Russian Federation, Sri Lanka, Switzerland, United Kingdom of Great Britain and Northern Ireland, United States of America and Yemen). As of 16 May, 20 States had not yet supplied follow-up information that had fallen due (Bulgaria, Burundi, Cambodia, Cameroon, Democratic Republic of the Congo, Denmark, Guyana, Italy, Japan, Luxembourg, Mexico, Moldova, the Netherlands, Peru, Poland, South Africa, Tajikistan, Togo, Uganda and Ukraine). In March 2008, the Rapporteur sent a reminder requesting the outstanding information to each of the States whose follow-up information was due in November 2007, but had not yet been submitted, and who had not previously been sent a reminder.

52. The Rapporteur noted that 14 follow-up reports had fallen due since the previous annual report. However, only 2 (Hungary and the Russian Federation) of these 14 States had submitted the follow-up information in a timely manner. Despite this, she expressed the view that the follow-up procedure had been remarkably successful in eliciting valuable additional information from States on protective measures taken during the immediate follow-up to the review of the periodic reports. While comparatively few States had replied precisely on time, 25 of the 33 respondents had submitted the information on time or within a matter of one to four months following the due date. Reminders seemed to help elicit many of these responses. The Rapporteur also expressed appreciation to non-governmental organizations, many of whom had also encouraged States parties to submit follow-up information in a timely way.

53. Through this procedure, the Committee seeks to advance the Convention's requirement that 'each State party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture ...' (art. 2, para. 1) and the undertaking 'to prevent ... other acts of cruel, inhuman and degrading treatment or punishment ...' (art. 16).

54. The Rapporteur expressed appreciation for the information provided by States parties regarding those measures taken to implement their obligations under the Convention. In addition, she has assessed the responses received as to whether all the items designated by the Committee for follow-up (normally between three and six recommendations) have been addressed, whether the information provided responds to the Committee's concern, and whether further information is required. Each letter responds specifically and in detail to the information presented by the State party. Where further information has been needed, she has written to the concerned State party with specific requests for further clarification. With regard to States that have not supplied the follow-up information at all, she requests the outstanding information.

55. At its thirty-eighth session in May 2007, the Committee decided to make public the Rapporteur's letters to the States parties. These would be placed on the web page of the Committee ...

56. Since the recommendations to each State party are crafted to reflect the specific situation in that country, the follow-up responses from the States parties and letters from the Rapporteur requesting further clarification address a wide array of topics. Among those addressed in the letters sent to States parties requesting further information have been a number of precise matters seen as essential to the implementation of the recommendation in question. A number of issues have been highlighted to reflect not only the information provided, but also the issues that have not been addressed but which are deemed essential to the Committee's ongoing work, in order to be effective in taking preventive and protective measures to eliminate torture and ill-treatment.

A similar procedure exists, for instance, under Article 65 of the Rules of Procedure of the Committee for the Elimination of Racial Discrimination, which since 2006 provides that the Committee may appoint a 'follow-up coordinator', for a period of two years, charged with following up on the requests of the Committee for further reports or information from the State party. This is part of a broader strategy to improve the follow-up to the Concluding Observations adopted by the Committee on the basis of States' reports:

Committee on the Elimination of Racial Discrimination, Guidelines to follow-up on concluding observations and recommendations (CERD/C/68/Misc.5/Rev.1, 5 March 2006):

1. Dissemination of the concluding observations
The Committee encourages the State party to disseminate the concluding observations as widely as possible. It is recommended that the concluding observations and recommendations be translated into local languages and in particular languages of concerned minorities to facilitate their participation in the implementation of the Convention on the Elimination of All Forms of Racial Discrimination (the Convention) and the concluding observations of the Committee .

2. Coordination of implementation efforts and designation of a focal point/liaison person The Committee acknowledges that its concluding observations touch on a wide range of issues and that their implementation will involve the active engagement and commitment of various ministries, departments and other stakeholders. There may consequently be a need to establish or strengthen existing mechanisms within the State party for the effective coordination of all activities related to the implementation of the Convention.

The State party is invited to designate a representative to act as focal point and who would be in charge of liaising with the Follow-up Coordinator or the alternate. This would greatly facilitate the task of the coordinator and communication between the State party and the Committee.

3. Regular reporting on progress
The State party is required to submit comprehensive reports on the general fulfilment of its obligations under the Convention on a regular basis. The periodic reports should contain information on measures taken to implement the recommendations of the Committee, as requested in the reporting guidelines of the Committee. In addition, the Committee may, in accordance with article 9, paragraph 1 of the Convention, request information from the State party at any time and may, in its concluding observations, request States to provide information within a year on follow-up to some of its recommendations. The Committee would welcome receiving information between the regular reporting sessions on concrete steps taken by the State party to implement these recommendations.

4. Cooperation with national human rights institutions and non-governmental organisations
The Committee invites the State party to involve national human rights institutions, non-governmental organisations and other stakeholders in the process of implementation of the Convention and of its concluding observations. This can be done by convening roundtables and

workshops on a regular basis with the aim of assessing the progress in the implementation of the concluding observations and recommendations.

5. Concluding observations and recommendations and national action plans.
In the Programme of Action adopted at the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, States were called upon to elaborate action plans in order to combat racism, racial discrimination, xenophobia and related intolerance. In States where such plans or human rights plans of action have been developed, the concluding observations and recommendations can serve as key qualitative and quantitative indicators of progress made in the implementation of the Convention. In this way the concluding observations and recommendations become an integrated part of domestic human rights strategies.

6. Assistance to follow-up activities
The Follow-up Coordinator or in his/her place the alternate is available to meet with representatives of the State party to discuss the implementation of the concluding observations and recommendations.

The State party may request technical assistance from the Office of the High Commissioner for Human Rights to assist in the implementation of the concluding observations and recommendations.

Should any further initiatives be taken, in order to develop the Concluding Observations adopted by human rights treaty bodies on the basis of State reports into statements binding upon the States concerned? Consider the following view:

Michael O'Flaherty, 'The Concluding Observations of United Nations Human Rights Treaty Bodies', *Human Rights Law Review*, 6, No. 1 (2006), 27:

Any [further effort] at the articulation of any form of obligation which may arise from concluding observations would be unhelpful and inappropriate. Concluding observations emerge from a process of dialogue, notable for its non-adversarial nature. The according of a compulsive quality to the subsequent findings by the treaty body would be inconsistent with this model and is likely to meet with the resistance of states and their further unwillingness to participate in the reporting process. In any case, much of the content of concluding observations simply does not lend itself to normative expression. Apart from the elements which have nothing to do with the treaties themselves, a considerable proportion of the analysis and recommendations may have a hortatory quality. It is also commonplace for recommendations to propose approaches which are either very case-specific or are of an experimental or untried nature – approaches of a type which may change radically over time or according to regional specificities that are hardly the stuff of law.

Heli Niemi has sought to examine the national implementation of UN treaty body findings, including final views, concluding observations, and general comments, in Australia, Canada, the Czech Republic, Finland, Spain and Sweden. The conclusions are the following:

Heli Niemi, *National Implementation of Findings by United Nations Human Rights Treaty Bodies. A Comparative Study* (Institute for Human Rights, Abo Akademi University, December 2003):

The functioning of the treaty body system and the quality of treaty body output certainly leave room for improvement, but in the end it is the strength of states' domestic institutions that determines the degree of compliance. The ... existence and strength of domestic 'institutions' in the field of national implementation of treaty body findings is one positive indicator of a state's commitment to implement treaties to which it is a party. Consequently, developing and strengthening such institutions is a way to improve state compliance ...

As a first step in the implementation process, governments should disseminate concluding observations, views and general comments both 'internally' (that is, distribute copies of them within relevant parts of administration and to the legislature, judiciary and other state institutions dealing with human rights), among NGOs and to the general public. There will be no national implementation of treaty body findings unless relevant actors have knowledge of them. Moreover, such knowledge will enable the media and civil society to better monitor governments' response to the Committees' views and recommendations and to pressure governments towards better compliance with the treaties. Indeed, the treaty bodies usually recommend in their concluding observations (and the Human Rights Committee does so in its final views) that governments should disseminate these documents.

In this context one should not ignore the question of translation of treaty body findings into local language(s); the impact of dissemination will suffer if no translation is available ... [As regards dissemination *per se*,] one can observe a clear trend towards an increasing use of governmental websites for the purpose of disseminating both reports and concluding observations soon after their submission (reports) or release (concluding observations). Such development is very welcome, for it is not enough that country reports and concluding observations are published on the OHCHR website alone. It is clear that governments carry the main responsibility for translating and disseminating concluding observations, and Internet is an easy, economic and efficient way to increase awareness of the treaty body output at the domestic level. Placing reports and concluding observations on a governmental website in citizens' mother language(s) renders these documents more accessible, as one does not have to be able to speak foreign languages or be familiar with the complexities of the UN system in order to obtain them. Naturally, Internet should not replace the distribution of printed copies of concluding observations to relevant national and local actors and institutions (such as government policy-makers, civil servants, judges, parliamentarians, ombudsmen, human rights commissioners, NGOs) or the practice of informing the general public through electronic and/or print media.

In contrast, the practice of disseminating views and general comments appears to be less developed, possibly because of a lower incentive to translate and disseminate these documents which, owing to their more legal language, are less accessible to the general public than concluding observations. Nonetheless, when a Committee issues its final views on an individual communication in respect of a particular country, the government of that country should at least inform the media of the outcome of the case and place information about the views in question on its website (preferably the original document in its entirety accompanied by a translated summary if need be). Moreover, both views and general comments should be disseminated within relevant parts of national administration, including state institutions dealing with human rights, in parliament and among judges. The Australian government's practice of tabling in the federal

parliament a brief description outlining the main allegations raised in each communication submitted against Australia and, subsequently, the views themselves and the government's responses, is a good one.

In general, it would be important to undertake the dissemination of all three categories of treaty body findings as quickly as possible in order to obtain the maximum amount of attention, both within state institutions, NGOs and public at large. In addition, regarding those institutions, bodies and officials that are responsible for the implementation of UN human treaties, mere dissemination is not necessarily enough but (multidisciplinary) workshops and seminars (if appropriate, with NGO participation) should be considered, in particular in relation to concluding observations ('dissemination with analysis'). The Canadian practice of holding a 'post-mortem' meeting in the week following the oral presentation of the country report between federal contributors to the report and members of the government delegation certainly qualifies as a best practice. It constitutes an effective opening of the subsequent implementation process in that the participants discuss the concluding observations and determine what, if any, follow-up and/or future action is required.

In addition to translating (if necessary) and disseminating concluding observations by the various means specified above, governments should study them carefully and use them (a) as the basis for improving the compatibility of national legislation and practices with international human rights treaties and (b) as the basis for the next country report. Both ways of using treaty body output, in particular concluding observations, is connected to governmental mechanisms for the implementation of UN human rights treaties in general and for the preparation of country reports in particular ... [S]ome sort of permanent inter-ministerial mechanism or structure for the implementation of concluding observations should be established in order to facilitate the process towards better compliance with international human rights standards. Preparation of reports may well function as a national follow-up mechanism, but a more proactive process focusing on how to implement concluding observations is needed to accompany reporting within the overall framework of treaty implementation. One has to remember that UN human rights conventions are 'multidisciplinary' or 'inter-departmental/ministerial', so the need for governmental co-ordination, co-operation and monitoring is evident. Also, different levels of government have powers in the field of human rights, so both horizontal and vertical mechanisms or structures should exist.

[In addition,] a comprehensive National Human Rights Action Plan [could be drafted] with a number of priority areas and an emphasis on co-ordination, co-operation and monitoring. It could contain the following components relating to the national implementation of both concluding observations and other forms of treaty body output:

- use of concluding observations and final views to draft the Action Plan, in particular when defining priority areas, together with highlighting the Committees' views and recommendations in the text itself in relevant contexts;
- establishment of an inter-ministerial working group for human rights within an appropriate ministry ... to strengthen co-ordination and monitoring of the implementation of human rights treaties;
- mandating the inter-ministerial working group to integrate concluding observations in its activities;
- periodic submission of reports by the government on the internal human rights situation of [the country concerned] to Parliament within the framework of the follow-up of the Action Plan, taking into account the Committee's views and recommendations on [that country].

While the suggestions above are addressed primarily to the executive and the legislative, whose roles are indeed crucial in the implementation of the findings of the UN human rights treaty bodies, courts should also be encouraged to use those findings more frequently in their judgments, either in order to interpret national provisions (in particular constitutional provisions or provisions included in a Bill of Rights) in accordance with those findings; or in order to apply directly the provisions of the international human rights treaties concerned, since the authoritative interpretation provided to them may contribute to give them more concrete meaning and thus facilitate such application by national courts. The Committee on International Human Rights Law and Practice of the International Law Association attempted to assess the practice of national jurisdictions in this regard, and to identify which factors encouraged, or impeded, a more systematic reference to the findings of the UN human rights treaty bodies in their work. Excerpts from the final report which resulted follow.

Committee on International Human Rights Law and Practice of the International Law Association, Final Report on the Impact of the Work of the United Nations Human Rights Treaty Bodies on National Courts and Tribunals, adopted at the 2004 Berlin Conference (excerpt of the conclusions):

The material surveyed ... shows that treaty body output has become a relevant interpretive source for many national courts in the interpretation of constitutional and statutory guarantees of human rights, as well as in interpreting provisions which form part of domestic law, as well as for international tribunals. While national courts have generally not been prepared to accept that they are formally bound by committee interpretations of treaty provisions, most courts have recognised that, as expert bodies entrusted by the States parties with functions under the treaties, the treaty bodies' interpretations deserve to be given considerable weight in determining the meaning of a relevant right and the existence of a violation.

[The material surveyed] shows clear patterns both in the types of material cited by national courts and the committees whose material they cite. The overwhelming number of references documented in the two reports are to cases decided under individual communications procedures and to general comments or recommendations adopted by the treaty bodies; concluding observations, States parties' reports and other output has been referred to on a relatively small number of occasions. The Human Rights Committee has received the majority of references, both as regards cases and general comments. References to the other committees' work have been less frequent.

