Reform of the United Nations Human Rights Programme – current challenges and trends[1,2]

Markus G. Schmidt

Kurzzusammenfassung

Diskussionen über die Reform der UN-Mechanismen zum Schutz der Menschenrechte sind keineswegs neu. Seit Veröffentlichung des dritten Reformberichts von UN-Generalsekretär *Kofi Annan* “In Larger Freedom” im März 2005 haben sich jedoch die Voraussetzungen für eine tiefer gehende Reform der Menschenrechtsgremien verbessert. Zum ersten Mal haben UN Mitgliedstaaten den politischen Willen manifestiert, das System grundlegend und nicht wie früher nur kosmetisch zu verändern. Das zeigt sich zum einen in dem Bestreben, die seit langem als hoffnungslos politisiert diskreditierte Menschenrechtskommission durch einen effizienteren Menschenrechtsrat mit weitergehenden Kompetenzen und innovativen Arbeitsmethoden zu ersetzen. Zum anderen sind Diskussionen im Gange, um das System der Expertenausschüsse, die die innerstaatliche Umsetzung der wichtigsten UNO Menschenrechtskonventionen überwachen sollen, effizienter zu gestalten und gegebenenfalls durch ein einziges, permanent tagendes Expertengremium zu ersetzen.

Dieser Artikel gibt einen Überblick der Verhandlungen und versucht, ein vorsichtiges Fazit der ersten beiden Sitzungen des Menschenrechtsrates zu ziehen. Obwohl die meisten Arbeitsmethoden des Rates erst noch ausgehandelt werden müssen, so läßt sich doch bereits erkennen, daß die Politisierung, die die frühere Menschenrechtskommission charakterisierte, leider auch die Arbeit des Rates prägen wird. Das verheißt nicht unbedingt Gutes für die Zukunft. Was eine Reform der Expertenausschüsse betrifft, so stehen Diskussionen noch in der Anfangsphase, und ein permanent tagender Expertenausschuß ist in absehbarer Zukunft nicht zu erwarten.

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1 Die Originalfassung dieses Artikels ist in Englisch und basiert auf einem Referat, das am 23. Juni 2006 in Potsdam auf Deutsch gehalten wurde. Aus Termin- und Arbeitsgründen war es dem Verfasser nicht möglich, eine deutsche Fassung zu erstellen.

2 Opinions expressed in the present article are personal and do not reflect the opinion of the United Nations Organization.

I. Introduction

Talk about reform and rationalization has been recurrent in the UN human rights programme for at least three decades, and some proposals for reform of the former UN Commission on Human Rights had been submitted to the UN Economic and Social Council (ECOSOC) as early as 1976. Some progress was achieved following the World Conference on Human Rights and the adoption of the Vienna Declaration and Programme of Action in June 1993 and the institution of the mandate of the High Commissioner for Human Rights in December 1993. But compared to previous decades and the position of previous secretary-generals, the UN human rights programme now has been given the priority that the prominence of human rights in the UN Charter would warrant. UN Secretary-General (SG) *Kofi Annan* has consistently argued that the human rights machinery of the Organization must be strengthened, and that work on human rights must be streamlined throughout the entire UN machinery.

The Outcome Document of the September 2005 Summit of Heads of States devotes particular attention to human rights[3], even though the language of the document was ultimately watered down compared to the initial drafts.

Against the backdrop of endeavours to reform the UN system *in toto*, one can evaluate the place of human rights in the UN of the future. All reform of the UN human rights mechanisms has tended to occur in cyclical bursts, and proposals for radical reform have abounded. Most of these proposals have fallen prey to the political unwillingness of UN member states to change the mechanisms, and such changes as have occurred have been incremental. But the current dynamics are such that the implementation of profound changes in the human rights programme is now tangible – and the current High Commissioner for Human Rights *Louise Arbour* is well aware that her office has a once-in-a-lifetime occasion to 'make change happen'.

II. Current challenges to the United Nations Human Rights Programme

Challenges to the system are manifold. Firstly, there is the need to endow the programme with appropriate resources, both in terms of financial and manpower appropriations – the multiplication of mandates in recent years was not accompanied by a concomitant rise in budgetary al-

[3] See paragraphs 119-131, 132, 134, 157-160 of the Outcome Document.

locations, and all new mandates were required to be serviced "from within existing resources".

