

WORKING PAPERS

The United Nations Treaty Bodies in a Transition Period – Progress Review March-December 2020 Chronicle

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TABLE OF CONTENTS

Introduction.....	1
I- The treaty bodies faced with the COVID-19 crisis.....	2
1- Reactions regarding the substance.....	2
2- Reactions at the procedural level.....	3
A-The challenges.....	4
B-Virtual sessions	5
C-Inter-committee coordination: the treaty body Working Group on COVID-19	7
II- The treaty bodies' contribution to the 2020 review process	9
1- The 'academic' meeting (15-16 April 2020).....	10
2- The beginning of the intergovernmental process: the co-facilitators	11
3- The informal Chairs meeting (2-5 June 2020).....	12
4- The Committees' contributions.....	12
5- The 32 nd annual meeting of Chairs (part I, 27-30 July 2020).....	13
6- The co-facilitators' report and the second part of the 32 nd annual meeting of the Chairs (14 December 2020).....	13
III- The individual communications process.....	15
Annex	17

INTRODUCTION

This article is an updated version by Professor de Frouville of his original paper reviewing the development of reform efforts and responses by the UN human rights treaty bodies during the first months of the COVID-19 pandemic, first published in French in 2020¹. It describes in-depth the developments and achievements of the Treaty Body Review Process by the General Assembly during 2020, including the contributions by the Geneva Human Rights Platform's initiative '[Treaty Body Review 2020 and Beyond](#).'

The United Nations treaty body system has been diagnosed as being 'in crisis' for at least 30 years and the theme of its reform is as old.

A first cycle of reflection started with the mandate given to Philip Alston who, [already in 1997, considered that the system as it existed was not sustainable](#).² Since then, this assessment has been reiterated numerous times, and [ambitious proposals have followed](#), one after another.³ But until now stakeholders have been satisfied with makeshift repairs to prevent the ship from sinking completely. Today, being a member of a treaty body feels like being a passenger aboard the Titanic: [the ship is sinking, but the orchestra continues to play!](#)

In 2009, the then High Commissioner for Human Rights, Navi Pillay, launched the 'Dublin process', which was named after the city where the first of about 20 informal consultations took place. This process resulted in a report,⁴ one of which key measures was the idea of a 'comprehensive reporting calendar'. However, following the publication of the report, the General Assembly, led by a few States, took over the process and adopted Resolution 68/268 on 'Strengthening and enhancing the effective functioning of the human rights treaty body system'.⁵ Based on maintaining the same level of resources, the resolution primarily aimed to address the backlog of reports submitted to the treaty bodies: it was above all about allowing more meeting time in exchange for savings on translation and conference services.⁶ The resolution set a deadline of 'no later than six years (...) to review the effectiveness of the measures taken in order to ensure their sustainability, and, if appropriate, to decide on further action to strengthen and enhance the effective functioning of the human rights treaty body system'. Soon after 2014, concerned actors began to mobilize around a gradually emerging '2020 review process', aiming for the latest date set in the resolution. Within this framework, the treaty bodies themselves realized that they needed to contribute to the process collectively as a 'system'.

Before we present this contribution and review the progress made regarding this process (II), we shall examine – given the exceptional circumstances – how the treaty bodies reacted to the COVID-19 pandemic (I). We will also address the parallel reflection process concerning the system for dealing with individual communications (III).

¹ <https://www.crdh.fr/wp-content/uploads/ODF-TB-transition-122020.pdf> (accessed on 31 May 2021).

² <https://www.ohchr.org/EN/HRBodies/HRTD/Pages/FirstBiennialReportbySG.aspx#>, (accessed 15 April 2021).

³ <https://www.ohchr.org/EN/HRBodies/HRTD/Pages/TBStrengthening.aspx>, (accessed 15 April 2021).

⁴ N. Pillay, 'Strengthening the United Nations human rights treaty body system. A report by the United Nations High Commissioner for Human Rights', June 2012, available online.

⁵ General Assembly Resolution 68/269, 'Strengthening and enhancing the effective functioning of the human rights treaty body system', 9 April 2014, A/RES/68/268; see also I. Salama, 'Présentation du processus de renforcement des organes conventionnels', in E. Decaux, O. de Frouville (eds), *La dynamique du système des traités de l'ONU*, Paris, Pedone, coll. 'Publications du C.R.D.H.', 2015, pp. 161-164.

⁶ On the process that followed the adoption of Resolution 68/268, see E. Whyte Gomez, 'The UN Treaty System, beyond 2020'; I. Salama, 'Strengthening the UN Human Rights Treaty Body System: Prospects of a Work in Progress' and E. Decaux, 'Pistes de réflexion et perspectives de travail pour 2020', in O. de Frouville (ed.), *Le système de protection des droits de l'Homme des Nations Unies. Présent et avenir*, Paris, Pedone, coll. 'Publications du C.R.D.H.', 2018, pp. 73-78, 95-111 and 113-131 respectively.

I- THE TREATY BODIES FACED WITH THE COVID-19 CRISIS

1- REACTIONS REGARDING THE SUBSTANCE

The United Nations system reacted swiftly and above all, in quantity to the crisis. While the Office of the High Commissioner for Human Rights (OHCHR) website is generally not very reactive, pages and sub-pages on the issue of [COVID-19 and human rights](https://www.ohchr.org/EN/NewsEvents/Pages/COVID-19.aspx)⁷ have been developed – in particular a sub-page dedicated to [the treaty bodies' reaction](https://www.ohchr.org/EN/HRBodies/Pages/COVID-19-and-TreatyBodies.aspx)⁸ and another on [special procedures of the Human Rights Council](https://www.ohchr.org/EN/HRBodies/SP/Pages/COVID-19-and-Special-Procedures.aspx).⁹ Focusing on the treaty bodies, the first reaction that was registered was a joint statement by the 10 treaty body Chairs of 24 March 2020. The webpage then classifies the various recommendations in guidance notes (three issued by the Committee on Enforced Disappearances (CED), the Committee on the Elimination of Discrimination against Women (CEDAW) and the Committee on Migrant Workers (CMW)), advice (two issued by the Subcommittee on Prevention of Torture (SPT)), statements (eight issued by the Committee on the Elimination of Racial Discrimination (CERD), the Committee on the Rights of Persons with Disabilities (CRPD), the Committee on Economic, Social and Cultural Rights (CESCR), the Committee on the Rights of the Child (CRC), CEDAW, the Human Rights Committee (CCPR), and a joint statement by SPT and the Committee Against Torture (CAT)), press releases (five

issued by the Chairs, CESCR, CEDAW, CMW and SPT) and stories (one by CRPD).

Practically, all ten treaty bodies have issued publications and reacted to the pandemic crisis in one way or another, from different angles. CCPR concentrated on the issue of derogations in crisis situations, whilst CESCR focused on the consequences of the pandemic on economic, social and cultural rights. Apart from these two 'generalist' reactions, categories of persons were also addressed – persons who are marginalised, discriminated against in 'ordinary' times and who are even more at risk under exceptional circumstances such as health states of emergency: women, racial or ethnic minorities, migrants, persons who are deprived of liberty and persons with disabilities. The Office of the High Commissioner for Human Rights promptly published a compilation that can be found on the relevant webpage,¹⁰ which is updated regularly and contained, in September, 19 publications all categories combined. Moreover, the Human Rights Treaties Branch of the Office of the High Commissioner established a toolkit on 'treaty law perspectives and jurisprudence in the context of COVID-19'.¹¹ The document was not developed by the treaty bodies themselves and therefore does not represent any sort of joint general comment, but rather a contribution from the Secretariat aimed at extracting legal references from treaty body jurisprudence that could be used in the context of a country-specific analysis and advocacy for a COVID-19 pandemic response consistent with international human rights law.¹²

⁷ See <https://www.ohchr.org/EN/NewsEvents/Pages/COVID-19.aspx>, (last accessed on 15 April 2021).