This pattern of citation reflects a number of factors, including the relative volume of the material produced by the Human Rights Committee so far as case law and general comments are concerned, the range of rights protected by the ICCPR, the fact that domestic courts have a clear preference for drawing on material that will help them to resolve a concrete case before them (thus the dominance of reference to cases), the fact that the Human Rights Committee's period of operation is the second longest of the treaty bodies, and a higher level of public awareness of the Committee and its work. For example, by comparison the Committee against Torture has heard far fewer cases – most of them relating to article 3 of the Torture Convention – and its output is cited at the domestic level almost exclusively in cases in which a challenge is made to a deportation or expulsion order by person.

One would reasonably expect that as time passes advocates and judges will become more familiar with the increasing jurisprudence emanating from other committees. However, given the factors mentioned above, it seems likely that the output of the Human Rights Committee will continue to be the predominant source cited.

Against this background, it is important to recall that the mode of citation of treaty body materials varies widely, from inconsequential references in passing, to more substantive references, to detailed analysis of a particular source that may be important in influencing or supporting a court's decision in a given case. The number of cases in which a treaty body finding is a significant factor in influencing the outcome of a decision is a small minority of the cases referred. This reflects the pertinence of the findings to the issue in the case, the detail and persuasiveness of the reasoning in the treaty body source, the particular norm that is being interpreted, and the receptiveness of the court to the international source material. The availability of other international or national material that deals with the issues in a more detailed manner also influences the use made of treaty body material, as does the membership of a regional organisation in which there exists an organ (such as the European or Inter-American Courts of Human Rights) which can deliver binding judgments.

[It] may be useful to make a few comments as to factors which at least in individual cases appear to have been conducive to the use of treaty body findings. They are partly those which help to explain why some national courts are more amenable to using international law in other contexts, and partly factors which are specific to the area of international human rights law. There appears to be no one critical factor that is determinative, other than perhaps an awareness on the part of advocates of the material and a preparedness on the part of judges to consider it with an open mind when it is placed before them. The fact that international law (including human rights treaties) forms part of domestic law under a country's constitution does appear to assist, although there are many common law countries (where treaties do not form part of domestic law) in which courts have made quite extensive use of treaty body products.

One factor which does seem to contribute to the use of treaty body output is a direct incorporation of provisions of a treaty in a domestic statute or constitution. A number of the common law jurisdictions referred to have adopted Bills of Rights which are an enactment of terms of one or both Covenants, or very similar; this has made reference to the output of the Human Rights Committee and the Committee on Economic, Social and Cultural Rights frequent. Another important factor appears to be the general awareness in the country concerned of the treaty bodies; in particular, public awareness of, and engagement in, the treaty reporting procedures may encourage knowledge of the work of the treaty bodies and the use of that output in advocacy before the courts and other national institutions. The availability of relevant treaty body findings in local languages would also appear to be a factor.

3.2 The implementation of decisions (views) adopted on the basis of individual communications

The implementation of decisions adopted on the basis of individual communications represents a specific challenge, since findings of violations should in principle lead to remedies being provided to the individual aggrieved, or compensation made to him/her; in addition, measures of a general nature, such as a change in legislation, may be

required. According to the 2008 Annual Report of the Human Rights Committee to the UN General Assembly, 429 Views out of the 547 Views adopted since 1979 concluded that there had been a violation of the ICCPR. The question of whether and how the Human Rights Committee could monitor the follow-up given to its findings has been debated, particularly since the early 1990s. The following excerpt of the 1994 Annual Report to the UN General Assembly summarizes the initiatives the Committee has taken in this regard:

Human Rights Committee Annual Report to the UN General Assembly, A/49/40 vol. 1 (1994):

Remedies called for under the Committee's views

458. The Committee's decisions on the merits are referred to as 'views' in article 5, paragraph 4, of the Optional Protocol. After the Committee has made a finding of a violation of a provision of the Covenant, it proceeds to ask the State party to take appropriate steps to remedy the violation. For instance, in the period covered by the present report, the Committee, in a case concerning arbitrary detention and torture, found as follows: 'The Committee is of the view that Mr Mohammed Bashir El-Megreisi is entitled, under article 2, paragraph 3(a), of the Covenant, to an effective remedy. It urges the State party to take effective measures (a) to secure his immediate release; (b) to compensate Mr Mohammed El-Megreisi for the torture and cruel and inhuman treatment to which he has been subjected and (c) to ensure that similar violations do not occur in the future' ...

The Committee further stated that it would wish to receive information, within 90 days, on any relevant measures taken by the State party in respect of the Committee's views (Communication No. 440/1990, *El-Megreisi* v. *the Libyan Arab Jamahiriya*) (*ibid.*, para. 8).

Follow-up activities

459. From its seventh session, in 1979, to its fifty-first session, in July 1994, the Human Rights Committee has adopted 193 views on communications received and considered under the Optional Protocol. The Committee has found violations of the Covenant in 142 of them. During the years, however, the Committee was informed by States parties in only a relatively limited number of cases of any measures taken by them to give effect to the views adopted. Because of the lack of knowledge about State compliance with its decisions, the Committee sought to devise a mechanism that would enable it to evaluate State compliance with its views.

460. At its thirty-ninth session (July 1990), following a thorough debate on the Committee's competence to engage in follow-up activities, the Committee set up a procedure which allows it to monitor the follow-up to its views adopted pursuant to article 5, paragraph 4, of the Optional Protocol. The Committee also established the mandate of a Special Rapporteur for follow-up on views ... During its fifty-first session, the Committee adopted a new rule of procedure, rule 95 [now Rule 101, under the current version of the Rules of Procedure (CCPR/C/3/Rev.8)], which spells out the mandate of the Special Rapporteur for follow-up on views. [This rule provides that the Committee designates a Special Rapporteur for follow-up on views adopted under Article 5, para. 4, of the Optional Protocol, 'for the purpose of ascertaining the measures taken by States parties to give effect to the Committee's views'. The Special Rapporteur 'may make such contacts and take such action as appropriate for the due performance of the follow-up mandate. The

Special Rapporteur shall make such recommendations for further action by the Committee as may be necessary.' It also provides that the Committee shall include information on follow-up activities in its annual report.]

461. In accordance with his mandate, the Special Rapporteur has been requesting follow-up information from States parties since the autumn of 1990. Follow-up information has been requested in respect of all views with a finding of a violation of the Covenant. At the beginning of the Committee's fifty-first session, follow-up information had been received in respect of 65 views; no information had been received in respect of 55 views. It is to be noted that in many instances, the secretariat has also received information from authors to the effect that the Committee's views have not been implemented.

462. While it is obviously difficult to categorize follow-up replies, it appears that a little over one fourth of the replies received thus far are fully satisfactory, in that they display a willingness on the part of the State party concerned to implement the Committee's views or to offer the applicant a remedy. A little over one third of the replies cannot be considered satisfactory, as they either do not address the Committee's recommendations at all, merely relate to one aspect thereof or indicate that the State party is not willing to grant the remedy recommended by the Committee. A number of replies have explicitly challenged the Committee's findings, either on factual or on legal grounds. The remaining replies are either couched in general terms, promise an investigation of the matter considered by the Committee or reiterate the State party's position during the proceedings.

463. While the overall results of the first four years of experience with the follow-up procedure are encouraging, they cannot be termed fully satisfactory. Some States parties have indeed replied that they are implementing the Committee's recommendations, for example, by releasing from detention victims of human rights violations, by granting them compensation for the violations suffered, by amending legislation found incompatible with the provisions of the Covenant or by offering the complainants different remedies. In a number of cases, States parties have indicated that compensatory payments to victims were made *ex gratia*, notably where the domestic legal system does not provide for compensation in a different manner. The Committee is aware that the absence of specific enabling legislation is a key factor that often stands in the way of monetary compensation to victims of violations of the Covenant, and commends those States which have compensated victims of violation of the Covenant; it encourages States parties to consider the adoption of such specific enabling legislation.

464. The Committee has carefully examined and analysed the information gathered through the follow-up procedure. Between the thirty-ninth and fiftieth sessions, it considered follow-up information on a confidential basis. Periodic reports on follow-up activities were not made public, and debates on follow-up matters took place in closed meetings.

465. At the same time, however, the Committee recognized that publicity for follow-up activities would be an appropriate means for making the procedure more effective. Thus, publicity for follow-up activities would not only be in the interest of victims of violations of provisions of the Covenant, but could also serve to enhance the authority of the Committee's views and provide an incentive for States parties to implement them.

466. Thus, during its forty-seventh session, in March-April 1993, the Committee agreed in principle that information on follow-up activities should be made public. [I]n March 1994, the Committee formally adopted a number of decisions concerning the effectiveness and publicity of the follow-up procedure. Those decisions were as follows:

(a) Every form of publicity will be given to follow-up activities;
(b) Future annual reports will include a separate and highly visible section on follow-up activities under the Optional Protocol. This should clearly convey to the public which States parties have cooperated and which States parties (hitherto) have failed to cooperate with the Special Rapporteur for the follow-up on views ... Reminders will be sent to all those States which have failed to provide follow-up information;
(c) Press communiqués will be issued once a year after the Committee's summer session, highlighting both positive and negative developments concerning the Committee's and the Special Rapporteur's follow-up activities;
(d) The Committee will welcome any information which non-governmental organizations might wish to submit as to what measures States parties have taken, or failed to take, in respect of the implementation of the Committee's views;
(e) The Special Rapporteur and members of the Committee should, as appropriate, establish contacts with particular Governments and Permanent Missions to the United Nations to further inquire about the implementation of the Committee's views;
(f) The Committee should draw the attention of States parties, at their biannual meetings, to the failure of certain States to implement the Committee's views and to cooperate with the Special Rapporteur in providing information on the implementation of views.

467. The Committee notes with concern that a number of countries have either not provided any follow-up information or have not replied to requests from the Special Rapporteur for follow-up on views. Those States which have not replied to at least four requests are, in alphabetical order, Jamaica, Madagascar, Suriname and Zaire.

468. The Committee decided to anchor firmly the publicity of the follow-up procedure in its rules of procedure, by adopting a new rule (Rule 99) to this effect. [This rule – Rule 103 under the current Rules of Procedure of the Committee – provides that: 'Information furnished by the parties within the framework of follow-up to the Committee's Views is not subject to confidentiality, unless the Committee decides otherwise. Decisions of the Committee relating to follow-up activities are equally not subject to confidentiality, unless the Committee decides otherwise.'] It also decided to keep the functioning of the follow-up procedure under constant review.

Committee against Torture, Annual Report to the UN General Assembly, A/63/44 (2008):

93. At its twenty-eighth session, in May 2002, the Committee against Torture revised its rules of procedure and established the function of a Rapporteur for follow-up of decisions on complaints submitted under article 22. [I]n 16 May 2002, the Committee decided that the Rapporteur shall engage, *inter alia*, in the following activities: monitoring compliance with the Committee's decisions by sending *notes verbales* to States parties enquiring about measures adopted pursuant to the Committee's decisions; recommending to the Committee appropriate action upon the receipt of responses from States parties, in situations of non-response, and upon the receipt henceforth of all letters from complainants concerning non-implementation of the Committee's decisions; meeting with representatives of the permanent missions of States parties

to encourage compliance and to determine whether advisory services or technical assistance by the Office of the United Nations High Commissioner for Human Rights would be appropriate or desirable; conducting with the approval of the Committee follow-up visits to States parties; preparing periodic reports for the Committee on his/her activities.

94. During its thirty-fourth session, the Committee, through its Special Rapporteur on follow-up to decisions, decided that in cases in which it had found violations of the Convention, including Decisions made by the Committee prior to the establishment of the follow-up procedure, the States parties should be requested to provide information on all measures taken by them to implement the Committee's recommendations made in the Decisions. To date, the following countries have not yet responded to these requests. [A list of countries found to have violated the CAT in specific cases follows.]

95. Action taken by the States parties in the following cases complied fully with the Committee's Decisions and no further action will be taken under the follow-up procedure. [A list of cases follows.]

96. In the following cases, the Committee considered that for various reasons no further action should be taken under the follow-up procedure. [A list of cases follows.] In one case, the Committee deplored the State party's failure to abide by its obligations under article 3 having deported the complainant, despite the Committee's finding that there were substantial grounds for believing that he would be in danger of being tortured: *Dadar* v. *Canada* (No. 258/2004).

97. In the following cases, either further information is awaited from the States parties or the complainants and/or the dialogue with the State party is ongoing. [A list of cases follows.]

98. During the thirty-ninth and fortieth sessions, the Special Rapporteur on follow-up to decisions presented new follow-up information that had been received since the last annual report with respect to the following cases. [A list of cases follows.]

4 THE REFORM OF THE UN HUMAN RIGHTS TREATIES SYSTEM

In his final report on enhancing the long-term effectiveness of the UN human rights treaty system, Philip Alston evoked the probable scenario of wide-scale delays and lack of reporting by States, combined with the overburdening of the expert bodies which, given the increasing number of ratifications of human rights treaties, can barely deal with the reports which are submitted to them within the narrow limits of their resources. He commented as follows on the possible reactions to such a scenario:

Effective functioning of bodies established pursuant to United Nations human rights instruments. Final report on enhancing the long-term effectiveness of the United Nations human rights treaty system, by Mr Philip Alston, independent expert (UN Doc. E/CN.4/1997/74, 27 March 1996):

C. A review of options

85. In essence, there would seem to be four options available to States in dealing with [the scenario described above]. The first is to dismiss the concern as alarmist and misplaced on

the ground that the situation will not in fact evolve in this way. States will not move towards universal ratification; they will continue to be chronically overdue in reporting; and they will become increasingly blasé in their dealings with the treaty bodies. The response by the latter will remain essentially as it is today and, somehow, existing resources will be used more efficiently in order to enable the maintenance of the status quo. The number of complaints procedures will not increase and the number of communications will stabilize. And the migrant workers convention will not enter into force. Over time, this option will lead to a reporting system that will have become little more than a costly charade, since it will be unable to cope in any meaningful way with the various functions entrusted to it.

