, France, Germany, Guatemala, Japan, the Netherlands, Poland, the Republic of Korea, Romania, Switzerland, Ukraine and the United Kingdom voted against this resolution, and Argentina, Brazil, Ecuador, Ghana, India, Nigeria, Peru, Uruguay and Zambia abstained. Canada has spoken out consistently against proposed resolutions condemning the defamation of religions, and incitement to racial and religious hatred, noting that Canada disagrees with the focus on only one religion and the fact that these resolutions do not address the issue of freedom of expression. The Canadian delegation notes that Canada agrees with the larger principles at stake, but is concerned about establishing an appropriate balance with respect to this human rights issue.

⁷⁶ Canada, Czech Republic, Finland, France, Germany, Guatemala, the Netherlands, Poland, Romania, Switzerland, Ukraine and the United Kingdom abstained.

- the implications and negative effects of unilateral coercive measures on their populations. This decision was adopted by a 32 to 12 vote, with Canada against.⁷⁷
- A decision by Cuba on behalf of the Non-Aligned Movement on enhancement of international cooperation in the field of human rights requesting the High Commissioner for Human Rights to consult states, intergovernmental and non-governmental organizations on means to enhance the international cooperation in UN human rights machinery, including the Human Rights Council. This decision was adopted on consensus

Finally, the Council also considered the reports of various Special Procedures on a number of themes and countries during this session.

C. BLOC POLITICS

Analyzing the voting patterns and commentary at the Human Rights Council, it quickly became clear to the Committee that, in the words of Isabelle Duplessis of the Université de Montréal, “a proxy for... larger international geo-strategic problems that are not being resolved...”⁷⁸ According to Paul Heinbecker, the Council has become “a proxy for... larger international geo-strategic problems that are not being resolved...”⁷⁹ Bloc politics appear evident throughout the actions of the Council – Eric Tistounet of the Office of the High Commissioner for Human Rights told the Committee that there is consistently “huge tension”⁸⁰ in the room.

The Committee has found that the Council is essentially divided, pitting the Organization of the Islamic Conference, the Arab League, and the Non-Aligned Movement against Canada, the European Union, and a small number of other relatively consistent allies. Formed in 1969, the OIC is an inter-governmental organization group of fifty-seven states that have decided to combine their efforts to safeguard the interests and well-being of Muslims around the world.⁸¹ The OIC currently has significant influence over the actions of the Council through its membership, effectively controlling the vote of over 17 Council members. A document provided to the Committee by

⁷⁷ Canada, Czech Republic, Finland, France, Germany, Japan, the Netherlands, Poland, Romania, Switzerland, Ukraine and the United Kingdom voted against this decision, and the Republic of Korea abstained.

⁷⁸ Isabelle Duplessis, paper submitted to the Committee *The Mission of the New United Nations Human Rights Council*, 23 April 2007.

⁷⁹ Heinbecker testimony.

⁸⁰ Eric Tistounet, Office of the High Commissioner for Human Rights, testimony before the Committee, 7 March 2007.

⁸¹ For more information, see <http://www.oic-oci.org>.

UNWatch, *Human Rights Scorecard: Canada at the UN in 2006-2007*,⁸² points out that over one-third of the Council's membership, all of the African group, and half of the Asian group, are members of the OIC. UNWatch and other observers have expressed concern that this concentration of membership has allowed one block of countries to use its concerted power to call special sessions targeting the alleged human rights violations of its adversaries.

The League of Arab States, or the Arab League, also plays a role in the voting blocs found on the Council. Formed in 1945, the Arab League was established to serve the common good of all Arab countries.⁸³ It currently controls seven seats on the Human Rights Council.

Finally, the Non-Aligned Movement, which was established in 1955, currently controls more than half the seats at the Human Rights Council. The Non-Aligned Movement is made up of 116 developing countries, and aims to represent the political, economic and cultural interests of the developing world.⁸⁴

Witnesses stated that since the Human Rights Council first met, these three overlapping groupings of states have worked together to sponsor and adopt resolutions serving their interests – often in direct opposition to Canada and other like-minded countries. Vote after vote can be traced with a pattern of 33 to 12 or 34 to 11, with Canada voting against the resolution. Paul Heinbecker noted that the voting patterns can to some extent be explained by the OIC, Non-Aligned Movement, and Arab League's perception of a struggle against the hegemonic developed world. He said that

there is a solidarity that people will maintain, even in the face of that which is manifestly not in their interest or even manifestly wrong. The larger value, for a lot of countries, is to stick together because they feel weak and powerless. They largely are, but... they seem to feel that if they can stick together, they at least have some kind of clout vis-à-vis the United States and the other powerful countries.⁸⁵

These bloc politics became particularly evident in the four special sessions, three of which have focussed on human rights violations committed by Israel, and one on the

⁸² Available at:

<http://www.unwatch.org/site/apps/nl/content2.asp?c=bdKKISNqEmG&b=1330819&ct=3601691>.

⁸³ For more information, see http://www.arableagueonline.org/las/index_en.jsp.

⁸⁴ BBC, "Profile: Non-Aligned Movement," 11 September 2006, available at: <http://news.bbc.co.uk/2/hi/2798187.stm>.

⁸⁵ Heinbecker testimony.

situation in Darfur. The General Assembly Resolution creating the Human Rights Council made it effectively easier for smaller groups to join together to form a one-third membership bloc to call a special session. In the special sessions and beyond, bloc politics have led to a string of anti-Israel resolutions, while other human rights violations are going ignored. Elizabeth Riddell-Dixon of the University of Western Ontario told the Committee that “[some] countries want to get onto the council largely for the wrong reasons... they realize currently that there are definite advantages in derailing a process with geopolitical debates, protecting yourself and your friends, vilifying your enemies and ensuring that the process does not move ahead. There is some clout there.”⁸⁶

Certainly, the difference in the number of resolutions against Israel and the terminology used is stark. While Resolution S-3/1 adopted at the third special session expressed “*its shock* at the horror of Israeli killing of Palestinian civilians in Beit Hanoun while asleep,”⁸⁷ Decision S-4/101 adopted at the fourth special session expressed “its concern regarding the seriousness of the human rights and humanitarian situation in Darfur” and welcomed “the cooperation established by the Government of the Sudan.”⁸⁸ As noted by Payam Akhavan and Amnesty International, the decision adopted with respect to the situation in Darfur was significantly more “tepid”⁸⁹ than Human Rights Council’s resolutions adopted with respect to the actions of Israel. An NGO appearing before the Committee in Geneva noted that ultimately, the Human Rights Council was established just as the situation in Lebanon was reaching crisis proportions in 2006. The Council had to do something about that crisis, but bloc politics were such that it did not take action in a responsible way.

Adèle Dion and Robert Sinclair of the Department of Foreign Affairs noted that bloc politics at the Council have also surfaced in the trend towards lack of transparency and consultation prior to tabling the text of new resolutions at the Council. They commented that since the new Council began, Canada has been presented with the text of a number of resolutions at the last minute. Robert Sinclair commented that

⁸⁶ Elizabeth Riddell-Dixon, Professor, Department of Political Science, University of Western Ontario, testimony before the Committee, 26 February 2007.

⁸⁷ UN Human Rights Council, *Human rights violations emanating from Israeli military incursions in the Occupied Palestinian Territory, including the recent one in northern Gaza and the assault on Beit Hanoun*, S-3/1, 15 November 2006.

⁸⁸ UN Human Rights Council, *Situation of human rights in Darfur*, S-4/101, 13 December 2006.

⁸⁹ Neve testimony.

The one core rule that everyone latches on to is the 24-hour rule; that is, you should give at least 24 hours' notice. Beyond that, there are certain expectations or conventions of decorum in terms of providing people or delegations with a chance to feed into the process. Certainly, for Canada, that is part of our approach to the council and to special sessions, namely, that you must build in time to build the consensus that will get you to an effective, balanced outcome.⁹⁰

The Committee is concerned that, faced with these bloc politics, there is little that human rights defenders such as Canada can currently do on the Human Rights Council. The Western Europe and other states group of members is effectively outnumbered. Government officials noted that Canada is missing many of its natural allies on the Council, such as Australia, New Zealand, and the United States. NGOs appearing before the Committee in Geneva emphasized that in order to work with the bloc politics on the Council, rather than being outmanoeuvred by them, Canada needs to learn to deal with countries that it does not have a tradition of allying with. Adèle Dion and officials at the Permanent Mission in Geneva told our Committee that Canada is currently very active in discussions in Geneva and in discussions with allies who are not on Council. It is discussing Human Rights Council issues in the capital cities of key UN Member States, building coalitions across regional groups, and supporting the election campaigns of states with good human rights records.

However, NGOs in Geneva also told the Committee that since the Human Rights Council was established there has been an apparent shift in the way that Canada deals with the UN. They said that Canada should be more diplomatic in its actions to the Council. Some expressed concern that Canada is becoming inflexible and strident in its current approach on the Council. In particular, Canada's consistent minority position on votes concerning Israel has apparently led to the OIC retaliating by finding problems with otherwise innocuous consensus resolutions. These NGOs asked whether it is Canada's role to take the most aggressive stance that the non-participant states like the United States can convince us to take, or whether Canada should play its more traditional role of being a genuine bridge-builder. Since Canada's position has shifted, the mediator and bridge builder role seems to have fallen to Norway in its position as an observer state.

⁹⁰ Robert Sinclair, Deputy Director, Human Rights, Foreign Affairs and International Trade Canada, testimony before the Committee, 26 February 2007.

Needless to say, the Committee is concerned that bloc politics are playing a significant and detrimental role on the Council. Canada needs to find a way to effectively manage its role on the Council to ensure that it does not lose its voice and influence, as well as to ensure that human rights are not lost to politics and positioning on a broader scale.

D. THE UNIVERSAL PERIODIC REVIEW (UPR)

Within this context, the Committee was interested to note the progress made in terms of establishing rules for the Universal Periodic Review, as this is one of the key innovative components of the new Human Rights Council that may be able to overcome some of the politics at play.

On 30 June 2006, the Council established an Intersessional Open-ended Intergovernmental Working Group to develop the modalities of the UPR mechanism, and appointed Ambassador Mohammed Loulichki of Morocco as the Working Group's Facilitator. The Working Group began reporting regularly to the Council on negotiations to implement the review process in September 2006, and has accepted written proposals from stakeholders, and engaged government representatives and non-governmental organizations in informal consultations on the issue.

At the fourth session of the Council Mr. Loulichki delivered a statement of his preliminary conclusions, indicating that while some general agreement exists, there are many complex elements that have not been addressed or resolved.⁹¹ The areas of agreement include understandings that:

- All Council members should be reviewed during their terms of membership, and members elected for only one or two year terms should be reviewed first;
- The review will begin after adoption of the UPR mechanism by the Council;
- The UPR and the order of review should be established as soon as possible to allow states time to prepare and ensure that the process is not overly long or burdensome;
- Equitable geographic distribution should be respected in the selection of countries for review;
- The review of countries will take place every four (48 countries per year) or five years (39 countries per year);
- The duration of the review shall be three hours, with an additional hour allocated for consideration of the outcome by the entire Council;

⁹¹ Mohammed Loulichki, *Non-Paper on the Universal Periodic Review Mechanism*, A/HRC/4/117, 15 March 2007.

- The objective of the review is to assess the human rights work done by a state, to ensure the fulfillment of the state's human rights obligations, to improve the human rights situation on the ground, to enhance state capacity and share best practices, to note positive developments and challenges, and to provide technical assistance and capacity building in consultation with, and with the consent of, the country;
- The terms of reference for review should be the UN Charter, the *Universal Declaration of Human Rights*, human rights instruments to which a state is a party, and voluntary pledges and commitments made by states.
- The review will be based on a report prepared by the state on the basis of guidelines to be adopted, and a compilation put together by the Office of the High Commissioner for Human Rights of information from treaty body Concluding Observations, Special Procedures, and other material;
- The final outcome of the review will be adopted by the entire Council and widely distributed; and
- Subsequent reviews should, among other things, focus on implementation of the preceding outcome.

Nevertheless, important considerations with respect to the UPR are still subject to debate. These contentious issues include the determination of the order of review; whether the UPR should be conducted by the entire Council or by a separate working group; whether an expert should prepare a summary of information for the review process; whether a rapporteur should be nominated to ensure follow-up; and the determination of what measures will be taken in cases of non-cooperation with the UPR mechanism.

Amnesty International told the Committee that Canada was one of the earliest and most forceful proponents of the UPR process. During the Council's first session, Canada described the UPR as a significant and innovative tool that "will help to focus on implementation and tangible results."⁹² During that session and in a later working document, Canadian representatives said that the UPR should be conducted in an open and transparent manner emphasizing cooperation, and should identify needs and opportunities to support interested states with technical assistance and capacity development. The delegation supported the three year periodicity (although the Working Group is now looking at a four or five year periodicity) and emphasized that the UPR should not duplicate existing mechanisms.

⁹² Government of Canada, *Statement to the Human Rights Council by Ambassador Paul Meyer Permanent Mission of Canada on behalf of Canada, Australia and New Zealand, Universal Periodic Review*, 28 June 2006.

The Committee generally agrees with witnesses who perceived the implementation of the UPR to be an important structural change. Payam Akhavan called the UPR an excellent potential mechanism with which to depoliticize the way in which human rights situations are considered by the Council, and the High Commissioner for Human Rights suggested that the UPR will highlight chronic human rights violations that were never mentioned before for political reasons. As noted by Jean-Louis Roy of Rights & Democracy, “The selectivity is over. All countries will have to say something about what is going on in their country.”⁹³ NGOs appearing before the Committee in Geneva said that the UPR will give a high profile to human rights. Alex Neve commented that he hopes that the UPR will become one of the most high-profile human rights processes within the UN system: “we think that this process gives us a degree of leverage that has never before existed within the international system.”⁹⁴ He said that “[i]f done correctly, this could, in an unparalleled manner, mean that the council would actually have the means to promote human rights in all countries consistently, objectively, transparently and even constructively.”⁹⁵ Finally, the High Commissioner for Human Rights stated her expectation that once the UPR mechanism is in place, the international community will face a wave of ratifications and reporting to treaty bodies.

Yet concerns with the UPR still exist. The Committee echoes the comments of NGOs in Geneva, who pointed out that if the UPR is undertaken by the full Human Rights Council with three hours allocated to each country, the regular work of the Council will be reduced to six weeks a year. The Committee believes that the UPR will be most effectively implemented if undertaken by a mechanism within the Council that provides a venue for real debate and for expert advice to be heard, while allowing the larger Council to continue with its other human rights work. The UPR should not be founded upon the reports of the states themselves, nor should it be an entirely peer review process. Rather, it should involve input from experts, NGOs, and others. The Committee is also concerned about the slow progress being made in establishing the UPR mechanism – the one year anniversary of the Council is fast approaching at which time

⁹³ Jean-Louis Roy, President, Rights & Democracy, testimony before the Committee, 23 April 2007.

⁹⁴ Neve testimony.

⁹⁵ *Ibid.*

the membership of some states is set to expire.⁹⁶ The Committee is concerned that these states will leave the Council before they can be reviewed.

In addition to these concerns, the Committee highlights the comments of Payam Akhavan, who emphasized that the Council should be careful that the UPR does not become a substitute for other monitoring mechanisms such as the Special Procedures, which, unlike the UPR, actually have the capacity to take preventative action or to act in case of emergency rather than waiting for next review. The Committee notes that the UPR has great potential, but the mechanism needs to be implemented with care.

E. SPECIAL PROCEDURES

Heike Alefson of the Office of the High Commissioner for Human Rights, told the Committee that more than the UPR, the review of Special Procedures mandates is one of most contentious and politicized issues at the Council to date.