⁸ Available at: <https://www.ohchr.org/EN/HRBodies/Pages/COVID-19-and-TreatyBodies.aspx>, (last accessed on 15 April 2021).

⁹ Available at: <https://www.ohchr.org/EN/HRBodies/SP/Pages/COVID-19-and-Special-Procedures.aspx>, (last accessed on 15 April 2021).

¹⁰ *Compilation of statements by human rights treaty bodies in the context of COVID-19*, September 2020, https://www.ohchr.org/Documents/HRBodies/TB/COVID19/External_TB_statements_COVID19.pdf, (last accessed on 15 April 2021).

¹¹ *Internal HRTB toolkit of treaty law perspectives and jurisprudence in the context of COVID-19*, established in May and updated on 15 July 2020. Available at: https://www.ohchr.org/Documents/HRBodies/TB/COVID19/HRTB_toolkit_COVID_19.docx, (last accessed 15 April 2021).

¹² See para. 4: 'Through a thorough and analytical overview of the relevant provisions, their interpretation, and the jurisprudence of treaty bodies, the toolkit provides

The first conclusion to draw is that we should not deny ourselves some pleasure at this response. What this period has shown above all, is that we have a powerful legal framework in place and reactive independent bodies at its service. Rapidly and without even being able to meet in person, the treaty bodies were able to take position and intervene to remind States of the legal framework within which measures had to be taken.

To justify the existence of the international human rights protection system *a minima*, one can claim that ‘things would be worse if it did not exist’. We believe the current situation gives renewed strength to this argument. Overall, at the national and at the international level, the robust response by actors and institutions mandated to protect human rights has arguably prevented abuses, or even more serious abuses than those that have occurred.

However, one may question what some have described as a ‘proliferation’ of responses.¹³ Multiple and successive reactions from regional bodies, domestic bodies and all international organizations have resulted in a flood of guidelines, statements, advice etc. Consequently, it is hard to keep up and materially impossible to digest all this literature. The overflow hinders comprehension and visibility. The organization International Justice Resource Center (IJRC) has attempted a mapping exercise, a sort of guidance for the guidance on its website,¹⁴ with a very useful cross-institutional thematic overview.

colleagues, including those in our field presences, the legal references to enable them to use the authority of treaty bodies to reinforce country-specific analysis and advocacy for a COVID-19 pandemic response consistent with international human rights treaties.’

¹³ L. Reinsberg, ‘Mapping the Proliferation of Human Rights Bodies Guidance on Covid-19 Mitigation’, *Just Security*, 22 May 2020. Source : <https://www.justsecurity.org/70170/mapping-the-proliferation-of-human-rights-bodies-guidance-on-covid-19-mitigation/>, (last accessed 15 April 2021).

¹⁴ <https://ijrcenter.org/covid-19-guidance-from-supranational-human-rights-bodies/>, (last accessed 15 April 2021).

What this ‘proliferation’ reveals, is probably the extreme institutional fragmentation of the international human rights protection system: in addition to regional systems, the universal system is composed of more than 250 experts who are spread between the Charter-based system of the Human Rights Council (80 special procedures mandate holders) and the treaty-based system (172 treaty body members), the Advisory Committee (18 experts), to which must be added the Office of the High Commissioner, which is a big producer of reports, along with the many resolutions and decisions adopted by the Human Rights Council. Without succumbing to a dangerous desire for purity or an unhealthy passion for order, one cannot help but think that some sort of simplification would be welcome.¹⁵ In the meantime, syntheses such as those prepared by the Office of the High Commissioner (*supra*) are very useful. Moreover, awareness that they may become inaudible because of too much diverse material has led treaty bodies to reflect upon new forms of coordination, at a procedural level but also at a substantive level. Part of the mandate of the inter-committee Working Group on COVID-19, which will be mentioned hereafter, is an in-depth discussion to enable Committees to coordinate their positions as far as possible on cross-cutting issues.

2- REACTIONS AT THE PROCEDURAL LEVEL

The COVID-19 crisis has seriously affected the activities of all human rights protection

¹⁵ See O. de Frouville, ‘Building a universal system for the protection of human rights: the way forward’, in C. Bassiouni, W. A. Schabas, *New Challenges for the UN Human Rights Machinery*, Cambridge, Intersentia, 2011, pp. 241-266. And more specifically the project for a United Nations Human Rights Court to deal with individual communications currently submitted to treaty bodies: O. de Frouville, ‘Pourquoi nous avons besoin d’une Cour des droits de l’Homme des Nations Unies ?’, in N. Aloupi, D. P. Fernandez Arroyo, C. Kleiner, L. A. Sicilianos, S. Touzé, *Les droits humains comparés. A la recherche de l’universalité des droits humains*, seminar held at the European Court of Human Rights on 8-9 March 2018, Paris, Pedone, 2019, pp. 129-161.

bodies, but has perhaps impacted treaty bodies even harder. Special procedures of the Human Rights Council had their visits cancelled, but their other activities, as they rely on special rapporteurs or a limited number of experts composing ‘working groups’, carried on for the most part.¹⁶ Other bodies such as the European Court of Human Rights had to take exceptional measures to work remotely and postpone hearings, but core activities were maintained *a minima* and in the end progressively resumed, despite the lockdown in the second wave.

For their part, treaty bodies are composed of experts coming from all continents, based in very different time zones and who – if a reminder is necessary – work *pro bono* with an allowance to cover their expenses while their Committee sits in Geneva. Treaty body work is mostly carried out in Geneva during sessions and to a lesser extent on an inter-sessional basis, notably regarding activities related to individual communications (especially for CCPR, CAT and CEDAW) or urgent actions of the Committee on Enforced Disappearances (CED). Given these specificities, challenges arose quickly (a) and the treaty bodies had to adapt by moving to virtual sessions (b) and establishing unprecedented coordination (c).

A- THE CHALLENGES

Treaty bodies – as well as the Secretariat of the Office of the High Commissioner – rapidly perceived the risks in terms of a ‘protection gap’ and persistent delays given the existing important backlog (both regarding reporting and communications).¹⁷ Due to the impossibility of meeting in Geneva in person,

¹⁶ For example, the spring session of the Working Group on Enforced or Involuntary Disappearances took place from 11-15 May (document available online at <https://ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25897&LangI>) as well as its 122nd session from 21-30 September (<https://ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26338&LangI>), (last accessed 15 April 2021).

¹⁷ See figures in the 2020 Secretary-General report, OHCHR, *UN human rights report*, to be published.

the transfer of at least some of the activities online was the only solution, at least in theory. However, practical obstacles remained. At the technical level, in March 2020, no institution was fully prepared to deal with the consequences of the crisis, notably regarding online work. Fortunately, a number of companies had already developed technical solutions that were relatively efficient, some of which were very successful. Nevertheless, some time was needed to adjust. Without even mentioning the [Security Council](#),¹⁸ which made a notably slow start,¹⁹ the Human Rights Council did not hold its [first virtual meeting](#) (discussion with the High Commissioner) until 9 April 2020.²⁰ However, whereas the Zoom platform was favoured by individual users, multiple security incidents occurred, leading to the platform being banned in numerous countries and similar guidance issued by the United Nations. Therefore, new, less efficient platforms had to be used: the software chosen by the United Nations that allowed for simultaneous interpretation (*Interprefy*) proved to be inaccessible to persons with disabilities, which greatly complicated CRPD activities as well as access of other stakeholders with disabilities to the work of the Committees.

