



Wilton Park



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Report

Towards a 21st century treaty body system

Wednesday 28 February – Friday 2 March 2017 | WP1574

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Report

Human rights treaty system

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Summary

The treaty bodies presently comprise 10 independent and expert United Nations (UN)-based review and compliance mechanisms. They are unique in both substance and structure and play a valuable part in global protection of human rights. UN Res 68/268 (2014) provided for a review by the United Nations (UN) General Assembly (GA) of the human rights treaty body system in 2020. While a number of measures designed to strengthen the system have been introduced over the last several years pursuant to that resolution, there nevertheless remain serious concerns that the system's current methods of working have become unsustainable and may require more radical change. For some, this is driven by a desire to enhance the practical effectiveness of the system by embracing new ways of working. For others, the concern is that the failure to provide the financial resources necessary to support the current working methods will inevitably reduce its effectiveness. Few, however, believe the status quo to be sustainable. In discussing approaches to potential improvements, several issues were seen as key:

- The overriding purpose of any reform must be to enhance the protection of human rights at national level, and bring treaty bodies closer to rights' holders. There has been much discussion of procedures in recent years and, while these are necessarily important for effective functioning, the underlying purpose of the work of treaty bodies should not be lost from view
- Uniquely within the UN's human rights machinery, states parties to the treaties have undertaken legally binding obligations. The committees monitoring compliance provide expert objective oversight of the observance and implementation of these obligations and are thus a key element of the architecture of the system. Any review of the treaty body system must be oriented towards enhancing the practical effectiveness of these bodies
- There is a need for the views of treaty bodies to be heard in the review discussions. Treaty bodies should assume leadership and develop a treaty body-oriented position. To be able to do so, and in the light of the review timetable, representatives of treaty bodies need to meet informally later this year
- The principles on which a treaty body-oriented position should be developed include:

- maintaining independence;
 - preserving specialisation;
 - ensuring implementation of recommendations;
 - adopting better common action and coordination;
 - strengthening collaboration with rights' holders;
 - engaging in the field;
 - reinforcing the legitimacy of treaty bodies and the binding obligations of states parties;
 - maintaining the 'Poznan formula'.
- There is a need to develop indicators to determine what constitutes success in relation to rights' holders
 - A lot can be changed without a GA resolution. Treaty bodies should take stock of various options for refreshing their working methods, and pilot different approaches. Exploring these pilot approaches will help develop a treaty body-oriented position
 - In parallel, chairpersons of treaty bodies may consider designating a special representative pro bono, or finding new voluntary funding, to address the issue of synchronising scheduling, and coordinating work more effectively, these being major concerns of states parties to the treaties

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“treaty body reform initiatives should contribute towards the enhanced protection of human rights”

Background and aims of the meeting

1. Discussion of the efficiency and effectiveness of the UN’s human rights treaty system has a long history. Already, just over a decade after the International Covenants came into effect, and only four treaties were in force, the first UN-mandated study was made on the effective operation of both existing and prospective UN human rights treaties¹. The report identified four key areas of focus: capacity; efficiency; quality; and the reporting burden for states.
2. Nearly 30 years later, with 10 human rights treaty monitoring bodies now operating, similar concerns remain, while the growth of normative instruments, monitoring bodies, ratifications, reports and complaints has rendered the system much more complex. Based uniquely on binding legal obligations and not political decisions, the UN’s human rights treaty bodies provide objective oversight, and are distinct from other components of the global human rights machinery. Given their central role and unique legal standing, there is a strong belief that treaty body reform initiatives should contribute towards the enhanced protection of human rights at the domestic level and their impact on human rights in practical terms.
3. Since 1989 dozens of consultations have been held and a number of substantial reform proposals made. These included: submission of a single comprehensive report by states, to be reviewed in turn by each relevant treaty body²; a unified standing treaty body, offering several different models, from a single body that considered every treaty

¹ See UN General Assembly report A/44/668 of 8 November 1989, ‘Effective Implementation of International Instruments on Human Rights, including Obligations under International Instruments on human rights’