Secondly, the UN human rights system is bedevilled by the perception of its excessive and growing politicization. Charges of politicization and selectivity led to the increasing irrelevance of the former Commission on Human Rights, notably because of its inability to pass resolutions that would condemn the most serious human rights violators. It is thus not surprising that the High Commissioner for Human Rights, in her closing address to the 61st session of the CHR on 22 April 2005, noted that the CHR in its then composition and with its agenda had become discredited.

Thirdly, the existing system and procedures have become excessively complex and in some instances duplicative. The reporting procedures under the seven principal human rights instruments overlap substantively and/or are to some degree duplicative, thus adding to the already significant reporting burden of the States parties. The majority of States parties cannot meet their reporting obligations and require training and technical assistance. Against the backdrop of the staggering number of 1450 state reports that are cumulatively overdue, it is imperative to simplify and streamline the procedures and ease the reporting burden on States. In addition, the recommendations of the treaty bodies in concluding observations on reports are not always precise, pragmatic, targeted or even implementable – thus posing a serious challenge to States parties in terms of compliance and follow-up.

Fourthly, the Office of the High Commissioner for Human Rights has become over-committed. In the context of insufficient financial resources, it makes little sense to undertake engagements for urgent response deployment of human rights officers in crisis situations, or to assume additional responsibilities and create additional field presences if they are not backed by the necessary budgetary allocations.

Lastly, standard setting activities continue, even though they will arguably lead to further substantive overlaps with the existing instruments, or create new monitoring mechanisms. Thus, the Optional Protocol to the Convention against Torture entered into force on 26 June 2006. A new instrument on disappearances was adopted by the Human Rights Council at its first session in June 2006 and is about to be passed by the General Assembly. A new convention on the rights of persons with disabilities will also be adopted by the General Assembly in the course of the current session.

III. The Secretary General's Reform report "In larger Freedom" and its impact for the human rights programme

The Secretary General's March 2005 reform report is remarkable in many respects – and it has important implications for the future of the human rights programme. The assumption which underlies the SG' s call for reform of the human rights programme is that the system should go from 'standard setting' – i.e. the adoption of new instruments – to implementation 'on the ground', for example to address human rights crises such as those in Darfur or in the Occupied Territories. In addition, the Commission on Human Rights was considered to be in need of a radical overhaul.

In the latter context, the High Level Panel of Experts mandated to make recommendations on systemic reform had made several suggestions on changes in the human rights programme to the Secretary-General in December 2004. It had recommended, for instance, universal membership of the Commission on Human Rights, an Annual Report of the High Commissioner to the General Assembly, increased interaction between the High Commissioner and the Security Council and reports of the High Commissioner to the Council.

The Secretary-General rejected the High Level Panel's proposal for a universal-membership Commission and instead proposed to eliminate the Commission and to replace it by a smaller Human Rights Council, which would meet as a standing body and be a subsidiary body of the GA, and whose members would be elected by a two-thirds majority of the GA. In his address to the Commission of 7 April 2005, the SG suggested that the Human Rights Council should function as a 'chamber of peer review' - its main task would be the evaluation of the fulfilment by all states of all their human rights obligations. Every UN member state would come up for review on a periodic basis – every three to four years. The modalities of operation of the Human Rights Council, the exact number of members and modalities of election to the Council, especially criteria for membership, would remain to be spelled out.

As far as the treaty-based procedures are concerned, the Secretary-General had already, in his report of September 2002, proposed that all States be allowed to file a single report with the seven treaty bodies, which would summarize their reporting obligations. The option of a single report summarizing States' reporting obligations was quickly rejected, by States parties and the treaty bodies alike. Instead, consensus has slowly developed in the production of a so-called Common Core Document (CCD), which would include general information of relevance to the im-

plementation of *all* the seven major instruments, accompanied by targeted, treaty-specific reports.

The March 2005 report once again suggests that the human rights treaty bodies should harmonize their activities. The SG urges the treaty bodies to harmonize their reporting guidelines and thus reduce the reporting burden on States. In addition, he emphasizes that treaty bodies should, in their concluding observations on state reports, provide clear guidance to States on what is required for full compliance. The underlying assumption is that the treaty body system must be streamlined and strengthened, and that measures should be taken to ensure that the treaty bodies function as a 'unified system'. The ways and means by which such a 'unified system' might be established, however, are not spelled out.