Another major obstacle was the absence of interpretation services in the Committees’ working languages. During a first phase, this obstacle was purely technical as it was impossible to have interpreters on the platforms. While this obstacle was overcome by early summer, more constraints appeared, such

¹⁸ ‘New Security Council Working Methods in the Midst of Covid-19’, *What’s in Blue*, 27 mars 2020, source : <https://www.whatsinblue.org/2020/03/new-council-working-methods-in-the-midst-of-covid-19.php>, (last accessed 15 April 2021).

¹⁹ R. Maurel, ‘L’(in)activité du Conseil de sécurité face au COVID-19 : où est confinée la ‘ communauté ‘ internationale ?’, *Revue des droits et libertés fondamentaux*, 2020, chron. No. 18.

²⁰ <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=25789&LangID=E>, (last accessed 15 April 2021).

as the insufficient number of booths that were adequately equipped in Geneva and could host interpreters under appropriate conditions given the pandemic.

Other hurdles that came to light required working methods to be adjusted. The issue of time difference made it impossible to hold meetings during the usual time slots, i.e. between 10am and 1pm and between 3pm and 6pm CEST, for a total of 6 hours daily. How is it possible to meet with an expert in Peru and another in China? It is only possible from 1pm CEST (7pm in Beijing, 6am in Lima) to 4pm CEST (10pm in Beijing, 9am in Lima). The conclusion that was drawn was that part of the work had to be undertaken through a written procedure, via emails. This is how treaty bodies were able to carry out a number of activities, such as the adoption of annual and other reports, the adoption of lists of issues based on State party reports etc.

B- VIRTUAL SESSIONS

March-August 2020

Overall, between March and the end of August, 12 treaty body sessions were ‘impacted’ by the crisis, as they could not take place in Geneva as planned or had to be shortened.

CRPD and CCPR were the crisis’ first ‘victims’. CRPD, the 23rd session of which was due to take place from 11 March-5 April decided to postpone until August (17 August-4 September). The pre-session working group tasked with considering lists of issues met online and these were adopted by email. For its part, CCPR was forced to suspend its 128th session halfway through on 13 March. It was due to take place from 22-27 March. Thankfully, constructive dialogues on State party reports had been held during the first two weeks. The Committee decided to adopt by email concluding observations following the dialogues as well as lists of issues regarding upcoming dialogues. As for its individual communication procedure, the Committee decided to adopt decisions and views that are

usually adopted in the plenary (inadmissibility decisions, repetitive cases and cases closed), thus avoiding any discussion online.

CED session was due to open on 20 March in Geneva. Members were told that interpretation services could not be provided by the United Nations Office in Geneva (UNOG). Following discussions amongst its members, the Committee decided to open its 18th session virtually and in public. Following the opening meeting in public, the Committee would adopt two pending lists of issues in private and would hold a general discussion on COVID-19 and the 2020 Review without interpretation services. The procedure regarding the adoption of the lists of issues was ‘hybrid’: email exchanges and suggestions from members, followed by the adoption paragraph by paragraph during the videoconference. The Committee had planned an intervention from the mother of a disappeared person: this was achieved with consecutive interpretation in Spanish and in English, which was provided on an exceptional basis. The Committee decided to suspend the session until 7 September, when it would close and the 19th session would open. During the suspension period, the Committee also adopted its annual report via email exchanges and an implicit acceptance procedure.

Based on this precedent, CED deemed it necessary to take stock of its experience and drafted a letter to the High Commissioner, describing lessons learnt and explaining what exactly had been achieved. The letter underlined four difficulties, apart from the issue of time difference, which need to be solved as a preliminary step to holding genuine virtual sessions: a) the issue of access to a reliable digital platform; b) availability of interpretation services in working languages; c) accessibility for all, including persons with disabilities and persons who do not have access or have insufficient access to the Internet; d) the issue of the allowance for treaty body members, which is usually tied to their presence in Geneva (*per diem* system).

CED was the first treaty body to hold a virtual ‘session’ and the United Nations press service relayed the news, probably a bit too

emphatically.²¹ In fact, CED only met online for a few hours, without interpretation services (apart from consecutive interpretation of the mother of a disappeared person) on an unreliable platform with many connection issues. The following treaty body sessions were due to take place in April, June, July and August, which left some time to improve technical aspects regarding online meetings. The letter by CED to the High Commissioner pushed for progress in that direction. CERD, the 101st session of which was due to be held from 20 April until 8 May, decided to have it postponed until the summer (it eventually took place from 4-7 August). Other treaty bodies that were due to meet in the summer had more time and decided to hold their respective sessions virtually, with a programme of work that was more or less reduced depending on Committees and none held constructive dialogues with States parties. Due to technical difficulties that were previously encountered, it seemed difficult to envisage such interactive dialogues – which always take place over six hours, necessitate interactions between experts and the State delegation and, informally, with civil society organizations (CSOs) or national human rights institutions (NHRIs).

Thus the SPT,²² CEDAW,²³ CCPR,²⁴ CERD²⁵ and CRPD²⁶ moved forwards and held virtual

sessions with various activities on their agenda. The SPT was innovative and met as regional groups to remotely hold dialogues with National Preventive Mechanisms (NPMs). This experience was generally deemed positive by SPT members and could be repeated, including during ‘ordinary’ times.

Besides, working groups of CRC (14-21 May), CEDAW (24-26 June) and CCPR (22-27 June) met to examine 7, 8 and 45 individual communications respectively. CEDAW subsequently adopted those views in the plenary session, whilst CRC postponed their consideration to a later session and CCPR merely adopted the most ‘straightforward’. CERD and CRPD considered one and four communications respectively during their August session.

The only treaty body that did not hold a session over that period is CMW. The Committee decided to have an ‘intersessional period’ between July 2020 and February 2021 and scheduled its next session in April 2021. Nevertheless, by written procedure, the Committee adopted a number of documents (annual report, general comment, guidance note, lists of issues etc.). For its part, CAT held a ‘session’ over a few hours on 13 July. Apart from that, CAT adopted lists of issues and its annual report by written procedure and decided to maintain its rapporteurs’ activities (follow-up, registration of new communications and interim measures, reprisals). CAT ‘cancelled’ its November session and, like CMW, decided that its next session should take place in April 2021.

Apart from sessions, the pandemic crisis obviously suspended the whole programme of visits and inquiries *in situ* visits of places of deprivation of liberty that are normally carried

²¹ The belief according to which the Committee had been able to hold a full ‘virtual’ session via videoconference rapidly spread to even keen observers, following the publication of the press release on the OHCHR website which headline was confusing.

²² 41st online session, from 15 to 19 June 2020, https://www.ohchr.org/Documents/HRBodies/OPCAT/Programme_of_work_SPT_41session.pdf, (last accessed 15 April 2021).

²³ 76th online session, 29 June 2020 – 9 July 2020, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/SessionDetails1.aspx?SessionID=1388&Lang=en, and for the pre-sessional working group, (last accessed 15 April 2021). https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/SessionDetails1.aspx?SessionID=1391&Lang=en,

²⁴ 129th online session following the pre-sessional working group on communications, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/SessionDetails1.aspx?SessionID=1374&Lang=en, (last accessed 15 April 2021).

²⁵ 101st online session (initially planned in April-May), 4-7 August 2020:

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/SessionDetails1.aspx?SessionID=1384&Lang=en, (last accessed 15 April 2021).