86. The second option would amount to the fulfilment of the dreams of some reformers and of most budget-cutters: the treaty bodies will undertake far-reaching reforms of their existing procedures, and will manage from within existing resources. Extensive authority will be delegated to the Secretariat to undertake preliminary report processing. The latter will be staffed largely by interns, junior professional officers (JPOs) paid for on a voluntary basis by the industrialized countries, and by individuals from other countries sponsored by foundations or their own Governments. Individual committee members will be responsible for drafting assessments which will be reviewed in small working groups and, except in especially controversial cases, will be rapidly endorsed in plenary. Any 'dialogue' will take place largely in writing. No report would be considered in plenary for more than one or two hours and each expert would be limited to five minutes' speaking time (thus making a total of 90 minutes in the case of the two Covenant-related committees, for example). Communications will be processed in a similar manner. Summary records will be dispensed with, and translation will only be available for the final products of the committees. Interpretation will be available only for plenary sessions and the remaining work will be done by heterogeneous language groups working overwhelmingly in English.

87. Apart from the difficulty of achieving any of these reforms, the main problem with this option is that it would require a radical change in many of the assumptions on the basis of which the current system has been developed. For the most part, States have shown no preparedness to make such changes. Moreover, the quality of the resulting outcomes, as well as their ability to command respect and generate the desired domestic responses, is unlikely to be high.

88. The third option is the provision of greatly enhanced budgetary resources to support all aspects of the procedures with a view to more or less maintaining the status quo. Funding would be provided for increased Secretariat staffing, translation and interpretation facilities, and a large technical cooperation budget would be allocated to fund an extensive array of advisory services designed to enable States to meet their extensive reporting obligations. Even leaving aside the question of whether this would be a workable approach in practice, current as well as foreseeable future budget trends would seem to be moving in the opposite direction to that required.

89. The fourth option is a more complex one, drawing on elements of the other options, and based primarily upon the adoption of some or all of the reforms canvassed below.

D. Consolidated reports

90. The interim report by the independent expert outlined a proposal for the preparation of a single consolidated report by each State party, which would then be submitted in satisfaction of the requirements under each of the treaties to which the State is a party. That proposal is for individual States to consider and act upon. It does not require endorsement or other formal action by any United Nations body or the treaty bodies. The detailed analytical study called for

by the General Assembly in resolution 51/87 will, when completed, assist in the preparation of any such consolidated reports. Ultimately, the questions and concerns that have been raised can only be answered definitively on the basis of concrete efforts to produce and work on the basis of such reports.

E. Elimination of comprehensive periodic reports in their present form

91. Another proposal, previously foreshadowed by the independent expert but not developed in any detail, would be to eliminate the requirement that States parties' periodic reports should be comprehensive. Such an approach would clearly not be appropriate in relation to initial reports. Similarly, it might be better suited to the situation of some treaty bodies than others, and might not be applied in all cases. The broader the scope of a treaty, the more appropriate it would seem to be to seek to limit the range of issues which must be addressed in a report. In effect, the reporting guidelines would be tailored to each State's individual situation. In many respects, it is a logical extension of an approach followed by the Human Rights Committee since 1989.

92. Since there are various formulas which might be adopted, the following process is only indicative. It would begin with a decision by the committee at session A to draw up a list of questions at session B. In the intervening period it would invite submissions of information from all relevant sources and would request the Secretariat to prepare a country analysis. The pre-sessional working group could then meet, perhaps immediately before or during session B, and draft a specific and limited list of questions. After endorsement by the Committee at session B the list would be forwarded immediately to the State party with a request for a written report to be submitted in advance (in sufficient time to enable translation) of session C or D. Such a procedure would: focus the dialogue on a limited range of issues; entirely eliminate the need to produce a lengthy report covering many issues of little particular import in relation to the country concerned; ensure that issues of current importance are the principal focus; guarantee that a report would be examined on schedule; enable individuals with expertise in the matters under review to participate in the delegation; reduce the number of ministries directly involved in report preparation; enhance the capacity of expert members of the committees to be well prepared for the dialogue; and provide a strong foundation for more detailed and clearly focused concluding observations.

93. It is therefore recommended that each committee should consider the extent to which all or some of its principal supervisory functions could be conducted on the basis not of general reports based on universally applicable reporting guidelines but of more limited and specially tailored requests for reports as described above.

F. Towards a consolidation of the treaty bodies

94. Some of the arguments for and against this reform have already been explored in the independent expert's 1989 report (A/44/668, paras. 182–183) [where Philip Alston adopted a balanced view of this proposal, noting the risks implicated by such a massive overhaul of the system, which could weaken further certain fragile, but promising, aspects of the current system]. For that reason, they will not be repeated here. Given the limitations of space it must suffice to note in this context that while the legal and procedural problems inherent in such an initiative would not be negligible, the prior issue is whether there is the political will to begin exploring in any detail the contours of such a reform. If that will were manifest, the technical challenges would be resolvable. It is therefore recommended that consideration be given to the convening of a small expert group, with an appropriate emphasis upon international legal expertise, to prepare a report on the modalities that might be considered in this respect.

G. The desirability of additional proactive measures

95. In addition to examining the possibility of steps to reduce the existing number of treaty bodies, it is important for United Nations organs which are involved in the design of new procedures to bear in mind the desirability of limiting the number of additional bodies to be created. Viewed in isolation, and on their individual merits, proposals to establish new, and improved, mechanisms are inevitably attractive. This attraction should, however, be balanced against the impact on the system as a whole of new bodies competing for scarce resources and perhaps, in some respects at least, unnecessarily duplicating the demands upon States parties. At least two current endeavours might be relevant in this respect.

96. The first concerns a procedure which has already been finalized and enshrined in a treaty. Article 72 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families provides for the election of a Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families within six months of the Convention's entry into force. This occurs when there are 20 States parties. Although it was adopted six years ago (in December 1990), as at 1 November 1996 there were only seven States parties. By acting now to amend the treaty so as to provide that the supervisory functions which the Convention entrusts to a new committee would instead be performed by one of the existing committees (presumably either the Committee on Economic, Social and Cultural Rights or the Human Rights Committee) the United Nations could avoid the expense of establishing an entire new supervisory apparatus, States parties could avoid increasing the number of committees to which they must report and the number of occasions on which reports must be presented and evaluated, and the number of States which would have to ratify the amendment would be minimal. A failure to act now will only result in exacerbating a situation that most States already consider to be unwieldy. Moreover, one of the major obstacles to reform in all such matters is the resistance of those (including experts, Secretariat officials, Governments, NGOs, etc.) with a vested interest in the maintenance of the status quo. Action taken at this stage would encounter comparatively very little resistance from such sources. But if delayed, it will probably become impossible.

97. The second example concerns the draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the drafting of which is currently being undertaken by a working group of the Commission on Human Rights. The protocol would, *inter alia*, provide for visits to places of detention by an expert body entrusted with that function. At its most recent session the working group took note of two different views as to the relationship, on the one hand between the new instrument and the existing Convention, and on the other hand between the proposed new sub-committee and the existing Committee against Torture. Persuasive arguments were put forward in favour of the instrument being kept quite separate from the Convention and of the sub-committee being entirely independent of the Committee (see E/CN.4/1997/33, paras. 14, 16, 19). But whatever the undoubted merits of those proposals, they would contribute very significantly to the further proliferation of instruments and committees, while doing nothing to ameliorate the present situation. A more appropriate solution would seem to be to arrive at a formula by which States which accepted the new procedures would be exempted from most, if not all, of their reporting obligations under the Convention and to explore all possible formulas by which the members of the Committee could serve on the new mechanism as well. This would seem to be a case in which the Secretariat should be requested to prepare an analytical paper exploring different options in a creative rather than mechanistic fashion.

H. Amending the treaties

98. Since the submission of the first report on treaty body reform, in 1989, amendments to three of the six treaties have been approved by the respective Meetings of the States Parties and endorsed by the General Assembly. They seek to ensure that the activities of both the Committee on the Elimination of Racial Discrimination and the Committee against Torture are financed from the regular budget of the United Nations (rather than wholly or partly by the States parties as currently provided for in the respective treaties) and to permit the Committee on the Elimination of Discrimination against Women to meet for longer than the two weeks annually specified in the Convention. A fourth proposed amendment would expand the membership of the Committee on the Rights of the Child from 10 to 18. The fact that both the respective Meetings of States Parties, as well as the General Assembly, have approved these amendments is an indication of the need for reform and of the preparedness of Governments to endorse such reforms.

99. Despite this clear consensus none of the amendments has yet entered into force and the prospects that they will do so in the foreseeable future must be considered slight. Thus, for example, over a period of four years only 20 of the 148 (as at 19 February 1997) States parties to the International Convention on the Elimination of All Forms of Racial Discrimination had accepted the amendments. In the case of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 20 of 101 States parties had done so (see E/CN.4/1997/73, para. 7). The problem is not that States parties are opposed to the amendment or that they are reluctant to see them brought into force. This is illustrated by the fact that every State party stands to gain financially from the amendments, since the costs involved will then be spread among the entire membership of the United Nations, rather than falling only on the parties to the relevant treaty. It is thus the non-States parties that would have a financial incentive to oppose such amendments, but they have chosen not to do so when called upon to vote in the General Assembly. Rather, the problem lies in the process of satisfying all of the domestic legal and political requirements needed to approve an amendment to a treaty. It is apparent that they are considered by many Governments, all of whom are confronted with an ever-increasing volume of international agreements to 'process', to be too time-consuming and cumbersome to be worth the effort.

100. To the extent possible, the General Assembly has, in each instance, authorized temporary measures to ameliorate the situation in the intervening period. Such flexibility is indispensable, even though it might have the unintended consequence of further discouraging States parties from taking the domestic steps required to effect their legal acceptance of the amendments.

101. Several recommendations emerge from this situation:

(a) All future human rights treaties should provide for a simplified process to be followed in order to amend the relevant procedural provisions. While the specific endorsement of this proposal by the Commission on Human Rights could not be binding in the context of any future negotiations it would constitute a clear policy guideline and help to facilitate the adoption of such flexibility in the future;

(b) A report should be requested from the Legal Counsel which would explore the feasibility of devising more innovative approaches in dealing with existing and future amendments to the human rights treaties;

(c) The General Assembly should request the Meetings of the States Parties to the relevant treaties to discuss means by which the States concerned might be encouraged to attach a higher priority to ratification of the amendments already approved;

(d) Consideration should be given immediately to amending the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families in line with the recommendation made [above, in para. 96] ...

Against the background of growing delayed reporting or non-reporting by States parties to human rights treaty bodies, as well as the difficult demands reporting to six committees imposes on States parties, the UN Secretary-General suggested in his report 'Strengthening of the United Nations: an Agenda for Further Change', (a) that the committees craft a more co-ordinated approach to their activities; and (b) that they standardize their varied reporting requirements (see UN Doc. A/57/387 (9 September 2002), chapter II, section B, and Corr. 1). The report also specifically recommended that 'each State should be allowed to produce a single report summarizing its adherence to the full range of international human rights treaties to which it is a party' (para. 54). Consultations among the chairpersons of the human rights treaty bodies and within inter-committee meetings, however, showed a consensus in favour of one core document being prepared by each State, rather than one single, consolidated, report, to be presented to all human rights treaty bodies concerned. The result has been the preparation of Harmonized Guidelines on Reporting under the International Human Rights Treaties, including Guidelines on a Common Core Document and treaty-specific targeted documents (HRI/MC/2005/3, 1 June 2005).

Under the new Harmonized Guidelines on Reporting under the International Human Rights Treaties, each State report consists of 'two complementary documents: an up-to-date common core document and a targeted treaty-specific document. The common core document will be submitted to all treaty bodies in conjunction with a targeted report specific to the relevant treaty' (para. 26). The common core document 'should contain information relating to the implementation of each of the treaties to which the reporting State is party and which may be of relevance to all or several of the treaty bodies monitoring the implementation of those treaties. The aim is to avoid reproducing the same information in several reports produced in accordance with the provisions of different treaties. It also allows each committee to view the implementation of its treaty in the wider context of the protection of human rights in the State in question' (para. 27). This document shall contain general factual and statistical information about the reporting State (including demographic, economic, social and cultural characteristics of the State, and the constitutional, political and legal structure of the State); a description of the general framework for the protection and promotion of human rights; a summary of the acceptance of international human rights norms; a description of the general legal framework within which human rights are protected and promoted at the national level; a description of the reporting process in promoting human rights at the national level (for example, concerning the participation of non-governmental organizations, national human rights institutions, or the organization of a public debate); and other related human rights information, particularly the follow-up given to international

conferences. In addition, the common core document would also discuss the implementation of substantive human rights provisions common to all or several treaties, in particular the non-discrimination and equality provisions thereof.

The purpose of these Harmonized Guidelines is best explained in paras. 3–4 of this document:

Harmonized Guidelines on Reporting under the International Human Rights Treaties, including Guidelines on a Common Core Document and treaty-specific targeted documents (HRI/MC/2005/3, 1 June 2005):

3. Reports presented in accordance with the present common guidelines will enable each treaty body and the State party to obtain a complete picture of progress made in the implementation of the relevant treaties, set within the wider context of the State's international human rights obligations, and provide a uniform framework within which each committee, in collaboration with the other treaty bodies, can work.

4. Compliance with these guidelines will:

(a) Avoid unnecessary duplication of information already submitted to other treaty bodies;
(b) Minimize the possibility that reports may be considered inadequate in scope and insufficient in detail to allow the treaty bodies to fulfil their mandates;
(c) Reduce the need for a committee to request supplementary information before considering a report;
(d) Enable a consistent approach by all committees in considering the reports presented to them; and
(e) Help each committee to consider the situation regarding human rights in every State party on an equal basis.