IV. The High Commissioner's Plan of Action of May 2005

The Secretary-General's report requested the High Commissioner for Human Rights to come up with a Plan of Action of her own, to develop and give concrete meaning to the Secretary-General's reform proposals. The Plan of Action was also designed to raise the profile of the Office and to make it more operational than it is currently.

The Plan of Action of the High Commissioner was released on 20 May, only 2 months after publication of the Secretary General's report. It places a heavy emphasis on the notion of 'country engagement' , which implies the strengthening of the geographic desks and units in the Office of the High Commissioner, an increased deployment of human rights staff to the field, the creation of a significant number of new field presences in the coming years, the establishment of standing capacities for rapid deployment and investigations, field support, capacity building, as well as work on transitional justice and the rule of law. The 'operationalization' of the Office's activities in the coming years will certainly be increased, and it is envisaged that the rotation of human rights officers onto positions in field presences will become mandatory in the foreseeable future.

The High Commissioner's Plan of Action sketches out the ways in which the Office would support the creation of the Human Rights Council (see Part IV below), and recommends, in paragraph 147, the establishment of a unified standing treaty body and the convening of an intergovernmental meeting on the subject (see below, Part V).

The implementation of the High Commissioner's Action Plan will be made possible by a significant increase of the resources available to the Office. Thus, the Outcome Document of the September 2005 Summit

envisaged a doubling of the regular budget of the Office of the High Commissioner over a period of five years. In December 2005, the General Assembly endorsed the budgetary appropriations for an additional 91 regular budget posts for the biennium 2006-2007. At least the same number of additional regular posts is expected to be approved for the following biennium, 2008-2009.

V. Negotiations on the establishment of the Human Rights Council and first Council activities

From the moment of the Secretary-General's proposal to replace the Commission on Human Rights by a Human Rights Council, the Office of the High Commissioner for Human Rights has provided substantive support to States to facilitate and move forward the discussions on the establishment of the Council.

It comes as no surprise that the first reaction of States to the Secretary-General's proposal, articulated during informal consultations of the Commission on Human Rights held on 12 April 2005, was predominantly negative. This was perhaps not least because the SG had addressed the Commission a few days earlier and had roundly criticized its politicization. A number of Commission members also expressed the concern that only developed countries would join the Council, and that the Council would focus primarily on violations of civil and political rights.

A Canadian "non paper" circulated in early July 2005 spelled out the possible modalities of operation of the Council, as well as tentative modalities of the so-called "peer review mechanism" (PRM). Under the Canadian proposal, the PRM would primarily have been based on already existing country information, rather than require extensive new information or reports by the UN system or from States. PRM should be designed to complement the existing mechanisms and primarily the concluding observations of the human rights treaty bodies and recommendations of the special procedures mandate holders of the (former) Commission on Human Rights.

Informal consultations on the Council took place in early September 2005 in the Commission on Human Rights, with a view to agreeing on a text for the Summit Outcome Document. Paragraphs 157 to 160 of the Outcome Document indeed confirm the establishment of the Human Rights Council. However, the notion of the peer review disappeared, as the negotiators of the document had not even begun to agree on what a 'peer review mechanism' might look like.

Negotiations on the establishment of the Council continued throughout the autumn and the winter of 2005, in an open-ended Working Group co-chaired by South Africa and Panama, and with the active participation of General Assembly President Jan Eliasson (Sweden). A number of draft resolutions were prepared, which made it clear that several stepping stones continued to stand in the way of consensus:

- the composition of the Council, the eligibility of its members and number of members;
- required majority of election of members by the General Assembly: simple majority or two thirds majority?
- functions of the Council – creation of a peer review mechanism or other comparable mechanism?
- would the Council sit as a standing body or meet as required, with several regular sessions per year and ad ho or special sessions for urgent situations?, and
- transitional arrangements.

On 15 March 2006, the General Assembly adopted Resolution 60/251 establishing the Human Rights Council, by a vote of 170 in favour, 3 abstentions and 4 against. The principal duties of the Council are spelled out in operative paragraph 5 of the Resolution: thus, paragraph 5(e) spells out that the Council shall 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”. The review should be based on a constructive dialogue, and would complement and not duplicate the work of the human rights treaty bodies. Under paragraph 5(f), the Council would contribute towards the prevention of human rights violations and respond promptly to human rights emergencies.

