

TREATY BODY MONITOR

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List of issues

It was decided that due to the absence of the Chairman at the meeting discussions on list of issues would be postponed until the next meeting.

Briefing on the Inter-Committee Meeting

Dialogue commenced with a presentation by Mr O’Flaherty, with a brief overview by Mr Amor on the outcome of the 7th Inter-Committee Meeting, held in Geneva on 23-25 June 2008.

The Committee Chair, Mr Rivas Posada, Mr Amor and Mr O’Flaherty had attended the Inter-Committee meeting. Mr O’Flaherty noted that there had been “an awkward juxtapositioning” of three key issues - the list of issues, consideration of a State in the absence of a report, and publication of the identity of country Rapporteur - and stated that a lot of time had been lost due to informational briefings. He stressed the importance of the dialogue with NGOs but questioned a briefing given on the Study of Violence against Children, respecting the importance of the issue but questioning its relevance to the ICM.

In addressing harmonisation, Mr O’Flaherty noted that the Secretariat had introduced reform proposals. However, he stressed that the various Committee members present were not convinced that these were the most pressing of issues. For example, he said that many felt that harmonising the list of issues was not the most urgent and pressing of issues and as a result created an ‘inordinate’ amount of discussion, with little

results. Alternatively, discussions on follow-up were minimal yet he noted that this is urgent for some Committees who do not have an established procedure.

Mr Amor, in agreement with Mr O'Flaherty, noted that the agenda should be decided with care and that the point of the meeting was to discuss harmonisation. He also noted that more rigorous working methods would have saved considerable time and that the format of the meeting was often more seminar based than interactive.

Turning to the matter of consideration of a State in the absence of a report, Mr O'Flaherty noted that within the Human Rights Committee it is a well-established procedure and that this was afforded some discussion in the ICM.

He noted there had been a great deal of interest in the innovations of the Human Rights Council and the ICM had received a briefing in this regard. Mr Amor added that joint clarifications would be useful with regard to the relationship between the treaty bodies and the Human Rights Council.

Concerning the independence of experts, he noted that the NGO briefing to the ICM laid emphasis on the election procedure and questioned the possible lack of independence of members on account of the present practices of States in the nomination and election process. He noted that this matter did not facilitate a great deal of discussion but did result in the reaffirmation of the 1997 decision by the Chairpersons on members retaining their independence. Mr Amor also stressed the usefulness of the exchange of information with NGOs as providing suggestions in practical terms.

Other matters discussed included the need for increased public access, inter alia NGOs, to the work of the treaty bodies, including pod casting of sessions, and Mr O'Flaherty noted that Ms Wedgwood had been a guiding figure in this. He also noted that NGOs had addressed the need to increase efforts for the involvement of NGOs at the national level as it appeared most national NGOs are currently serviced by those at the international level.

Addressing the concept of joint general comments by two treaty bodies, Mr O'Flaherty stated that the general feeling was that if done they should address only procedural and technical aspects, and not the substance of the treaties. Mr Amor noted that it would be difficult to have comments that overarch all the committees and suggested that instead of joint comments it would be more reasonable to have joint platforms on areas such as State reservations.

Finally Mr O'Flaherty addressed the ongoing work of the Secretariat on indicators, noting that the work is fascinating and welcomed, but that it also needs to be finalised.

Mr O'Flaherty introduced some of the proposals made during the ICM, which included:

- A deadline for the completion of revised reporting guidelines for the committees for the end of 2009.
- An expert meeting between follow-up Rapporteurs (where a Committee has a Rapporteur to participate) or task force members to discuss possible areas of harmonization, paying particular attention to qualitative assessment.
- Sending committee observers to the Human Rights Council. Those who have already done so felt it was invaluable experience.
- A deadline for the completion of the Secretariat's work on indicators for the end of 2009.
- That as the ICM was to meet twice annually; one meeting would be dedicated to harmonisation issues.

Committee dialogue

The Human Rights Council

Ms Chanet stated that she and Ms Wedgwood would be drafting a report on the relationship between the Committee and the Council and noted a high degree of references had been made during the UPR to treaty bodies. She questioned the fact that States could choose which recommendations to accept under the UPR. In line with follow-up, she further questioned how the treaty bodies were to proceed in the event of a State rejecting a treaty body recommendation during the UPR process.

The Human Rights Council and UPR

Ms Wedgwood noted that the consideration of France under the UPR had provided useful information for France's consideration before the Committee. However, she expressed concern that in the past States indicated their lack of compliance with treaty body recommendations by inaction, not by any open defiance displayed during the UPR session. She also expressed distress at having learned that evening meetings had been conducted with the countries under examination to negotiate the recommendations which had resulted in a 'mutual watering down' of the recommendations. She questioned if this practice would increase the unwillingness of States Parties to accept treaty body recommendations.

Mr O'Flaherty responded that this had been a main issue in the ICM. Furthermore, the accuracy of the Secretariat in reflecting treaty body recommendations in the UN compilation report had been questioned.

