



PROPOSALS FOR TREATY BODY REFORM

The UN General Assembly is reviewing the work of the ten treaty bodies—only the second time the General Assembly will have conducted such a review. The first treaty body reform process concluded in 2014, but it did not review the substantive output of UN treaty bodies or first-order concerns about the treaty bodies’ working methods or the politicization of human rights.

In 2014, member states expanded the resources available to UN treaty bodies and increased the range of activities of treaty bodies supported by the UN secretariat. This second round of UN treaty body reform cannot afford to make that same mistake.

To avoid repeating a superficial reform effort, we propose the following:

1. Strengthen and enhance treaty body independence and impartiality

- Since the OHCHR treaty body section is a part of the secretariat, one of the organs established in the UN Charter, the General Assembly may set the parameters within which the UN secretariat may service the treaty bodies and establish mechanisms to protect the impartiality and independence of treaty bodies. “The General Assembly may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter,” according to Article 10 of the UN Charter.
- The activism of UN treaty bodies and the OHCHR on politically sensitive topics outside the scope of human rights treaties, such as LGBT and abortion issues, calls into question the independence and impartiality of UN treaty bodies and raises the possibility of corruption and self-dealing. Many experts who sit on UN treaty bodies, moreover, have professional and personal ties to the well-funded organizations and activists who promote these causes.
- The independence of treaty bodies is at the service of an authentic and rigorous interpretation of the treaties they monitor, as for example laid out in the interpretative canons in the Vienna Convention on the Law of Treaties. It is not a license to rewrite

treaties that have taken years to negotiate through interpretations that impose new obligations that were never negotiated nor adopted by States.

- The General Assembly's UN treaty body reform process should set up a mechanism to investigate the background of candidates to the UN treaty bodies further in order to ensure the independence and impartiality of the treaty bodies.
- The General Assembly's UN treaty body reform process should also debate a treaty body code of conduct to hold experts accountable, including for political bias, conflict of interests, and other unethical practices, and institute a mechanism whereby States, UN agencies, civil society organizations, and individuals may raise questions and concerns about UN treaty body members based on the code of conduct, so that UN treaty bodies and the Conferences of States party may take action on such reports.
- Here it must be emphasized that there is no inherent conflict between independence and accountability. Far from undermining the independence of UN treaty bodies an accountability mechanism, based on a code of conduct adopted by States, would enhance the independence and impartiality of the treaty bodies. The groups that increasingly co-opt treaty bodies for their causes are a part of complex network of organizations, governmental actors, and private philanthropists that escape the normal channels through which governments are held accountable. Therefore, increased accountability will help guarantee independence.

2. Limit OHCHR support for treaty bodies to mandated activities only

- The working methods of UN treaty bodies are entirely up to the bodies themselves according to the treaties that establish them. However, the working methods chosen by each treaty body must be in furtherance of the mandate of the treaty body.
- As a matter of law, States party fulfill their reporting obligations under each human rights treaty by submitting their reports to the treaty bodies. Any discussion of the State party's report thereafter through either general comments, concluding observations or a follow-up procedure to concluding observations, such as the ones some of the treaty bodies are already experimenting with, merely supplements the requirements of the treaty. Member states are not required to participate in such interactions as a matter of law.
- Aside from specific working methods that extend and enhance the reporting requirements beyond what is foreseen by human rights treaties, non-mandated activities of treaty bodies also include participation by NGOs in the reporting process, periodic interference in inter-governmental negotiations between States, press communiques on internal political debates within countries, and press communiques disseminating the views of treaty bodies during the reporting cycles.
- Non-mandated activities artificially aggrandize the authority of UN treaty bodies and politicize the treaty bodies. The General Assembly should evaluate whether it is opportune to end all OHCHR support for non-mandated activities for each treaty body in order to

ensure the dialogue between member states and treaty bodies remains a constructive dialogue as opposed to an antagonistic and politicized one.

- The General Assembly need not interfere with the independence of UN treaty bodies regarding their own working methods or substantive views and recommendations. The General Assembly can decide what treaty body activities are within their mandate and instruct the OHCHR to support only those activities. Unless the General Assembly instructs the secretariat to stop supporting non-mandate activities it is hard to say what treaty bodies may or may not do, or what limits, if any, can be placed on their authority.

FURTHER READING:

Gennarini, Stefano, Hope for Human Rights: Why the UN General Assembly Must Address Treaty Body Overreach, Definitions Issue 11, Center for Family and Human Rights (February 15, 2020). Available at: <https://c-fam.org/wp-content/uploads/Hope-for-Human-Rights-Why-the-UN-General-Assembly-Must-Address-Treaty-Body-Overreach-1-1.pdf>

Kloster, Andrew and Pedone, Joanne, Human Rights Treaty Body Reform: New Proposals (June 27, 2011). Journal of Transnational Law & Policy, Vol. 22, Spring 2013. Available at SSRN: <https://ssrn.com/abstract=1885758> or <http://dx.doi.org/10.2139/ssrn.1885758>

Sylva, Douglas and Yoshihara, Susan Dorothy Fink, Rights by Stealth: The Role of UN Human Rights Treaty Bodies in the Campaign for an International Right to Abortion (July 1, 2007). International Organizations Research Group, White Paper, Number Eight, First Edition, 2007 . Available at SSRN: <https://ssrn.com/abstract=2993303>