² See UN General Assembly report A/57/387 of 9 September 2002, ‘Strengthening the United Nations: An agenda for further change’

provision together, to one with multiple chambers along the lines of each treaty, or with clustered rights, or perhaps divided along geographic lines³; and developing a single five-year calendar with fixed dates for countries to report to diverse committees, aiming to bring predictability to state reports.⁴

4. In addition to addressing predictability of reporting, the treaty body strengthening process initiated in 2012 by High Commissioner Navanethem Pillay identified four main issues. These were: the huge growth in the treaty body system in the previous decade; insufficient coordination among the treaty bodies resulting in diverse working methods, as well as matters of coordination and process with other UN human rights bodies, including the Universal Periodic Review (UPR); challenges with the operation of systems for consideration of state reports, individual complaints and the follow-up on Concluding Observations; and the lack of visibility of the treaty bodies, including issues such as webcasting, translation services and election of expert members. Before the process begun by the High Commissioner was completed, however, it was picked up, or in the view of some 'hijacked', by a group of governments at the General Assembly in New York. Eventually, after a tortuous route, this resulted in the adoption of resolution A/68/268 in April 2014. The resolution endorsed many of the proposals made by the High Commissioner for harmonization and simplification of working methods, but not the fixed calendar. It also determined reallocation of resources, producing cost-savings. Furthermore, it required, by way of review, two-yearly reports by the UN Secretary-General on progress of the implementation of its provisions until an overall review of the effectiveness of measures taken pursuant to it is held no later than 2020. Three years after the adoption of this resolution, several governments generally supportive of the treaty body monitoring system have asked questions to the chairpersons of treaty bodies about what they perceived as 'slow progress' in implementing reform measures. Issues these states identified primarily relate to the review of periodic reports by states parties. This should be remedied as some argue insufficient attention has been given to the concerns raised by these states.
5. Alongside the ongoing UN process, and as a contribution towards the 2020 review, a project was launched to look at options for reform and long-term sustainability of the treaty body system.⁵ While the findings of this project have yet to be published, it is understood that the principal recommendation is likely to propose a single state report and consolidated state review, moving from treaty body to treaty body, resulting in a single compilation of recommendations. This would be based on a six-year cycle, with a UPR session in between.
6. Finally, in January 2018 an informal meeting of experts, preparatory to the discussions at Wilton Park, took place in Copenhagen with a view to generating an 'ideas catalogue' for further discussion. Among the issues addressed was the uniqueness of the treaty body system, how to improve working methods of the various committees and what new vision, or approaches, for treaty body monitoring could be envisaged within existing legal and resource frameworks.
7. Against this background, the meeting at Wilton Park of experts from a range of institutional and geographical backgrounds, aimed to explore opportunities provided by the 2020 review, taking into account political viability, short and longer term prospects and resource implications of proposals. It focused on practical ways the treaty body

³ See HRI/MC/2006/2 of 22 March 2006, 'Concept Paper on the High Commissioner's Proposal for a Unified Standing Treaty Body'

⁴ See 'Strengthening the United Nations human rights treaty body system', A Report by the United Nations High Commissioner for Human Rights, Navanethem Pillay of June 2012

⁵ This study is conducted by the Geneva Academy of International Humanitarian Law and Human Rights. See <https://www.geneva-academy.ch/our-projects/our-projects/un-human-rights-mechanisms/detail/16-academic-platform-on-treaty-body-review-2020>

system can:

- Enhance and strengthen human rights protection at country, regional and international levels;
- Amplify impact 'on the ground' by building on lessons learned, existing good practice and innovative approaches;
- Create opportunities for an ambitious future which goes beyond 2020.

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"How does reporting, state dialogue or Concluding Observations contribute towards positive outcomes for human rights protection?"