Mr Lallah expressed his pleasure at treaty body recommendations being reflected in the UPR process. However, he was concerned at the possible level of selectivity that may occur in which recommendations would be provided. This concern was raised on two levels. The first was the difficulty the Secretariat has in compiling such data within the constraints of a 10-page document. The second was the possible selectivity of the Council in which recommendations they would then choose to highlight. He wondered, in light of this, if the Secretariat could possibly annex all recommendations made to their working papers.

Indicators

At the annual ICM meeting, 2005, the Secretariat was asked to provide assistance to the treaty bodies in analysing statistical data provided in States reports. It was also requested to outline a conceptual framework for identifying indicators for monitoring compliance with international instruments. The discussion undertaken in the ICM and at the Human Rights Committee working methods meeting centred on the current report of the Secretariat produced in June, 2008.¹

Mr Iwasawa stated he had been in attendance at the expert meeting of April this year², noting the interesting discussion that took place on indicators and the fact that the report by the Secretariat adequately reflects this.

¹ Report on Indicators for Promoting and Monitoring the Implementation of Human Rights, HRI/MC/2008/3; <http://www2.ohchr.org/english/bodies/icm-mc/documents.htm>

² To undertake its work for the research and compilation of human rights indicators, as requested by the Inter-Committee meeting in 2005, OHCHR established a working group. This group consists of experts from treaty bodies; academia, international agencies, NGOs and special procedures mandate holders. "This was done with a view to developing a common understanding of the conceptual and methodological approach to identifying indicators for monitoring compliance with international human rights instruments and benefit from each other's expertise and experience". The consultations were held in Geneva in 2005, 2006, 2007 and 2008. *Report on Indicators for Promoting and Monitoring the Implementation of Human Rights*, <http://www2.ohchr.org/english/bodies/icm-mc/documents.htm> pg. 15.

He requested that the report be made available to all the Committee members. Mr O'Flaherty made the point that the Committee is only one of a few to have been briefed on the issue of indicators by the Secretariat.

Reservations

Concerns have been raised, by both treaty bodies and States as to the large number of reservations States have against human rights instruments. The Vienna Convention on the Law of Treaties of 1969 codified existing customary law, and provides a definition of a reservation to a treaty.³ The issue of reservations to treaties has been discussed before the International Law Commission (ILC) since 1993. Reservations may be applied by a State against specific articles of a treaty that they feel are 'inappropriate' or 'intrusive'. This provision permits a State to become party to a treaty without having to accept all articles of said treaty. The report submitted to the ICM notes that the Special Rapporteur on Reservations to Treaties met with representatives from the human rights treaty bodies in May 2007, at the International Law Commission (ILC) annual meeting in Geneva. They discussed the formulation and withdrawal of acceptances and objections and the ILC has revised the wording of several guidelines relating to reservations.

Sir Rodley presented concerns on the lack of dialogue concerning reservations at the ICM meeting. He reminded the Committee that representatives from the treaty bodies have met with the ILC and that the revised guidelines relating to reservations are due to be concluded in 2009. He expressed the need for monitoring the developments of these guidelines, as the views of treaty bodies need to be taken into account. Mr Amor agreed stressing that treaty bodies should not be faced with a *fait accomplis*.

Any alterations to the legal parameters of the treaties will have a direct bearing on the relationship between the State and the treaty bodies. As the treaty bodies are responsible for the monitoring and implementation of the treaties these concerns are not unfounded.

Informational briefings

Informational briefings are usually thematic in nature. They provide the ICM with information on developments within specific areas that the Secretariat may feel are of direct interest or relevance to the treaty bodies. The briefings at the ICM included an update on the on the UN Study on Violence against Children, an overview of the Human Rights Council and the UPR process and the report on indicators mentioned above.

Sir Nigel Rodley addressed the inclusion of these briefings during the ICM by the Secretariat and the amount of time they take for presentation and discussion. He noted that this was addressed by the ICM two years ago and expressed his surprise at their continuing inclusion on the agenda. He expressed concerns on the inclusion on the agenda of matters that are not necessarily relevant to the purpose of the meetings, by the Secretariat. As a result, he said, the decision as to what to include as a priority matters of discussion is being taken away from the members. He added that the Chairpersons, prior to the ICM, should establish a pre-sessional agenda for approval.

Mr O'Flaherty reiterated the agreement reached at the ICM for two sessions to be held per annum, with one dedicated to harmonisation.

NGOs

Ms Motoc asked how it would be possible to encourage contact by NGOs to the Committee. She felt that the Committee does not attract a sufficient number of NGO participants, which impacts on the information provided before consideration of a State report.

³ untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf

Independence of experts

Ms Motoc, referring to the brief discussion on the independence of experts at the ICM, asked if a clear indication as to what 'independence of experts' means had been expressed. She also asked if this was an issue specifically addressed by the ICM or whether it had been more of a general debate. Mr O'Flaherty responded by saying that it was an issue contained in the NGO briefing and underscored the point that this had been the single best document put before the ICM. However, he did note that this was more a matter for States.