At the same time, the case has been made for a unified standing treaty body, resulting from the merger of all existing human rights treaty bodies. This, it has been argued, would enhance the effectiveness of the system and correspond to what is required for a 'holistic', i.e. integrated, approach to the human rights obligations of States (see also on this debate M. Bowman, 'Towards a Unified Treaty Body for Monitoring Compliance with UN Human Rights Conventions? Legal Mechanisms for Treaty Reform', *Human Rights Law Review*, 7, No. 1 (2007), 225; M. O'Flaherty and C. O'Brien, 'Reform of UN Human Rights Treaty Monitoring Bodies: a Critique of the Concept Paper on the High Commissioner's Proposal for a Unified Standing Treaty Body', *Human Rights Law Review*, 7, No. 1 (2007), 141; see also the summary of an international meeting of experts on the theme of treaty body reform, held at Triesenberg, Liechtenstein, 14–16 July 2006 (Malbun II), A/HRC/2/G/5, 25 September 2006, Annex). Others have proposed the establishment of a World Court of Human Rights, to the jurisdiction of which States could decide to submit on an optional basis, to remedy the lack of effectiveness and gaps in the current system (see M. Nowak, 'The Need for a World Court of Human Rights', *Human Rights Law Review*, 7, No. 1 (2007), 251; S. Trechsel, 'A World Court

for Human Rights', *Northwestern University Journal of International Human Rights*, 1 (2004), 3). As High Commissioner for Human Rights (2005–8), Louise Arbour sought, unsuccessfully, to push forward the idea of a standing and unified treaty body:

Concept paper on the High Commissioner's proposal for a unified standing treaty body. Report by the Secretariat (HRI/MC/2006/2, 22 March 2006):

27. The proposal of a unified standing treaty body is based on the premise that, unless the international human rights treaty system functions and is perceived as a unified, single entity responsible for monitoring the implementation of all international human rights obligations, with a single, accessible entry point for rights-holders, the lack of visibility, authority and access which affects the current system will persist. The proposal is also based on the recognition that, as currently constituted, the system is approaching the limits of its performance, and that, while steps can be taken to improve its functioning in the short and medium term, more fundamental, structural change will be required in order to guarantee its effectiveness in the long term. Unlike the current system of seven part-time Committees, a unified standing treaty body comprised of permanent, full-time professionals is more likely to produce consistent and authoritative jurisprudence. A unified standing treaty body would be available to victims on a permanent basis and could respond rapidly to grave violations. As a permanent body, it would have the flexibility to develop innovative working methods and approaches to human rights protection and be able to develop clear modalities for the participation of United Nations partners and civil society, which build on the good practices of the current system. It would also be able to develop a strong capacity to assist States parties in their implementation of human rights obligations, including through follow-up activities and the country engagement strategies envisaged by the High Commissioner in her Plan of Action. Also in line with the Plan of Action, the Secretariat would be significantly strengthened to provide the expert support and advice required by a unified standing treaty body, as well as that required to strengthen national capacity and partnerships to allow full engagement in the treaty implementation process ...

28. As States implement human rights obligations in an integrated rather than treaty-specific way, and individuals and groups do not enjoy their human rights or experience violations along treaty lines, a unified standing treaty body would provide a framework for a comprehensive, cross-cutting and holistic approach to implementation of the treaties. In contrast to the current system of seven treaty bodies which consider reports which are submitted in accordance with different periodicities, a unified standing treaty body could introduce flexible and creative measures to encourage reporting, and maximize the effectiveness and impact of monitoring. For example, a single cycle for reporting by each State party on implementation of all treaty obligations could be introduced, which would occur once every three to five years, providing States parties and partners with the opportunity to carry out in-depth, holistic, comprehensive and cross-cutting assessments and analysis of a State's human rights performance against all relevant obligations. A single reporting cycle monitored by a unified standing treaty body would provide a framework for prioritization of action needed at the country level to comply with human rights obligations. Reporting could be aligned with national processes and systems such as the development and implementation of national human rights action plans and other reporting obligations of the State party. As a result of comprehensive examination of a State party's implementation of all its treaty obligations, reporting to a unified standing treaty body would stimulate more effective mainstreaming of the rights of specific groups or issues in the interpretation and implementation of all human rights treaty obligations, thereby making these

more visible and central. At the same time, the current specialized expertise of treaty bodies and their focused attention on specific rights and rights-holders would be safeguarded and built upon.

29. A comprehensive and holistic assessment of a State's human rights performance against all relevant obligations by the unified standing treaty body resulting in a single document containing all key concerns and recommendations would facilitate States parties' and other national stakeholders' consideration of the whole range of relevant human rights concerns and legislative, policy and programme measures required. By providing a complete picture of the human rights priorities, this holistic approach would also facilitate the work of stakeholders, such as NGOs, NHRIs and other parts of civil society at the country level, and make it easier for them to integrate these recommendations into their country programming. Partners would benefit from their different areas of human rights expertise and develop a common approach to human rights issues and requirements at the national level.

30. A unified standing treaty body would ensure a consistent approach to the interpretation of provisions in the treaties which are similar or overlap substantively. Complainants would also have the opportunity to invoke substantively overlapping or similar provisions of more than one instrument, thereby enhancing consistence and coherence in the interpretation of substantively similar provisions in the different instruments. A unified standing treaty body would also guarantee consistency and clarity of General Comments/Recommendations and, in that way, strengthen the interpretation of treaty provisions. The output of a unified standing treaty body would strengthen appreciation of the indivisibility of human rights obligations and the importance of a holistic, cross-cutting and comprehensive approach to implementation.

31. A unified standing treaty body could extend the period of the dialogue with individual States parties from the current average of one day per treaty body to, for example, up to five days, depending on factors such as the number of treaties ratified. By combining the seven dialogues currently operating independently into one, in-depth session with one monitoring counterpart rather than seven, the dialogue would be transformed into a strategic and continuous tool for monitoring human rights performance against all obligations. States parties would be encouraged to send expert delegations including all Government ministries having responsibility for the full range of human rights to respond to detailed questions and benefit from the expertise of Committee members. An extension of the period of dialogue would provide new opportunities for stakeholders to contribute information and exchange views with the Committee. Enhanced participation, information and exchange of views on all human rights obligations would result in an overall package of more precise, clear and practical recommendations. Improved dialogue, engagement and output would encourage greater participation of civil society and other actors, thereby facilitating implementation at the national level.

32. Members of the unified standing treaty body would be available on a permanent basis. This would allow them to build on the current achievements of the system to develop strong, coherent, innovative and flexible approaches to monitoring implementation of the treaties. As members would be permanent pending individual complaints would be adjudicated expeditiously, which would heighten the impact of views adopted in the context of complaints procedures, and encourage their wider use by rights-holders. Similarly, a unified standing treaty body would allow for a strengthening of follow-up capacity, by increasing the potential and feasibility for follow-up missions by the experts, given the permanent nature of their work.

33. A unified standing treaty body would inevitably be more visible than the existing treaty bodies, and would be able to make its procedures, recommendations and decisions better known at the national level. Enhanced visibility, in tandem with open and transparent procedures, would also

arouse media interest, and conclusions and recommendations adopted by a unified standing treaty body on the overall human rights situation in a country are likely to attract more media attention than conclusions and recommendations adopted on the implementation of a single treaty.

34. In comparison to the current system of seven part-time bodies, as a standing body, the unified standing treaty body would be more flexible than the current bodies in respect of the timing and venue of its sessions. It would be able to group the consideration of the reports of several States parties from one region over the course of a few weeks, thereby enhancing regional peer pressure to engage with the system. It would also be available to convene sessions in regions, thereby strengthening the visibility of the system and ensuring its accessibility. It could also develop a regular pattern of missions relating to follow-up or capacity building.

35. A unified standing treaty body could also absorb new standards. It would be easier to integrate the monitoring of a new instrument into a unified monitoring structure already dealing with several treaties rather than incorporating new monitoring functions into the mandate of an existing treaty body, an option which has previously been rejected in the cases of CAT and the draft International Convention for the Protection of All Persons from Enforced Disappearance.

36. The permanent availability and functioning of a unified standing treaty body would allow for the establishment of stronger links with other human rights bodies, such as the special procedures mechanisms or regional human rights systems, to coordinate activities and complement action in accordance with the respective mandates. A unified standing treaty body would also be able to establish links with political bodies more readily than seven part-time bodies. A comprehensive, overall assessment of the implementation of international legal obligations under human rights treaties for countries in one single document, rather than in seven separate documents, would be more likely to attract heightened attention from political bodies such as [the] Human Rights Council or the Security Council.

9.6. Question for discussion: the virtues of specialized human rights bodies v. the benefits of consolidation

Apart from the resistance this proposal may meet from States or current members of existing human right treaty bodies, is the consolidation of the UN human rights treaty bodies into one single, standing body, desirable? Consider the following view: 'it is debatable whether a single tribunal will actually enhance, rather than diminish, the jurists' expertise to address the enormous range of human rights issues in a comprehensive way. This question is of particular concern to those parties championing historically underrepresented human rights perspectives such as children's rights, gender discrimination, and economic, social, and cultural rights. Such parties might fear that centralization would privilege a dominant interpretive position that marginalizes these issues. In addition, amending the existing treaty system raises the disquieting prospect that some States would use the opportunity to press for a 'least common denominator' approach. This approach would favor adopting for the new tribunal the least rights-protective petition procedures found among the ... existing treaty bodies' (L. R. Helfer, 'Forum Shopping for Human Rights', *University of Pennsylvania Law Review*, 148 (1999), 285 at 396).

10

The United Nations Charter-Based Monitoring of Human Rights

INTRODUCTION

The United Nations Charter-based system of human rights monitoring has been through major changes in 2006–7. Acting under Article 68 of the UN Charter, the Economic and Social Council (Ecosoc) had established the Commission on Human Rights as an intergovernmental body initially composed of eighteen Member States. The membership of the Commission on Human Rights was progressively expanded to fifty-three members in 2006 to take account of the more diverse membership of the United Nations. The Commission was assisted in its work by the UN Sub-Commission for the Promotion and Protection of Human Rights, until 1999 called the Sub-Commission on Prevention of Discrimination and Protection of Minorities. Despite major achievements, the system thus developed was considered to be overpoliticized, and to lack credibility due, in particular, to the selective approach to the human rights records of governments. In its place, it was decided in 2005 to establish a Human Rights Council, as a subsidiary organ of the UN General Assembly, whereas the former Commission on Human Rights was one of a number of subsidiary bodies of the Ecosoc.

This chapter examines how this change came about, and which tools the Human Rights Council has at its disposal to promote and protect human rights (for useful presentations, see P. Alston, 'Reconceiving the UN Human Rights Regime: Challenges Confronting the New Human Rights Council', *Melbourne Journal of International Law*, 7 (2006), 185; K. Boyle (ed.), *New Institutions for Human Rights Protection* (Oxford University Press, 2009), chapters 1–3; G. Luca Burci, The United Nations Human Rights Council' in *Italian Yearbook of International Law*, XV (2005), 25: F. D. Gaer, 'A Voice Not an Echo: Universal Periodic Review and the UN Treaty Body System', *Human Rights Law Review*, 7, No. 1 (2007), 109; N. Ghanea, 'From UN Commission on Human Rights to UN Human Rights Council: One Step Forwards or Two Steps Sideways', *International and Comparative Law Quarterly*, 55, No. 3 (2006), 695; F. Hampson, 'An Overview of the Reform of the UN Human Rights Machinery', *Human Rights Law Review*, 7, No. 1 (2007), 7; P. G. Lauren, '"To Preserve and Build on Its Achievements and to Redress Its Shortcomings": the Journey from the Commission on Human Rights to the Human

Rights Council', *Human Rights Quarterly*, 29 (2007), 307). The materials collected present, first, the background to the overhaul of the UN Charter-based system of human rights protection (section 1). Next, they review the three tools at the Human Rights Council's disposal: complaints related to 'a consistent pattern of gross and reliably attested violations of human rights' (section 2); the universal periodic review (section 3); and the so-called 'special procedures' established initially by the Commission on Human Rights and now contributing to the work of the Council (section 4).

1 THE ESTABLISHMENT OF THE HUMAN RIGHTS COUNCIL

Against the background briefly referred to in the introduction to this chapter, the following excerpt explains the objectives behind replacing the Commission on Human Rights by a Human Rights Council. In 2003, faced with new threats to multilateralism as a result of the policies of the United States under the Bush Administration, and with strong criticism from the US Congress directed against the effectiveness of the United Nations as an organization, the Secretary-General, Koffi Annan, decided to convene a high-level panel of eminent persons to provide him with proposals for reform. The High-level Panel on Threats, Challenges and Change was chaired by Anand Panyarachun, the former Prime Minister of Thailand. It had the following to say on the reform of the UN human rights machinery:

A More Secure World: Our Shared Responsibility, Report of the High-level Panel on Threats, Challenges and Change transmitted to the UN Secretary-General (A/59/565, 1 December 2004, Annex) (bold characters in the original):

283. In recent years, the [UN Human Rights] Commission's capacity to perform its tasks has been undermined by eroding credibility and professionalism. Standard-setting to reinforce human rights cannot be performed by States that lack a demonstrated commitment to their promotion and protection. We are concerned that in recent years States have sought membership of the Commission not to strengthen human rights but to protect themselves against criticism or to criticize others. The Commission cannot be credible if it is seen to be maintaining double standards in addressing human rights concerns.

284. Reform of this body is therefore necessary to make the human rights system perform effectively and ensure that it better fulfils its mandate and functions. We support the recent efforts of the Secretary-General and the United Nations High Commissioner for Human Rights to ensure that human rights are integrated throughout the work of the United Nations, and to support the development of strong domestic human rights institutions, especially in countries emerging from conflict and in the fight against terrorism. Member States should provide full support to the Secretary General and the High Commissioner in these efforts.