Understanding the context and the challenges

8. While the 2020 review can be seen as an opportunity to achieve a more sustainable future for human rights treaty bodies in fulfilling their roles relating to the protection of human rights globally, there is considerable concern that the review also represents a threat. In particular, the prospect of diplomats at the UN in New York, who often have little familiarity with human rights issues but may have an eye to weakening the treaty body system, could hinder genuine reform efforts. In addition to the lack of political will, there is also felt to be general inertia about reform, with few governments standing up to champion the value and role of the treaty bodies. Coupled with this is fatigue, with previous reform efforts having generally yielded little in the way of significant positive outcomes. Fatigue in reporting to the treaty bodies is widespread. Fear of change is seen as a deterrent for reform: there are vested interests in the system staying the way it is. Some would argue this includes the Office of the High Commissioner for Human Rights (OHCHR). Tensions are perceived between OHCHR and treaty bodies given the latter's independence to determine their own working methods and, with their legal basis, they are essentially accountable only to rights-holders. Access for treaty body members to information about resources, financial and otherwise, and their allocation, is another source of friction. Some have a sense that treaty bodies are being starved of resources, while a push is underway ultimately to unify or form a merger with the UPR system.
9. Impact and visibility at the national level, and strong linkage with national structures are also seen as major challenges. Accessibility, for the treaty bodies to comprehensive sources of information, and for national human rights actors – civil society organisations or national human rights institutions (NHRIs) – to treaty body sessions in Geneva, are also impediments. National actors, including states, have diverging interests.
10. Ensuring treaty body membership is of expert quality, independent (particularly of executive power), and diverse have been recurring concerns over many years. Few countries conduct a national nomination process for candidates. Horse-trading of votes is common during elections, most of which are held in New York rather than in Geneva, where all treaty body sessions now take place.
11. The growth of the treaty body system has led to functional challenges. Although in recent years some treaty bodies have managed to reduce the backlog in their consideration of states' periodic reports, a backlog nevertheless remains. In particular, the backlog of individual complaints has increased. The variety of treaty body working methods, and the perceived proliferation of recommendations they issue, challenges states as well as NHRIs and non-governmental organisations interested to contribute to the review of reports and their follow-up.
12. There is a strong sense that to initiate positive change it is necessary firstly to understand what constitutes treaty body success in protecting human rights, and what works, an analysis which is currently absent. How does reporting, state dialogue or Concluding Observations contribute towards positive outcomes for human rights protection? It is argued there is a need to develop indicators to measure these tools so that they can be properly evaluated, and their value understood.
13. Yet while the current working practices of treaty body system are often seen as being

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unsustainable long-term, due to underfunding, internal constraints and political pressures, this presents an opportunity for positive change, and the 2020 review the occasion to capitalise on this. Following from this, there is a need to think ahead, and pre-empt any potential initiatives to undermine treaty monitoring. Fear should certainly not result in doing nothing. Although some see a decline in respect for human rights globally, this can create impetus, with the larger human rights community banding together effectively in support of change. By comparison to the time when the first treaty bodies came into force, there is much stronger national infrastructure globally for protecting human rights, as well as a greater emphasis on human rights within the UN’s own activity, for example integrating human rights into the 2030 Sustainable Development Goals Agenda and adopting a Human Rights Upfront policy. There is also more awareness of human rights responsibilities in UN country teams. Enhanced collaboration across treaty bodies, and with other components of the human rights architecture, such as Special Procedures and the UPR, could provide opportunities for sharing information. Greater synergy with the UPR, while retaining and demonstrating the distinction of treaty bodies, given these are not equivalent processes, could be sought. Some note greater use of treaty body conclusions by the UPR has increased their visibility. Digitisation should enable improved data systems. New technologies and social media should enable increased visibility for and accessibility to the work of treaty bodies. The role(s), relevance and impact of treaty bodies, in particular their success stories, need to be communicated, and the 2020 review provides a major impetus for this.