If the adoption of the Resolution was the most important hurdle to be overcome, it was not the final one. Agreement now had to be reached on the composition of the 47 member Council. Candidates for election to the Council were invited to submit a number of pledges, and many declared candidates for the Council indeed filed such pledges with the Office of the High Commissioner for Human Rights. Pledges often included better cooperation under the treaty-based reporting procedures or standing invitations to the special procedures mechanisms of the former Commission on Human Rights.

On 9 May 2006, the General Assembly elected the 47 members of the Council, with 13 seats each for the African and Asian groups, 8 seats for the Latin American group, 6 for the Eastern European and 7 for the Western European and others group. As expected, candidates such as

the Russian Federation, China and India were elected without problems; the US was not a candidate for election, preferring instead to observe the first year or years of operation of the Council from the sidelines. While there was some criticism that a number of countries with notoriously deficient human rights records had made it onto the Council, others noted that some candidates, such as Iran and Iraq, had not been elected.

On 23 May 2006, Ambassador de Alba of Mexico was nominated as President-designate of the Human Rights Council. Together with representatives of the regional groups, he undertook a number of informal consultations before the first Council session, which was convened from 19 to 30 June 2006. These consultations covered a broad range of issues, including the Council's proposed agenda, the modalities and scope of the future universal periodic review mechanism, review of all special mechanisms of the former Commission on Human Rights, and other related issues. Delegates emphasized that the work of the Council should be based on the principles of transparency, non-selectivity, inclusiveness and de-politicization. The principal challenge would be to agree to a *modus operandi* of the Council that would examine human rights violations impartially, subject all countries to periodic review, and that could effectively reach out to countries to help them meet their human rights obligations. In the words of an Assistant US Secretary of State, the members of the Council should "be the fire fighters of the world, not the arsonists"[4].

Whether such considerations will indeed suffice to rule out regional alliances under which some of the more unpalatable human rights violators might in the future be elected to the Council, and whether the Council can in fact avoid the level of politicization that so bedevilled its predecessor, remains to be seen. There are some signs that the desire for a depoliticized Council will remain a pious but unfulfilled hope.

During the High-Level Segment of the first Council session from 19 to 22 June 2006, more than 100 dignitaries (mostly at the level of Foreign Minister) underlined the historic opportunity to re-invigorate the UN human rights machinery, but a number of more than robust exchanges between several delegations created a distinct sense of déjà vu. The exchanges during the first Special Session of the Council on the Situation in the Occupied Territories on 5 and 6 July 2006 also were to a large extent reminiscent of the debate, in the former Commission on Human Rights, on agenda item 9 (a) on country situations. Indeed, the Council resolved to include a standing agenda item on the situation of human rights in the

[4] Assistant Secretary of State *Mark Lagon*, US State Department Press release, 3 November 2005.

Occupied Territories on the agenda of future sessions. The voting pattern on the resolution adopted by the Special Session on 6 July 2006, which expresses deep concern at breaches by Israel of international humanitarian law and human rights law, led to charges that the Council "was let down by the European Union" - EU members and Switzerland indeed voted against the resolution.[5]

Many observers have noted that the Council's first session was productive and successful, given that only few days could be devoted to the discussion on substantive issues. The Council adopted a number of resolutions, including one on prohibition of incitement to religious and racial hatred. It adopted the Declaration on the Rights of Indigenous Peoples, the draft binding instrument on disappearances, and welcomed the entry into force of the Optional Protocol to the Convention on Torture. The Council also created two inter-sessional open-ended working groups to discuss the review of mechanisms (of the former Commission on Human Rights – paragraph 6 of Resolution 60/251) and the modalities of the universal periodic review (UPR).

The second session of the Council (18 September to 6 October 2006) unfortunately confirmed the fears of many observers and diplomats that the politicization which was the hallmark of the old Commission will also plague, and to a very significant extent, the work of the Council. Debates during the second session on issues such as the war in Lebanon, the situation in Darfur and Sri Lanka, and the prohibition of defamation of religions were tense and acrimonious. So were the debates on country-specific special procedures mandates and on the reports of a number of thematic mandate holders. President de Alba's initial intention to table and have adopted a so-called "omnibus" resolution that would address all the issues discussed by the Council soon gave way to a more 'generic resolution'.