285. In many ways, the most difficult and sensitive issue relating to the Commission on Human Rights is that of membership. In recent years, the issue of which States are elected to the Commission has become a source of heated international tension, with no positive impact on human rights and a negative impact on the work of the Commission. Proposals for membership

criteria have little chance of changing these dynamics and indeed risk further politicizing the issue.

Rather, **we recommend that the membership of the Commission on Human Rights be expanded to universal membership**. This would underscore that all members are committed by the Charter to the promotion of human rights, and might help to focus attention back on to substantive issues rather than who is debating and voting on them.

286. In the first half of its history, the Commission was composed of heads of delegation who were key players in the human rights arena and who had the professional qualifications and experience necessary for human rights work. Since then this practice has lapsed. We believe it should be restored, and we propose that **all members of the Commission on Human Rights designate prominent and experienced human rights figures as the heads of their delegations**.

287. In addition, we propose that **the Commission on Human Rights be supported in its work by an advisory council or panel**. This council or panel would consist of some 15 individuals, independent experts (say, three per region), appointed for their skills for a period of three years, renewable once. They would be appointed by the Commission on the joint proposal of the Secretary-General and the High Commissioner. In addition to advising on country-specific issues, the council or panel could give advice on the rationalization of some of the thematic mandates and could itself carry out some of the current mandates dealing with research, standard-setting and definitions.

288. **We recommend that the High Commissioner be called upon to prepare an annual report on the situation of human rights worldwide.** This could then serve as a basis for a comprehensive discussion with the Commission. The report should focus on the implementation of all human rights in all countries, based on information stemming from the work of treaty bodies, special mechanisms and any other sources deemed appropriate by the High Commissioner.

289. The Security Council should also more actively involve the High Commissioner in its deliberations, including on peace operations mandates. We also welcome the fact that the Security Council has, with increasing frequency, invited the High Commissioner to brief it on country-specific situations. We believe that this should become a general rule and that **the Security Council and the Peacebuilding Commission should request the High Commissioner to report to them regularly about the implementation of all human rights–related provisions of Security Council resolutions, thus enabling focused, effective monitoring of these provisions**.

290. More also needs to be done with respect to the funding situation of the Office of the High Commissioner. We see a clear contradiction between a regular budget allocation of 2 per cent for this Office and the obligation under the Charter of the United Nations to make the promotion and protection of human rights one of the principal objectives of the Organization. There is also a need to redress the limited funding available for human rights capacity-building. Member States should seriously review the inadequate funding of this Office and its activities.

291. In the longer term, Member States should consider upgrading the Commission to become a 'Human Rights Council' that is no longer subsidiary to the Economic and Social Council but a Charter body standing alongside it and the Security Council, and reflecting in the process the weight given to human rights, alongside security and economic issues, in the Preamble of the Charter.

Although only presented by the High-level Panel on Threats, Challenges and Change as one option to consider for the future, the replacement of the Commission on Human Rights by a Human Rights Council was proposed by the UN Secretary-General, Kofi Annan, in the following terms:

In Larger Freedom: Towards Development, Security and Human Rights for All. Report of the Secretary-General (A/59/2005, 21 March 2005):

165. Its founders endowed the United Nations with three Councils, each having major responsibilities in its own area: the Security Council, the Economic and Social Council and the Trusteeship Council. Over time, the division of responsibilities between them has become less and less balanced: the Security Council has increasingly asserted its authority and, especially since the end of the cold war, has enjoyed greater unity of purpose among its permanent members but has seen that authority questioned on the grounds that its composition is anachronistic or insufficiently representative; the Economic and Social Council has been too often relegated to the margins of global economic and social governance; and the Trusteeship Council, having successfully carried out its functions, is now reduced to a purely formal existence.

166. I believe we need to restore the balance, with three Councils covering respectively, (a) international peace and security, (b) economic and social issues, and (c) human rights, the promotion of which has been one of the purposes of the Organization from its beginnings but now clearly requires more effective operational structures. These Councils together should have the task of driving forward the agenda that emerges from summit and other conferences of Member States, and should be the global forms in which the issues of security, development and justice can be properly addressed. The first two Councils, of course, already exist but need to be strengthened. The third requires a far-reaching overhaul and upgrading of our existing human rights machinery ...

181. The Commission on Human Rights has given the international community a universal human rights framework, comprising the Universal Declaration on Human Rights, the two International Covenants and other core human rights treaties. During its annual session, the Commission draws public attention to human rights issues and debates, provides a forum for the development of United Nations human rights policy and establishes a unique system of independent and expert special procedures to observe and analyse human rights compliance by theme and by country. The Commission's close engagement with hundreds of civil society organizations provides an opportunity for working with civil society that does not exist elsewhere.

182. Yet the Commission's capacity to perform its tasks has been increasingly undermined by its declining credibility and professionalism. In particular, States have sought membership of the Commission not to strengthen human rights but to protect themselves against criticism or to criticize others. As a result, a credibility deficit has developed, which casts a shadow on the reputation of the United Nations system as a whole.

183. If the United Nations is to meet the expectations of men and women everywhere – and indeed, if the Organization is to take the cause of human rights as seriously as those of security and development – then Member States should agree to replace the Commission on Human Rights with a smaller standing Human Rights Council. Member States would need to decide if they want the Human Rights Council to be a principal organ of the United Nations or a subsidiary

body of the General Assembly, but in either case its members would be elected directly by the General Assembly by a two-thirds majority of members present and voting. The creation of the Council would accord human rights a more authoritative position, corresponding to the primacy of human rights in the Charter of the United Nations. Member States should determine the composition of the Council and the term of office of its members. Those elected to the Council should undertake to abide by the highest human rights standards.

Addendum to the Report (A/59/2005/Add. 1, 23 May 2005):
The Human Rights Council would be a standing body, able to meet regularly and at any time to deal with imminent crises and allow for timely and in-depth consideration of human rights issues. Moving human rights discussions beyond the politically charged six-week session [during which the Commission on Human Rights convened in March–April on an annual basis] would also allow more time for substantive follow-up on the implementation of decisions and resolutions. Being elected by the entire membership of the General Assembly would make members more accountable and the body more representative. And being elected directly by the General Assembly – the principal United Nations legislative body – would also have greater authority than the Commission, which is a subsidiary body of the Economic and Social Council. Indeed, according to the Charter, responsibility for discharging the functions under the Economic and Social Council, including the promotion of human rights, is ultimately vested in the General Assembly. A smaller membership would allow the Human Rights Council to have more focused debate and discussions.

On 15 March 2006, following up on the suggestion made in the 'In Larger Freedom' Report, the General Assembly adopted Resolution A/RES/60/251 to establish the Human Rights Council. The Resolution created the Human Rights Council to replace the Commission on Human Rights, as a subsidiary organ of the General Assembly. It read further:

UN General Assembly, Resolution 60/251. Human Rights Council (A/RES/60/251, 15 March 2006):

3. [The General Assembly decides also] that the Council should address situations of violations of human rights, including gross and systematic violations, and make recommendations thereon. It should also promote the effective coordination and the mainstreaming of human rights within the United Nations system;

4. Decides further that the work of the Council shall be guided by the principles of universality, impartiality, objectivity and non-selectivity, constructive international dialogue and cooperation, with a view to enhancing the promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development;

5. Decides that the Council shall, *inter alia*:

(a) Promote human rights education and learning as well as advisory services, technical assistance and capacity-building, to be provided in consultation with and with the consent of Member States concerned;
(b) Serve as a forum for dialogue on thematic issues on all human rights;

(c) Make recommendations to the General Assembly for the further development of international law in the field of human rights;
(d) Promote the full implementation of human rights obligations undertaken by States and follow-up to the goals and commitments related to the promotion and protection of human rights emanating from United Nations conferences and summits;
(e) Undertake a universal periodic review, based on objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States; the review shall be a cooperative mechanism, based on an interactive dialogue, with the full involvement of the country concerned and with consideration given to its capacity-building needs; such a mechanism shall complement and not duplicate the work of treaty bodies; the Council shall develop the modalities and necessary time allocation for the universal periodic review mechanism within one year after the holding of its first session;
(f) Contribute, through dialogue and cooperation, towards the prevention of human rights violations and respond promptly to human rights emergencies;
(g) Assume the role and responsibilities of the Commission on Human Rights relating to the work of the Office of the United Nations High Commissioner for Human Rights, as decided by the General Assembly in its resolution 48/141 of 20 December 1993;
(h) Work in close cooperation in the field of human rights with Governments, regional organizations, national human rights institutions and civil society;
(i) Make recommendations with regard to the promotion and protection of human rights;
(j) Submit an annual report to the General Assembly;

6. Decides also that the Council shall assume, review and, where necessary, improve and rationalize all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights in order to maintain a system of special procedures, expert advice and a complaint procedure; the Council shall complete this review within one year after the holding of its first session;

7. Decides further that the Council shall consist of forty-seven Member States, which shall be elected directly and individually by secret ballot by the majority of the members of the General Assembly; the membership shall be based on equitable geographical distribution, and seats shall be distributed as follows among regional groups: Group of African States, thirteen; Group of Asian States, thirteen; Group of Eastern European States, six; Group of Latin American and Caribbean States, eight; and Group of Western European and other States, seven [these 'other' States of the WEOG group are Australia, Canada and New Zealand; while formally not a member of any geographical group, the United States is considered a member of WEOG for election purposes, and Israel has an 'observer' status within WEOG]; the members of the Council shall serve for a period of three years and shall not be eligible for immediate re-election after two consecutive terms;

8. Decides that the membership in the Council shall be open to all States Members of the United Nations; when electing members of the Council, Member States shall take into account the contribution of candidates to the promotion and protection of human rights and their voluntary pledges and commitments made thereto; the General Assembly, by a two-thirds majority of the members present and voting, may suspend the rights of membership in the Council of a member of the Council that commits gross and systematic violations of human rights;

9. Decides also that members elected to the Council shall uphold the highest standards in the promotion and protection of human rights, shall fully cooperate with the Council and be reviewed under the universal periodic review mechanism during their term of membership;

10. Decides further that the Council shall meet regularly throughout the year and schedule no fewer than three sessions per year, including a main session, for a total duration of no less than ten weeks, and shall be able to hold special sessions, when needed, at the request of a member of the Council with the support of one third of the membership of the Council;

The Resolution was the result of a broad consensus, although the United States, the Marshall Islands, Palau, and Israel voted against it. Belarus, Iran, and Venezuela abstained. The United States explained their vote as follows:

Explanation of Vote by Ambassador John R. Bolton, US Permanent Representative to the United Nations, on the Human Rights Council Draft Resolution, in the General Assembly, March 15, 2006:

UN Secretary General Kofi Annan established ambitious but appropriate goals for the effort to reform the Commission on Human Rights. Though all of us recognized that the Commission on Human Rights needed changing, it was the Secretary General who framed the discussion by saying that 'the Commission's capacity to perform its tasks has been increasingly undermined by its declining credibility and professionalism', which 'casts a shadow on the reputation of the United Nations system as a whole'.

To help the Member States move forward, he made a number of proposals to improve the body, as did the United States and other Member States. We appreciate UNGA President Jan Eliasson's efforts to create an effective human rights body, as well as the efforts of Ambassador Kumalo and Ambassador Arias. Through their leadership, some of these goals were achieved with this text, and there are provisions that make improvements over the existing Commission on Human Rights. But on too many issues the current text is not sufficiently improved.

In focusing on the membership of the body, the United States was in excellent company. The Secretary-General had targeted this as the fundamental problem with the Commission, noting, 'states have sought membership of the Commission not to strengthen human rights but to protect themselves against criticism or to criticize others'. We strongly agreed with the Secretary-General, and our preeminent concern was always about the credibility of the body's membership.

The Secretary-General also proposed a strong tool to fix this – he proposed that the Council elect its members by a two-thirds majority. This proposal is not included in the resolution before us today, and it should be. The higher hurdle for membership would have made it harder for countries that are not demonstrably committed to human rights to win seats on the Council. It would have helped to prevent the election of countries that only seek to undermine the new body from within.

The United States also proposed an exclusionary criteria to keep gross abusers of human rights off the Council. This proposal would have excluded Member States against which measures are in effect under Chapter VII of the UN Charter related to human rights abuses or

acts of terrorism. We also expressed a willingness to consider alternatives to satisfy the need for a strong mechanism to exclude the worst human rights violators.

Sadly, these suggestions were not included in the new text. The resolution before us merely requires Member States to 'take into account' a candidate's human rights record when voting. And the provision for the General Assembly to suspend an elected member of the Council requires a two-thirds vote, a standard higher than that for electing members.

Our position on the need for a strong, credible membership is one of principle, and one we know that others here today share. We extend our appreciation to those Member States that agreed with our assertion that there should be no place on the new Council for countries where there is objective evidence of systematic and gross violations of human rights, or where United Nations sanctions have been applied for human rights violations. Some Member States have signed letters and plan to make statements to this effect. Although these commitments could not ultimately change our position on this draft resolution, they represent a welcome and appropriate effort on behalf of many dedicated Member States.

We had a historic opportunity to create a primary human rights organ in the UN poised to help those most in need and offer a hand to governments to build what the Charter calls 'fundamental freedoms'. The Council that is created will be our legacy. We must not let the victims of human rights abuses throughout the world think that UN Member States were willing to settle for 'good enough'. We must not let history remember us as the architects of a Council that was a 'compromise' and merely 'the best we could do' rather than one that ensured doing 'all we could do' to promote human rights.

Mr President, absent stronger mechanisms for maintaining credible membership, the United States could not join consensus on this resolution. We did not have sufficient confidence in this text to be able to say that the HRC would be better than its predecessor.