Like the body set up to examine implementation of the UPR, on 30 June 2006, the Council established an Open-ended Intergovernmental Working Group on the Implementation of Operative Paragraph 6 of Resolution 60/251 (the General Assembly resolution underlying the establishment of the Council). This Working Group is led by three facilitators, including Tomas Husak, Permanent Representative for the Czech Republic, who is specifically mandated to conduct a review of the Special Procedures. Numerous rounds of consultations have been held, and a summary of discussions on the review of Special Procedures was prepared following the Working Group's second session in February 2007.⁹⁷ Like the UPR, while some general agreement exists, many complex elements have not yet been addressed or resolved. The areas of agreement include understandings that:

- Mandate holders must meet fundamental criteria, such as expertise, integrity, independence, objectivity, impartiality, geographic distribution, gender balance, and representation of different legal systems;
- Nominees can be proposed by governments, regional groups, international organizations, NGOs, other human rights bodies, or by individuals – if the nominees fit the criteria, they will be entered onto a roster of potential mandate holders;

⁹⁶ Membership terms for states initially elected to serve on the Council were staggered – members were granted 1, 2 or 3 year memberships. Thus, the memberships of those states granted one year terms in June 2006 are set to expire in June 2007.

⁹⁷ *Summary of Discussions on Review of Procedures*, A/HRC/4/CRP.4, 13 March 2007; Tomas Husak, *Facilitator Non-Paper on Special Procedures*, 12 March 2007.

- Mandate holders will serve for a maximum of two consecutive three year terms, and can serve again after a three year break;
- The existing system needs to be streamlined and standardized (with an emphasis on rationalization and harmonization), and must focus on protection gaps (areas where there is currently no mandate coverage) – this may mean eliminating some mandate holders;⁹⁸
- Special Procedure working methods must be predictable, transparent, and impartial;
- Mandate holders must focus more on cooperation and becoming involved in joint activities;⁹⁹
- There is a need to enhance the format, structure, content and timeliness of Special Procedure reports, ensuring that they produce credible and objective information, and provide governments with realistic and feasible recommendations;
- The cooperation of governments is essential;
- There is a need to strengthen follow-up to recommendations and ensure regular monitoring in order to overcome gaps in implementation;
- Special Procedures will be permitted to interact with the UPR, and Special Procedure reports can form part of background materials for the UPR;
- Special Procedures will be encouraged to interact with treaty bodies, NGOs, the Office of the High Commissioner for Human Rights, and other UN agencies;
- Special Procedures' interactions with the Council's complaints procedure will take into account the confidentiality of that procedure; and
- Mandate holders and governments must be held accountable.

Nevertheless, important considerations with respect to the Special Procedures are still subject to intensive debate. The contentious issues include:

- Whether mandate holders will be chosen by appointment or election, or a hybrid approach;
- Whether the number of mandate holders should be reduced;
- Whether a distinction should be made between country mandates already established by consensus or by vote;
- How cooperation with mandate holders and the need for enhanced implementation of recommendations will be evaluated;
- The extent of government cooperation needed – whether governments must provide unhindered access to and within the country;
- Whether a new code of conduct should be implemented for mandate holders;
- The extent of government involvement in the preparation of Special Procedures' reports;
- The extent of linkages between the UPR, the future complaints procedure, treaty bodies, and Special Procedures;
- The extent of Special Procedures cooperation with NGOs; and

⁹⁸ Heike Alefson notes that mandate holders themselves are also consulting as to where the protection gaps are and are expected to produce a paper in April 2007.

⁹⁹ Heike Alefson notes that mandate holders themselves have been recently making more effort to coordinate their activities, sometimes producing joint reports and communications.

- Various avenues for Special Procedure interaction with the media.

A number of states and other observers, including Canada, are deeply concerned that some factions on the Council are attempting to severely limit or even eliminate the mandates and number of Special Procedures, particularly those with a country mandate. The Committee is pleased to see that Canada has vigorously opposed such proposals. In past sessions of the Council, the Canadian delegation has emphasized that Special Procedures are crucial to strengthening the Council and human rights system, and that the Special Procedures system is one of the most important ways in which the international community can promote human rights and protest violations. The delegation has encouraged states to cooperate fully with mandate holders and has stated that:

In reviewing the special procedures, care should be paid to preserving the roles which they perform, including expert studies, reporting on issues and situations, field missions, dialogue with States, awareness raising, highlighting issues and situations, standard setting and promoting implementation, responding to communications, urgent action, and functioning as an early warning system.¹⁰⁰

However, despite Canada's efforts, the initiative to limit the number of Special Procedures is still one of live concern. Officials at the Office of the High Commissioner for Human Rights told the Committee that there is currently a fear among some nations that only Special Procedures established on consensus will be permitted to continue with their mandates, and that a proposal to set a very high threshold will make it nearly impossible to establish new Special Procedures. As noted in a paper submitted by Isabelle Duplessis,

While many countries seek to genuinely strengthen the system, viewing the reform process in these terms, others view rationalization as a way to block the development of the monitoring mechanisms inherited from the former Commission. Although they do not aim to simply abolish the thematic and country-specific procedures, some state delegations would like to place them under strict political control from now on.¹⁰¹

The Committee notes that concerns about limiting the Special Procedures have heightened since the African group sponsored a resolution calling for the Working Group reviewing Special Procedures to review a revised draft manual and make

¹⁰⁰ Government of Canada, *Preliminary Views on Review of Mandates (Canada)*, 7 September 2006.

¹⁰¹ Duplessis, *The Mission of the New United Nations Human Rights Council*.

recommendations, and to draft a code of conduct for mandate holders. As noted in Chapter B, Section B2(d), this resolution was adopted by a 30 to 15 vote, with Canada against. Since the African group circulated a preliminary draft code of conduct, the issue has become very politicized. Officials from the Office of the High Commissioner for Human Rights noted that some countries fear that implementation of such a code of conduct is simply a means of monitoring and controlling the Special Procedures, and that the code will affect the independence and credibility of mandate holders. Alex Neve told the Committee that the issue is “a worrying concern now because it is indicative of the intention some governments have of trying to find ways to undermine, erode and undercut the independence of the special procedures.”¹⁰² In an explanatory statement before the vote on the African group’s resolution at the second session, the Canadian delegation stated that

We should also not engage in any action which would seem to infringe on the independence of the special procedures... Whatever the intentions of the authors may have been this proposal comes across as an attempt to re-open by vote the consensus of the Working Group in order to exert greater control over and limit the vital role of the Special Procedures.¹⁰³

Witnesses emphasized that many states feel that an adequate code of conduct already exists in the 2002 General Assembly Regulations Governing the Status, Basic Rights and Duties of Officials, other than Secretariat Officials, and Experts on Mission, and that the proposed code will add no value to the existing framework, as Amnesty International pointed out that some countries have even countered with proposals for a code of conduct for governments being investigated by Special Procedures.

Ultimately, it remains to be seen what impact proposals to limit and manage the Special Procedures will have. The Committee agrees that the Special Procedures need to be streamlined and harmonized – the Council needs to ensure their utility and accountability. However, as noted by Heike Alefson, a careful balance needs to be struck between this call for accountability and the exercise of excessive control over the mandate holders.

¹⁰² Neve testimony.

¹⁰³ Government of Canada, *Explanation of vote before the Vote, Canada, L2.2rev1*, September/October 2006.

F. CIVIL SOCIETY

The Committee does wish to commend one apparently positive aspect of the new Human Rights Council – a “big improvement”¹⁰⁴ on the Commission on Human Rights is the involvement of civil society. Jean-Louis Roy, Sandeep Prasad of Action Canada for Population and Development, and Adèle Dion commented that civil society representatives now have a chance to speak at every session in a more integrated manner. They can participate in interactive dialogue with special rapporteurs and can raise issues in the “other issues” section of the agenda. Ms. Dion noted that NGOs are no longer “crowded to the least desirable speaking slot at the end of the agenda between 6 p.m. and midnight when the room is empty. They now have the ability to be much more credible and timely participants in the discussions.”¹⁰⁵ A number of events and roundtables running parallel to the Council sessions have also seen significant NGO involvement, as well as national human rights institution and state participation.

G. GLOBAL IMPRESSIONS OF THE HUMAN RIGHTS COUNCIL – AN EVALUATION

It is imperfect, but it is slightly better than before, and it is much better than nothing.¹⁰⁶

The overwhelming comment received by the Committee with respect to overall impressions of the first year in the life of the UN Human Rights Council is that it is still too early to tell. Nearly all witnesses expressed disappointment mixed with cautious hope about the future. Jean-Louis Roy summarized these positions succinctly, saying that the Council

is a work in progress. It will take years before we have the last formulas. We are seeing a lot of good work going on. We have read all the reports and I think we should not, at this stage, rush to pass a final judgment. It will be a work in progress. In the following years, they will pass from procedures to substance.¹⁰⁷

Ultimately, the Committee must agree that the Human Rights Council is a work in progress and that it is nowhere near finished the institution-building process – the body

¹⁰⁴ Dion testimony.

¹⁰⁵ *Ibid.*

¹⁰⁶ Christopher Kenneth Penny, Assistant Professor of International Law, Norman Paterson School of International Affairs, testimony before the Committee, 26 February 2007.

¹⁰⁷ Roy testimony.

spent its first year getting its procedures in order. The Council has been in the construction phase, laying the groundwork for a sustainable organization. Unfortunately, this overlap between institution-building, human rights protection, and reacting to human rights emergencies made the first year particularly difficult for the Council. As noted by Adèle Dion, “[i]t is extremely difficult to be engaged in building an institution while simultaneously trying to make it function as if it were a fully developed mechanism.”¹⁰⁸ The Council is in the early stages yet.

However, the Committee notes that the politics that marred the Commission on Human Rights show no sign of abating and may even be increasing. Payam Akhavan commented that good structural changes have been made, but politics are repeating from the past: “[i]t is one thing to reconstruct structures; it is yet another thing to change the culture of international diplomacy.”¹⁰⁹ The Committee has found that the Council may have to simply work with the politics at play. This impression was reinforced by an NGO in Geneva that noted that expecting the new institution to break new ground is expecting a lot. Jean-Louis Roy told the Committee that the Council “will always be politicized. We should not dream about that... [governments] will not go through that door and decide that they will not play politics as a human rights council.”¹¹⁰ He said that it is mechanisms like the UPR that will work to check such politicization.

Yet, despite the fact that there is still “a long way to go,”¹¹¹ the Committee agrees with the majority of witnesses that it is still too early to judge the Human Rights Council with any finality. Certainly, it will be important to see what the six working groups responsible for setting out the processes, rules and procedure are able to build in terms of innovative structure and non-political guidelines for the Council. As pointed out by an NGO in Geneva, the UPR and the Special Procedures will be vital to the effective functioning of the Council – they need to be “strong and effective” for positive change to occur.

The Committee echoes Eric Tistounet’s comment that there are currently too many expectations surrounding the Council – in order to properly evaluate the changes

¹⁰⁸ Dion testimony.

¹⁰⁹ Akhavan testimony.

¹¹⁰ Roy testimony.

¹¹¹ Dion testimony.

that have been implemented we need to step back to gain a broader perspective rather intently focus on the details that are not working. As stated by the High Commissioner for Human Rights, states and observers need to have realistic expectations of what the Human Rights Council can do. She pointed out that the creation of the Council was not an earth shattering change for the UN, and that there is accordingly no reason to expect all the problems of the former Commission will be solved. Certainly not immediately. What the Committee does wish to emphasize is that, contrary to the comments of some observers, particularly in the media, the Council is not yet beyond salvation. There are many fears and worries, but the Council should be recognized for the political and diplomatic human rights vehicle that it is and be provided with solutions for working within that framework.

H. THE PROPOSAL FOR A UNIFIED TREATY BODY

Before turning to the Committee's recommendations, the Committee wishes to discuss the evolution of the High Commissioner for Human Rights' proposal to create a unified treaty body. Since the High Commissioner for Human Rights first launched her proposal in 2006, her concept paper has served as the basis for extensive UN consultations on treaty body reform. In June 2006, the proposal was first considered at the Fifth Inter-Committee Meeting and 18th Meeting of Chairpersons of Human Rights Treaty Bodies, and in July, the High Commissioner held an informal brainstorming meeting on the treaty body system in Liechtenstein with members of human rights treaty bodies, state representatives, UN entities, independent national human rights institutions, and NGOs. The High Commissioner has also announced that a meeting of UN Member States will take place on this issue in 2007 at a Berlin meeting on procedures.

The Human Rights Council has been following this process closely. During the second session of the Human Rights Council members adopted Canada's revised resolution on consensus, calling for effective implementation of international human rights instruments, taking note of the unified standing treaty body proposal and encouraging the High Commissioner to undertake a study on various options for reforming the treaty body system, to seek the views of states and other stakeholders, and to report back to the Council. The High Commissioner for Human Rights told the

Committee that the fate of the treaty body system is in the Council's hands, and that it remains to be seen how the human rights body will deal with the issue.

Throughout its hearings, the Committee heard that most states, UN agencies, NGOs, and the treaty bodies themselves are interested in improving the efficiency and effectiveness of the current treaty body system, as well as the quality of their experts. However, Amnesty International, Louise Arbour, and other officials at the Office of the High Commissioner for Human Rights plainly stated that response to the High Commissioner's specific proposal has generally been cool. Member States, vulnerable groups and treaty bodies themselves have met the proposal with scepticism and concern.

One of the primary concerns expressed to the Committee is with respect to the potential for loss of expertise that could occur in a unified treaty body, as well as the inability of such a body to respond to specific concerns and rights, such as the rights of women, children, migrants, and racial minorities. Witnesses fear that such groups would be marginalized in the unified system.¹¹² Alex Neve commented that the human rights treaties were created because it was felt that the generic treaties did not effectively protect the rights of marginalized groups – doing away with the individualized reporting process would merely counter the original purpose of those conventions. He said that

sectors of society whose rights were of a particular degree of vulnerability such that focused, elevated attention was necessary. We could not count on the general treaties. The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights dealt with all those issues. They talk about non-discrimination and gender equality. There is nothing in those conventions that does not provide the kinds of protections to women, children and racial minorities that we are talking about, but the world recognized that those generic treaties were not up to the task and were not adequately protecting those sectors of society.¹¹³

¹¹² Neve testimony; Arbour testimony; Alessio Bruni, Office of the High Commissioner for Human Rights, testimony before the Committee, 7 March 2007; Brent Parfitt, member of the Committee on the Rights of the Child, testimony before the Committee on Human Rights, 6 November 2006; UNICEF, *UNICEF Position Paper on the Proposal by the United Nations High Commissioner for Human Rights for a Unified Standing Treaty Body*, 2006, available at: www.crin.org/docs/UNICEF_Position_2006.doc; International Women's Rights Action Watch (Asia-Pacific), Submission by the International Women's Rights Action Watch (Asia-Pacific), 23 June 2006, available at: <http://www.iwraw-ap.org/news/hrc23606.htm>; NGO Group for the Committee on the Rights of the Child, *Statement to the 5th Meeting of Chairpersons of Treaty Bodies, Encouraging Withdrawal of Unified Standing Treaty Body Proposal*, 20 June 2006, available at: <http://www.crin.org/resources/infodetail.asp?id=10875>.

¹¹³ Neve testimony.

The Committee echoes the comments of Elizabeth Riddell-Dixon, who questioned why such “radical structural change”¹¹⁴ is necessary to address the problems in the current system. A number of other proposals have been put on the table in recent years. For example, some have submitted proposals that would have treaty bodies focus on better coordination and a more rigorous process for choosing members, while others propose the creation of a unified body only to handle individual complaints. Still others have discussed merging the Human Rights Committee with the Economic, Social and Cultural Rights Committee, or merging committees functionally to receive individual complaints but leaving them separate for the review of country records. The chairpersons of the treaty bodies have also accepted a revised draft of harmonized guidelines on reporting under the treaties that includes guidelines on a common core document to be submitted by countries accompanied by treaty-specific documents.