Even so, other Council members began tabling their own draft resolutions, and close to the end of the session, some 44 drafts had been submitted and had to be voted upon. In the end, the Council simply ran out of time and preferred to defer action on all draft resolutions to its next session, euphemistically called "resumed second session". Even agreement on a comparatively mild Presidential Statement proved elusive, and the only outcome is a 'generic text' which calls on the Secretary-General and the High Commissioner for Human Rights to "continue with the fulfilment of their activities, in accordance with all previous decisions adopted by the Commission on Human Rights and to update the relevant

5 *Alfred de Zayas*, The new UN Human Rights Council was let down by the European Union, in: Current Concerns, No.1 (2006), pp.5-6.

reports and studies". All this left observers with the distinct impression that the session had been a resounding failure[6], and a number of NGOs called the outcome a "huge disappointment".[7]

Most observers suggest that one litmus test for the future success of the Council will be the outcome of the review of mechanisms and the modalities for the UPR. On the former, it is likely that the Council's working group will seek to reduce the number of special procedures established by the former Commission on Human Rights. It is highly probable that most of the country-specific mandates will be eliminated over time; and there is also the possibility that a number of the thematic mechanisms will either be eliminated, transferred to other agencies, or that some of the existing thematic mandates will be streamlined and merged into one.

During the second session of the Council in September 2006, several delegations strongly advocated the elimination of country-specific mandates. Of equal concern was the reaction of numerous Council members to a report by four mandate holders on Lebanon[8] : in an unprecedented reaction to what they perceived to be the alleged 'bias' of the report, Council members from the Organization of the Islamic Conference (OIC), the Arab Group and the so-called 'Like Minded Group' of developing countries considered the report to be 'null and void' and asked for it to be withdrawn.

On the issue of the UPR, consultations are currently underway, under the chairmanship of the President of the Council and with the assistance of facilitators. Several options for the functioning of the UPR have been floated. Under a Mexican proposal, the Council would be divided into several chambers, a rapporteur would be identified for the review of each country situation, and there would be a formal, documented, outcome of the review in form of recommendations. This option would, it has been pointed out, to some degree duplicate the reporting mechanisms of the treaty bodies.

Another proposal advanced by Switzerland opts for a 'light' review formula: a three hour Council plenary dialogue with the country whose situation is under review, and a summary of the dialogue, without formal

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6 Le Conseil des droits de l'homme renvoie toutes les décisions, Tribune de Genève, 6 October 2006.

7 Human Rights Watch blasts new U.N. rights watchdog, in: Washington Post, 6 October 2006.

8 Report by the Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the right to health; Representative of the Secretary-General on the human rights of Internally Displaced Persons, Special Rapporteur on Adequate Housing, Mission to Lebanon and Israel (7-14 September 2006), UN-Doc. A/HRC/2/7 (2 October 2006).

recommendations. This option has been criticized as toothless, but it may well politically the more viable one.

Yet another proposal has been advanced by the OIC, which suggests that the periodicity of review of countries under the UPR should be staggered according to the level of development of the country concerned. Under the OIC proposal, developed countries would be reviewed every three or four years, developing countries every five years, and the least developed countries every six or seven years. This option, in turn, has been criticized in that it does away with the notion of equality of treatment,

All of the above and other proposals have been compiled by the OHCHR in a single document [9] . During the second session of the Council (September 2006), there was surprisingly little substantive discussion on the scope and the modalities of the UPR, and informal working group consultations, both on review of mechanisms and UPR, will be held in November 2006, before the next Council session.

The Office of the High Commissioner for Human Rights is committed to the creation of a mechanism that under no circumstances is *below* that of the former Commission. A number of open questions do, however, remain. A concern has been expressed, not least by some negotiators of the Western Group, that too many concessions were made by that group on the modalities of the UPR before the adoption of Resolution 60/251. An inter-sessional open-ended working group could negotiate the modalities of the UPR 'to death'.