Despite the reservations thus expressed by the United States, one important difference between the Human Rights Council and the former Commission on Human Rights resides in the mechanism for the election of its members. The Ecosoc formerly elected the members of the Commission on Human Rights. In contrast, the members of the Human Rights Council are elected by the 192 members of the General Assembly 'directly and individually' by secret ballot, although in order to ensure equitable geographical representation, each group of States (divided along geographical lines into groups that have remained unchanged since 1963) is allocated a predefined number of seats (see para. 7 of UN General Assembly Resolution 60/251). During the discussions preceding the adoption of Resolution 60/251 on the Human Rights Council, there were proposals to ensure that only candidates with a clean human rights record should be allowed to stand as candidates for membership in the Council. While this proposal was not retained – a major factor explaining the negative vote of the United States – para. 8 of Resolution 60/251 nevertheless refers to the need to 'take into account the contribution of candidates to the promotion and protection of human rights and their voluntary pledges and commitments made thereto'. Thus, when presenting their candidacy to the Council, governments describe their record in the field of human rights. They also make certain pledges that may play a role, subsequently, under the universal periodic review

process (see below, section 3). For instance, in her letter to the President of the UN General Assembly announcing that the United States (now under the Administration of President Obama) were a candidate for membership to the Human Rights Council for the term 2009–12, the Ambassador of the United States of America to the United Nations, Ms Susan Rice, attached a list of 'human rights commitments and pledges', excerpts of which are presented below:

Human rights commitments and pledges of the United States of America – Annex to the letter dated 22 April 2009 from the Permanent Representative of the United States of America to the United Nations addressed to the President of the General Assembly:

Commitment to advancing human rights in the United Nations system

1. The United States commits to continuing its efforts in the United Nations system to be a strong advocate for all people around the world who suffer from abuse and oppression, and to be a stalwart defender of courageous individuals across the globe who work, often at great personal risk, on behalf of the rights of others.
2. The United States commits to working with principled determination for a balanced, credible and effective United Nations Human Rights Council to advance the purpose of the Universal Declaration of Human Rights. To that same end, in partnership with the international community, we fully intend to promote universality, transparency and objectivity in all of the Council's endeavours. The United States commits to participating fully in the universal periodic review process and looks forward to the review in 2010 of its own record in promoting and protecting human rights and fundamental freedoms in the United States.
3. The United States is committed to advancing the promotion and protection of human rights and fundamental freedoms in the General Assembly and the Third Committee, and in this vein intends to actively participate in the 2011 review by the General Assembly of the work of the Human Rights Council.
4. The United States is also committed to the promotion and protection of human rights through regional organizations ...
5. The United States recognizes and upholds the vital role of civil society and human rights defenders in the promotion and protection of human rights and commits to promoting the effective involvement of non-governmental organizations in the work of the United Nations, including the Human Rights Council, and other international organizations.
6. As part of our commitment to the principle of universality of human rights, the United States commits to working with our international partners in the spirit of openness, consultation and respect and reaffirms that expressions of concern about the human rights situation in any country, our own included, are appropriate matters for international discussion.

Commitment to continue providing support to human rights activities in the United Nations system

1. The United States is committed to continuing its support for the Office of the United Nations High Commissioner for Human Rights. In 2009, the United States intends to pledge $8 million to the Office of the United Nations High Commissioner for Human Rights and its efforts to address violations of human rights worldwide, as well as an additional $1.4 million to the

United Nations Voluntary Fund for Technical Cooperation in the Field of Human Rights, and more than $7 million to other funds.
2. The United States is also committed to continuing its support of other United Nations bodies whose work contributes to the promotion of human rights. In 2008–2009, the United States has contributed funding to support human rights efforts, inter alia, through the United Nations Children's Fund (UNICEF) ($130 million), the United Nations Democracy Fund ($7.9 million) and the United Nations Development Fund for Women (UNIFEM) ($4.5 million). The United States also supports the United Nations Population Fund (UNFPA) and is contributing $50 million for fiscal year 2009.

Commitment to advancing human rights, fundamental freedoms, and human dignity and prosperity internationally

1. The United States commits to continuing to support States in their implementation of human rights obligations, as appropriate, through human rights dialogue, exchange of experts, technical and interregional cooperation, and programmatic support of the work of non-governmental organizations.
2. The United States commits to continuing its efforts to strengthen mechanisms in the international system established to advance the rights, protection and empowerment of women.

Commitment to advancing human rights, fundamental freedoms, and human dignity and prosperity internationally

1. The United States commits to continuing to support States in their implementation of human rights obligations, as appropriate, through human rights dialogue, exchange of experts, technical and interregional cooperation, and programmatic support of the work of non-governmental organizations.
2. The United States commits to continuing its efforts to strengthen mechanisms in the international system established to advance the rights, protection and empowerment of women ...
3. The United States commits to continuing to promote respect for workers' rights worldwide, including by working with other Governments and the International Labour Organization (ILO) to adopt and enforce regulations and laws that promote respect for internationally recognized worker rights and by providing funding for technical assistance projects designed to build the capacity of worker organizations, employers and Governments to address labour issues, including forced labour and the worst forms of child labour, such as child soldiering, workplace discrimination, and sweatshop and exploitative working conditions.
4. The United States commits to continuing to advocate a victim-centred and multidisciplinary approach to combating all forms of trafficking in persons and to restoring the dignity, human rights and fundamental freedoms of human trafficking victims.
5. The United States commits to continuing to promote freedom of religion for individuals of all beliefs, particularly members of minority and vulnerable religious groups, through dedicated outreach, advocacy, training and programmatic efforts.
6. The United States is committed to continuing to promote human rights in the fight against HIV/AIDS in a variety of ways, including through promoting the rights of people living with HIV/AIDS, fighting against stigma and discrimination, and supporting women's rights. The United States is committed to preventing suffering and saving lives by confronting global health challenges through improving the quality, availability and use of essential health services.

7. The United States is committed to continuing its leadership role in promoting voluntary corporate social responsibility and business and human rights initiatives globally …
8. Recognizing the essential contributions of independent media in promoting the fundamental freedom of expression, exposing human rights abuses and promoting accountability and transparency in governance, the United States commits to continuing to champion freedom of expression and to promote media freedom and the protection of journalists worldwide.
9. We are dedicated to combating both overt and subtle forms of racism and discrimination internationally.

Commitment to advancing human rights and fundamental freedoms in the United States

1. The United States executive branch is committed to working with its legislative branch to consider the possible ratification of human rights treaties, including but not limited to the Convention on the Elimination of All Forms of Discrimination against Women and ILO Convention No. 111 concerning Discrimination in Respect of Employment and Occupation.
2. The United States is committed to meeting its United Nations treaty obligations and participating in a meaningful dialogue with treaty body members.
3. The United States is committed to cooperating with the human rights mechanisms of the United Nations, as well as the Inter-American Commission on Human Rights and other regional human rights bodies, by responding to inquiries, engaging in dialogues and hosting visits.
4. The United States is also strongly committed to fighting racism and discrimination, and acts of violence committed because of racial or ethnic hatred. Despite the achievements of the civil rights movement and many years of striving to achieve equal rights for all, racism still exists in our country and we continue to fight it.
5. The United States is committed to continuing to promote human prosperity and human rights and fundamental freedoms of all persons within the United States, including through enforcement of the Americans with Disabilities Act and its amendments, engaging religious and community leaders in upholding religious freedom and pluralism, and encouraging the members of the private sector to serve as good corporate citizens both in the United States and overseas.

The newly established Human Rights Council held its inaugural session in Geneva, 9–30 June 2006. On 18 June 2007, acting in accordance with para. 6 of UN General Assembly Resolution 60/251, the Human Rights Council adopted the President text entitled 'UN Human Rights Council: Institution Building' (Institution-building of the United Nations Human Rights Council, A/HRC/Res/5/1, 18 June 2007). The Resolution establishes a new complaints procedure in order to address consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms occurring in any part of the world and under any circumstances. It outlines the functioning of the universal periodic review (UPR). It describes the way mandate-holders of special procedures will be appointed, and how they are expected to fulfil their mandate; and it sets up the Human Rights Council Advisory Committee, the successor to the Sub-Commission for the Promotion and Protection of Human Rights. The following sections of this chapter review the three tools the Council has at its disposal.

Box 10.1. **The Advisory Committee of the Human Rights Council**

The Advisory Committee is composed of eighteen experts serving in their personal capacity, elected by the Human Rights Council (the Sub-Commission on the Promotion and Protection of Human Rights, which the Advisory Committee replaced, comprised twenty-six independent experts). The geographical balance is ensured by the following distribution: five members shall originate from African States; five from Asian States; two from Eastern European States; three from Latin American and Carribean States; and three from Western European and other States. The experts must have a recognized competence and experience in the field of human rights; they must be of high moral standing; and they must be independent and impartial, which implies that individuals holding decision-making positions in Government or any other organization which might give rise to a conflict of interest with responsibilities inherent to the mandate may not be elected (Decision 6/102 of the Human Rights Council, Follow-up to Human Rights Council Resolution 5/1).

The Advisory Committee will 'function as a think-tank for the Council and work at its direction', providing it with the necessary expertise (Human Rights Council Resolution 5/1, para. 65). The 'Institution-building' Resolution of the Council makes it clear that the Advisory Committee should serve the agenda of the Council, and not take initiatives of its own as did the former Sub-Commission on the Promotion and Protection of Human Rights: 'The function of the Advisory Committee is to provide expertise to the Council in the manner and form requested by the Council, focusing mainly on studies and research-based advice. Further, such expertise shall be rendered only upon the latter's request, in compliance with its resolutions and under its guidance' (Human Rights Council Resolution 5/1, para. 68). However, although the Advisory Committee is explicitly prohibited from adopting resolutions or decisions, it 'may propose within the scope of the work set out by the Council, for the latter's consideration and approval, suggestions for further enhancing its procedural efficiency, as well as further research proposals within the scope of the work set out by the Council' (para. 69).

The Advisory Committee shall convene up to two sessions for a maximum of ten working days per year, although additional sessions may be scheduled on an ad hoc basis with prior approval of the Council. Its inaugural session was held on 4–15 August 2008 in Geneva.

2 THE COMPLAINTS MECHANISM

When the Human Rights Council was established, it was decided that its mandate would include addressing 'situations of violations of human rights, including gross and systematic violations, and make recommendations thereon' (UN General Assembly Resolution 60/251, para. 3). The idea was to build on the procedures developed over time by the Commission on Human Rights. Although it initially declined to examine the complaints about human rights violations sent to the United Nations, the Commission gradually adopted a bolder stance at the initiative of developing countries seeking to challenge apartheid in South Africa and other issues related to racial

discrimination or to the self-determination of peoples. The Economic and Social Council adopted Resolution 1235 (1967) (Ecosoc Res. 1235(XLII) of 6 June 1967) authorizing the Commission on Human Rights to examine information relevant to gross violations of human rights and fundamental freedoms. It later adopted Resolution 1503 (1970), establishing a procedure for dealing with communications relating to violations of human rights and fundamental freedoms (Ecosoc Res. 1503(XLVIII) of 27 May 1970, revised by Ecosoc Res. 2000/3 of 9 June 2000). The resulting system, which involved the Sub-Commission on the Promotion and Protection of Human Rights prior to any complaint being transmitted to the Commission on Human Rights, was to a large extent reproduced when the Human Rights Council was established, to be placed in the hands of the Council in co-operation with its Advisory Committee:

Human Rights Council, Resolution 5/1: Institution building (18 June 2007): Complaint Procedure

A. Objective and scope

85. A complaint procedure is being established to address consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms occurring in any part of the world and under any circumstances.

86. Economic and Social Council resolution 1503 (XLVIII) of 27 May 1970 as revised by resolution 2000/3 of 19 June 2000 served as a working basis and was improved where necessary, so as to ensure that the complaint procedure is impartial, objective, efficient, victims-oriented and conducted in a timely manner. The procedure will retain its confidential nature, with a view to enhancing cooperation with the State concerned.

B. Admissibility criteria for communications

87. A communication related to a violation of human rights and fundamental freedoms, for the purpose of this procedure, shall be admissible, provided that:

(a) It is not manifestly politically motivated and its object is consistent with the Charter of the United Nations, the Universal Declaration of Human Rights and other applicable instruments in the field of human rights law;
(b) It gives a factual description of the alleged violations, including the rights which are alleged to be violated;
(c) Its language is not abusive. However, such a communication may be considered if it meets the other criteria for admissibility after deletion of the abusive language;
(d) It is submitted by a person or a group of persons claiming to be the victims of violations of human rights and fundamental freedoms, or by any person or group of persons, including non-governmental organizations, acting in good faith in accordance with the principles of human rights, not resorting to politically motivated stands contrary to the provisions of the Charter of the United Nations and claiming to have direct and reliable knowledge of the violations concerned. Nonetheless, reliably attested communications shall not be inadmissible solely because the knowledge of the individual authors is second-hand, provided that they are accompanied by clear evidence;
(e) It is not exclusively based on reports disseminated by mass media;

(f) It does not refer to a case that appears to reveal a consistent pattern of gross and reliably attested violations of human rights already being dealt with by a special procedure, a treaty body or other United Nations or similar regional complaints procedure in the field of human rights;
(g) Domestic remedies have been exhausted, unless it appears that such remedies would be ineffective or unreasonably prolonged.

88. National human rights institutions, established and operating under the Principles Relating to the Status of National Institutions (the Paris Principles), in particular in regard to quasi-judicial competence, may serve as effective means of addressing individual human rights violations.

C. Working groups

89. Two distinct working groups shall be established with the mandate to examine the communications and to bring to the attention of the Council consistent patterns of gross and reliably attested violations of human rights and fundamental freedoms.

90. Both working groups shall, to the greatest possible extent, work on the basis of consensus. In the absence of consensus, decisions shall be taken by simple majority of the votes. They may establish their own rules of procedure.

1. Working Group on Communications: composition, mandate and powers 91. The Human Rights Council Advisory Committee shall appoint five of its members, one from each Regional Group, with due consideration to gender balance, to constitute the Working Group on Communications.

92. In case of a vacancy, the Advisory Committee shall appoint an independent and highly qualified expert of the same Regional Group from the Advisory Committee.

93. Since there is a need for independent expertise and continuity with regard to the examination and assessment of communications received, the independent and highly qualified experts of the Working Group on Communications shall be appointed for three years. Their mandate is renewable only once.