The Committee wishes to emphasize the comments of Isabelle Duplessis, as well as those that emerged from the July 2006 meeting in Liechtenstein, which highlighted the practical and legal challenges of implementing the unified treaty body proposal. Professor Duplessis pointed out that instigating such change will most likely necessitate amending the relevant Conventions themselves. She said:

I would however draw your attention to the tremendous legal challenges we are facing to amend these treaties and create a unified treaty body. I don't know how the United Nations will do this. It is going to be difficult. It could amend each convention, with all the attendant difficulties, or adopt a constitutive resolution to create a unified body and finally abolish the seven others. And I think that if the General Assembly has the clear political will, it will do this, but that remains to be seen.¹¹⁵

Speaking to the General Assembly, Liechtenstein's Permanent Representative to the UN noted that the challenges of implementing the unified body could be as large as those that face the current system. He pointed to the problem of dealing with states that have not signed some conventions or that may have entered reservations, as well as the difficulty of reaching agreement between states, which could result in two separate systems where the current treaty body system might continue to operate for those who do not accept the

¹¹⁴ Riddell-Dixon testimony.

¹¹⁵ Duplessis testimony.

new proposal.¹¹⁶ Amnesty International told the Committee that if the High Commissioner's proposal goes ahead, there remains a pressing need to tackle the underlying structural problems that thwarted the treaty body system in the first place; otherwise the international community will be left with one big body that incorporates all the problems of the former fragmented system.

Noting the comments of Paul Meyer, Canada's Permanent Representative to the UN in Geneva, the Committee found that one definite point of fear among Member States is that the final goal of the proposal for a unified treaty body may be to create an international human rights court or tribunal. Alessio Bruni of the Office of the High Commissioner for Human Rights confirmed that "fear of an international court exists, that's for sure."¹¹⁷ Although academics such as Payam Akhavan may eagerly call for the creation of such a court (while recognizing that this is a long-term objective), and even if the High Commissioner for Human Rights told the Committee that this possibility is too far in the future to seriously discuss, Member States are currently very concerned about the expansion of power that the proposed unified treaty body might entail.

Given these multiple concerns, the Committee is not convinced that the time is ripe for the creation of a unified treaty body. Streamlining is needed, but there are many other proposed solutions that could go some way towards rectifying the problems with the current treaty body system on a more immediate level. As noted by Christopher Penny of the Norman Paterson School of International Affairs, "[g]iven practical, political and substantial legal limitations on the establishment of such a body, limitations exemplified by the process that led us to the creation of the Human Rights Council itself, it would be premature to go down that road."¹¹⁸

This position in many ways reflects the position that the Canadian government has already taken with respect to this proposal. Although the Canadian delegation has consistently encouraged follow-up to the High Commissioner for Human Rights' proposal, as well as a thorough examination of the available options,¹¹⁹ Paul Meyer told

¹¹⁶ Government of Liechtenstein, *Letter dated 14 September 2006 from the Permanent Representative of Liechtenstein to the United Nations Secretary-General*, 18 September 2006.

¹¹⁷ Bruni testimony.

¹¹⁸ Penny testimony.

¹¹⁹ During the Human Rights Council's first session, Canada expressed appreciation and support for the efforts of the High Commissioner towards reforming the UN human rights treaty body system, including

the Committee that he does not believe that the proposal is ready for endorsement. He emphasized that treaty body reform is a longer term project that cannot be tackled at the same time as Human Rights Council reform. This position was effectively echoed by Alessio Bruni of the Office of the High Commissioner for Human Rights, who noted that there were too many reforms occurring at the UN at once, resulting in a broad reluctance to deal with this proposal unified treaty body seriously at the moment.

As a final note, the Committee highlights the concerns of some witnesses with respect to the proposed expansion of the Office of the High Commissioner into regional offices around the world. Witnesses commented that such a move is not in step with many of the other consolidation and streamlining initiatives being undertaken as part of the UN reform process. In its follow up to this report, the Committee will be interested to hear more about the Office of the High Commissioner's plans in this regard, including information about the goals, mandate, and budget for such regional offices.

unified standing treaty body proposal. The delegation stated that the proposal deserved consideration by states; encouraged treaty bodies to contribute to reform process; expressed appreciation for efforts taken to harmonize reporting guidelines and the expanded core document; and encouraged additional efforts to reduce overlap and duplication (Government of Canada, *Interactive Dialogue with the High Commissioner with the High Commissioner for Human Rights, Mme Louise Arbour, on her Report: Oral Statement by Canada*, 23 June 2006). Canada, Australia and New Zealand also issued joint statement at Third Committee of General Assembly indicating that they were strong supporters of renewing and reforming the treaty body system and welcoming the High Commissioner's "innovative approach to exploring reform options including her efforts to explore the possibility of a unified standing treaty body proposal" by working with states and civil society (Government of Australia, *Statement by the Hon. Duncan Kerr SC. MP, Parliamentary Delegate to the Australian Delegation to the UN on Behalf of Australia, Canada and New Zealand*, 17 October 2006).

CHAPTER 4 – RECOMMENDATIONS FOR THE GOVERNMENT OF CANADA

A. RECOMMENDATIONS

The Committee has been struck by a number of important issues during this preliminary study of the Human Rights Council and came to a number of conclusions as to how the Canadian government can most effectively bring its influence to bear in the maintenance of a viable and sustainable Council into the future.

1. Implementing the Council’s Rules, Mechanisms and Procedures

The Committee’s first recommendation is that the Canadian delegation bring focus to bear on the development and implementation of the Council’s procedures, mechanisms, and rules. As noted by Alex Neve, “the council is dealing with these mundane but terribly important procedural issues that will lay the foundation for what the council will ultimately become.”¹²⁰ Establishing this groundwork is a vitally important task, if not a particularly exciting sound bite for the media. At the first session of the Council in June, the Canadian delegation stated that

we place considerable importance on carefully developing the essential groundwork of the Human Rights Council, including its rules of procedure, agenda and working methods as a foundation to guide our work before moving on to a discussion on substantive issues.¹²¹

The Committee emphasizes that the government of Canada should continue to focus its efforts on the work of the six working groups that are currently in negotiations to establish the entire framework for the future Council. Echoing the words of an NGO in Geneva, “if the basics are right then the mechanism can grow.”

The Council’s two working groups on implementation of the UPR and Special Procedures are a crucial part of this institution-building process. These two mechanisms are new and vital tools that will play an important role in ensuring the protection of human rights in the UN system. The Committee encourages the Canadian government to work towards ensuring that these mechanisms become powerful, credible and effective features of the Human Rights Council. The

¹²⁰ Neve testimony.

¹²¹ Government of Canada, *Statement in Explanation of Position upon adoption of the Resolution on The Intergovernmental Working Group on the Right to Development (Canada)*, 30 June 2006.

Council's success depends on the strength of these mechanisms. In specific reference to the UPR, Jean-Louis Roy commented that "if the Universal Periodic Review is a farce of some sort, a two-page business with no content, it will be quite a blow for the human rights doctrine and politics that have been developed in the world in the last 60 years."¹²²

In order to ensure the strength and credibility of these mechanisms once they are fully operational, the UPR and Special Procedures need to place particular emphasis on follow-up and implementation of recommendations. As noted by Adèle Dion,

We have this great body of international human rights law, but we are not doing so well at actually implementing it so that it makes a difference to people on the ground. Through the creation of this new council, we are trying to ensure that there is a stronger, sharper focus on implementation.¹²³

Effective follow-up and implementation are the only way to ensure that the UPR and Special Procedures mature into the viable human rights protection mechanisms that they have the potential to become.

RECOMMENDATION 1

The Committee recommends that the Government of Canada focus its attention upon, and direct its resources towards, working intensively with the six working groups currently in negotiations to establish the rules, mechanisms, and procedure of the UN Human Rights Council.

In terms of the Special Procedures, the Government of Canada should emphasize the need for:

- **The independence and expertise of mandate holders to be maintained;**
- **Timely and adequate state cooperation with mandate holders, including assured and open;**
- **Strengthening of the urgent appeals tool by which Special Procedures can communicate with governments on behalf of individual victims of human rights violations; and**
- **Protection gaps to be addressed to ensure that all human rights issues are covered within the Special Procedures system.**

In terms of the Universal Periodic Review, the Government of Canada should emphasize the need for:

- **The UPR to be held as frequently as possible;**
- **The review to be undertaken by a mechanism within the Council so that the full Council's already limited time is not taken up by this process; and**

¹²² Roy testimony.

¹²³ Dion testimony.

- **The UPR to be part of a comprehensive and continuous process, accompanied by advance preparation, interactive dialogue, meaningful outcomes, and careful attention to follow-up and implementation. This process needs to be transparent (with respect to the information used in the review, dialogue, and the outcome and follow-up), and should be backed by strong human rights expertise to focus the review on essential human rights issues in any given country.**

RECOMMENDATION 2

The Committee recommends that, during the working group negotiations, the Government of Canada vigorously press for effective follow-up and implementation of Human Rights Council, Universal Periodic Review, and Special Procedures recommendations.

RECOMMENDATION 3

The Committee recommends that the Government of Canada press the Human Rights Council to establish an accountability mechanism to ensure that fact-finding missions created by the Council receive full support from Council members, both in terms of fulfillment of mission mandates and in terms of follow-up to mission recommendations.

2. Unified Human Rights Treaty Body

The Committee is not convinced that the time is ripe for the creation of a unified human rights treaty body. Streamlining is definitely needed, but there are many other proposed solutions that could go some way towards rectifying the problems with the current treaty body system on a more immediate level.

RECOMMENDATION 4

The Committee recommends that the Government of Canada remain active in negotiations to improve the efficiency and effectiveness the human rights treaty body system, without supporting the proposal for a unified treaty body system at this time.

3. Canadian Foreign Policy

The Committee emphasizes that the Canadian government needs to work to enhance credibility and leadership in its role as a member of the Human Rights Council. By doing so, Canada can ensure the effective evolution of its position as member of the Council and better seek to mitigate the politics that are currently overwhelming its proper function. Although Canada is already a very active member on the Council, the

government needs to re-examine its role and more effectively assert the influence that it can have in terms of shaping the politics and direction of the Council. NGOs in Geneva told the Committee that human rights defenders around the world need Canada *now*, and emphasized that “the disappointments are not a reason to step away. They are a reason to intensify Canada’s engagement.” Some felt that “Canada is selling itself short on the influence it can have on the Human Rights Council.”

Adèle Dion agreed that Canada needs to be more “outspoken and dynamic”,¹²⁴ than it has been in the past. It needs to take the reins now to attempt to ensure that bloc politics do not destroy the Council. Paul Heinbecker put this idea boldly:

I believe we need to call them as we see them. We should stand for human rights. When we see situations that we disapprove of, we should say so. When we see situations that we approve of, we should say that as well; we should not shrink from that. We should ask ourselves now if we are actually doing that.... My advice is that there is a system of international law, and we should not shrink from defending that system. We are the ones who helped build it, after all.¹²⁵

Yet, doing so does not necessarily mean that Canada should become a strident voice for one perspective. The Committee strongly believes that Canada can play an important bridge-building role that may ease the bloc politics on the Council and facilitate the effective functioning of the Council into the future. Isabelle Duplessis noted that

“As a middle power Canada must not stay with the bloc of European countries, but must utilize horizontal affiliations with NGOs and small countries ...

I think a middle power on the international stage must use the law and find ways to go beyond it. To my mind, the law is a tool that can serve to neutralize a debate ...

[middle powers are being encouraged] to use horizontal human rights logic to reach countries that are responsive to human rights logic and to create alliances on more specific topics.¹²⁶

It is important for Canada to form cross-regional alliances with moderate Asian, African, Middle Eastern, and Latin American states. Jean-Louis Roy also encouraged Canada to use its play within regional bodies to benefit the Council:

¹²⁴ Dion testimony.

¹²⁵ Heinbecker testimony.

¹²⁶ Duplessis testimony.

Canada has an excellent position and Canada's policy must reflect this. Through regional blocs such as the Francophonie, the Commonwealth and the OAS, Canada has a duty to create alliances that break these regional blocs which, if they were to persist, would greatly politicize the Council.¹²⁷

Without doing so Canada may continue to be marginalized and outvoted. Only through cooperation will Canada get Council approval for its initiatives, given the current dynamics at play. Alex Neve reinforced the need for Canada to act as a bridge-builder, stating that "Canada is perhaps one [of] the countries better situated than most to be able to work across geographical divides, to reach out to moderates in other groupings and to build coalitions that can counter some of these worrying trends."¹²⁸

RECOMMENDATION 5

The Committee recommends that the Government of Canada work to enhance its effectiveness and leadership on the UN Human Rights Council by increasing its role as a bridge-builder, and moving beyond its traditional allies to foster alliances with countries around the world.

4. A Canadian Ambassador for Human Rights

In order to achieve this goal, the Committee recommends that the Canadian government put into place a Canadian ambassador for human rights. The Committee believes that this is the next step to be taken if Canada wishes to become a human rights leader at the Council. Unlike the Commission on Human Rights, the new Council has produced a continuous set of demands and challenges that last all year long – demands of a different quantity and quality than those that emerged from the six focused weeks of work under the former Commission. To deal with this new situation and to retain a leadership role, the Committee believes that additional resources are needed to ensure that Canada can be active at all times and at all levels within the Council. Such an ambassador could ensure that Canada has the capacity to undertake elevated diplomatic initiatives and fully evolve into its bridge-builder role on the Council.

The ambassador could essentially play the role of focal point within the Canadian government to concentrate on human rights as part of Canadian foreign policy. The

¹²⁷ Roy testimony.

¹²⁸ Neve testimony.

ambassador would be based in Canada with a permanent staff and work in coordination with several relevant federal departments, particularly the Department of Foreign Affairs and International Trade. The ambassador would travel as necessary to negotiate with other members of the Council and would represent the Canadian voice permanently on the Council itself. Models for a successful ambassador for human rights are already present in France, Spain, the Netherlands, and Sweden. Ultimately, a Canadian human rights ambassador would significantly enhance Canada's role and capacity at the Council, raise the profile and standing of human rights as a foreign policy issue in Canada, and re-focus Canada on the necessity of implementing its international human rights obligations in domestic law.

RECOMMENDATION 6

The Committee recommends that the Government of Canada put into place a Canadian ambassador for human rights, based in Canada, to work in coordination with relevant federal departments. The ambassador should be Canada's permanent representative on the Human Rights Council and participate as necessary in other international negotiations on human rights issues.

B. CONCLUSIONS

Ultimately, the Committee wishes to issue a reminder that the Canadian government has an important role to play as member of the Human Rights Council, particularly during these political and contentious times. There are ways to ensure that politics do not run away with the Council – it is too early to tell how the Council is working, and certainly not too late to fix what has already gone wrong. As noted by Payam Akhavan, “[n]ow is the time to strike. Now is the time to exploit the opportunity to create effective mechanisms because, once they become crystallized, it becomes exceedingly difficult to bring about further reform.”¹²⁹ By taking the Committee's recommendations seriously and learning to work with the politics at play rather than throwing up our hands in dismay, Canada can have a serious influence on the evolution of human rights protection through the Council. The international community has an opportunity to make the Human Rights Council work. In order to help this happen

¹²⁹ Akhavan testimony.

Canada must take the initiative to remind the international community of the Council's fundamental purpose and goals – the protection of international human rights.