²⁶ 23rd virtual session (initially planned in March-April), 17 August-4 September,

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/SessionDetails1.aspx?SessionID=1376&Lang=en, (last accessed 15 April 2021).

out by SPT had to be postponed (missions to Bulgaria, Australia, Madagascar, Nauru). Another visit by CEDAW, which was scheduled for March-April under its inquiry procedure, was also postponed indefinitely.

September-December 2020

It was obvious by summer 2020 that normalcy could not be restored during the second half of 2020: sessions in Geneva could not resume. Most Committees (apart from CMW and CAT as mentioned above) decided to make the best of the situation by organizing their activities online. Since July, material and logistical conditions for virtual sessions had stabilized, without however being satisfactory as they did not solve entirely the issues raised in the letter that CED had sent to the High Commissioner. In terms of digital platform, the UN continued to impose *Interprefy* for meetings with simultaneous interpretation and *Webex* for meetings without interpretation. Treaty body members generally expressed their dissatisfaction with this choice owing to the fact that these platforms were deemed too complicated and not very reliable. In fact, *Interprefy* proved adequate – albeit not very user friendly and unnecessarily complicated. However, the lack of tools to facilitate access for visually impaired persons probably means that the platform is doomed to be dropped eventually. The issue of interpretation provision remained, with a maximum of four hours available daily – thus limited to two hours when two Committees sit simultaneously – which made it impossible to hold a normal session and necessary to resort to meetings without interpretation and consequently exclusively in English. Finally, the issue of treaty body members' allowance remained unresolved. As *per diem* is tied to travel outside the country of residence in UN regulations, it cannot be paid for virtual sessions. It is meant to cover accommodation and other expenses during sessions and therefore cannot be paid when experts work from home. However, treaty body members argued that their participation in sessions, although virtually, incurred expenses

and required special assistance – notably at the logistical and technical level (IT equipment up to date, high speed Internet connection etc.)

Taking these constraints into account, each Committee had to make choices and maintain a reduced activity level. All treaty bodies decided to postpone the review of State party reports until 2021. Nevertheless, CED decided to hold a constructive dialogue online with Iraq – the State delegation being based in Baghdad and CED members in their respective places of residence. However, this dialogue took place in the framework of Article 29(4) of the Convention, which provides for the possibility for the Committee to request 'additional information' on the implementation of the Convention from States parties. Therefore, it was not a country review based on the State party report. In this regard, CED decided to postpone the review of reports submitted by Switzerland and Mongolia until 2021, thus following in other treaty bodies' footsteps.

In total, the rapporteur of the Working Group on COVID-19 (see *infra*) established that, during the March-December 2020 period, the treaty bodies adopted 70 lists of issues, 44 lists of issues prior to reporting (LOIPR), three general comments or recommendations, 146 individual communications and one inquiry report, in addition to other activities such as the adoption of follow-up reports, the drafting of guidelines/statements/recommendations relating to COVID-19 and multiple webinars...

C- INTER-COMMITTEE COORDINATION: THE TREATY BODY WORKING GROUP ON COVID-19

The treaty body Chairs' 32nd annual meeting was scheduled from 1-5 June 2020 in New York. Since it was impossible to meet in person and given how rudimentary videoconference logistics were at that time, it was decided to hold an *informal* meeting from 2-5 June, exclusively in English, with Chairs as well as '2020 focal points', i.e. members of each Committee mandated to follow the Resolution 68/268

review process. The issue of treaty body adaptation to the pandemic crisis was on the agenda of this *informal* meeting. Chairs reviewed measures that had been taken thus far and the CED letter was endorsed by participating members. Moreover, two members proposed establishing an inter-committee Working Group on COVID-19 to work on substantive as well as procedural matters. This proposal was welcomed by all participants.

The Working Group held three meetings in the summer on 3, 10 and 17 July. The meetings took place in English only, on *Webex*. The Working Group was composed of ‘COVID-19 focal points’ from each Committee and appointed a facilitator, Mrs Nora Sveass (SPT) and a rapporteur, Mrs Mikkiko Otani (CRC). The Working Group allowed treaty bodies to share their experiences and practices since the first virtual session. It was also an opportunity to hear OHCHR officials speak on logistical and financial issues, as well as conference and present and future constraints around interpretation services. In conclusion, the rapporteur of the Working Group drafted a comprehensive report summarizing all information and conclusions and formulating recommendations to the treaty body Chairs.²⁷

At the end of the first part of their 32nd annual session (27-30 July), the Chairs decided to extend the mandate of the Working Group so that it could continue to follow the situation and develop proposals that would be common to all treaty bodies.²⁸ During the autumn, the Working Group held five online meetings on 14 and 30 October, 17 and 25 November and 11 December. The Working Group developed a concept of inter-committee regional webinars, a database compiling treaty body jurisprudence in relation to the pandemic crisis, as well as a proposal for a common position sent to the Chairs concerning the resumption of reviews of

State party reports in the first half of 2021. Regarding the latter, the Working Group noted CED experience with regard to the dialogue it held with Iraq under Article 29(4) of the Convention. The Working Group also took note of CESC²⁹ and CCPR³⁰ plans to review State party reports online if it was still impossible to sit in person. CCPR indicated in its press release upon closing its 130th session that such online reviews ‘would be held strictly on a trial and exceptional basis, should the in-person session not take place due to COVID-19.’³¹ This idea was reiterated by the Working Group in its recommendations aiming to ‘avoid a monitoring gap’ in order to encourage the treaty bodies to perform online reviews on an exceptional basis as a ‘pilot project’ if sessions cannot take place in Geneva.

In this regard, the Geneva Academy of International Humanitarian Law and Human Rights and the C.R.D.H./Paris Human Rights Center on 2-3 December organized a ‘Treaty Body Members Platform’ meeting³² on ‘COVID-19 working methods’. The meeting was held online and was open to all treaty body members and their secretariat (OHCHR). The first two segments on 2 December were also open to NGOs that work with treaty bodies on a regular basis (notably those that are part of the ‘TB-Net’ group).

The treaty body Chairs, in a letter of 7 December 2020 sent to the Presidents of the General Assembly, the Third and the Fifth Committees, underlined that concerns

²⁷ This document is available on the webpage dedicated to the 32nd annual meeting of treaty body Chairs: <https://www.ohchr.org/EN/HRBodies/AnnualMeeting/Pages/Session32.aspx>, (last accessed 15 April 2021).

²⁸ See meeting report, Document A/75/346, 14 September 2020, paras 30-39 and 47.

²⁹ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26392&LangID>, (last accessed 15 April 2021).

³⁰ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26485&LangID>, (last accessed 15 April 2021).

³¹ *Id.*

³² The ‘Treaty Body Members Platform’ is a series of informal meetings initiated by the Geneva Academy in the framework of its ‘Geneva Human Rights Platform’. Under ‘normal’ circumstances, these meetings take place in Geneva, after treaty body meetings. These meetings aim to bring together members of two (or more if possible) treaty bodies for an informal exchange around an issue of common interest.

expressed by the treaty bodies regarding virtual sessions remained unheeded: interpretation services, digital platform, accessibility etc. The Secretariat failed to provide adequate solutions.

Furthermore, the Chairs recalled that even if all conditions were met, online work would still face the hurdle of different time zones – a problem which regional bodies (in Europe, Africa or America) do not have.