Enhancing the treaty body system

14. Some express concern that there is no clear strategy or line of action coming from current discussions. The perspective of treaty bodies is felt to have been marginalised during the reform procedure initiated in 2012 and needs to be articulated clearly in advance of the 2020 review. While some members of treaty bodies have tried to engage with inter-governmental reform processes, and ultimately states control the purse-strings and will decide on the outcome of the review process, there was a unanimous view that substantive **treaty body leadership and ownership of the reform process is required**. At the same time, there are no opportunities, beyond the annual meetings of chairpersons of treaty bodies, for discussion across treaty bodies. The meetings of chairpersons are sometimes felt to be ineffectual as what they endorse is not always subsequently implemented in individual committees due to insufficient trust in the process. It is argued that chairpersons should be empowered, to give legitimacy to their discussions, and they should be prepared to take initiatives. In the immediate future, the forthcoming meeting of chairpersons in May should consider the degree to which this forum might be used for ongoing reform discussions. Comprising more than 170 individual expert members, reaching a unified position among treaty bodies on principles will not be easy. It may be that some treaty bodies are less involved than others. Nevertheless, it is proposed that further informal and ad hoc discussion among members of treaty bodies, on an informal and voluntary basis, is essential, and should be considered a matter of urgency. There was strong support for such a meeting in the second half of 2018. Voluntary funding would be required or this.
15. To enable treaty bodies to **enhance and strengthen human rights protection at national level** and increase impact ‘on the ground’ treaty bodies need **national and local engagement**, a two-way process, as well as **proximity to rights-holders**. Often states conduct national consultations in advance of and following UPR hearings, and it is suggested this model could inspire a similar practice in relation to treaty body reviews. It gives a sense of national ownership, and should also help with implementation of recommendations and other follow-up. NHRIs are key, and should be invited to contribute to follow-up and not only when states are preparing a report or undergoing review. NHRIs can also help treaty bodies’ outreach. While NHRIs are an important source of information, their own work can be strengthened by their engagement with treaty bodies, for example in conjunction with Concluding

Observations. Parliamentarians should be informed of state reviews, and can be an influential actor in promoting implementation and follow-up. Often there are parliamentary human rights committees which could serve as ready interlocutors. Workshops at national level, with an inclusive participation, could be a useful tool to discuss implementation and follow up to treaty body recommendations. Regional consultations could be held, especially for discussing General Comments. Good practice on follow-up work is seen to exist in various treaty bodies. It is suggested that there should be a compilation of good practice measures, which could be drawn on by all treaty bodies. It is recognised that follow-up also varies according to the situation in a particular country and attitude of the government, so it may not be able to conduct follow-up everywhere, but a blueprint for good practice could emerge.

16. There was strong support for the view that the work of treaty bodies would benefit immeasurably from moving outside Geneva and undertaking regional and in-country visits, in terms of national and local engagement, enhancing implementation of committee recommendations and enabling proximity to rights-holders. Several options are foreseen. Firstly, what was modelled as a 'roving' treaty body, with the whole treaty body visiting a specific region. All reports from that region would be reviewed. It was argued that the UN Security Council (UNSC) makes regional visits, which improves the quality of the UNSC's work and makes its deliberations more meaningful. At regional level, some human rights bodies of the African Union (AU), the Council of Europe (CoE) and the Organisation of American States (OAS) conduct hearings outside their base and make regional or in-country visits. Admittedly, the arrangements for such visits may prove challenging for the Secretariat, although the meeting would likely take place in a UN office. It would be necessary for Secretariat members to be present. Despite meeting nearer to the countries under review, there may nevertheless be access issues for local human rights groups, whose presence could not be guaranteed.
17. Another option could be for what was described as 'in-situ treaty body action', similar to the approach by the Inquiries procedures of the TBs and of the Sub-Committee for the Prevention of Torture (SPT). A delegation from the treaty body would visit a country to undertake the review, reporting back to the full Plenary who consider and adopt the final Concluding Observations. The government would need to opt for this in situ procedure. The value of such a visit depends largely on the quality of the delegation, requiring the appropriate expertise. The treaty body also needs to be comfortable with delegating authority to a smaller group, so there has to be full confidence among committee members. This model has the advantage of guaranteeing local engagement, including with a range of government officials. One potential risk is the government may attempt to exercise excessive control over the visit. Whether this approach would be less costly is also an open question: fewer members of the Secretariat would need to attend than when the full treaty body is in session, and arguably there could be multiple reports under review at the same time, like 'moving chambers'. With both regional and in-country visits there would, however, be a need for budgetary allocation. There was broad interest in running pilot projects on these options.
18. The third option picks up on current informal practice of follow-up visits by one or more treaty body members to a country, at the invitation of either government or non-governmental organisations, generally to discuss implementation issues. This was felt to be valuable and should be encouraged. It was, however, felt this would not be politically viable for regular follow-up engagement. Some states might be more prepared to accept this form of in-country presence than either of the other models. It was noted that technical assistance should be available not only for states to comply with their reporting obligations, but to build capacity for implementing recommendations at national level and follow-up.
19. **Independence of treaty bodies**, both the committees themselves and their membership, remains crucial, even though this inevitably means different views might be taken on similar issues. Treaty bodies should be independent not only of governments, but of non-governmental organisations, UN agencies or the UN