Yet, true to the Committee's previous studies and reports, it must also be noted that Canada also has a strong responsibility to implement its own human rights obligations at home in order to maintain its role on the Council. So much of Canada's international reputation is based on its strong human rights record. Canada will come up for review by the UPR during its term of membership and if it wishes to hold on to its membership, it must be seen to be upholding the human rights pledges that it has made. As the Committee has highlighted in the past, Canada has serious implementation gaps when it comes to domestic implementation of its many of its international human rights obligations. Strict compliance with UN treaty body recommendations is often lacking. Alex Neve emphasized that these recommendations tend to “disappear into a black hole, only to emerge largely unimplemented for the next round of review.”¹³⁰ In order to encourage respect for the Human Rights Council and the Universal Periodic Review process, Canada must prove that it is able to live up to its reputation by implementing and complying with such recommendations. The Committee will continue to monitor Canadian actions domestically and on the Council to ensure that Canada can continue to make a difference in the human rights field. Ultimately, Canada's credibility in international human rights institutions will depend on its commitment to, and implementation of, human rights obligations at home.

¹³⁰ Neve testimony.



General Assembly

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Agenda items 46 and 120

Resolution adopted by the General Assembly

[without reference to a Main Committee (A/60/L.48)]

60/251. Human Rights Council

The General Assembly,

Reaffirming the purposes and principles contained in the Charter of the United Nations, including developing friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and achieving international cooperation in solving international problems of an economic, social, cultural or humanitarian character and in promoting and encouraging respect for human rights and fundamental freedoms for all,

Reaffirming also the Universal Declaration of Human Rights¹ and the Vienna Declaration and Programme of Action,² and recalling the International Covenant on Civil and Political Rights,³ the International Covenant on Economic, Social and Cultural Rights³ and other human rights instruments,

Reaffirming further that all human rights are universal, indivisible, interrelated, interdependent and mutually reinforcing, and that all human rights must be treated in a fair and equal manner, on the same footing and with the same emphasis,

Reaffirming that, while the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, all States, regardless of their political, economic and cultural systems, have the duty to promote and protect all human rights and fundamental freedoms,

Emphasizing the responsibilities of all States, in conformity with the Charter, to respect human rights and fundamental freedoms for all, without distinction of any kind as to race, colour, sex, language or religion, political or other opinion, national or social origin, property, birth or other status,

Acknowledging that peace and security, development and human rights are the pillars of the United Nations system and the foundations for collective security and well-being, and recognizing that development, peace and security and human rights are interlinked and mutually reinforcing,

¹ Resolution 217 A (III).

² A/CONF.157/24 (Part I), chap. III.

³ See resolution 2200 A (XXI), annex.

Affirming the need for all States to continue international efforts to enhance dialogue and broaden understanding among civilizations, cultures and religions, and emphasizing that States, regional organizations, non-governmental organizations, religious bodies and the media have an important role to play in promoting tolerance, respect for and freedom of religion and belief,

Recognizing the work undertaken by the Commission on Human Rights and the need to preserve and build on its achievements and to redress its shortcomings,

Recognizing also the importance of ensuring universality, objectivity and non-selectivity in the consideration of human rights issues, and the elimination of double standards and politicization,

Recognizing further that the promotion and protection of human rights should be based on the principles of cooperation and genuine dialogue and aimed at strengthening the capacity of Member States to comply with their human rights obligations for the benefit of all human beings,

Acknowledging that non-governmental organizations play an important role at the national, regional and international levels, in the promotion and protection of human rights,

Reaffirming the commitment to strengthen the United Nations human rights machinery, with the aim of ensuring effective enjoyment by all of all human rights, civil, political, economic, social and cultural rights, including the right to development, and to that end, the resolve to create a Human Rights Council,

1. *Decides* to establish the Human Rights Council, based in Geneva, in replacement of the Commission on Human Rights, as a subsidiary organ of the General Assembly; the Assembly shall review the status of the Council within five years;

2. *Decides* that the Council shall be responsible for promoting universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner;

3. *Decides also* that the Council should address situations of violations of human rights, including gross and systematic violations, and make recommendations thereon. It should also promote the effective coordination and the mainstreaming of human rights within the United Nations system;

4. *Decides further* that the work of the Council shall be guided by the principles of universality, impartiality, objectivity and non-selectivity, constructive international dialogue and cooperation, with a view to enhancing the promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development;

5. *Decides* that the Council shall, inter alia:

(a) Promote human rights education and learning as well as advisory services, technical assistance and capacity-building, to be provided in consultation with and with the consent of Member States concerned;

(b) Serve as a forum for dialogue on thematic issues on all human rights;

(c) Make recommendations to the General Assembly for the further development of international law in the field of human rights;

(d) Promote the full implementation of human rights obligations undertaken by States and follow-up to the goals and commitments related to the promotion and

protection of human rights emanating from United Nations conferences and summits;

(e) Undertake a universal periodic review, based on objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States; the review shall be a cooperative mechanism, based on an interactive dialogue, with the full involvement of the country concerned and with consideration given to its capacity-building needs; such a mechanism shall complement and not duplicate the work of treaty bodies; the Council shall develop the modalities and necessary time allocation for the universal periodic review mechanism within one year after the holding of its first session;

(f) Contribute, through dialogue and cooperation, towards the prevention of human rights violations and respond promptly to human rights emergencies;

(g) Assume the role and responsibilities of the Commission on Human Rights relating to the work of the Office of the United Nations High Commissioner for Human Rights, as decided by the General Assembly in its resolution 48/141 of 20 December 1993;

(h) Work in close cooperation in the field of human rights with Governments, regional organizations, national human rights institutions and civil society;

(i) Make recommendations with regard to the promotion and protection of human rights;

(j) Submit an annual report to the General Assembly;

6. *Decides also* that the Council shall assume, review and, where necessary, improve and rationalize all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights in order to maintain a system of special procedures, expert advice and a complaint procedure; the Council shall complete this review within one year after the holding of its first session;

7. *Decides further* that the Council shall consist of forty-seven Member States, which shall be elected directly and individually by secret ballot by the majority of the members of the General Assembly; the membership shall be based on equitable geographical distribution, and seats shall be distributed as follows among regional groups: Group of African States, thirteen; Group of Asian States, thirteen; Group of Eastern European States, six; Group of Latin American and Caribbean States, eight; and Group of Western European and other States, seven; the members of the Council shall serve for a period of three years and shall not be eligible for immediate re-election after two consecutive terms;

8. *Decides* that the membership in the Council shall be open to all States Members of the United Nations; when electing members of the Council, Member States shall take into account the contribution of candidates to the promotion and protection of human rights and their voluntary pledges and commitments made thereto; the General Assembly, by a two-thirds majority of the members present and voting, may suspend the rights of membership in the Council of a member of the Council that commits gross and systematic violations of human rights;

9. *Decides also* that members elected to the Council shall uphold the highest standards in the promotion and protection of human rights, shall fully cooperate with the Council and be reviewed under the universal periodic review mechanism during their term of membership;

10. *Decides further* that the Council shall meet regularly throughout the year and schedule no fewer than three sessions per year, including a main session, for a total duration of no less than ten weeks, and shall be able to hold special sessions, when needed, at the request of a member of the Council with the support of one third of the membership of the Council;

11. *Decides* that the Council shall apply the rules of procedure established for committees of the General Assembly, as applicable, unless subsequently otherwise decided by the Assembly or the Council, and also decides that the participation of and consultation with observers, including States that are not members of the Council, the specialized agencies, other intergovernmental organizations and national human rights institutions, as well as non-governmental organizations, shall be based on arrangements, including Economic and Social Council resolution 1996/31 of 25 July 1996 and practices observed by the Commission on Human Rights, while ensuring the most effective contribution of these entities;

12. *Decides also* that the methods of work of the Council shall be transparent, fair and impartial and shall enable genuine dialogue, be results-oriented, allow for subsequent follow-up discussions to recommendations and their implementation and also allow for substantive interaction with special procedures and mechanisms;

13. *Recommends* that the Economic and Social Council request the Commission on Human Rights to conclude its work at its sixty-second session, and that it abolish the Commission on 16 June 2006;

14. *Decides* to elect the new members of the Council; the terms of membership shall be staggered, and such decision shall be taken for the first election by the drawing of lots, taking into consideration equitable geographical distribution;

15. *Decides also* that elections of the first members of the Council shall take place on 9 May 2006, and that the first meeting of the Council shall be convened on 19 June 2006;

16. *Decides further* that the Council shall review its work and functioning five years after its establishment and report to the General Assembly.

*72nd plenary meeting
15 March 2006*

Appendix B - UNITED NATIONS



**International
Human Rights
Instruments**

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Fifth Inter-Committee Meeting of the human rights bodies
Geneva, 19-21 June 2006

Eighteenth meeting of chairpersons of the human rights treaty bodies
Geneva, 22-23 June 2006
Item 6 of the provisional agenda

**CONCEPT PAPER ON THE HIGH COMMISSIONER'S PROPOSAL
FOR A UNIFIED STANDING TREATY BODY**

Report by the Secretariat

GE.06-41075

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Introduction

1. In her Plan of Action, the High Commissioner for Human Rights indicated that she will develop proposals for a unified standing treaty body and invite States parties to the seven human rights treaties to an intergovernmental meeting in 2006 to consider options.¹ This concept paper elaborates on her proposal and provides a basis on which options for reform can be explored. Further background papers will be prepared on specific issues relevant to the establishment of a unified standing treaty body, such as legal considerations, membership and resource requirements. While discussions with stakeholders on the High Commissioner's proposal proceed, efforts to strengthen the human rights treaty reporting system initiated pursuant to the Secretary-General's 2002 reform proposals will continue.² Other ideas aimed at strengthening the system, and ensure that it has the best possible impact, will also be explored.

2. The concept paper is divided into five parts. First, it presents the objectives of the High Commissioner's proposal and the principles that guide it. Second, it analyzes the current system, its objectives and achievements, as well as the challenges it faces. Third, it identifies how the establishment of a unified standing treaty body would meet those challenges, and ensure a strengthened and more effective monitoring system. Fourth, it puts forward ideas on the possible forms, modalities of operation and functions of a unified standing treaty body. Finally, it raises some issues to be considered with respect to the establishment of such a body. Several annexes are attached to the paper, which provide facts and figures about reporting to human rights treaty bodies; the reporting status per State party to the various human rights treaties as at 16 February 2006; information on the average time between submission to consideration of States parties' reports; statistics relating to the individual complaints procedures; and the current resource requirements of the human rights treaty bodies.

I. OBJECTIVES OF REFORM AND GUIDING PRINCIPLES

3. The human rights treaty system is based on the seven core United Nations human rights treaties, which set legal standards for the promotion and protection of human rights and create legal obligations for States parties to implement human rights at the national level.³ The treaties also provide the normative framework for United Nations efforts to support the implementation of human rights norms at the national level. Compliance with these standards by States parties is monitored by seven treaty bodies through several procedures. All treaty bodies consider reports; five have the competence to consider individual petitions subject to admissibility criteria being met; four are entitled to consider State-to-State complaints; and two have competence to inquire into allegations of grave or systematic violations. These procedures are designed to assess objectively the situation in States parties and encourage them to implement their international legal obligations. They also provide a means through which the United Nations can support States in this endeavour.

¹ A/59/2005/Add.3, para. 147.

² In discussions with the High Commissioner for Human Rights and at her invitation, treaty bodies have provided initial views on her proposal; see CERD/C/SR.1723, CERD/C/SR.1726, CCPR/C/SR.2296, E/C.12/2005/SR.47 and CMW/C/SR.23.

³ Seven core human rights treaties set legal standards for States parties for the promotion and protection of human rights: the International Covenant on Economic, Social and Cultural Rights (ICESCR); the International Covenant on Civil and Political Rights (ICCPR); the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); the Convention on the Rights of the Child (CRC); and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW).

4. The principal objective of the human rights treaty body system is to ensure human rights protection at the national level through the implementation of the human rights obligations contained in the treaties. Accordingly, the effectiveness of the treaty system must be assessed by the extent of national implementation of the recommendations resulting from constructive dialogue under reporting procedures, decisions under the four individual complaints procedures currently in operation and the outcome of inquiries. It must also be assessed by how successful the system has been in providing States with authoritative guidance on the meaning of treaty provisions, preventing human rights violations, and ensuring prompt and effective action in cases where such violations occur. The system's effectiveness should also be assessed by how far the output of these procedures has been integrated into all national, regional and international efforts to protect human rights.

5. Ways to enhance the system so that it can meet these objectives most effectively have been discussed since the establishment of the first treaty body, the Committee on the Elimination of Racial Discrimination, in 1970, in particular in the context of the Meeting of Chairpersons of human rights treaty bodies, which first met in 1984 and has met annually since 1994. An independent expert appointed by the Secretary-General to carry out a study on enhancing the long-term effectiveness of the United Nations human rights treaty system during the 1980s, suggested, *inter alia*, the creation of a single monitoring body for all treaties.⁴ The Secretary-General's second reform report in 2002 provided new impetus for discussions by calling on the international human rights treaty bodies to "craft a more coordinated approach to their activities and standardize their varied reporting requirements" and suggested that "each State should be allowed to produce a single report summarizing its adherence to the full range of international human rights treaties to which it is a party" (A/57/387, para. 54). In his report "In larger freedom" (A/59/2005), the Secretary-General re-emphasized the need to streamline and strengthen the treaty body system, and called for implementation of harmonized guidelines on reporting to all treaty bodies, so that the treaty bodies can operate as a unified system. In her Plan of Action (A/59/2005/Add.3), the High Commissioner reiterated this call, emphasizing that the objective of the system must be to ensure the greatest level of protection for all rights-holders, and proposed the creation of a unified standing treaty body in order to provide a strengthened and more effective monitoring system to enhance the impact of the human rights treaty system, particularly at the national level.

6. The overarching objective of the High Commissioner's proposal is twofold. First, it aims to secure comprehensive and holistic implementation by States parties of the substantive legal obligations in the treaties which they have assumed voluntarily. Second, it seeks to strengthen the level of protection provided to rights-holders at the national level through ensuring scrutiny of implementation by an authoritative, visible and effective system, which is easily accessible to rights-holders.

7. The High Commissioner's proposal is underpinned by several principles. These are that the human rights treaty system has a key role to play in the promotion and protection of human rights at national and international levels. The achievements of the current system should be built on, in order to provide a stronger framework for implementation and monitoring of existing treaty obligations, and those which may be elaborated by future international human rights treaties, such as with respect to disappearances and disability. The specificities of each treaty must be preserved and their focus on specific rights, such as freedom from torture or

⁴ The independent expert, Philip Alston, prepared three reports on enhancing the long-term effectiveness of the United Nations human rights treaty system. The first (A/44/668) was submitted to the General Assembly in 1989, an interim report (A/CONF.157/PC/62/Add.11/Rev.1) was prepared for the World Conference on Human Rights in 1993 and a final updated report (E/CN.4/1997/74) was transmitted to the Commission on Human Rights at its fifty-third session in 1997. The views of States, UN agencies, the Secretary-General and other interested parties were solicited with regard to the final report and submitted to the Commission on Human Rights in 1998 and 2000 (E/CN.4/1998/85 and E/CN.4/2000/98).

racial discrimination, and the rights of particular rights-holders, such as children, women, and migrant workers and migrant workers, should not be diminished. At the same time, the interdependent and indivisible nature of the obligations set out in the treaties must be highlighted. Implementation of existing obligations of States parties, must be strengthened, but substantive obligations of States parties should not be affected or renegotiated.