94. The Chairperson of the Working Group on Communications is requested, together with the secretariat, to undertake an initial screening of communications received, based on the admissibility criteria, before transmitting them to the States concerned. Manifestly ill-founded or anonymous communications shall be screened out by the Chairperson and shall therefore not be transmitted to the State concerned. In a perspective of accountability and transparency, the Chairperson of the Working Group on Communications shall provide all its members with a list of all communications rejected after initial screening. This list should indicate the grounds of all decisions resulting in the rejection of a communication. All other communications, which have not been screened out, shall be transmitted to the State concerned, so as to obtain the views of the latter on the allegations of violations.

95. The members of the Working Group on Communications shall decide on the admissibility of a communication and assess the merits of the allegations of violations, including whether the communication alone or in combination with other communications appear to reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms. The Working Group on Communications shall provide the Working Group on Situations with a file containing all admissible communications as well as recommendations thereon. When the Working Group on Communications requires further consideration or additional information,

it may keep a case under review until its next session and request such information from the State concerned. The Working Group on Communications may decide to dismiss a case. All decisions of the Working Group on Communications shall be based on a rigorous application of the admissibility criteria and duly justified.

2. Working Group on Situations: composition, mandate and powers 96. Each Regional Group shall appoint a representative of a member State of the Council, with due consideration to gender balance, to serve on the Working Group on Situations. Members shall be appointed for one year. Their mandate may be renewed once, if the State concerned is a member of the Council.

97. Members of the Working Group on Situations shall serve in their personal capacity. In order to fill a vacancy, the respective Regional Group to which the vacancy belongs, shall appoint a representative from member States of the same Regional Group.

98. The Working Group on Situations is requested, on the basis of the information and recommendations provided by the Working Group on Communications, to present the Council with a report on consistent patterns of gross and reliably attested violations of human rights and fundamental freedoms and to make recommendations to the Council on the course of action to take, normally in the form of a draft resolution or decision with respect to the situations referred to it. When the Working Group on Situations requires further consideration or additional information, its members may keep a case under review until its next session. The Working Group on Situations may also decide to dismiss a case.

99. All decisions of the Working Group on Situations shall be duly justified and indicate why the consideration of a situation has been discontinued or action recommended thereon. Decisions to discontinue should be taken by consensus; if that is not possible, by simple majority of the votes.

D. Working modalities and confidentiality

100. Since the complaint procedure is to be, *inter alia*, victims-oriented and conducted in a confidential and timely manner, both Working Groups shall meet at least twice a year for five working days each session, in order to promptly examine the communications received, including replies of States thereon, and the situations of which the Council is already seized under the complaint procedure.

101. The State concerned shall cooperate with the complaint procedure and make every effort to provide substantive replies in one of the United Nations official languages to any of the requests of the Working Groups or the Council. The State concerned shall also make every effort to provide a reply not later than three months after the request has been made. If necessary, this deadline may however be extended at the request of the State concerned.

102. The Secretariat is requested to make the confidential files available to all members of the Council, at least two weeks in advance, so as to allow sufficient time for the consideration of the files.

103. The Council shall consider consistent patterns of gross and reliably attested violations of human rights and fundamental freedoms brought to its attention by the Working Group on Situations as frequently as needed, but at least once a year.

104. The reports of the Working Group on Situations referred to the Council shall be examined in a confidential manner, unless the Council decides otherwise. When the Working

Group on Situations recommends to the Council that it consider a situation in a public meeting, in particular in the case of manifest and unequivocal lack of cooperation, the Council shall consider such recommendation on a priority basis at its next session.

105. So as to ensure that the complaint procedure is victims-oriented, efficient and conducted in a timely manner, the period of time between the transmission of the complaint to the State concerned and consideration by the Council shall not, in principle, exceed 24 months.

E. Involvement of the complainant and of the State concerned

106. The complaint procedure shall ensure that both the author of a communication and the State concerned are informed of the proceedings at the following key stages:

(a) When a communication is deemed inadmissible by the Working Group on Communications or when it is taken up for consideration by the Working Group on Situations; or when a communication is kept pending by one of the Working Groups or by the Council;
(b) At the final outcome.

107. In addition, the complainant shall be informed when his/her communication is registered by the complaint procedure.

108. Should the complainant request that his/her identity be kept confidential, it will not be transmitted to the State concerned.

F. Measures

109. In accordance with established practice the action taken in respect of a particular situation should be one of the following options:

(a) To discontinue considering the situation when further consideration or action is not warranted;
(b) To keep the situation under review and request the State concerned to provide further information within a reasonable period of time;
(c) To keep the situation under review and appoint an independent and highly qualified expert to monitor the situation and report back to the Council;
(d) To discontinue reviewing the matter under the confidential complaint procedure in order to take up public consideration of the same;
(e) To recommend to OHCHR to provide technical cooperation, capacity-building assistance or advisory services to the State concerned.

3 THE UNIVERSAL PERIODIC REVIEW

The universal periodic review (UPR) envisaged in operative para. 5(e) of the UN General Assembly Resolution 60/251 was initially presented in an address of the UN Secretary-General to the Commission on Human Rights in April 2005:

> [The Human Rights Council] should have an explicitly defined function as a chamber of peer review. Its main task would be to evaluate the fulfilment by all States of all their human rights obligations. This would give concrete expression to the principle that human rights are universal and indivisible. Equal attention will have to be given to civil, political, economic, social and cultural rights, as well as

the right to development. And it should be equipped to give technical assistance to States and policy advice to States and United Nations bodies alike. Under such a system, every Member State could come up for review on a periodic basis. Any such rotation should not, however, impede the Council from dealing with any massive and gross violations that might occur. Indeed, the Council will have to be able to bring urgent crises to the attention of the world community.

The Addendum to the Report 'In Larger Freedom' provides the following elaboration:

In Larger Freedom: Towards Development, Security and Human Rights for All. Report of the Secretary-General, Addendum (A/59/2005/Add. 1, 23 May 2005):

7. The peer review mechanism would complement but would not replace reporting procedures under human rights treaties. The latter arise from legal commitments and involve close scrutiny of law, regulations and practice with regard to specific provisions of those treaties by independent expert panels. They result in specific and authoritative recommendations for action. Peer review would be a process whereby States voluntarily enter into discussion regarding human rights issues in their respective countries, and would be based on the obligations and responsibilities to promote and protect those rights arising under the Charter and as given expression in the Universal Declaration of Human Rights. Implementation of findings should be developed as a cooperative venture, with assistance given to States in developing their capacities.

8. Crucial to peer review is the notion of universal scrutiny, that is, that the performance of all Member States in regard to all human rights commitments should be subject to assessment by other States. The peer review would help avoid, to the extent possible, the politicization and selectivity that are hallmarks of the Commission's existing system. It should touch upon the entire spectrum of human rights, namely, civil, political, economic, social and cultural rights. The Human Rights Council will need to ensure that it develops a system of peer review that is fair, transparent and workable, whereby States are reviewed against the same criteria. A fair system will require agreement on the quality and quantity of information used as the reference point for the review. In that regard, the Office of the High Commissioner could play a central role in compiling such information and ensuring a comprehensive and balanced approach to all human rights. The findings of the peer reviews of the Human Rights Council would help the international community better provide technical assistance and policy advice. Furthermore, it would help keep elected members accountable for their human rights commitments.

The appendix to the Human Rights Council Resolution 5/1 'Institution-building of the United Nations Human Rights Council' (18 June 2007) describes the UPR in the following terms:

Human Rights Council, Resolution 5/1: Institution-building (18 June 2007):

A. Basis of the review

1. The basis of the review is:
   (a) The Charter of the United Nations;

(b) The Universal Declaration of Human Rights;
(c) Human rights instruments to which a State is party;
(d) Voluntary pledges and commitments made by States, including those undertaken when presenting their candidatures for election to the Human Rights Council (hereinafter 'the Council').

2. In addition to the above and given the complementary and mutually interrelated nature of international human rights law and international humanitarian law, the review shall take into account applicable international humanitarian law.

B. Principles and objectives

1. Principles

3. The universal periodic review should:
(a) Promote the universality, interdependence, indivisibility and interrelatedness of all human rights;
(b) Be a cooperative mechanism based on objective and reliable information and on interactive dialogue;
(c) Ensure universal coverage and equal treatment of all States;
(d) Be an intergovernmental process, United Nations Member-driven and action-oriented;
(e) Fully involve the country under review;
(f) Complement and not duplicate other human rights mechanisms, thus representing an added value;
(g) Be conducted in an objective, transparent, non-selective, constructive, non-confrontational and non-politicized manner;
(h) Not be overly burdensome to the concerned State or to the agenda of the Council;
(i) Not be overly long; it should be realistic and not absorb a disproportionate amount of time, human and financial resources;
(j) Not diminish the Council's capacity to respond to urgent human rights situations;
(k) Fully integrate a gender perspective;
(l) Without prejudice to the obligations contained in the elements provided for in the basis of review, take into account the level of development and specificities of countries;
(m) Ensure the participation of all relevant stakeholders, including non-governmental organizations and national human rights institutions, in accordance with General Assembly resolution 60/251 of 15 March 2006 and Economic and Social Council resolution 1996/31 of 25 July 1996, as well as any decisions that the Council may take in this regard.

2. Objectives

4. The objectives of the review are:
(a) The improvement of the human rights situation on the ground;
(b) The fulfilment of the State's human rights obligations and commitments and assessment of positive developments and challenges faced by the State;
(c) The enhancement of the State's capacity and of technical assistance, in consultation with, and with the consent of, the State concerned;
(d) The sharing of best practice among States and other stakeholders;

(e) Support for cooperation in the promotion and protection of human rights;
(f) The encouragement of full cooperation and engagement with the Council, other human rights bodies and the Office of the United Nations High Commissioner for Human Rights.

C. Periodicity and order of the review

5. The review begins after the adoption of the universal periodic review mechanism by the Council.
6. The order of review should reflect the principles of universality and equal treatment.
7. The order of the review should be established as soon as possible in order to allow States to prepare adequately.
8. All member States of the Council shall be reviewed during their term of membership.
9. The initial members of the Council, especially those elected for one or two-year terms, should be reviewed first.
10. A mix of member and observer States of the Council should be reviewed.
11. Equitable geographic distribution should be respected in the selection of countries for review.
12. The first member and observer States to be reviewed will be chosen by the drawing of lots from each Regional Group in such a way as to ensure full respect for equitable geographic distribution. Alphabetical order will then be applied beginning with those countries thus selected, unless other countries volunteer to be reviewed.
13. The period between review cycles should be reasonable so as to take into account the capacity of States to prepare for, and the capacity of other stakeholders to respond to, the requests arising from the review.
14. The periodicity of the review for the first cycle will be of four years. This will imply the consideration of 48 States per year during three sessions of the working group of two weeks each.

D. Process and modalities of the review

1. Documentation

15. The documents on which the review would be based are:
    (a) Information prepared by the State concerned, which can take the form of a national report, on the basis of general guidelines to be adopted by the Council at its sixth session (first session of the second cycle), and any other information considered relevant by the State concerned, which could be presented either orally or in writing, provided that the written presentation summarizing the information will not exceed 20 pages, to guarantee equal treatment to all States and not to overburden the mechanism. States are encouraged to prepare the information through a broad consultation process at the national level with all relevant stakeholders;
    (b) Additionally a compilation prepared by the Office of the High Commissioner for Human Rights of the information contained in the reports of treaty bodies, special procedures, including observations and comments by the State concerned, and other relevant official United Nations documents, which shall not exceed 10 pages;
    (c) Additional, credible and reliable information provided by other relevant stakeholders to the universal periodic review which should also be taken into consideration by the

Council in the review. The Office of the High Commissioner for Human Rights will prepare a summary of such information which shall not exceed 10 pages.

16. The documents prepared by the Office of the High Commissioner for Human Rights should be elaborated following the structure of the general guidelines adopted by the Council regarding the information prepared by the State concerned.
17. Both the State's written presentation and the summaries prepared by the Office of the High Commissioner for Human Rights shall be ready six weeks prior to the review by the working group to ensure the distribution of documents simultaneously in the six official languages of the United Nations, in accordance with General Assembly resolution 53/208 of 14 January 1999.

2. Modalities

18. The modalities of the review shall be as follows:
    (a) The review will be conducted in one working group, chaired by the President of the Council and composed of the 47 member States of the Council. Each member State will decide on the composition of its delegation;
    (b) Observer States may participate in the review, including in the interactive dialogue;
    (c) Other relevant stakeholders may attend the review in the Working Group;
    (d) A group of three rapporteurs, selected by the drawing of lots among the members of the Council and from different Regional Groups (troika) will be formed to facilitate each review, including the preparation of the report of the working group. The Office of the High Commissioner for Human Rights will provide the necessary assistance and expertise to the rapporteurs.
19. The country concerned may request that one of the rapporteurs be from its own Regional Group and may also request the substitution of a rapporteur on only one occasion.
20. A rapporteur may request to be excused from participation in a specific review process.
21. Interactive dialogue between the country under review and the Council will take place in the working group. The rapporteurs may collate issues or questions to be transmitted to the State under review to facilitate its preparation and focus the interactive dialogue, while guaranteeing fairness and transparency.
22. The duration of the review will be three hours for each country in the working group. Additional time of up to one hour will be allocated for the consideration of the outcome by the plenary of the Council.
23. Half an hour will be allocated for the adoption of the report of each country under review in the working group.
24. A reasonable time frame should be allocated between the review and the adoption of the report of each State in the working group.
25. The final outcome will be adopted by the plenary of the Council.

E. Outcome of the review

1. Format of the outcome

26. The format of the outcome of the review will be a report consisting of a summary of the proceedings of the review process; conclusions and/or recommendations, and the voluntary commitments of the State concerned.