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Secretariat itself. Treaty body members should be independent of executive authority. Geographical diversity of committees’ membership is an issue, since some 25 countries occupy almost half of the seats on treaty bodies. There is much support for treaty body membership to be multidisciplinary, and appropriate to the needs of the committee. To ensure that the requisite professional skills and specialisations are represented on committees, states need to know the specific needs of each committee. This could be done by treaty bodies themselves drawing up competency profiles for candidates, or there could be recourse on an ad hoc basis to specialist knowledge. Gender parity also needs to be kept in mind. Treaty body membership also requires a considerable commitment of time, and prospective members need to be aware of this.

20. To ensure strong candidates for treaty body membership many felt there is a need for more comprehensive information on candidacies. There should be opportunity for a candidate to promote their interest without having to be present in New York or Geneva. There is much support for some form of national selection process and for guidelines to be issued on good practice. It was noted that states generally hold an advisory panel prior to forwarding nominations to the European Court of Human Rights. In the words of a former High Commissioner for Human Rights, there should be ‘open contestation’ for election. Some drew attention to the procedures used for the appointment of human rights Special Procedures, when there is a vetting process, a hearing of candidates and interview by a panel, although this cannot replace the elections processes provided for in the treaty texts.

Good candidate selection means little if there is poor practice by electors ignoring the criteria for candidacy when voting. Much frustration was expressed about the ‘vote-swapping’ which occurs during the electoral process, without regard to the merit of candidates. Elections need to be transparent, and it was suggested that guidelines could be drawn up. Holding elections in Geneva, rather than New York, may also be helpful.

21. Treaty bodies’ **communication**, and their **messaging**, contributes substantially to their **visibility**. A number of questions arose about communications. While OHCHR is primarily responsible for communications on the part of treaty bodies, there is limited capacity, and Geneva is not a major hub for news. That said, and recognising different audiences exist, there is a need to issue key documents promptly, and publicise their availability. Communications should be more creative and bold. More use of a popular voice in communications is necessary, language that is not simplistic but is clear and concise. Is webcasting being used to the best advantage, for example to promote change in states parties and implementation of recommendations? It was noted that interpretation issues within the UN limited the use of skype, but this was surely not an insoluble impediment?
22. There was uniform support for a proposal to use the 2020 review timeline to compile treaty body ‘success stories’, clarifying their role(s), relevance and impact, underlining positive change that has occurred as a result of treaty body engagement. Who should have primary responsibility to undertake this compilation? This needs to be determined, taking into account resource limitations at OHCHR. It was felt an academic study would take too long. One suggestion was for a global consultation to ask for information as a range of actors would be involved. It was felt that treaty bodies themselves, or their chairpersons, should be able to contribute specific examples of impact, as well as states, NHRIs and civil society. Such a project would likely need extra-budgetary funding. The value of such a compilation, however, could not be underestimated. It may also help the poor visibility and lack of presence of treaty bodies at the UN in New York.
23. While General Assembly resolution 68/268 endorsed a number of proposals for alignment and simplification of working methods of treaty bodies, as noted above (para 4) there is continuing concern about scheduling, proliferation of recommendations, overall backlog, multiple issues relating to review of periodic reports and addressing

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non-reporting states. There was a substantial view that further changes in working methods are required and can be introduced irrespective of the GA process. The issue of alignment of working methods is one which generates strong views. While states and non-governmental organisations generally advocate this, since it makes committee procedures more readily understandable and could perhaps generate better dialogue with both, there is hesitation on the part of treaty bodies. Would such alignment undermine the specialisation of treaty bodies? Could it set the benchmark as the lowest common denominator? Perhaps there needs to be better understanding among committees. A suggestion was that if committees all adopted a two or three year work plan this would assist their cooperation. These issues require further discussion and need to be explained to both states and civil society. One matter, however, on which treaty bodies are united is the need for country briefs to be reinstated. In earlier years these had been compiled by OHCHR to assist a treaty body’s consideration of a state party. Yet because they were not specifically mandated, no funding was available for them and they were no longer prepared.