II. OBJECTIVES AND ACHIEVEMENTS OF THE SYSTEM AND CURRENT CHALLENGES

A. Objectives of the monitoring procedures

8. Current treaty monitoring mechanisms aim to achieve several objectives.⁵ The process of reporting provides an opportunity for an individual State party to conduct a comprehensive review of the measures it has taken to bring its national law and policy into line with the provisions of the treaties to which it is a party. The preparation of reports provides a platform for national dialogue on human rights amongst the various stakeholders in a State party. The report itself provides the Government and others, including civil society, with a baseline for the elaboration of clearly stated and targeted policies, which include priorities consistent with the provisions of the treaties. The process of reporting also encourages and facilitates public scrutiny at the national level of Government approaches to implementation and stimulates constructive discussion with civil society of ways to advance the enjoyment by all of the rights laid down in the various conventions. Consideration of the reports by the Committees, through constructive dialogue with States parties, allows individual States and States as a whole to exchange experience on the problems faced in implementation of the instruments, and good practices that facilitate enhanced implementation. It also allows for international scrutiny, which underlines States' responsibility and accountability for human rights protection.

9. The complaints procedures provide an opportunity for treaty bodies with the competence to receive complaints to identify steps that States should take to comply with their international legal obligations in the context of concrete individual situations. The procedures offer individual relief to victims of human rights violations and should stimulate general legal, policy and programme change. Inquiry procedures enable Committees to address the structural causes of systematic violations and make recommendations relating to a broad range of issues.

10. The degree to which the treaty body procedures achieve these objectives depends on several factors, which will be relevant for any monitoring system. Where reporting is concerned, this includes the willingness and capacity of States to report regularly, use the process as an opportunity for a frank and comprehensive assessment of implementation of international obligations, and engage in a dialogue with national stakeholders before and after the consideration of reports by the Committee. It also depends on the awareness and knowledge of national constituencies and their interest in participating in the process and using it to assess progress in implementation and raise issues, including obstacles to implementation, at the national and international levels. In addition, it depends on the lapse of time between submission and consideration of a report, the quality and fairness of the dialogue, concluding observations and recommendations and any follow-up action that may occur. With regard to individual complaints, awareness at the national level of the possibility of complaint among rights-holders, the efficiency of the procedures at the international level and the quality of the outcomes are key, as is the willingness of States parties to implement views and make necessary legislative and policy changes to comply with their obligations. Similarly, the effectiveness of the inquiry procedure depends on national awareness of the procedure, the quality of the process and its outcome.

⁵ The Committee on Economic, Social and Cultural Rights specified seven objectives of the reporting process in its first general comment, adopted during its third session in 1989; see HRI/GEN/1/Rev.7.

B. Achievements

11. The various procedures and outputs of the treaty bodies have become increasingly sophisticated, developed and strengthened over time. The treaty body system has made a significant contribution to the promotion and protection of human rights, with treaty bodies providing authoritative guidance on the meaning of international human rights standards, the application of treaties and the steps States parties should take to ensure full implementation of human rights and their enjoyment by all.

12. The reporting process has played a role in stimulating the creation of constituencies at the national level to promote implementation of human rights. It has also provided direct input into the development of new laws, policies and programmes. The process has afforded a platform for national dialogue on human rights among the various stakeholders, and an opportunity for public scrutiny of Government policies. The outcome of the process, the concluding observations or recommendations of the Committees, has also offered guidance on implementation to Governments and has often constituted a framework for joint action by States, United Nations entities, civil society and others.

13. Despite the fact that treaty bodies' decisions in this context are not legally binding, individual complaints procedures have often resulted in individual relief for victims. Through the decisions in individual cases, the Committees have also developed a body of jurisprudence on the interpretation and application of human rights treaties, which is referred to more frequently by national and regional courts and tribunals.⁶

14. National human rights institutions (NHRIs), NGOs and other parts of civil society, regional bodies and United Nations agencies have also benefited from the treaty monitoring process. For example, the United Nations Children's Fund (UNICEF), which facilitates State and national stakeholder engagement in the reporting process relating to the Convention on the Rights of the Child, uses the output of the Committee of the Rights of the Child as a programming tool, and approaches the reporting exercise as dynamic occasion for assessment and dialogue with States, United Nations entities and NGOs which results in a framework for State accountability for implementation of their treaty obligations. Other parts of the United Nations system, including the Office of the United Nations High Commissioner for Refugees (UNHCR), the United Nations Development Programme (UNDP), the United Nations Development Fund for Women (UNIFEM) and the World Health Organization (WHO), also participate in the reporting process, and, to a greater or lesser extent, seek to integrate its output into their programming. They also provide expertise and support to the Committees as they elaborate General Comments in order to obtain guidance on standards for their programming and protection activities.

C. Challenges facing the system

15. Despite these achievements, the system faces serious challenges. Some of these are linked to its success, and result from the growth in human rights instruments and the steadily increasing number of States formally assuming international legal obligations. The number of human rights treaty bodies has increased from one Committee to seven since 1970, and there are currently 115 treaty body experts. The establishment of the Subcommittee on Prevention after the entry into force of the Optional Protocol to the Convention against Torture, and the creation of new bodies to monitor the proposed instruments on enforced disappearance and disability

⁶ Committee on International Human Rights Law and Practice of the International Law Association, *Final report on the impact of findings of the United Nations human rights treaty bodies* (2004). See also the discussion in the *Interim report on the impact of the work of the United Nations human rights treaty bodies on national courts and tribunals* (2002).

will add new treaty bodies and experts to the current system. The Optional Protocol to the Convention against Torture will also introduce new monitoring functions to the system.⁷

Table 1: Composition of the treaty bodies

	<i>Original</i>	<i>Increased</i>	<i>No. of States parties for increase</i>
CERD:	18 members	-	-
HRC:	18 members	-	-
CESCR:	18 members	-	-
CEDAW:	18 members	23 members	35 States parties
CAT:	10 members	-	-
CRC:	10 members	18 members*	-
CMW:	10 members	14 members	41 States parties
SCP-OPCAT:†	10 members	25 members	50 States parties

Members are elected for four-year terms. Elections for half of the members are held every two years.

* Amendment to art. 43.2 of the Convention, approved by General Assembly resolution 50/155 of 21 December 1995, which entered into force on 18 November 2002 upon acceptance by two thirds of States parties.

† Subcommittee on Prevention, Optional Protocol to the Convention against Torture.

16. The system also faces challenges because many States accept the human rights treaty system on a formal level, but do not engage with it, or do so in a superficial way, either as a result of lack of capacity or lack of political will. Some States fail to submit reports required by the treaties, and most submit them after considerable delay. Many States, including those with significant technical capacity and high commitment, find that meeting complex and overlapping reporting obligations is challenging, bearing in mind other reporting requirements they may have. Figures from February 2006 indicate that 70 per cent of the total number of State party reports due have been submitted, a percentage which has been achieved as a result of the submission of consolidated reports.⁸ Of the initial reports that are due, 30 per cent have not been submitted.⁹ As of February 2006, only eight of the 194 States that are party to one or more of the seven treaties are up to date with their reports, with the remaining 186 States owing 1,442 reports to the treaty bodies. The Committees have little real power to enforce States to comply with the procedures, but at the same time, with their current working methods, they could not accommodate full compliance by States parties with reporting obligations. The achievement of the High Commissioner's goal of universal ratification and full acceptance of complaints and inquiry procedures, combined with full compliance by States parties with reporting procedures, would exacerbate these challenges.

⁷ The Optional Protocol to the Convention against Torture (OPCAT), which is yet to enter into force, creates a ten-member Subcommittee on Prevention (SCP), to undertake visits to places of detention in States parties. The draft International Convention for the Protection of All Persons from Enforced Disappearance adopted by a working group of the Commission on Human Rights in September 2005 (E/CN.4/2005/WG.22/WP.1/Rev.4) envisages the creation of a 10-member treaty body to monitor implementation. The Ad Hoc Committee of the General Assembly on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities is considering establishing a monitoring mechanism, including a possible ninth treaty body.

⁸ A number of treaty bodies accept combined reports to address the reporting backlog. One State party submitted its combined initial (due 17 March 1978) to fourteenth periodic (due 17 March 2004) reports in one document of 24 pages.

⁹ The treaty bodies have considered reporting obligations of successor States in different ways. Consequently, it is possible that there may be slight variations in the total number of reports.

Table 2: Reporting periodicity under the treaties

<i>Treaty</i>	<i>Initial report within</i>	<i>Periodic reports every</i>
ICERD	1 year	2 years
ICESCR*	2 years	5 years
ICCPR	1 year	4 years [†]
CEDAW	1 year	4 years
CAT	1 year	4 years
CRC	2 years	5 years
CMW	1 year	5 years
CRC-OPSC**	2 years	5 years or with next CRC report
CRC-OPAC ^{††}	2 years	5 years or with next CRC report

* Article 17 of the Covenant does not establish a reporting periodicity, but gives the Economic and Social Council discretion to establish its own reporting programme.
[†] Article 40 of the Covenant gives the Human Rights Committee (HRC) discretion to decide when periodic reports shall be submitted. In general, these are required every four years.
** Optional Protocol on the sale of children, child prostitution and child pornography.
^{††} Optional Protocol on the involvement of children in armed conflict.

17. The growth in the number of treaties and treaty bodies has been ad hoc and their provisions and competencies overlap. This has resulted in duplication. The existing bodies have implemented different working methods, thereby compromising the system's coherence and creating a lack of clarity for States parties and other actors engaged in the system. Currently, there is no coordination among the treaty bodies in relation to the scheduling of report consideration. A State party may be asked to present reports to several Committees in the period of a month, or sometimes a week, and many States parties appear before several Committees in the same year. Treaty bodies have adopted different procedures for the consideration of reports, making it difficult for States parties to determine how best to prepare and benefit from the dialogue with the Committee. A State party may be asked the same question by several of the treaty bodies, and find that less time is devoted to treaty-specific issues. Limited coordination and collaboration among treaty bodies, and different approaches, in particular with respect to the role of NGOs, NHRIs and the wider United Nations system, increase duplication and impede interaction with stakeholders, who find the system obscure.

18. The growth in the number of treaties and ratifications has resulted 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. At the same time, the treaty bodies have been under-resourced, and their meeting time has been insufficient to handle their workload. Individual complaints procedures are underutilized, but the time between submission of a complaint and pronouncement of a final decision currently averages 30 to 33 months, which severely challenges the system's ability to provide redress for serious violations of the rights of individuals. An increase in petitions would further delay the processing of individual complaints.

19. In response to these challenges, treaty bodies with the support of the Secretariat, have worked to enhance efficiency and address some of these concerns, individually and collectively through the Meeting of Chairpersons and the Inter-Committee Meeting, which has met annually since 2002 and brings together the Chair and two other members of each treaty body. These efforts have resulted in improvements and innovations. States whose reports are long overdue are now considered by Committees in the absence of a report, and technical cooperation to assist States parties is also available from the Secretariat. By the end of 2006, two treaty bodies will function in two chambers in order to increase their working capacity. The working methods of treaty bodies have been harmonized in some areas, but Committees continue to adopt different

approaches with regard to dialogue with the representatives of States parties, lists of issues, concluding observations, and the role of civil society and United Nations entities in their work.

20. Adoption of harmonization of working methods and streamlined reporting guidelines will go some way to rendering the current system more predictable. These measures should also facilitate State reporting and encourage further ratifications, particularly by small and developing States, which will help to achieve universal ratification. Additional measures may also be considered. These could include convening treaty body sessions at the same time to encourage coordination and interaction, or providing opportunities for members to observe or participate in sessions of treaty bodies other than their own. Treaty bodies might also consider examining the reports of States parties jointly. Substantive activities could be integrated by the formulation of joint General Comments by the treaty bodies, convening joint thematic working groups and the harmonization of agendas, priorities and objectives. The Meetings of Chairpersons and the Inter-Committee Meetings could also take on formal and structured coordinating functions in order to create a unified approach to the reporting and petitions procedures.

21. These measures would not, however, address the underlying challenges to the system. Despite its achievements, the system is little known outside academic circles, Government departments and officials directly interacting with the system, and specialized lawyers and NGOs. The treaty body system is rarely perceived as an accessible and effective mechanism to bring about change. Victims of human rights violations and civil society actors are unfamiliar with the system's complex procedures or are unaware of its potential. Media coverage is poor and the use of treaty body jurisprudence by lawyers and national judicial systems is limited. The visits of treaty body members to countries remains an exception, and the system is often described as disconnected from realities on the ground, with meetings confined to Geneva or New York. The number of complaints filed with the Secretariat is low in comparison to the number of individuals living under the jurisdiction of States that have accepted individual complaints procedures, and most complaints are directed toward a minority of States parties. The inquiry procedures of CAT and CEDAW have been little used, while the State-to-State complaint mechanisms have never been used.

22. The visibility of the system is linked to the authority of the monitoring bodies, which depends on the quality of the monitoring process, its output and decision-making, as well as the perception of independence and fairness of the procedures employed. The experience of the current system suggests that treaty bodies, composed of part-time, unremunerated experts nominated by States parties from among their nationals and elected by States parties for fixed renewable terms, have been uneven in terms of expertise and independence, as well as geographical distribution, representation of the principal legal systems and gender balance. Competing demands have also meant that some treaty body members have been unable to devote the time required to the work of their Committees, and some have been unable to attend sessions. As there is no limitation on the number of terms members may serve, several members have served for long and unbroken periods. Notably, article 9 of the OPCAT and article 26. 4 of the draft International Convention for the Protection of All Persons from Enforced Disappearance provide that members shall be eligible for one re-election only. They also provide that consideration be given to balanced gender representation (OPCAT, art. 5.4, and draft Convention on Enforced Disappearance, art. 26.1). Additional detailed provisions relating to the qualifications and professional expertise required for members are also set out in article 5.2 of the OPCAT.

23. The treaty body system has developed ad hoc and it does not function as an integrated and indivisible framework for human rights protection. This has weakened its overall impact. The existence of seven treaty bodies acting independently to monitor implementation of obligations based on the Universal Declaration of Human Rights, raises the possibility of

diverging interpretations which may result in uncertainty with respect to key human rights concepts and standards, which threatens a holistic, comprehensive and cross-cutting interpretation of human rights provisions. A lack of coordination and collaboration among the treaty bodies may result in conflicting jurisprudence. This issue is specifically addressed in the draft International Convention for the Protection of All Persons from Enforced Disappearance, which calls on its Committee to consult other treaty bodies with a view to ensuring the consistency of their respective observations and recommendations.¹⁰ The multiplicity of recommendations emerging from each treaty body makes it difficult for States parties and other national stakeholders to gain a comprehensive picture of the key human rights concerns and recommendations vis-à-vis the human rights situation in States. This may diminish the possibility that States parties will translate this output into integrated cross-sectoral national planning and programming.

24. The process of reporting often falls short of achieving its objective of providing regular opportunities for individual States parties to periodically conduct a comprehensive review of the measures they have taken to bring their national laws and policies in line with the treaties to which they are a party. The quality of State party reports submitted to different treaty bodies varies considerably. During 2004 and 2005, the Committees noted that only 39 per cent of reports considered were in compliance with reporting guidelines. In 18 per cent of cases, non-compliance was specifically noted in concluding observations.¹¹ Some Governments have been praised by Committees for their well-researched, frank and self-critical approach, but many reports are repetitive, present information provided in other documents or insufficient or selective data on the de jure and de facto implementation of human rights in the State party. In many cases, reports are prepared without consultation across Government departments or debate with national stakeholders. In some cases, national civil society may not have local access to reports.

25. Often, treaty bodies have insufficient information to enable them to undertake a full analysis of implementation in law and practice of the legal obligations stipulated in the treaties. This negatively impacts on the quality of dialogue and recommendations of the Committees. The reports of States parties may focus on the legal framework, but pay insufficient attention to the practical implementation and de facto enjoyment of rights by individuals. Information from United Nations agencies and NGOs on all States parties is not systematically available prior to the consideration of reports. As a result, the subsequent recommendations of treaty bodies may lack the precision, clarity and practical value required to enhance implementation.