I personally expressed the opinion that a solution to this difficulty would involve extending session dates, or even moving towards an annual schedule of sessions to allow treaty bodies to work continuously for two hours every working day. This schedule could be adopted and extended post-pandemic, with one part of the session in Geneva in person and another part online for the rest of the year to deal with everyday business. This would also facilitate establishing a fixed and coordinated calendar of country reviews (see *infra*). However, thus far, this idea³³ has been met with reluctance from the Secretariat as well as treaty body members, anchored as their imaginary is in the idea of in-person meetings at fixed dates.

Eventually, during the second part of their 32nd annual meeting that took place on 14 December 2020, the Chairs heard the report of the Working Group on COVID-19, renewed their confidence in the Working Group and mandated it with the drafting of guidelines for online country reviews, for those Committees who had decided to resume this activity.

³³ For a more detailed argument, see text in annex, which was presented at the 2-3 December meeting organized by the Academy and the C.R.D.H.

II- THE TREATY BODIES' CONTRIBUTION TO THE 2020 REVIEW PROCESS

In June 2019, during their annual meeting, the treaty body Chairs adopted a document presented as their 'vision' of the future of the treaty body system.³⁴ This document results from a process that was spread over a little more than a year, starting with a joint meeting between Covenant Committees in March 2018 and culminating in a meeting between the Chairs and the '2020 focal points'³⁵ in Copenhagen on 26-27 February 2019.³⁶

In the Autumn of 2019, the C.R.D.H. and the Geneva Academy put the idea forward of a 'Copenhagen II' process with a view to promoting the Chairs' 'vision' and carry out a first review (1) prior to the beginning of the intergovernmental review process launched by the President of the General Assembly with the appointment of co-facilitators (2). Due to the delay caused by the pandemic and then the sudden acceleration of activities at the beginning of June, an informal meeting of Chairs was convened from 2-5 June 2020 (3), inviting Committees to submit proposals (4)

³⁴ The document is available on the webpage of the 31st annual meeting of Chairs: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/SessionDetails1.aspx?SessionID=1354&Lang=en. It is also reproduced in the Chairs' report on their 31st annual meeting, A/72/256, 30 July 2019, in Annex III and is entitled 'Position paper of the Chairs of the human rights treaty bodies on the future of the treaty body system'.

³⁵ During the process, most Committees decided to appoint a 'focal point' to follow and work on the issue of the review of General Assembly Resolution 68/268. For my own part, I was appointed focal point of the Human Rights Committee until my mandate ended in December 2018 and then focal point of the Committee on Enforced Disappearances from the Committee's 17th session in October 2019.

³⁶ The Copenhagen meeting, organized at the initiative of the Chair of the Committee against Torture, Jens Modvig, had resulted in the adoption of an 'outcome document' that served as a basis for Chairs to draft their June document.

prior to the first part of the 32nd annual meeting in July (5) and the submission by the co-facilitators of their report in September, followed by the second part of the Chairs' annual meeting on 14 December (6).

1- THE 'ACADEMIC' MEETING (15-16 APRIL 2020)

As the autumn appeared to be States' preferred option to complete the Resolution 68/268 review process, it seemed appropriate to organize the 15-16 April 'academic' meeting in New York rather than in Geneva, in order to facilitate contacts with State representatives at the General Assembly. Because of the global COVID-19 pandemic, all travel to New York had become impossible and the meeting was held online via videoconference, with the help and support from the Columbia Law School. Entitled 'Beyond 2020-From a vision to a plan', the meeting was held under the 'Chatham House Rule',³⁷ but its participation was open as it brought together, apart from the treaty body Chairs and the '2020 focal points', officials of the OHCHR (Secretariat) from the 'Treaty Bodies Branch', NGO representatives (from Amnesty International, the International Service for Human Rights, the CCPR-Center, Open Society Justice Initiative etc.), researchers from the Geneva Academy and the C.R.D.H. (Felix Kirchmeier, Kamelia Kemileva, Claire Callejon etc.), and Sarah Cleveland as a former member of the Human Rights Committee and Professor at Columbia Law School. The discussion was rich and summarized in a working document that was drafted by the Academy and for which distribution was limited. The document reviewed the progress that had been made and

listed a number of ideas put forward for the future of the system.

Four core elements came out of the discussions:

- Regarding the reporting procedure, participants reiterated but also specified the central idea of 'predictability', favouring the option of a fixed date review and of a calendar that would be specific to each Committee rather than a 'comprehensive' calendar (for all the treaty bodies). Each Committee would be the master of its own reporting calendar, extending the possibility to review country situations 'in the absence of a report', with a view to keeping the fixed calendar. This autonomy would be matched with closer coordination, including regarding review dates, to allow the possibility of back-to-back reviews, or sequential reviews (for example by a Committee every two years). This would entail substantive coordination, from the drafting of 'lists of issues' to the adoption of concluding observations. At the implementation stage, the idea of a coordinated, or even integrated follow-up (for example performed by an *ad-hoc* inter-committee body) was also suggested.
- More specifically related to the General Assembly Resolution, Yuval Shany, focal point of the Human Rights Committee, proposed reviewing the logic behind the financing of treaty body activities established by Resolution 68/268: whereas the latter provides a backward-looking formula – calculating the upcoming budget on the basis of past activities – a 'forward-looking' formula would calculate necessary resources based on a schedule of activities determined by each treaty body every two or three years. This would allow taking into account the continued

³⁷ 'When a meeting, or part thereof, is held under the Chatham House Rule, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed.', <https://www.chathamhouse.org/about-us/chatham-house-rule>, (last accessed 15 April 2021).

growth in treaty body activity – the increase in the number of State party reports, but above all the increase in the number of individual communications received, where the previous formula, since it is based on past activity, always resulted in insufficient resources that did not match the actual needs.

- Thirdly, participants to the meeting agreed that Resolution 68/268 did not take sufficiently into account the specificity of two treaty bodies: the SPT – whose mandate is limited to visits of places of deprivation of liberty in States parties – and CED, which does not operate according to a periodic reporting procedure and also performs, unlike other Committees, an important function of urgent actions to locate disappeared persons.
- Fourthly, with regard to individual communications, the treaty bodies emphasized the need to set up an effective digital portal as well as a case management system similar to those of international jurisdictions – without of course overlooking the necessary strengthening of the Petitions and Urgent Actions Section which is understaffed (on the latter, see *infra* 3).

2- THE BEGINNING OF THE INTERGOVERNMENTAL PROCESS: THE CO-FACILITATORS

In the meantime, the intergovernmental process had started. In a letter of 8 April 2020, the President of the General Assembly announced his decision to appoint two co-facilitators for the Resolution 68/268 review process: Mr Omar Hilale, Ambassador of Morocco and Mr Jürg Lauber, Ambassador of Switzerland. As part of their mandate, the two

co-facilitators scheduled a launch meeting on 2 June 2020, bringing together all actors, including treaty bodies, represented by the Chair of CEDAW, Mrs Hilary Gbedemah, as Chair of the annual meeting of treaty body Chairs ('Chair of Chairs'). A second meeting was convened on 4 June with 'experts' of State delegations from New York and Geneva. It should be noted that the fact that those meetings were held online via videoconference allowed for a broader participation than meetings that normally take place in person: had the meeting taken place in New York, Geneva 'expert' diplomats probably could not have taken part, even though *a priori* they are more aware of those issues than their New York colleagues who do not deal with those on a daily basis as most UN 'human rights' activities are based in Geneva.