24. While there is much support for the simplified reporting procedure, accompanying measures such as a limitation to the number of questions asked in the list of issues still need to be implemented consistently. Similarly, attention must be given to ensuring there are fewer and more targeted Concluding Observations, including recommendations, making these easier to implement. They should be strategic, formulate action, address specific goals, and use clear and concise language. Dialogue with states parties should be made more inter-active, and, many would argue, less adversarial. There should be recognition of progress that has occurred.

25. Other areas where it was felt improvements to working methods could be made include:

- Providing more preparatory time to evaluate the available information and ensure recommendations are angled towards implementation; in the absence of adequate information, the rapporteur should be empowered to obtain this, including through a potential country visit. One impediment to the rapporteur playing a more active role, however, is that committee members have no assistance to undertake preparatory work which has to be done in their own time and through their personal effort.
- Adopting specific strategies towards non-reporting states, depending on whether this was a result of absence of political will or capacity; extending the practice of holding reviews where a report has not been submitted, based on information sought from civil society and other sources, and resulting in the issuance of Concluding Observations. It may also be appropriate to offer a visit to the state, to start a dialogue, although it was acknowledged that resource limitations may hamper such a strategy.
- Committees might consider adopting an early warning procedure, as appropriate.

26. In addition to the issue of cooperation among treaty bodies, their interface with other UN human rights machinery and processes (including UPR) and with UN agencies and others was felt to require development. Cooperation within the UN system was seen as being sporadic and ad hoc, and needs to be institutionalised.

Practical next steps

27. Given the strong sense that treaty body views need to be heard in advance of the 2020 review and generate a treaty body oriented position, a meeting should be held to bring together between one to three members of each treaty body, not necessarily chairs, to discuss reform issues. The annual meeting of chairpersons is insufficient for this task, and there are no other inter-treaty body fora available. Such a meeting should take place in the second half of 2018, to enable time for its output to be fully considered, and it would need to be funded from extra-budgetary provisions, with support from

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governments. Its terms of reference for creating a shared position, at some level of detail, should be based on the principles of what reform should do. These include: maintain independence; preserve specialisation; ensure enforcement of recommendations; improve common action and coordination; maintain the 'Poznan formula', for adopting common measures on working methods and procedural matters; strengthen collaboration with rights holders and engagement in the field; protect legitimacy and reinforce the binding obligations ensuing from the treaties.

28. To respond in a shorter-term to longstanding and continuing concerns about treaty body working methods as well as the slowness of implementation of reform measures endorsed by the GA in 2014 the chairpersons could designate a 'special representative', one of the chairpersons or perhaps an outside expert, to address issues of synchronizing scheduling. The object could be to map out, in consultation with states and OHCHR, an 'ideal schedule', starting in the next year or so, whereby no state appears before more than two treaty bodies in a single year. Additionally, the brief should include examining how to coordinate treaty body work more effectively. The aim should be to bring about better implementation of the substantive obligations of states under the relevant human rights treaties, with changes enhancing, rather than weakening, the level of protection afforded to rights holders. Proposals could be submitted for the chairpersons to examine at their meeting in 2019.
29. Already there are many suggestions on the table for reform of treaty body functioning. Treaty bodies need to take stock of these, and pilot different approaches over a one-year period. Some committees have already begun to do this, and their evaluation or findings of new ways of working need to be recorded and shared across committees. It was also felt to be important to establish further pilot projects, which could cover issues such as: fewer and more targeted recommendations; guidelines for a nomination process for candidates for committee membership; improved election practices; encouraging stronger NHRI involvement; and better interactive dialogue with states. What works, how and why? Participation in these pilots would be voluntary, some treaty bodies might see one measure only as most appropriate to test.
30. To enable a continuous exchange between states parties, and other stake-holders, and treaty bodies, as well as to support and champion treaty body work it was suggested there should be the establishment of a 'Group of Friends' of treaty body reform. While it is likely this would be based among the diplomatic community in Geneva, it would be important that the 'Group of Friends' should have constructive links with the diplomatic community in New York.

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