26. Despite the recent introduction of follow-up procedures by some treaty bodies, and OHCHR technical cooperation activities aimed at enhancing implementation of treaty obligations, a major weakness of the current system is the absence of effective, comprehensive follow-up mechanisms to ensure that the system has a sustained and systematic impact on the enjoyment of human rights at the national level. Governments frequently pay insufficient attention to the recommendations adopted by the treaty bodies, and lack of awareness or knowledge among national constituencies about the monitoring procedures and their recommendations, renders these invisible at the national level.

III. WAYS IN WHICH THE ESTABLISHMENT OF A UNIFIED STANDING TREATY BODY COULD ADDRESS CURRENT CHALLENGES

27. The proposal of a unified standing treaty body is based on the premise that, unless the international human rights treaty system functions and is perceived as a unified, single entity

¹⁰ E/CN.4/2005/WG.22/WP.1/Rev.4, article. 28.2.

¹¹ Office of the High Commissioner for Human Rights, *Report on compliance of States parties with the existing guidelines for the treaty body reporting procedure*. Informal paper of the Secretariat prepared for the Technical working group on harmonized reporting guidelines, Geneva, 8-9 December 2005.

responsible for monitoring the implementation of all international human rights obligations, with a single, accessible entry point for rights-holders, the lack of visibility, authority and access which affects the current system will persist. The proposal is also based on the recognition that, as currently constituted, the system is approaching the limits of its performance, and that, while steps can be taken to improve its functioning in the short and medium term, more fundamental, structural change will be required in order to guarantee its effectiveness in the long term. Unlike the current system of seven part-time Committees, a unified standing treaty body comprised of permanent, full-time professionals is more likely to produce consistent and authoritative jurisprudence. A unified standing treaty body would be available to victims on a permanent basis and could respond rapidly to grave violations. As a permanent body, it would have the flexibility to develop innovative working methods and approaches to human rights protection and be able to develop clear modalities for the participation of United Nations partners and civil society, which build on the good practices of the current system. It would also be able to develop a strong capacity to assist States parties in their implementation of human rights obligations, including through follow-up activities and the country engagement strategies envisaged by the High Commissioner in her Plan of Action. Also in line with the Plan of Action, the Secretariat would be significantly strengthened to provide the expert support and advice required by a unified standing treaty body, as well as that required to strengthen national capacity and partnerships to allow full engagement in the treaty implementation process (paragraphs 145-146).

28. As States implement human rights obligations in an integrated rather than treaty-specific way, and individuals and groups do not enjoy their human rights or experience violations along treaty lines, a unified standing treaty body would provide a framework for a comprehensive, cross-cutting and holistic approach to implementation of the treaties. In contrast to the current system of seven treaty bodies which consider reports which are submitted in accordance with different periodicities, a unified standing treaty body could introduce flexible and creative measures to encourage reporting, and maximize the effectiveness and impact of monitoring. For example, a single cycle for reporting by each State party on implementation of all treaty obligations could be introduced, which would occur once every three to five years, providing States parties and partners with the opportunity to carry out in-depth, holistic, comprehensive and cross-cutting assessments and analysis of a State's human rights performance against all relevant obligations. A single reporting cycle monitored by a unified standing treaty body would provide a framework for prioritization of action needed at the country level to comply with human rights obligations. Reporting could be aligned with national processes and systems such as the development and implementation of national human rights action plans and other reporting obligations of the State party. As a result of comprehensive examination of a State party's implementation of all its treaty obligations, reporting to a unified standing treaty body would stimulate more effective mainstreaming of the rights of specific groups or issues in the interpretation and implementation of all human rights treaty obligations, thereby making these more visible and central. At the same time, the current specialized expertise of treaty bodies and their focused attention on specific rights and rights-holders would be safeguarded and built upon.

29. A comprehensive and holistic assessment of a State's human rights performance against all relevant obligations by the unified standing treaty body resulting in a single document containing all key concerns and recommendations would facilitate States parties' and other national stakeholders' consideration of the whole range of relevant human rights concerns and legislative, policy and programme measures required. By providing a complete picture of the human rights priorities, this holistic approach would also facilitate the work of stakeholders, such as NGOs, NHRIs and other parts of civil society at the country level, and make it easier for them to integrate these recommendations into their country programming. Partners would benefit from their different areas of human rights expertise and develop a common approach to human rights issues and requirements at the national level.

30. A unified standing treaty body would ensure a consistent approach to the interpretation of provisions in the treaties which are similar or overlap substantively. Complainants would also have the opportunity to invoke substantively overlapping or similar provisions of more than one instrument, thereby enhancing consistence and coherence in the interpretation of substantively similar provisions in the different instruments. A unified standing treaty body would also guarantee consistency and clarity of General Comments/Recommendations and, in that way, strengthen the interpretation of treaty provisions. The output of a unified standing treaty body would strengthen appreciation of the indivisibility of human rights obligations and the importance of a holistic, cross-cutting and comprehensive approach to implementation.

31. A unified standing treaty body could extend the period of the dialogue with individual States parties from the current average of one day per treaty body to, for example, up to five days, depending on factors such as the number of treaties ratified. By combining the seven dialogues currently operating independently into one, in-depth session with one monitoring counterpart rather than seven, the dialogue would be transformed into a strategic and continuous tool for monitoring human rights performance against all obligations. States parties would be encouraged to send expert delegations including all Government ministries having responsibility for the full range of human rights to respond to detailed questions and benefit from the expertise of Committee members. An extension of the period of dialogue would provide new opportunities for stakeholders to contribute information and exchange views with the Committee. Enhanced participation, information and exchange of views on all human rights obligations would result in an overall package of more precise, clear and practical recommendations. Improved dialogue, engagement and output would encourage greater participation of civil society and other actors, thereby facilitating implementation at the national level.

32. Members of the unified standing treaty body would be available on a permanent basis. This would allow them to build on the current achievements of the system to develop strong, coherent, innovative and flexible approaches to monitoring implementation of the treaties. As members would be permanent pending individual complaints would be adjudicated expeditiously, which would heighten the impact of views adopted in the context of complaints procedures, and encourage their wider use by rights-holders. Similarly, a unified standing treaty body would allow for a strengthening of follow-up capacity, by increasing the potential and feasibility for follow-up missions by the experts, given the permanent nature of their work.

33. A unified standing treaty body would inevitably be more visible than the existing treaty bodies, and would be able to make its procedures, recommendations and decisions better known at the national level. Enhanced visibility, in tandem with open and transparent procedures, would also arouse media interest, and conclusions and recommendations adopted by a unified standing treaty body on the overall human rights situation in a country are likely to attract more media attention than conclusions and recommendations adopted on the implementation of a single treaty.

34. In comparison to the current system of seven part-time bodies, as a standing body, the unified standing treaty body would be more flexible than the current bodies in respect of the timing and venue of its sessions. It would be able to group the consideration of the reports of several States parties from one region over the course of a few weeks, thereby enhancing regional peer pressure to engage with the system. It would also be available to convene sessions in regions, thereby strengthening the visibility of the system and ensuring its accessibility. It could also develop a regular pattern of missions relating to follow-up or capacity building.

35. A unified standing treaty body could also absorb new standards. It would be easier to integrate the monitoring of a new instrument into a unified monitoring structure already dealing with several treaties rather than incorporating new monitoring functions into the mandate of an existing treaty body, an option which has previously been rejected in the cases of CAT and the draft International Convention for the Protection of All Persons from Enforced Disappearance.

36. The permanent availability and functioning of a unified standing treaty body would allow for the establishment of stronger links with other human rights bodies, such as the special procedures mechanisms or regional human rights systems, to coordinate activities and complement action in accordance with the respective mandates. A unified standing treaty body would also be able to establish links with political bodies more readily than seven part-time bodies. A comprehensive, overall assessment of the implementation of international legal obligations under human rights treaties for countries in one single document, rather than in seven separate documents, would be more likely to attract heightened attention from political bodies such as a future Human Rights Council or the Security Council.

IV. IMPLEMENTING MEASURES: A UNIFIED STANDING TREATY BODY

37. The following section discusses some of the possible forms/modalities of operation of a unified standing treaty body, monitoring functions, including some possible innovations.

A. Forms/Modalities of operation

38. Currently, treaty bodies are in session for a total of 57 weeks. In order to accomplish monitoring functions currently carried out by the treaty bodies, the unified standing treaty body would be permanent. This would have implications for its working methods and procedures, but also its membership, both in terms of the number of members, as well as the formal requirements and qualifications for membership.

39. Different models for a unified standing treaty body could be envisaged, with much depending on the number of its members. A chamber or working group system would enable the body to take on a larger workload to deal with all the procedures. Such a system would also allow the unified standing treaty body to develop stronger follow-up mechanisms and innovative approaches to monitoring national implementation. A functional division between reporting and petitions could be envisaged, with the work with respect to these functions being further divided into chambers or working groups along treaty, thematic or regional lines, or operating in parallel. The design applied to the different functions and how they will be carried out would depend on the overall design of the unified standing treaty body.

1. A single body with no chambers

40. A unified standing treaty body with no chambers or working groups would ensure consistent interpretation. However, this model would not address the challenges to the current system arising from its workload and may worsen backlogs. Also, if the number of members of the body was large, it may be difficult to reach consensus on substantive and procedural matters.

2. Chambers operating in parallel

41. Under this model, each chamber would have the full mandate for all treaties and monitoring functions. Advantages would be that there would be a capacity for distribution of tasks and workload. All Committee members would exercise the various monitoring functions and thus achievements of the body under the various procedures would lead to reciprocal enrichment. The experience of CRC, which is currently applying a two-chambers model, and

CEDAW, which will introduce this modality in the latter part of 2006, should provide useful insights which should be considered in discussing this option.

3. Chambers along functional lines

42. A unified standing treaty body might choose to create separate chambers for the consideration of reports and individual complaints. Separate chambers could also be created for inquiries and country visits. A “follow-up” or “implementation” chamber could also be created, although such functions might also be assigned to specific task forces within the chambers dealing with reports and communications. This model would allow for distribution of tasks between chambers and allow members to develop expertise with regard to the specific procedures, in particular individual complaints. However, there would be a risk of disconnection among the chambers on substantive issues, which might result in inconsistency of interpretation. Ideally, the work of the unified standing treaty body in the context of one procedure should inform its work with respect to its other procedures. The workload which the unified standing treaty body would have may not be accommodated sufficiently by this option, and supplementary mechanisms to distribute workload might be required.

4. Chambers along treaty lines

43. The establishment of chambers along treaty lines would have the advantage of allowing for easy distribution of workload and maintaining specificity of each treaty. The issue of participation of experts from non-States parties could be avoided in this scenario, and members with specialized expertise could be elected. However, the benefits which should flow from the establishment of a unified standing treaty body, namely that it would produce a holistic, comprehensive and cross-cutting assessment of human rights situations, eliminate duplication and potential inconsistent interpretations, reduce the reporting burden, underline the indivisibility of rights, create visibility for the system and improve access for stakeholders, may be compromised by as this method would reflect the separations and divisions in the current system. However, unlike in the current system of seven treaty bodies, a unified standing treaty body working in chambers along treaty lines would implement identical working methods.

5. Chambers along thematic lines

44. Under this option, chambers could be structured along clusters of rights, such as non-discrimination, rule of law, etc. An advantage may be the reduced risk of inconsistencies in interpretation of overlapping provisions. However, clusters may be difficult to define and overlap between chambers would remain, and there might be undue emphasis on certain rights to the neglect of others. Also, States parties may find it difficult to report and stakeholders may find it difficult to interact with this system.

6. Chambers along regional lines

45. This option would allow for development of expertise relating to human rights issues in a particular region and could strengthen relationships with regional systems and partners. However, there could be a risk of inconsistencies among chambers. In addition, this modality might duplicate the work of regional systems, and may result in the emergence of regional rather than universal standards.

B. Functions

1. Reporting

46. Reporting and “constructive dialogue” are currently the primary tools used by treaty bodies to monitor implementation of treaty obligations by States parties. There are several options that the unified standing treaty body could consider in relation to reporting. It could adopt the approach of the current system and consider reports submitted under each of the seven treaties applicable to a State. It could require States to submit an expanded core document and treaty-specific reports relating to the treaties accepted by States parties. Responses to comprehensive and integrated lists of issues relating to all treaty obligations could replace periodic reports. This approach might facilitate reporting by States parties, eliminate backlogs and ensure that up-to-date information on implementation is available to the unified standing treaty body. This system would also allow the body to pre-schedule consideration of reports years in advance according to a regular, agreed cycle. This would allow for proper budgeting and estimation of costs.

2. Individual complaints

47. Procedural innovations could be instituted by a unified standing treaty body in relation to individual complaints. As in the current practice of treaty bodies with competence to consider complaints, the unified standing treaty body could appoint special rapporteurs for new complaints and interim measures, or working groups. The responsibilities of the special rapporteurs could be aligned along institutional/instrument lines (complaints under Optional Protocol to ICCPR and to CEDAW, art. 22 of CAT and art. 14 of CERD), or in accordance with overarching substantive clusters (non-discrimination, security of person, torture and non-refoulement, right to life, due process and administration of justice, etc.).

48. A unified standing treaty body could introduce expedited procedures for the handling of manifestly ill-founded cases (which could be adjudicated by a chamber of three). It could also introduce a fast-track procedure to adjudicate routine meritorious cases, which merely follow established jurisprudence.

49. The unified standing treaty body could be empowered to adjudicate claims of violations of provisions of more than one instrument in the context of the same case, provided that the State concerned is a party to both instruments. This would encourage coherence of interpretation of the major human rights instruments and provide further impetus towards a genuinely “unified” system. A chamber for consideration of complaints, or a staggered chamber system could be considered.

3. Inquiries

50. A unified standing treaty body would enhance the visibility and general awareness of the existence of this procedure, which could generate more inquiries. With its permanent membership and enhanced flexibility, the unified body would be able to develop more effective and innovative procedures, including more efficient follow-up measures.

4. General comments

51. As in the case of the existing treaty bodies, a unified standing treaty body would adopt and publish its interpretation of the content of human rights provisions, in the form of General Comments/Recommendations to clarify the content of human rights provisions. Unlike in the current system, a unified standing treaty body would be able to adopt a holistic approach to overlapping obligations in the treaties. The unified standing treaty body would also be well

placed to introduce more transparent and participatory processes for all stakeholders in the elaboration of General Comments/Recommendations.

5. Follow-up

52. A unified standing treaty body could introduce mechanisms, building on the practice of existing treaty bodies, to follow up implementation of concluding observations and recommendations, and decisions on individual cases. The rules of procedure of the unified standing treaty body should clearly spell out the follow-up competencies of the body, which could include in situ monitoring missions.

6. Early warning and fact finding

53. An early warning mechanism could be developed by a unified standing treaty body. As a standing body, it could respond quickly to violations requiring immediate attention, as well as emerging human rights situations, and, in a timely fashion, alert relevant actors within the United Nations system to take appropriate action.

54. A unified standing treaty body would approach human rights in a comprehensive, holistic and cross-cutting manner, and accordingly have greater capacity than the existing bodies to assess concrete human rights situations and developments at the country level. Building on CERD practice, the unified standing treaty body could adopt early warning/urgent action procedures without amending existing treaty provisions. Human rights violations could be responded to by a unified standing treaty body in close collaboration with special procedures' mandate holders, with the normal division of labour between the treaty bodies and special mechanisms being maintained.

7. Cooperation with partners

55. Interaction with United Nations entities is already an integral part of the current treaty body system. Provisions providing for formal interaction are included in the treaties (ICESCR, ICCPR, CEDAW, CRC and CMW) and/or in their Committees' rules of procedure (HRC, CEDAW, CAT, CRC). A unified standing treaty body could encourage greater practical engagement by United Nations specialized agencies, programmes and funds in the reporting process, at all phases of the reporting cycle, both at the national and at the international levels. As in the current system, the unified standing treaty body could invite specialized agencies and other parts of the United Nations system to provide written reports with country-specific information on States parties, and could adopt standard guidelines to facilitate this process.