During the launch meeting, the co-facilitators communicated their provisional calendar, which was more or less followed. A questionnaire seeking written contributions by 7 July was sent to all States parties.³⁸ Informal consultations were held at the end of July with States parties (New York, 27 July); treaty body Chairs (28 July, online during the first part of the 32nd annual meeting of Chairs); followed by new consultation sessions on 28 August (New York, hybrid meeting with States, OHCHR and other stakeholders) and 2 September (virtually) concerning a number of themes determined in consultation with States and other stakeholders; drafting of the report that was presented orally during a wrap-up session on 11 September and sent in writing to the Nigerian President of the General Assembly on 14 September, before the closing of the 74th session of the General Assembly and the opening of its 75th session on 15 September, under Turkish presidency.

³⁸ All contributions received (89) can be consulted on the webpage dedicated to the co-facilitation process: <https://www.ohchr.org/EN/HRBodies/HRTD/Pages/Co-Facilitation-Process.aspx>, (last accessed 25 April 2021).

3- THE INFORMAL CHAIRS MEETING (2-5 JUNE 2020)

In response to the acceleration of the review calendar at the beginning of June, the Secretariat considered it was appropriate to convene an informal meeting of the treaty body Chairs, with the participation of the ‘2020 focal points’, at the date originally planned for the formal annual meeting in New York – which was partly postponed until the end of July 2020. The informal meeting took place from 2-5 June 2020, which coincided with the launch of the co-facilitation process. ‘COVID measures’ (see *supra*) were also on its agenda. Regarding the 2020 review process, the meeting enabled Chairs to prepare a draft common position to be submitted to the co-facilitators, on the basis of their ‘vision’ and of the document developed following the 15-16 April meeting. The objective was for this common position to be developed and adopted during the partial annual meeting of the Chairs scheduled from 27-30 July. Therefore, the treaty bodies were invited to work separately in order to feed back information and proposals that could contribute to a common position that would be presented to the co-facilitators.

4- THE COMMITTEES’ CONTRIBUTIONS³⁹

The Human Rights Committee sent a letter to the co-facilitators on 16 July 2020, recalling the Chairs’ ‘vision’ and informing about its decision, at its 123rd session (July 2019) to adopt a Predictable Review Cycle aimed at reviewing all 173 States parties to the Covenant over an eight year cycle. Additionally, the Committee mentioned the need to review the Resolution 68/268 ‘formula’, which is backward-looking in essence, and adopt a forward-looking formula that would contribute to fully implementing the Predictable Cycle. The Committee also

emphasized the fact that such revision would not involve a significant budget increase (21.625 reports reviewed per year instead of 19 which would represent an additional 1.2 weeks of meeting time and 90 additional working days for OHCHR personnel).

For its part, in a letter of 24 July, the Committee on Enforced Disappearances asserted the specificity of its procedure. On the one hand, urgent actions (Article 30 Convention) were not taken into account in the Resolution 68/268 formula. In the meantime, the Committee had registered 906 urgent actions (now over 1,000), incurring an increasing workload without corresponding resources – in terms of meeting time and above all in terms of Secretariat staff resources. On the other hand, CED reporting procedure is different from that of other treaty bodies: drafters of the Convention did not wish to establish a procedure of periodic reports. The Convention provides for the submission of an initial report within two years of the entry into force (Article 29(1)) and the possibility for the Committee to request ‘additional information’ (Article 29(4)). Consequently, it is harder for CED to adapt to the requirements of a predictable calendar: a request for additional information is only sent to a State party where the Committee deems it necessary, depending on the level of implementation of its obligations in the State concerned and on the situation in the country. Therefore, the Committee considers that the time interval between two requests for additional information may vary from one to eight years depending on States. Given the number of States parties (63), the Committee plans to review additional information from about 20 States per year according to various review modalities – from traditional dialogue to desk review. On this basis, the Committee reached the conclusion that it needed four weeks of additional meeting time per year, representing 1.4 additional personnel from the Secretariat.

Finally, a letter to the cofacilitators of 6 July was signed by several members of various treaty bodies, aiming at promoting the solution of country reviews ‘*in situ*’, i.e. either in the

³⁹ Contributions are available on the OHCHR webpage dedicated to the co-facilitation process: <https://www.ohchr.org/EN/HRBodies/HRTD/Pages/Co-Facilitation-Process.aspx>, (last accessed 25 April 2021).

concerned country, or at the regional level – following the example of the CRC session in Samoa.⁴⁰ The authors of the letters called on the future General Assembly resolution to recognize the positive role that such sessions could play, whilst acknowledging that it was not currently possible due to the COVID-19 pandemic.

5- THE 32ND ANNUAL MEETING OF CHAIRS (PART I, 27-30 JULY 2020)

The 32nd annual meeting provided an opportunity for discussions between the Chairs and the co-facilitators. On the basis of the conclusions from the June meeting and the contributions from Committees developed since then, the treaty body Chairs presented their ‘vision’ to the co-facilitators, but also measures that had been taken for its implementation. In particular, they highlighted the Covenant Committees’ decision to set up a fixed and predictable calendar to review State reports and recalled the proposal for a ‘forward-looking’ formula.⁴¹ As part of their decisions and recommendations, the Chairs reaffirmed the framework of Resolution 68/268 and their ‘vision’, including a predictable and coordinated calendar of reviews for Covenant Committees as well as for Convention Committees. They also reiterated the relevance of the idea of a ‘prospective’ formula ‘in the light of the decision taken by both Covenant Committees to apply a predictable calendar of reviews, and to ensure sustainability by adequately funding the treaty body system to fulfil its mandate (...)’, referring to the letter by the Human Rights Committee of

16 July 2020. The Chairs also supported the specific requests made by CED in its letter of 24 July and recommended encouraging dialogue with States in the region, referring to the letter from the group of treaty body experts of 6 July 2020.⁴² Finally, the Chairs endorsed the idea, notably promoted by the Chair of CAT but also by NGOs, ‘to consider replacing every second review with a focused review, which may consist of an *in situ* visit by one member of the treaty body with one member of the Secretariat to engage with the State party.’

6- THE CO-FACILITATORS’ REPORT AND THE SECOND PART OF THE 32ND ANNUAL MEETING OF THE CHAIRS (14 DECEMBER 2020)

The report submitted to the General Assembly by the co-facilitators⁴³ constitutes an excellent overview of the consultations that were held. The co-facilitators note that there is a consensus amongst all stakeholders that General Assembly Resolution 68/268 still provides the appropriate framework that would, if fully implemented, allow the treaty bodies to function more effectively. At the same time, the co-facilitators note that contributions also revealed ‘challenges’ and ‘gaps’ and call for ‘limited adjustments’ and ‘updates’. The report goes on to present, without any hierarchy, conclusions and recommendations regarding all the issues that were raised, from the use of new technologies, to the consideration of reports, to modalities for the election of treaty body members. Concerning the reporting procedure, the co-facilitators consider that consultations have demonstrated that the development of a predictable review cycle and, to the extent possible, a coordinated, fixed and multi-year calendar for all of the Committees is a desirable

⁴⁰ 84th extraordinary session of the Committee on the Rights of the Child, held in Apia, Samoa, to review reports from Tuvalu, Micronesia and Cook Islands. See the dedicated webpage: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/SessionDetails1.aspx?SessionID=2410&Lang=en and press release: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25667&LangID>, (last accessed 15 April 2021).

⁴¹ See report on the 32nd annual meeting, A/75/346, paras 18-29.

⁴² In their 2019 ‘vision’ that resulted from the Copenhagen process, the Chairs had already underlined ‘that there are considerable benefits in conducting dialogues with States parties concerning their reports at a regional level’.