There has also been a fear, formulated by no other than the President of the International Court of Justice[10], that a weak UPR mechanism which results in the conciliatory and accommodating review of the human rights situation in most countries , might undermine or make less effective the reporting procedures before the seven treaty bodies, in the sense that States might be tempted to reduce cooperation with the treaty-based procedures if they can expect friendlier treatment under the UPR. There is also the risk that the UPR mechanism may be transformed into an appeal mechanism against the recommendations of treaty bodies in concluding observations or those of the special rapporteurs of the Council. In that sense, great care will have to be taken to establish a review system that preserves the totality of achievements of the work of the treaty-based mechanisms.

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9 Updated Compilation of Proposals and Relevant Information on the Universal Periodic Review, 21 September 2006.

10 Letter of Justice *Rosalyn Higgins*, President of the ICJ, to the High Commissioner for Human Rights, 24 May 2006.

Another danger would be to create a dual track system and procedure under which those States that cooperate with the UN human rights mechanisms, by regularly submitting reports to treaty bodies or inviting special rapporteurs, are frequently taken to task, whereas those who do not cooperate with these mechanisms, because of lack of resources or of political will, would escape any closer scrutiny.[11]

Notwithstanding the above, there is hope. It has for example been suggested that the Council could, in the context of the UPR mechanism, place particular emphasis on the follow-up to the decisions and recommendations of the treaty bodies. To the extent that countries appear before the Council on a regular basis, the follow-up procedures of the treaty bodies could be significantly strengthened. Thus, a Council recommendation requesting a State to implement a particular treaty body recommendation with immediate effect would indeed contribute to reinforcing the efficacy of the treaty-based mechanisms.[12]

VI. Reform of the treaty body system and debates over the creation of a unified standing treaty body

Proposals for radical reform of the treaty body system have been made on a number of occasions. Few were discussed in any depth. During the 1993 World Conference on Human Rights, a proposal to amend the Optional Protocol to the International Covenant on Civil and Political Rights to allow the Human Rights Committee to hand down *legally* binding decisions[13], did not even make it to the Conference's drafting Committee.

As indicated above, the SG, in his March 2005 report, recommended that the human rights treaty bodies function as a 'unified system'. The treaty bodies themselves have recognized the need for reform and have progressively expressed support for the concept of the Common Core Document (hereafter CCD), which would be supplemented by targeted, treaty-specific reports. The proposal for the CCD supplemented by treaty-specific reports had resulted from a brainstorming on treaty body reform convened in Malbun, Liechtenstein, in May 2003. Representatives of the seven treaty bodies met in December 2005 and February 2006 to work on harmonized reporting guidelines for all treaty bodies, with a view to reducing the reporting burden on States parties.

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11 See *Eric Tistounet*, Les Organes de Traité et le Conseil des droits de l'homme (forthcoming, beginning of 2007).

12 *Tistounet*, ibidem.

13 See Annual Report of the Human Rights Committee for 1993, A/48/40 (Part 1), Annex X. B. paragraph 15; UN-Doc. A/Conf.157/TBB/3.

The Fifth Inter-Committee in June 2006 considered the revised draft Guidelines for the CCD in detail and accepted them[14]. Treaty bodies are encouraged to apply the Guidelines in a flexible way, review their own respective guidelines for initial and periodic reports, and to collect indications of any difficulties with their implementation. The experience of each treaty body with the implementation of the Guidelines would then be reviewed by the Seventh Inter-Committee meeting in June 2008. The Office of the High Commissioner for Human Rights has begun to train States parties on the preparation of the CCD and targeted treaty-specific reports; training has taken place in Nicaragua and Panama, and is planned for a number of African countries, including Equatorial Guinea and the DRC.

A number of countries – including Afghanistan, Angola, Burkina Faso, the Democratic Republic of the Congo, Timor Leste, Nicaragua and Panama – have signalled their interest in training on the CCD. Others, such as Switzerland or the Hong Kong SAR, are experimenting with reporting matrices that are comparable to the reporting guidelines for the CCD; thus, Switzerland has prepared a 'joint reporting matrix' which could be used for the preparation of reports to all treaty bodies[15]. In February 2006, the UN Interim Administration in Kosovo (UNMIK) became the first entity to submit a Common Core Document and a targeted report under the ICCPR[16].

As far as the High Commissioner's proposal, in paragraph 147 of her May 2005 Plan of Action, to work towards a unified standing treaty body (USTB) is concerned, the discussions remain at a preliminary stage. It is correct that the timing of the proposal took most States by surprise, as the idea of a USTB had not even been floated with them until that time. Thus, the Outcome Document of the 2005 Summit remains silent on the issue.