56. All treaty bodies have developed modalities for interaction with non-governmental organizations, and this interaction now forms an integral part of the monitoring process. In addition, treaty bodies highly value the interaction that has developed with civil society representatives. One of the action points of the High Commissioner's Plan of Action is "to build stronger collaborations with civil society and work together with them to contribute to long-term human rights achievements."¹² The unified standing treaty body could build on the achievements of the current system and significantly strengthen the role of civil society actors in its activities.

8. Days of general discussion

57. The general/thematic discussions convened by the existing treaty bodies have proven to be valuable discussion forums, which attract the participation of Government representatives,

¹² A/59/2005/Add.3, para. 144.

individual experts, United Nations bodies and specialized agencies as well as members of civil society. General/thematic discussions and subsequent recommendations have fed into the preparation of General Comments and prompted the launching of global studies.¹³

58. A unified standing treaty body could build on this experience and strengthen the role of general/thematic discussions in making the system visible and accessible. A unified standing treaty body could introduce, different and more flexible approaches in order to engage as many stakeholders. It could convene days of general discussions in regions which would focus on particular human rights concerns of specific to regions. It could also convene days of general discussion on themes common to the treaties, which would allow for the development of a cross-cutting approach to human rights. The output of days of general discussion organized by a unified standing treaty body could form the background to the preparation of General Comments/Recommendations on thematic issues relevant across treaty lines.

V. ISSUES TO BE CONSIDERED IN THE CREATION OF A UNIFIED STANDING TREATY BODY

A. Specificity

59. A key feature of the current system of seven human rights treaties is the promotion and protection of the rights of particular rights-holders, such as children, women and migrant workers. Some commentators have expressed the view that the creation of a unified standing treaty body may lead to diminished protection for these rights holders because such a body would be unable to monitor implementation of the specificities of each treaty in sufficient depth. Commentators have also suggested that the establishment of a unified standing treaty body would result in less scrutiny of the implementation of specific rights, such as freedom from torture and racial discrimination. It has also been suggested that the establishment of a unified standing treaty body in place of the existing bodies might diminish the capacity of the treaty body process to galvanize those sectors of the Government and the community dealing with, or interested in, specific issues. The point has also been made that the variety of expertise available in the membership of the existing Committees is greater than could be available to a unified standing treaty body. In the process of designing a unified standing treaty body, measures would be taken to prevent the loss of specialized expertise of the present system and ensure that the dialogue under a new monitoring regime maintained the current focus on the promotion and protection of the rights of specific rights-holders and specific rights. Measures would also be taken to ensure that the treaty body process continues to engage those sectors of the Government and the community dealing with, or interested in, the rights of specific rights holders or rights issues.

B. Different ratification patterns

60. As universal ratification has yet to be achieved and Member States have different ratification patterns, the establishment of a unified standing treaty body poses a number of procedural challenges. These include how the membership of a unified standing treaty body would be determined, and whether members of the body could participate in deliberations and decision-making on substantive treaty obligations that their own country has not accepted. In the narrow context of complaints, under the current practice, members of the HRC, CEDAW, CERD and CAT can, and do, participate in the consideration of complaints even if their country of origin has not ratified the Optional Protocol to the ICCPR or to CEDAW or has not made the declaration under article 14 of CERD or article 22 of CAT. This issue could also be resolved

¹³ A unique provision of the Convention on the Rights of the Child, article 45 (c), enables the Committee to recommend to the General Assembly that the Secretary-General undertake studies on specific issues related to the rights of the child. The General Assembly has requested the Secretary-General to undertake comprehensive studies on the impact of armed conflict on children and on violence against children.

through the composition of chambers, if a chamber system is indeed the preferred working modality for a unified standing treaty body.

C. Membership

61. The ultimate success of any monitoring system, including of a unified standing treaty body, depends on the calibre and independence of the experts monitoring implementation of treaty standards. Quality of membership of a unified standing treaty body could be ensured by instituting election procedures which include processes which provide States parties with more information on candidates. More detailed criteria for candidature, qualifications and expertise and term limits, as well as geographic and gender balance, could also be introduced. Members of a permanent body would require remuneration at a sufficiently senior level to attract the highest calibre of candidates. In this regard, experience from similar bodies, including those operating at the regional level, may be helpful.

62. Mechanisms could be designed so that members retained their links with their constituencies, so as to ensure that the unified standing treaty body benefits from the relevant national experiences and expertise and avoids bureaucratization. A unified standing treaty body could be composed of a combination of permanent and non-permanent members, thereby ensuring that each examination/procedure benefited from the appropriate level of expertise. The permanent members could provide continuity, coherence and consistency, and non-permanent members could provide specialist expertise as required in the situation/case at hand.

63. A detailed system for the nomination and election of experts could also be developed, in particular in view of the different ratification patterns.

D. Legal issues

64. With the exception of CESCER, all the human rights treaty bodies are created by the human rights treaties they monitor. The creation of a unified standing treaty body raises significant legal issues. Different options may be envisaged. The first option might involve amendments to each of the human rights treaties, as envisaged in their amendment provisions. The second option could be based on an overarching amending procedural protocol. Legally non-binding solutions could also be envisaged. These may include a gradual transfer of competencies to one of the existing human rights treaty bodies or, alternatively, the temporary suspension of the functions of the treaty bodies and the transfer of their powers to a unified standing treaty body created by means of a General Assembly resolution.

65. Any transitional arrangements would depend on the option perceived to be the most viable approach to the establishment of a unified standing treaty body. Concurrent application of parallel monitoring regimes should be avoided, as this would further complicate, rather than simplify and strengthen the monitoring regime. Concurrent systems would also compromise the aim of the reform exercise. At a minimum, a simplified ratification procedure, or the provisional application of the new monitoring regime pending the entry into force of the amendments (amending protocol), as in the case of the Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea, could be envisaged.

Annex 1: Facts and figures about reporting

Ratifications

- All States are party to at least one of the treaties and 75% are party to four or more;
- 71% of all possible ratifications have been undertaken, more than two-thirds of the way to universal ratification. Excluding the ICRMW, 77% of all possible ratifications have been undertaken.

The present system - some basic facts

- 7 treaty bodies with 3 more soon to be created or envisaged (SCP under OPCAT, CED and CRPD);
- 115 members elected by States parties (or members of ECOSOC);
- 57 weeks of sessions per year

Compliance with reporting obligations

	<i>No. of States parties</i>	<i>No. of initial reports submitted</i>	<i>No. of overdue reports</i>	<i>No. of States parties with no overdue reports</i>	<i>Total number of reports received¹⁴</i>	<i>Total number of reports due by 16 Feb 2006</i>
ICERD	170 (88%)	152 (89%)	437	60 (35%)	1695 (80%)	2132
ICCPR	155 (80%)	129 (83%)	187	53 (34%)	334 (64%)	521
ICESCR	152 (78%)	110 (72%)	211	62 (41%)	213 (50%)	424
CEDAW	180 (93%)	151 (84%)	166	94 (52%)	592 (78%)	758
CAT	141 (73%)	101 (72%)	178	45 (32%)	247 (58%)	425
CRC	192 (99%)	183 (95%)	132	115 (60%)	302 (70%)	434
CRC-OPAC	104 (54%)	18 (17%)	49	55 (53%)	18 (27%)	67
CRC-OPSC	103 (53%)	14 (14%)	56	47 (46%)	14 (20%)	70
ICRMW	34 (18%)	2 (6%)	26	8 (24%)	2 (7%)	28
Total	1231 (71%)	860 (70%)	1442		3417 (70%)*	4859

- 70% of all reports that were due by 16 February 2006 have in fact been submitted*;
- 30% of initial reports have not yet been submitted;
- A State that has ratified all nine treaties imposing reporting obligations must produce a report to a treaty body on average once every five and a half months;
- For the period January 2004 to December 2005, the reports of 188 States parties were considered: 36 States were required to present a report to more than one treaty body, 13 to three treaty bodies, and two States to four treaty bodies. Additionally, HRC considered two States parties in the absence of a report and CERD completed its review procedure in the case of four States parties.¹⁵

¹⁴ A number of treaty bodies accept combined reports to address the reporting backlog. One State party submitted its combined initial (due 17 March 1978) to fourteenth periodic (due 17 March 2004) reports in one document of 24 pages.

¹⁵ For the period January 2004 to December 2005, CERD scheduled a review of the implementation of the Convention in 24 States parties. Some States parties were withdrawn from the review procedure following the submission of their reports. In other cases, reviews were postponed at the request of the States parties, which had indicated their intention to submit the requested reports within a short period of time.

Annex 2: Reporting status per State party as of 16 February 2006

Countries	Reports submitted	Pending consideration	Total overdue	5 years overdue	10 years overdue	Initial overdue
Afghanistan	5		25	16	8	4
Albania	10	1 ¹⁶	3	1		
Algeria	25	1 ¹⁷	7	1		
Andorra	4		2			
Angola	6		6	4	2	2
Antigua & Barbuda	4		14	8	5	3
Argentina	34		4			2
Armenia	12		7	1		
Australia	32	1 ¹⁸	2			
Austria	32	1 ¹⁹	4			
Azerbaijan	15	2 ²⁰	5			3
Bahamas	15		3	2	1	1
Bahrain	9		5	1		3
Bangladesh	20	1 ²¹	8	2		3
Barbados	24		10	6	2	
Belarus	35		6	2		1
Belgium	27	1 ²²	5			
Belize	7	2 ²³	11	4	1	5
Benin	9	2 ²⁴	5			1
Bhutan	7		2	1		
Bolivia	27	3 ²⁵	8	1		2
Bosnia & Herzegovina	12	9 ²⁶	6	2	1	4
Botswana	17	2 ²⁷	7	1		4
Brazil	28	1 ²⁸	3	2	1	
Brunei Darussalam	1					
Bulgaria	26		17	8	2	2
Burkina Faso	18		13	5		4
Burundi	14	1 ²⁹	16	8	1	1
Cambodia	13		14	6	1	2
Cameroon	22		11	4		
Canada	41	7 ³⁰	1			
Cape Verde	19	6 ³¹	15	7	3	6

¹⁶ Initial report (CESCR)

¹⁷ Third periodic report (CAT)

¹⁸ Third periodic report (CAT)

¹⁹ Sixth periodic report (CEDAW)

²⁰ Second and third periodic reports (CEDAW)

²¹ Initial report (CRC-SC)

²² Initial report CRC-AC)

²³ Third and fourth periodic reports (CEDAW)

²⁴ Second periodic reports (CAT and CRC)

²⁵ Second to fourth periodic reports (CEDAW)

²⁶ Initial to sixth periodic reports (CERD) and initial to third periodic reports (CEDAW)

²⁷ Fifteenth and sixteenth periodic reports (CERD)

²⁸ Sixth periodic report (CEDAW)

²⁹ Initial report (CAT)

³⁰ Fourth and fifth periodic reports (CESCR), fifteenth to eighteenth periodic reports (CERD) and initial report (CRC-AC)

Countries	Reports submitted	Pending consideration	Total overdue	5 years overdue	10 years overdue	Initial overdue
Central African Republic	9		24	18	10	2
Chad	10		19	10		6
Chile	32	2 ³²	7	1		2
China	22	2 ³³	5	1		
Colombia	30	3 ³⁴	7	2		2
Comoros	1		5	3	1	1
Congo (Republic of the)	8	1 ³⁵	15	9	6	2
Cook Islands	0		2	1		
Costa Rica	31	2 ³⁶	9	3	1	
Côte d'Ivoire	15		17	7	2	4
Croatia	15		5			2
Cuba	21	2 ³⁷	9	3		1
Cyprus	32	3 ³⁸	6	1		
Czech Republic	18	4 ³⁹	1			
Dem. People's Rep. of Korea	7		1			
Dem. Rep. of the Congo	21	3 ⁴⁰	15	6	2	2
Denmark	41	5 ⁴¹	1			
Djibouti	1		7	2		4
Dominica	1		14	9	6	5
Dominican Republic	20		8	3		
Ecuador	33		5			1
Egypt	31		10	2	1	2
El Salvador	28	7 ⁴²	3			1
Equatorial Guinea	6		13	6	4	5
Eritrea	4		4			3
Estonia	17	4 ⁴³	1			
Ethiopia	14	1 ⁴⁴	18	12	7	3
Fiji	17		6	2		
Finland	39	2 ⁴⁵				
France	31		5	1		2
Gabon	17		11	4	2	1

³¹Initial to sixth periodic reports (CEDAW)

³²Fourth periodic report (CEDAW) and third periodic report (CRC)

³³Fifth and sixth periodic reports (CEDAW)

³⁴Fifth and sixth periodic reports (CEDAW) and third periodic report (CRC)

³⁵Initial report (CRC)

³⁶Initial reports (CRC-AC and CRC-SC)

³⁷Fifth and sixth periodic reports (CEDAW)

³⁸Third to fifth periodic reports (CEDAW)

³⁹Sixth and seventh periodic reports (CERD), third periodic report (CEDAW) and initial report (CRC-AC)

⁴⁰Third periodic report (CCPR) and fourth and fifth periodic reports (CEDAW)

⁴¹Sixteenth and seventeenth periodic reports (CERD), sixth periodic report (CEDAW), fifth periodic report (CAT) and initial report (CRC-SC)

⁴²Second periodic report (CESCR), ninth to thirteenth periodic reports (CERD) and initial report (CRC-AC)

⁴³Sixth and seventh periodic reports (CERD), fourth periodic report (CEDAW) and second periodic report (CAT)

⁴⁴Third periodic report (CRC)

⁴⁵Fifth periodic reports (CESCR and CEDAW)

Countries	Reports submitted	Pending consideration	Total overdue	5 years overdue	10 years overdue	Initial overdue
Gambia	6		24	18	12	1
Georgia	15	3 ⁴⁶				
Germany	35		3			
Ghana	24	3 ⁴⁷	8	1		4
Greece	28	1 ⁴⁸	5	1		1
Grenada	1		12	8	4	3
Guatemala	27	6 ⁴⁹	4			3
Guinea	20	3 ⁵⁰	17	10	5	3
Guinea-Bissau	1		10	7	4	2
Guyana	24	14 ⁵¹	8	4	2	1
Haiti	14		13	8	4	2
Holy See	16		8	2		3
Honduras	11	5 ⁵²	7	1		3
Hungary	35	2 ⁵³	5	1		
Iceland	37	4 ⁵⁴				
India	27	6 ⁵⁵	4	2	1	
Indonesia	9	3 ⁵⁶	4	1		1
Iran (Islamic Rep. of)	22		8	4	2	
Iraq	25		11	5		
Ireland	13	1 ⁵⁷	3			2
Israel	25	5 ⁵⁸	1			
Italy	35	3 ⁵⁹	2			
Jamaica	26	1 ⁶⁰	6			1
Japan	16	1 ⁶¹	5			
Jordan	25	3 ⁶²	10	4		
Kazakhstan	9	2 ⁶³	1			
Kenya	9	1 ⁶⁴	9	2		3
Kiribati	1	1 ⁶⁵	2			1
Kuwait	20		10	3		
Kyrgyzstan	8		9	1		3

⁴⁶ Second and third periodic reports (CEDAW) and third periodic report (CAT)

⁴⁷ Third to fifth periodic reports (CEDAW)

⁴⁸ Sixth periodic report (CEDAW)

⁴⁹ Eighth to eleventh periodic reports (CERD), sixth periodic report (CEDAW) and fourth periodic report (CAT)