⁴³ Document A/75/601, 17 November 2020.

feature of any future format of the human rights treaty body system:

'A master calendar should be coordinated across all Committees and include the due dates for States parties' reports and the dates for the constructive dialogue. One of the major advantages stated of a predictable review cycle is that it enables both the Committees and States parties to plan properly which potentially reduces the lack of reporting.'

Eventually, the co-facilitators consider that OHCHR could prepare, in coordination with the treaty bodies, a proposed schedule and estimated costing for predictable review cycles. The scheduling could also take into account other reporting obligations, such as the Universal Periodic Review.

Overall, the process has been remarkable: from the Copenhagen meeting to the co-facilitators' report, the treaty bodies have demonstrated not only that they could speak with one voice, but also make constructive proposals that could reach a consensus. It remained to be seen, beyond the very positive report by the co-facilitators, whether States would draw the necessary conclusions at the General Assembly.

To this day (January 2021), there is no reason to believe so. On the contrary, the outlook seems rather grim. Rather than responding swiftly to the co-facilitators' recommendations and closing the 2020 review by relaunching the strengthening process on a more solid base, States added caution to inertia. General Assembly Resolution 75/174 adopted on 16 December 2020 merely 'takes note' of the co-facilitators' report in a preambular paragraph. In diplomatic language, 'take note' means neither 'endorse' nor 'deplore' – it is a way of indicating that it is a simple fact to take into account amongst others. In its operative part, the resolution 'takes note of the report of the Secretary-General on the status of the human rights treaty body system' – ignoring its alarmist tone – and merely 'encourages all stakeholders

to continue their efforts for the full implementation of resolution 68/268' and 'reaffirms paragraphs 26 to 28 of its resolution 68/268, in which it set out how the allocation of meeting time to the treaty bodies would be identified and requested the Secretary-General to provide the corresponding financial and human resources (...)'.

With this resolution, the General Assembly has expressed both contempt and indifference: contempt for the two ambassadors who speedily led a consultation process that was open and transparent and who drafted a detailed, technical, fact-based report; contempt for the treaty bodies who self-organized against all odds – given the obstacles related to the pandemic (see *supra*) to contribute substantially and constructively to the process; indifference for the future of the treaty body system, which is slowly but inevitably sinking.

In their letter of 7 December to the Presidents of the General Assembly, the Third and the Fifth Committees, the treaty body Chairs recall what is stated in the report by the Secretary-General: States have not complied with Resolution 68/268. Since 2018, the General Assembly has refused to approve the additional staff resources corresponding to the additional meeting time according to the formula provided by the Resolution. The Chairs raise the alarm: if the General Assembly does not abide by its own formula, the treaty bodies will not be able to meet the objectives set by the Resolution in terms of reducing the backlog of reports and communications. Worse still, the backlog will keep increasing and the 'protection gap' widening. The Chairs also regret that they have not received any information regarding the follow-up to the intergovernmental process. These concerns were reiterated by the participants to the second part of the 32nd annual meeting of the Chairs on 14 December.

III- THE INDIVIDUAL COMMUNICATIONS PROCESS

As a reminder, eight of the ten treaty bodies have an activated individual communications procedure.⁴⁴ The treaty bodies have met the objectives set by Resolution 68/268 in terms of communications examined. However, in parallel, the number of communications received has increased steadily. Even though numbers remain modest, the increase is important in terms of proportion: the latest biennial report indicates an increase of 80% in the average number of communications registered per year in 2018-2019 compared with the previous 2017-2018 period (from 300 to 540 communications).⁴⁵ Furthermore, the General Assembly has been inconsistent: according to the Resolution 68/268 formula, the Assembly granted additional time for treaty bodies to consider individual communications, but only approved less than half the corresponding human resources (communications examination is prepared by members of the Petitions and Urgent Actions Section of the Secretariat, where staff levels have remained practically unchanged over the relevant period).⁴⁶ The assessment made by the Secretary-

General in the latest biennial report is alarming and is worth citing in its entirety:

*'The backlog of communications that have been received and are awaiting review by the relevant Committees was 1,587 as at 31 October 2019, representing an increase of 62.4 per cent compared with the backlog of 977 communications as at 31 December 2017 (annex VIII). On average, the Committees adopted 250 decisions per year in 2018-2019, meaning that with the current staff resources, the Committees would need more than six years to clear the backlog, without considering any new individual communications received.'*⁴⁷

Additionally, it became apparent that the process that had led to the adoption of Resolution 68/268 had not sufficiently taken into account issues related to individual communications, centered as it was on the reporting procedure – certainly because at that time, the vast majority of communications were sent to the Human Rights Committee and the issue did not appear to be 'systemic'. That is why the Geneva Academy, towards the end of the 'academic process' that had been dedicated to the reporting procedure and having drafted a first report,⁴⁸ decided to launch independent

⁴⁴ CMW procedure remains inactive until a sufficient number of States parties have accepted it. SPT is not provided with a communications procedure, since its mandate focuses on visits to places of deprivation of liberty in States parties.

⁴⁵ General Assembly, Status of the human rights treaty body system, Report of the Secretary-General, A/74/643, 23 January 2020, para. 16.

⁴⁶ See Reports of the Secretary-General on the status of the human rights treaty body system of 30 August 2018, A/73/309, para. 72 and 23 January 2020, A/74/643, paras 42-43: 'Although the required increase in total meeting time was modest, the shift of time for the more labour-intensive review of individual communications entailed a much more substantial increase in the required staffing support. In the proposed programme budget for the biennium 2018-2019, the Secretary-General proposed the establishment of 11 new posts (10 Human Rights Officers (P-3) and 1 support staff (General Service (Other level))) to address the evolving workload. The proposal was not supported by the General Assembly, however, in its review

of the proposed budget, and the decision was taken instead to establish only five positions of Human Rights Officer (P-3) using general temporary assistance. (...) During the biennium 2018-2019, the treaty body system was not able to utilize all of the approved meeting time, given that it did not have the requisite staff resources, in particular for individual communications (...). In 2018-2019, for the consideration of individual communications, the seven Committees concerned were able to meet for only 10.5 weeks instead of 16 weeks (...)'.

⁴⁷ General Assembly, Status of the human rights treaty body system, Report of the Secretary-General, A/74/643, 23 January 2020, para. 18.

⁴⁸ C. Callejon, K. Kemileva, F. Kirchmeier, D. Zipoli, 'Optimizing the UN Treaty Body System', Academic Platform Report of the 2020 Review, May 2018. <https://www.geneva-academy.ch/research/publications/detail/356-optimizing-the-un-treaty-body-system>, (last accessed 15 April 2021).

research on individual communications. The research benefited from several rounds of informal consultations, including a private seminar organized in January 2019 by the Paris Human Rights Center, bringing together treaty body members, members of the Petitions and Urgent Actions Section from the Secretariat, NGO representatives, as well as members of the Registry of the European Court of Human Rights. The Academy published a second report in May 2019, entirely dedicated to the communication system, containing a list of recommendations concerning procedural as well as structural reform – notably strengthening of the Secretariat and setting up an adequate digital case management system similar to those of international courts or the European Court of Human Rights.⁴⁹ On this basis and following the Paris seminar, the Academy and CCPR-Center organized a visit to the Registry of the European Court of Human Rights in Strasbourg with the participation of the Petitions and Urgent Actions Section. Based on this visit, the Academy and the Paris Human Rights Center drafted several working papers that were meant to be discussed during a second seminar in Paris in June 2020. Due to the pandemic, the seminar took place partly in Geneva and partly online on 17 June.