Initial consultations and a brainstorming meeting convened by the EU Presidency in October 2005 concluded that while numerous legal issues remained to be solved, the concept of a USTB merited further discussion. In late March 2006, the High Commissioner circulated a concept paper on the idea of the USTB to all stakeholders, and solicited feedback from them[17]. The Fifth Inter-Committee meeting and the 18th meeting of treaty body chairpersons discussed the paper in depth. Further discus-

14 See UN-Doc. HRI/MC/2006/3 , 10 May 2006.

15 Joint Reporting Matrix, Einführung und Anwendungsanleitung , 21 June 2004.

16 See UN-Doc. CCPR/C/UNK/1, Part I (Core Document) and Part II (report under article 40 ICCPR).

17 See UN-Doc. HRI/MC/2006/2, 22 March 2006.

sions on the concept paper and other possible solutions to achieve a more unified treaty body system took place at a meeting convened in Liechtenstein from 14 to 16 July 2006. This concept paper will be complemented by several options papers, which will also be sent to stakeholders for comments.

A draft options paper on legal options for, and obstacles to, the creation of a USTB has been prepared with inputs from the Office of Legal Affairs[18] - this options paper was discussed preliminarily at the recent Liechtenstein meeting, where it was pointed out that unanimity would be required for any treaty amendment process. Other options papers on the possible working methods of a unified body, on criteria for membership in a standing body, on handling of individual petitions by a unified body, and on how to preserve the specificity of the seven principal human rights instruments, are in preparation.

Several States parties and treaty body experts have criticized the concept paper for not putting forward other proposals, although criticism has tended to focus less on the substance of the proposal than on the process of consultations. While some experts welcomed the concept of a USTB during the Fifth Inter-Committee meeting, others have opposed it completely, mostly on the basis that a USTB would risk undermining the specificity of the seven major instruments. A similar division of opinion on the desirability of a unified body has become apparent among the community of human rights NGOs.

As a result of the political opposition from some States and that of some treaty bodies and NGOs, a proposal has emerged which is beginning to obtain increasing support: the creation of a single unified body for consideration of individual complaints only. The Committee on the Elimination of Racial Discrimination (CERD) has prepared a paper which details this proposal[19], and the High Commissioner and several participants in the Liechtenstein meeting indicated that this could be indeed a suitable solution, mostly because easier to achieve from a legal point of view. The other reform proposals focus essentially on the harmonization of treaty body working methods.

While it is premature to draw definitive conclusions, it appears that a USTB which would unify both state reporting and complaints procedures is not a politically viable proposition at this point in time. That message has been conveyed clearly by a majority of State party representatives

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[18] Preliminary Non-Paper by the Secretariat on Legal Options for the Establishment of a Unified Treaty Body – July 2006.

[19] UN-Doc. HRI/MC/2006/8/CRP.1 , 4 July 2006.

and treaty body experts, and in particular, by the African and Asian groups, as well as the USA and the Russian Federation, during the Liechtenstein meeting. The Outcome Document of this meeting, which reflects the concerns expressed by State representatives and treaty body experts, will be submitted as an official document to the General Assembly and the Human Rights Council, and be discussed by the Sixth Inter-Committee meeting scheduled for June 2007[20].

As far as the proposed intergovernmental consultations on the concept of the USTB are concerned, many governments have pointed to the need to focus first on the working methods and the rules of procedure of the Human Rights Council and the modalities of the universal periodic review mechanism, before addressing treaty body reform in any meaningful detail. This position was also expressed during the second session of the Human Rights Council in September/October 2006. Furthermore, some 'reform fatigue' has been invoked. As a result, the intergovernmental consultations on the USTB will be postponed until the spring or the summer of 2007. However, joint meetings of treaty body members as well as open-ended consultations on the issue among all States parties and other stakeholders have been requested; they are likely to be convened in the autumn of 2006. The meetings of States parties to the principal human rights instruments should also be used to discuss substantive issues, including suggestions for reform of the treaty body system.[21]

[20] UN-Doc. HRI/MC/2007/2, 8 August 2006 (advance unedited version).

[21] Ibid., paragraph 41.