⁵⁰ Fourth to sixth periodic reports (CEDAW)

⁵¹ Initial to fourteenth periodic reports (CERD)

⁵² Initial report (CCPR), fourth to sixth periodic reports (CEDAW) and third periodic report (CRC)

⁵³ Third periodic report (CESCR) and fourth periodic report (CAT)

⁵⁴ Fifth periodic report (CEDAW), third periodic report (CAT) and initial reports (CRC-AC and CRC-SC)

⁵⁵ Second and third periodic reports (CEDAW) and fifteenth to eighteenth periodic reports (CERD)

⁵⁶ Fourth and fifth periodic reports (CEDAW) and second periodic report (CAT)

⁵⁷ Second periodic report (CRC)

⁵⁸ Tenth to thirteenth periodic reports (CERD) and fourth periodic report (CEDAW)

⁵⁹ Fourth periodic report (CAT) and initial reports (CRC-AC and CRC-SC)

⁶⁰ Fifth periodic report (CEDAW)

⁶¹ Initial report (CAT)

⁶² Third and fourth periodic reports (CEDAW) and third periodic report (CRC)

⁶³ Second periodic report (CEDAW) and initial report (CRC-AC)

⁶⁴ Second periodic report (CRC)

⁶⁵ Initial report (CRC)

Countries	Reports submitted	Pending consideration	Total overdue	5 years overdue	10 years overdue	Initial overdue
Lao People's Dem. Rep.	21		2	1		
Latvia	15	3 ⁶⁶	3	1		
Lebanon	25	1 ⁶⁷	7	3	1	1
Lesotho	16		15	6	1	5
Liberia	1		23	16	13	4
Libyan Arab Jamahiriya	30	2 ⁶⁸	6	1		1
Liechtenstein	11	4 ⁶⁹	3	1		
Lithuania	12	3 ⁷⁰	3			1
Luxembourg	30	1 ⁷¹				
Madagascar	25	1 ⁷²	11	7	4	1
Malawi	6	4 ⁷³	14	7	1	4
Malaysia	2	2 ⁷⁴	3	1		1
Maldives	8	2 ⁷⁵	11	5	2	2
Mali	24	2 ⁷⁶	12	4	2	4
Malta	23	1 ⁷⁷	10	4		
Marshall Islands	2	1 ⁷⁸	1			
Mauritania	9	1 ⁷⁹	2	1		
Mauritius	28	3 ⁸⁰	9	2	1	
Mexico	37	9 ⁸¹	4			2
Micronesia (Fed. States of)	1		2	1		
Monaco	7	2 ⁸²	7	4		1
Mongolia	31	3 ⁸³	6	1		2
Morocco	32	1 ⁸⁴	5			2
Mozambique	4	2 ⁸⁵	17	11	6	3
Myanmar	3		1			
Namibia	13	2 ⁸⁶	14	5		3
Nauru	0		2	1		1

⁶⁶ Initial report (CESCR) and second periodic reports (CAT and CRC)

⁶⁷ Third periodic report (CRC)

⁶⁸ Fourth periodic report (CCPR) and second periodic report (CEDAW)

⁶⁹ Initial report (CESCR), second and third periodic reports (CERD) and second periodic report (CEDAW)

⁷⁰ Second and third periodic reports (CERD) and third periodic report (CEDAW)

⁷¹ Fifth periodic report (CAT)

⁷² Third periodic report (CCPR)

⁷³ Second to fifth periodic reports (CEDAW)

⁷⁴ Initial and second periodic reports (CEDAW)

⁷⁵ Second and third periodic reports (CEDAW)

⁷⁶ Second periodic report (CRC) and initial report (CMW)

⁷⁷ Initial report (CRC-AC)

⁷⁸ Second periodic report (CRC)

⁷⁹ Initial report (CEDAW)

⁸⁰ Third to fifth periodic reports (CEDAW)

⁸¹ Fourth periodic report (CESCR), twelfth to fifteenth periodic reports (CERD), sixth periodic report (CEDAW), fourth periodic report (CAT), third periodic report (CRC) and initial report (CMW)

⁸² Initial reports (CESCR and CRC-AC)

⁸³ Sixteenth to eighteenth periodic reports (CERD)

⁸⁴ Third periodic report (CESCR)

⁸⁵ Initial and second periodic reports (CEDAW)

⁸⁶ Second and third periodic reports (CEDAW)

Countries	Reports submitted	Pending consideration	Total overdue	5 years overdue	10 years overdue	Initial overdue
Nepal	25		2	1		
Netherlands	32	3 ⁸⁷	1			
New Zealand	32		4			
Nicaragua	21	1 ⁸⁸	11	5	2	
Niger	18	2 ⁸⁹	14	8	3	2
Nigeria	27		5	2		1
Niue	0		2	1		1
Norway	43	5 ⁹⁰				
Oman	3	2 ⁹¹				
Palau	1		1			
Panama	26		17	8	3	2
Papua New Guinea	2		13	10	6	1
Paraguay	13		7	1		3
Peru	31	2 ⁹²	10	4	1	1
Philippines	26	2 ⁹³	15	7	2	3
Poland	37	4 ⁹⁴	3			
Portugal	28	1 ⁹⁵	5			
Qatar	15	2 ⁹⁶	6			2
Republic of Korea	26	3 ⁹⁷	3			1
Republic of Moldova	11	2 ⁹⁸	6			
Romania	30	1 ⁹⁹	13	5	2	2
Russian Federation	38	1 ¹⁰⁰	2			
Rwanda	20		16	9	5	2
Saint Kitts and Nevis	5		3	1		
Saint Lucia	7	6 ¹⁰¹	8	5	3	1
Saint Vincent & the Grenadines	15		14	9	5	2
Samoa	4	1 ¹⁰²	2			
San Marino	2		9	5	3	3
Sao Tome & Principe	1		1			
Saudi Arabia	6		3			1
Senegal	27	1 ¹⁰³	14	5	1	2

⁸⁷ Third periodic report (CESCR) and fourth periodic reports (CEDAW and CAT)

⁸⁸ Sixth periodic report (CEDAW)

⁸⁹ Initial and second periodic reports (CEDAW)

⁹⁰ Fifth periodic report (CCPR), seventeenth and eighteenth periodic reports (CERD), fifth periodic report (CAT) and initial report (CRC-AC)

⁹¹ Initial report (CERD) and second periodic report (CRC)

⁹² Sixth periodic report (CEDAW) and fourth periodic report (CAT)

⁹³ Fifth and sixth periodic reports (CEDAW)

⁹⁴ Fourth to sixth periodic reports (CEDAW) and fourth periodic report (CAT)

⁹⁵ Fourth periodic report (CAT)

⁹⁶ Initial reports (CAT and CRC-SC)

⁹⁷ Third periodic report (CCPR), fifth periodic report (CEDAW) and second periodic report (CAT)

⁹⁸ Second and third periodic reports (CEDAW)

⁹⁹ Sixth periodic report (CEDAW)

¹⁰⁰ Fourth periodic report (CAT)

¹⁰¹ Initial to sixth periodic reports (CEDAW)

¹⁰² Initial report (CRC)

Countries	Reports submitted	Pending consideration	Total overdue	5 years overdue	10 years overdue	Initial overdue
Serbia & Montenegro ¹⁰⁴	25		11	3		4
Seychelles	6		24	14	8	5
Sierra Leone	4		30	19	13	6
Singapore	4	1 ¹⁰⁵				
Slovakia	11		6	3		
Slovenia	15		3			
Solomon Islands	3		12	8	6	1
Somalia	4		20	16	10	3
South Africa	6	4 ¹⁰⁶	7	2		2
Spain	36		7	1		2
Sri Lanka	22		9	2		2
Sudan	16		6			1
Suriname	18	2 ¹⁰⁷	3	2	1	
Swaziland	15	1 ¹⁰⁸	8	2		3
Sweden	38	1 ¹⁰⁹	2			1
Switzerland	14		5	1		
Syrian Arab Republic	25	2 ¹¹⁰	4	1		1
Tajikistan	12	5 ¹¹¹	7	2		3
Thailand	8		2			2
The FYR Macedonia	14	5 ¹¹²	7	3		1
Timor-Leste	0		8			8
Togo	16	1 ¹¹³	21	15	10	1
Tonga	14		5	1		1
Trinidad and Tobago	25		4			
Tunisia	31		12	3		2
Turkey	9	1 ¹¹⁴	5			3
Turkmenistan	8	3 ¹¹⁵	8	4		3
Tuvalu	0		4	2		2
Uganda	17		12	4	2	4
Ukraine	40	4 ¹¹⁶	2			1
United Arab Emirates	12		7	2		1

¹⁰³ Second periodic report (CRC)

¹⁰⁴ The treaty bodies have considered reporting obligations of successor States in different ways. Consequently, there may be slight variations in the number of reports. In this case, the reports submitted include reports submitted by the former Yugoslavia, the Federal Republic of Yugoslavia and Serbia and Montenegro. See <http://untreaty.un.org/ENGLISH/bible/englishinternetbible/historicalinfo.asp>

¹⁰⁵ Third periodic report (CEDAW)

¹⁰⁶ Initial to third periodic reports (CERD) and initial report (CAT)

¹⁰⁷ Third periodic report (CEDAW) and second periodic report (CRC)

¹⁰⁸ Initial report (CRC)

¹⁰⁹ Fifth periodic report (CAT)

¹¹⁰ Initial reports (CEDAW and CRC-SC)

¹¹¹ Initial report (CESCR), initial to third periodic reports (CEDAW) and initial report (CAT)

¹¹² Initial report (CESCR) and fourth to seventh periodic reports (CERD)

¹¹³ Initial report (CAT)

¹¹⁴ Initial report (CRC-SC)

¹¹⁵ Initial and second periodic reports (CEDAW) and initial report (CRC)

¹¹⁶ Sixth periodic report (CCPR), seventeenth and eighteenth periodic reports (CERD) and fifth periodic report (CAT)

Countries	Reports submitted	Pending consideration	Total overdue	5 years overdue	10 years overdue	Initial overdue
United Kingdom	37	1 ¹¹⁷	1			1
United Republic of Tanzania	24	1 ¹¹⁸	9	4	2	2
United States of America	8	3 ¹¹⁹	6			2
Uruguay	27		18	7	1	3
Uzbekistan	16	7 ¹²⁰				
Vanuatu	4	3 ¹²¹	2	1		
Venezuela (Bolivarian Rep. of)	33		6	1		2
Viet Nam	22	4 ¹²²	7	2	1	
Yemen	30	2 ¹²³	4	2		
Zambia	27	2 ¹²⁴	2			
Zimbabwe	8		11	5		
TOTAL	3417	295	1442	585	225	282

¹¹⁷ Fifth periodic report (CEDAW)

¹¹⁸ Second periodic report (CRC)

¹¹⁹ Second and third periodic reports (CCPR) and second periodic report (CAT)

¹²⁰ Third to fifth periodic reports (CERD), second and third periodic reports (CEDAW), third periodic report (CAT) and second periodic report (CRC)

¹²¹ Initial to third periodic reports (CEDAW)

¹²² Fifth and sixth periodic reports (CEDAW) and initial reports (CRC-AC and CRC-SC)

¹²³ Fifteenth and sixteenth periodic reports (CERD)

¹²⁴ Third periodic report (CCPR) and second periodic report (CAT)

Annex 3: Average time from submission to consideration of State party reports by the treaty bodies in 2005

Treaty Body	Months			Average Months
CAT	34th session	35th session		
	17.5 months	20.5 months		19
CESCR	34th session	35th session		
	13 months	18 months		15.5
HCR	83rd session	84th session	85th session	
	10 months	12 months	14 months	12
CERD	66th session	67th session		
	12 months	13 months		12.5
CRC	38th session	39th session	40th session	
	24 months	22 months	21 months	22.3
CEDAW	32nd session	33rd session		
	18 months	28.5 months		23.25
TOTAL AVERAGE				17.4

**Annex 4: Statistics relating to the individual complaint procedures of
ICCPR, CAT and CERD**

Overall cases registered with ICCPR		1453	
Cases pending		316	
Countries with highest percentage of registration			
	State party	Total number of cases registered	Overall percentage
1.	Jamaica	177	12.18
2.	Canada	118	8.12
3.	Australia	98	6.74
4.	Spain	93	6.40
5.	Netherlands	82	5.64
6.	Uruguay	79	5.44
7.	Uzbekistan	71	4.89
8.	France	66	4.54
	Total	784	53.95

Overall cases registered with CAT		288	
Cases pending		41	
Countries with highest percentage of registration			
	State party	Total number of cases registered	Overall percentage
1.	Sweden	66	22.92
2.	Switzerland	56	19.44
3.	Canada	49	17.01
4.	France	30	10.42
5.	Australia	20	6.94
6.	Netherlands	14	4.86
	Total	235	81.60

Overall cases registered with CERD		35	
Cases pending		3	
Countries with highest percentage of registration			
	State party	Total number of cases registered	Overall percentage
1.	Denmark	14	40.00
2.	Australia	6	17.14
3.	Sweden	3	8.57
4.	Norway	3	8.57
5.	Slovakia	3	8.57
6.	Netherlands	3	8.57
	Total	32	91.43

Annex 5: Resource implications of the Human Rights Treaty Bodies

2006-2007	Regular Budget	Extra-Budgetary	Total
TB experts (travel and DSA) OHCHR	5,957,800	2,625,200	8,583,000
OHCHR staff	10,756,500	6,133,000	16,889,500
DAW ¹²⁵	2,912,000	n/a	2,912,000
CEDAW	1,142,200	n/a	1,142,200
Conference services ¹²⁶	19,200,000	n/a	19,200,000

2006-2007

The UN regular budget (Section 24) Subprogramme 2 allocated USD 5,957,800 for the six Geneva based treaty bodies, for the travel and DSA of 92 experts.

Section 9 Subprogramme 2 (DAW/DESA) allocated USD 1,142,200 for the travel and DSA of the 23 CEDAW experts.

Total allocation for travel and DSA of 117 experts for the biennium 2006-2007 was **USD 7,100,000**

A permanent body of 25 experts would cost approximately USD 7,700,000 per year. It is expected that the experts would be at USG level.

Conference Services Costs

Based on the programme budget implications provided by conference services in New York (for CEDAW additional session in 2007, A/59/38 annex 9, and for the two chambers for CRC) a three-week session with a week of working group will cost approximately USD 1,200,000.

Consequently, the requested 13 sessions¹²⁷ per year of treaty body meetings would require some USD 19,200,000 being made available to conference services. Most of these resources are already available to conference services.

¹²⁵ DAW staff for the Women's Rights Section dedicated to the servicing of CEDAW (two P-4, one P-3, one P-2 and 2 GS).

¹²⁶ These costs are only indicative and have not been approved by Conference Services for this specific exercise but have been taken from previous costing received by OHCHR and DAW.

¹²⁷ Three sessions a year of three weeks preceded by a week of working group for HRC and CEDAW, three sessions a year of three weeks preceded by one week of working group for CRC, two sessions a year of three weeks preceded by a week of working group for CESC, two sessions of three weeks a year for CERD, two sessions of two and three weeks respectively preceded by a week of working group for CAT and one three week session for MWC.

APPENDIX C

Membership of the Human Rights Council by year

2007
Algeria Argentina Bahrain Czech Republic Ecuador Finland India Indonesia Morocco Netherlands Philippines Poland South Africa Tunisia
2008
Brazil France Gabon Ghana Guatemala Japan Mali Pakistan Peru Republic of Korea Romania Sri Lanka Ukraine United Kingdom Zambia
2009
Azerbaijan Bangladesh Cameroon Canada China Cuba Djibouti Germany Jordan Malaysia Mauritius Mexico Nigeria Russian Federation Saudi Arabia Senegal Switzerland Uruguay