The objective of this process is both modest and ambitious: given that the situation of the European Court and that of the treaty bodies is not entirely comparable – tens of thousands of complaints received every year *versus* a few hundreds, several hundred members of the Registry of the Court *versus* about twenty members of the Secretariat – what solutions could nonetheless be transposed from the experience of the Court – either in full or in part

– to facilitate how individual communications are dealt with at the UN? The Inter-American and African regional Commissions represent other ‘reference’ institutions as they are probably more comparable in terms of numbers of communications. While contacts have been made, including during the seminars organized by the Academy, deeper exchanges would be useful. Besides, this work on working methods concerning how registries or secretariats deal with complaints is different from working methods developed by the treaty bodies themselves. In this regard, much remains to be done and thought through, be it the possibility to work in chambers or hold hearings, a procedure for repetitive cases, follow-up or third-party interventions (*amicus curiae*), a practice that has been introduced recently but that remains very limited.

In the meantime, the treaty body Chairs, at the first part of their 32nd annual meeting, endorsed the call for a strengthening of Secretariat resources ‘to support the increasing workload of the treaty bodies, including in the light of the large number of individual communications and requests received under the urgent actions procedure and the related significant backlogs’.⁵⁰ They also conveyed the idea that ‘there should be a one-off investment to set up a digital portal for individual communications and urgent actions for the parties to submit, access and track relevant information, including on the status of a case’.⁵¹

The co-facilitators’ report constitutes, once again, a positive contribution as it reflects these recommendations.

It remains to be seen, here too, whether States will heed this call.

⁴⁹ C. Callejon, K. Kemileva, F. Kirchmeier, ‘Treaty Bodies’ individual communication procedures : Providing Redress and Reparation to Victims of Human Rights Violations’, Geneva Academy of International Humanitarian Law and Human Rights, Geneva, Mai 2019. <https://www.geneva-academy.ch/research/publications/detail/478-treaty-bodies-individual-communication-procedures-providing-redress-and-reparation-to-victims-of-human-rights-violations>, (last accessed 15 April 2021).

⁵⁰ Document A/75/346, Decisions and recommendations, para. 46-n.

⁵¹ *Id.*, para. 46-o.

ANNEX

TREATY BODY MEMBERS PLATFORM – COVID WORKING METHODS

The Geneva Human Rights Platform and the Paris Human Rights Center (C.R.D.H.)

2-3 December 2020

Treaty bodies sessions in times of COVID-19 and beyond

Olivier de Frouville, Vice-Chair of the Committee on Enforced Disappearances⁵²

Our sessions for this term and probably again for the next six months have been and will be taking place online. We of course all hope that by June or July we will be able to resume our sessions in presence in Geneva. However, this experience of online sessions has given rise to new practices and to new methods of work, with some negative dimensions but also positive aspects that we may want to use in the future.

As one participant reminded us yesterday, the new format has demanded a lot to TBs members in terms of flexibility: normally we meet in session and get most of the work done when we are sitting in Geneva during these 2 to 5 weeks of sessions, depending on the committee. Intersessional work is limited – and generally done by the chair or other members of the bureau, while other members of the committee are somehow ‘freed’ from their responsibility and can return to their normal professional occupations.

Online sessions have destabilised this framework and changed the balance between ‘in session’ and ‘inter-sessional’ time: members are requested to work on an informal basis, either through email, or through ‘informal’ meetings online in between sessions, without interpretation. As such, we are becoming members on a continuous basis.

Despite this, we are acting ‘as if’ things were still the same: we are programming ‘sessions’ of the same duration as ‘before’ – 2 to 5 weeks – essentially acting ‘as if’ the work were done during this time.

But the truth is that the format of the sessions has changed: the issue of time zones imposes us to change our times of session and the number of hours per day – as it is in fact impossible to meet from 10.00 am to 6 pm Geneva time without ‘losing’ members from the Pacific region, Asia or from the American continent. In addition the limited availability of interpretation is such that we can only have a maximum of 4 hours of ‘formal’ session per day – interpreted in the three working languages.

In this regard, questions can be raised on how we are going to organize our dialogues with states parties for those committees who decide to resume this activity in 2021?

⁵² Please note that I am speaking as an independent expert, member of the CED, but not on behalf of the CED.

It is to be hoped that by the beginning of 2020 we will be able to have access to more time of interpretation - although NOTHING at the moment allows us to express that hope, because we have no indication that the situation is going to change.

If we have the same number of hours of interpretation and we want to review reports by states parties within the usual six hours - it means that we will have to use 3 days / states parties - two states parties meaning 6 session days.

The COVID-19 period also caused our sessions to sometimes spread over a longer period of time than what was initially programmed.

For instance, the CED has held its 19th session from 14 to 25 September, but then suspended it to have its Article 29.4 dialogue with Iraq on 5 and 7 October; we then re-suspended until the 4th of November to adopt the COBS, but were unable to finish the review of the draft, so we suspended again until the 25 November, when we finally adopted the COBs and closed the session. So in practice the session spread over more than two months...

In the pre-COVID time, it seemed 'obvious' to close our session after 2 weeks (for the CED) because the concept of 'session' was intrinsically linked to our physical presence in Geneva: we could not have imagined to take decisions, holding dialogues, adopting communications etc. after we were all gone from Geneva. In the COVID-era, things are different: the concept of 'session' time is not anymore linked to our presence in Geneva. Geneva might become in the future a 'moment' of our sessions, but not necessarily the base for the whole duration of our sessions.

These new modalities are in part welcome in the sense that online work offers more flexibility and more reactivity; it also enhances our capacity to communicate and interact with all stakeholders in a more flexible manner.

In the future we may imagine a different organisation for our sessions, without being constrained to hold sessions consecutively and without having to hold the session for the whole in presence. For instance for a committee that has 4 weeks of session, we could imagine to have 2 weeks in presence in Geneva the first half of October, suspend the session, and then resume the session 'online' the first week of November, and then again the first week of December. Another option could be to save some session days for more punctual events like webinars or consultations with stakeholders.

This new flexibility in organising our sessions may prove very useful, especially if considered in the perspective of a fixed and coordinated agenda of review among treaty bodies. It may facilitate the 'coordination' aspect, by allowing various TBs to coordinate and 'sequence' the timing of their dialogues with a state party. For instance one Committee may program the review of a state party in presence during its session and another committee or other committees though not in session - and thus not in Geneva - may undertake the online review of the same state party one month after etc.

For those committees that are moving towards more 'focused' reviews, it may also present a real asset, allowing them to better coordinate their 'themes', and thus enhance their complementarity on overlapping issues.

However, these new methods also raise new challenges, especially in a context of limited resources. We may want to use these new methodologies to increase our impact and effectiveness.

And this leads to one further question: aren't we going to be *constrained* to use these new methods of work in the post-COVID era? We may also find ourselves in a situation where the General Assembly will, at some point, reduce our session time in Geneva because of budgetary constraints and ask us to 'resume' or sessions online to complete the business we have not done.

Worse: we may find ourselves in a situation where the GA will reduce our session time in Geneva and will not recognize our work done 'online' as work done 'in session' - with all the implications in terms of documentation, conference services, assistance from the secretariat and compensation for the work done.

We have of course always carried out some work on an inter-sessional basis - and we recognize that this is part of our duty as TBs members.

But the risk is that with the generalization of online activities of TBs, this inter-sessional work becomes a substantial part of our work as committee members and that in the end, our capacity to handle our work properly may be reduced.

For these reasons, it is crucial that the TBs anticipate these evolutions and be creative in order to harness the possible consequences of the online sessions as a new regular modality of work in the post COVID period.

The Geneva Academy of International Humanitarian Law and Human Rights

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