Ms Wedgwood addressed the issue of experts within the treaty bodies from a slightly different perspective. She stressed that it wasn't the treaty bodies themselves that put forward experts but the State. She stated that this was an old United Nations problem and criticised the fact that there was not a single woman on the roster for next year's elections to the Committee. She claimed that States have no particular incentive for nominating female candidates and felt that this should be raised with the States within the appropriate fora stressing that candidates should represent diverse languages, backgrounds and gender. She concluded by recognising that, when delegations are more diverse than the Committees considering their reports, this does not present a good image.

Resources

Mr O'Flaherty had noted that the UPR system seemed to be working to the detriment of the treaty bodies in relation to resources, a matter discussed during the ICM. Marcus Schmidt, representing the Secretariat, had noted at the ICM that resources were also stretched for the Council. Addressing comments that had been made regarding translation of documents into the UN languages by Mr Amor, amongst others; he offered apologies for the documents before them only being in English. The lack of funds available for translation services, he stated, had delayed the presentation of reports to the General Assembly.

State reporting

Ms Majodina noted the proliferation of reporting by States to the UN system. She stated that a phenomenon exists known as reporting fatigue and that many countries are 'groaning under the weight of this'. As a result, she concurred that there existed a huge backlog of reports. In light of this she asked if any mention had been made to the concept of a consolidated report. She confirmed that the Human Rights Committee were against this particular approach but was curious if any discussion had taken place as she felt it was necessary to devise ways for States to maintain their obligations.

Mr O'Flaherty and Mr Amor both responded to this. Mr O'Flaherty said that this had not been discussed and the topic 'has the equivalent of a dead body with a stake in its heart'. Harmonisation of working methods and improvement was discussed, he said, with a proposed deadline for reporting guidelines. Mr Amor stated that the idea of a consolidated report and a single treaty body had offered the opportunity for a nice academic debate but the only real area for harmonisation was within the working methods of the committees. He stressed the importance of this in regard to the development of new treaty bodies, and whilst States freely accept the reporting obligations when ratifying, the committees need to be able to improve the reporting process.

Review of reporting guidelines

Mr O'Flaherty presented a paper on revised reporting guidelines for the Committee. He stated that it was an updated version of one presented in March, and had taken into account comments made by other members at that meeting.

His initial comments were to give an update of the progress of other treaty bodies in this area. He noted that CERD, CEDAW and CMW have all adopted revised guidelines whilst CESCR are currently revising, the CRC have initiated the revision process and CAT has produced no action so far.

Mr O'Flaherty said in order to revise reporting guidelines a common core document is needed. He reflected on the fact that a legal framework at national level that promotes human rights should be dealt with in the common core document under 'evolving practice and procedure'. He also noted that general comments should be taken into account and reflected in the guidelines. Whilst he stipulated that this is an evolving practice, he also commented on areas that had not yet been settled, such as the list of issues, and that the consideration to adopt an enhanced list of issues was included in the present paper. Also included was the option of dispensing with a report format for States entirely and to base everything on a list of issues. He stated that the pros and cons for this were listed in his report.

The deadline proposed at the ICM meeting for the completion of revised reporting guidelines was the end of 2009.

Other committee members added to a discussion on the notion of reducing the full State report to a response to the list of issues. Ms Chanet said the idea of a report should be kept but asked what information would States be required to include if the State report was shortened. She also addressed the weight that would be needed for follow-up if responses were limited. Ms Chanet also said that too often the Committee asks for information on specialist issues such as women and children, which are covered by other committees. She stated that questions should centre on rights only in the Covenant and stressed that they are known as a legal committee and therefore should focus on this aspect.

Ms Wedgwood stated that what would be seen as acceptable would depend on the regularity of State reporting. She highlighted that France structured their responses to prior questions from 10 years ago. She put forward the idea of a reward system whereby the more frequently a State reports, the shorter those reports can be.

Mr Lallah agreed with Ms Wedgwood and Ms Chanet that States should continue to produce reports. He agreed with Ms Wedgwood as to the difficulties and said that a full report should be kept. One of the reasons for this, he said, was that committee members change and a full report is required for new members to become conversant with the situation in that State. He continued by noting the difficulties of harmonising a list of issues. He used as an example the threat of terrorism faced by the UK and the US, which he stated is a specific issue for those States and not a common one.

Mr Amor stated that there are often too many issues to be raised with a State. He noted that instead of all these issues being addressed, many are prioritised in replies by the State. He suggested that incorporating previous concluding observations within the reporting framework would encourage responses on all interests of the Committee.

The Committee then discussed the need to produce draft guidelines, with Mr Amor nominating Mr O'Flaherty. This provoked a small debate on the distribution of tasks amongst the Committee. Both Ms Wedgwood and Ms Motoc raised the issue of uneven distribution of tasks, with Ms Motoc requesting the Secretariat produce a short report outlining the tasks of each member.

The meeting adjourned with the Chair stating that this was not a matter for open discussion. Furthermore, due to the lack of time discussion on the public relation strategic plan would have to be postponed.

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ABOUT THE PUBLICATION

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