2. Content of the outcome

27. The universal periodic review is a cooperative mechanism. Its outcome may include, *inter alia*:
    (a) An assessment undertaken in an objective and transparent manner of the human rights situation in the country under review, including positive developments and the challenges faced by the country;
    (b) Sharing of best practices;
    (c) An emphasis on enhancing cooperation for the promotion and protection of human rights;
    (d) The provision of technical assistance and capacity-building in consultation with, and with the consent of, the country concerned;
    (e) Voluntary commitments and pledges made by the country under review.

3. Adoption of the outcome

28. The country under review should be fully involved in the outcome.
29. Before the adoption of the outcome by the plenary of the Council, the State concerned should be offered the opportunity to present replies to questions or issues that were not sufficiently addressed during the interactive dialogue.
30. The State concerned and the member States of the Council, as well as observer States, will be given the opportunity to express their views on the outcome of the review before the plenary takes action on it.
31. Other relevant stakeholders will have the opportunity to make general comments before the adoption of the outcome by the plenary.
32. Recommendations that enjoy the support of the State concerned will be identified as such. Other recommendations, together with the comments of the State concerned thereon, will be noted. Both will be included in the outcome report to be adopted by the Council.

F. Follow-up to the review

33. The outcome of the universal periodic review, as a cooperative mechanism, should be implemented primarily by the State concerned and, as appropriate, by other relevant stakeholders.
34. The subsequent review should focus, *inter alia*, on the implementation of the preceding outcome.
35. The Council should have a standing item on its agenda devoted to the universal periodic review.
36. The international community will assist in implementing the recommendations and conclusions regarding capacity-building and technical assistance, in consultation with, and with the consent of, the country concerned.
37. In considering the outcome of the universal periodic review, the Council will decide if and when any specific follow-up is necessary.
38. After exhausting all efforts to encourage a State to cooperate with the universal periodic review mechanism, the Council will address, as appropriate, cases of persistent non-cooperation with the mechanism.

Human Rights Council, Decision 6/102. Follow-up to Human Rights Council Resolution 5/1 (27 September 2007) – General Guidelines for the Preparation of Information under the Universal Periodic Review:

[The report prepared by States for the universal periodic review should contain the following information:]

A. Description of the methodology and the broad consultation process followed for the preparation of information provided under the universal periodic review;
B. Background of the country under review and framework, particularly normative and institutional framework, for the promotion and protection of human rights: constitution, legislation, policy measures, national jurisprudence, human rights infrastructure including national human rights institutions and scope of international obligations identified in the 'basis of review' in resolution 5/1, annex, section IA;
C. Promotion and protection of human rights on the ground: implementation of international human rights obligations identified in the 'basis of review' in resolution 5/1, annex, section IA, national legislation and voluntary commitments, national human rights institutions activities, public awareness of human rights, cooperation with human rights mechanisms ...;
D. Identification of achievements, best practices, challenges and constraints;
E. Key national priorities, initiatives and commitments that the State concerned intends to undertake to overcome those challenges and constraints and improve human rights situations on the ground;
F. Expectations of the State concerned in terms of capacity-building and requests, if any, for technical assistance;
G. Presentation by the State concerned of the follow-up to the previous review.

In order to illustrate the functioning of the UPR in practice, the following are excerpts of three of the documents pertaining to the review of the United Kingdom in 2008. The first excerpt is the full list of conclusions and recommendations made by the members of the Human Rights Council (Working Group on the Universal Periodic Review), upon examining the situation of the United Kingdom on the basis of the three documents submitted to them – the State report, the compilation by the Office of the High Commissioner for Human Rights of findings of treaty bodies and special procedures, and the compilation of information received from other sources. The second document is the decision of the Human Rights Council on the outcome of the UPR regarding the United Kingdom. The third document lists the responses of the United Kingdom to certain recommendations made in the course of the UPR. While for reasons of space the full set of responses could not be reproduced, the sample presented is representative of the type of questions addressed, and the kind of justification offered when a recommendation is not accepted.

Human Rights Council, Report of the Working Group on the Universal Periodic Review: United Kingdom of Great Britain and Northern Ireland (A/HRC/8/25, 23 May 2008)

Conclusions and/or Recommendations

56. In the course of the discussion, the following recommendations were made to the United Kingdom of Great Britain and Northern Ireland:

1. To set up a strategic oversight body, such as a commission on violence against women, to ensure greater coherence and more effective protection for women. (India)
2. To address the high incarceration rate of children, ensure that the privacy of children is protected and put an end to the so-called 'painful techniques' applied to children. (Algeria)
3. To consider further measures in order to address the problem of violence against children, including corporal punishment. (Italy)
4. To reconsider its position about the continued legality of corporal punishment against children. (Sweden)
5. To consider going beyond current legislation and to ban corporal punishment, also in the private sector and in its Overseas Territories. (France)
6. To continue to review all counter-terrorism legislation and ensure that it complies with the highest human rights standards. (Cuba, Ghana and the Netherlands)
7. To harmonize its legislation with its human rights obligations towards individual protesters exercising their freedom of expression and opinion and to curtail excessive pretrial detention. (Algeria)
8. To enshrine in legislation the right of access of detainees to a lawyer immediately after detention, and not after 48 hours. (Russian Federation)
9. To strengthen guarantees for detained persons, and not to extend but to shorten the length of time of pretrial detentions. (Switzerland)
10. To introduce strict time limits on pre-charge detention of those suspected of terrorism, and provide information about so-called 'secret flights'. (Russian Federation)
11. To consider that any person detained by its armed forces is under its jurisdiction and respect its obligations concerning the human rights of such individuals. (Switzerland)
12. To elaborate specific policies and programmes aimed at ensuring that its applicable human rights obligations are not violated in situations of armed conflict. (Egypt)
13. To elaborate a national programme to combat the problem of overcrowding of prisons. (Russian Federation)
14. To facilitate the access of the International Committee of the Red Cross (ICRC) to its prisons. (Algeria)
15. To enhance the programmes aimed at addressing socio-economic inequalities, from a human rights perspective in fulfilment of its obligations under the International Covenant on Economic, Social and Cultural Rights. (Egypt)
16. To provide further information with regard to efforts to reduce poverty among children in half by 2010. (France)
17. To provide more care and attention to the rights of the elderly. (Canada)

18. To follow the Council of the European Union 'Asylum Qualification Directive' in future cases with regard to sexual orientation as a ground for asylum-seeking. (Canada)
19. To consider holding a referendum on the desirability or otherwise of a written constitution, preferably republican, which includes a bill of rights. (Sri Lanka)
20. That the example of the United Kingdom in issuing, in principle, a specific law dealing with incitement to racial and religious hatred, be emulated as a good practice in countries which have not done so, in implementation of article 20(2) of ICCPR and its stipulated purpose. (Egypt)
21. To protect the children and families of migrants and refugees (Algeria, Ecuador) and to accede to the International Convention on Protection of the Rights of All Migrant Workers and Members of their Families. (Algeria, Ecuador and Egypt)
22. To reflect upon and consider setting a date for signing the International Convention on the Protection of All Persons from Enforced Disappearance. (France)
23. To withdraw its interpretative statement with respect to article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination [ICERD]. (Egypt) [Upon signing the International Convention on the Elimination of All Forms of Racial Discrimination, the United Kingdom stated its understanding that, although it imposes the criminalization of speech or activities promoting the idea of racial superiority or racial discrimination, Article 4 ICERD could only be implemented by the United Kingdom 'with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of the Convention (in particular the right to freedom of opinion and expression and the right to freedom of peaceful assembly and association)'.]
24. To study, with a view to withdraw, its reservation to article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination. (Cuba)
25. To withdraw its reservation to the Convention on the Rights of the Child, concerning the provision that detained children be separated from adults while in detention, as well as the reservation concerning refugee and asylum-seeking children. (Indonesia)
26. To consider removal of its reservations to the Convention on the Rights of the Child and the Optional Protocol on the involvement of children in armed conflict. (Russian Federation)
27. To accept the full and unrestricted implementation of the provisions of the Convention against Torture and the International Covenant on Civil and Political Rights in overseas territories under its control. (Algeria)
28. To integrate fully a gender perspective in the next stages of the UPR review, including the outcome of the review. (Slovenia)

57. The response of the United Kingdom to these recommendations will be included in the outcome report adopted by the Human Rights Council at its eighth session.

Human Rights Council, Decision 8/107. Outcome of the universal periodic review: United Kingdom of Great Britain and Northern Ireland (10 June 2008):

The Human Rights Council,
Acting in compliance with the mandate entrusted to it by the General Assembly in its resolution 60/251 of 15 March 2006 and Council resolution 5/1 of 18 June 2007, and in

accordance with the President's statement PRST/8/1 on modalities and practices for the universal periodic review process of 9 April 2008;

Having conducted the review of the United Kingdom of Great Britain and Northern Ireland on 10 April in conformity with all the relevant provisions contained in Council resolution 5/1;

Adopts the outcome of the universal periodic review on the United Kingdom of Great Britain and Northern Ireland which is constituted of the report of the Working Group on the review of the United Kingdom of Great Britain and Northern Ireland (A/HRC/8/25), together with the views of the United Kingdom of Great Britain and Northern Ireland concerning the recommendations and/or conclusions, as well as its voluntary commitments and its replies presented before the adoption of the outcome by the plenary to questions or issues that were not sufficiently addressed during the interactive dialogue in the Working Group (A/HRC/8/52 chap. VI and A/HRC/8/25/Add. 1).

Human Rights Council, Report of the Working Group on the Universal Periodic Review: United Kingdom of Great Britain and Northern Ireland. Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review (A/HRC/8/25/Add. 1, 13 August 2008):

The Government of the United Kingdom welcomed the recommendations made in the course of its Universal Periodic Review on 10 April 2008. It has given them careful consideration, and its responses are as follows:

1. Elaborate a national programme to combat the problem of overcrowding in prisons. (Russian Federation)

The United Kingdom **accepts** the recommendation and will implement it immediately. Lord Carter's review of prisons in England & Wales, which was published on 5 December 2007, looked at demand for prison places over the long and medium term. In response to his recommendations, the UK Government has announced a series of measures that will create an additional 10,500 prison places by 2014.

7. Study, with a view to withdrawing, its interpretative statement to Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). (Cuba and Egypt)

The United Kingdom **does not accept** the recommendation. The United Kingdom has a long tradition of freedom of speech which allows individuals to hold and express views which may well be contrary to those of the majority of the population, and which many may find distasteful or even offensive. The UK maintains its view that individuals have the right to express such views so long as they are not expressed violently or do not incite violence or hatred against others. The Government believes that this strikes the right balance between maintaining the right to freedom of speech and protecting individuals from violence and hatred.

8. Continue to review all counter-terrorism legislation and ensure that it complies with the highest human rights standards. (Cuba, Ghana and the Netherlands)

The United Kingdom **accepts** the recommendation, and has already implemented it. The UK's counter-terrorism legislation is already subject to annual independent review. The independent

reviewer of counter-terrorism legislation is required to produce an annual report for the Home Secretary on the operation of the Terrorism Act 2000, the Prevention of Terrorism Act 2005 (control orders) and Part 1 of the Terrorism Act 2006. This report must then also be laid before Parliament. It will continue to be the case that all of the UK's anti-terrorism measures have to be set in the context of the UK's general commitment to human rights and the protection of individual freedoms.

16. Consider that any person detained by its armed forces is under its jurisdiction and respect its obligations concerning the human rights of such individuals. (Switzerland)
The United Kingdom **accepts** the recommendation that the UK should respect its obligations concerning the human rights of detained persons but **does not accept** that any person detained by our armed forces is under our jurisdiction.

To the extent that the UK has human rights obligations in respect of persons detained by the armed forces, we comply fully with them. However, the House of Lords, the UK's highest court, has held that those detained by UK Forces operating overseas fall within UK jurisdiction for the purposes of the European Convention on Human Rights only in very limited circumstances. Other international human rights treaty obligations may also be applicable in limited circumstances.

While the effectiveness of the UPR still has to be evaluated, the initial appraisals have been reassuring. Using the review of the United Kingdom as an example, Kevin Boyle concludes:

Kevin Boyle, 'The United Nations Human Rights Council: Origins, Antecedents, and Prospects', in K. Boyle (ed.), *New Institutions for Human Rights Protection* (Oxford University Press, 2009), p. 11 at p. 36:

States under review and Council members in the three hours of interactive dialogue have made serious efforts to give the process meaning and depth. The atmosphere has been constructive and the issues raised for scrutiny have addressed both strengths and weaknesses of the countries in question. What is most interesting and of longer term significance, has been the extent to which countries under review have been both self-critical and have accepted recommendations made by other states for positive action, including the ratification of international instruments. The frankness with which some countries accepted that they have human rights problems and agreed to address them is genuinely new and encouraging.

When the UPR was proposed, certain fears were expressed that this would undermine the human rights treaty bodies' authority, or that of the special procedures established by the Human Rights Council (see Sir N. Rodley, 'The United Nations Human Rights Council, Its Special Procedures, and Its Relationship with the Treaty Bodies: Complementarity or Competition?' in K. Boyle (ed.), *New Institutions for Human Rights Protection* (Oxford University Press, 2009), p. 49). In 2009, however, the Office of the High Commissioner for Human Rights was reassuring on that point. It noted for instance:

Office of the High Commissioner for Human Rights, Special Procedures Facts and Figures 2008 (2009):

A notable development in 2008 was the emergence of new synergies between the Special procedures and the new Universal Periodic Review (UPR). States under review have now invited special procedures mandate holders to visit their countries; three States under review issued standing invitations, bringing to 63 the total number of standing invitations. Increasingly, States under review are addressing issues of concern to special procedures in the interactive dialogue that forms part of the review process, and these issues also typically feature in the recommendations of the UPR Working Group.

4 THE SPECIAL PROCEDURES

4.1 The origins and diversity of the special procedures of the Human Rights Council

'Special procedures' are mechanisms established by the Commission on Human Rights, and now assumed by the Human Rights Council, to address either specific country situations or thematic issues in all parts of the world. The origin of special procedures resides in the establishment by the Commission on Human Rights, at the request of the newly independent African States and the broader non-aligned movement, of an ad hoc Working Group on South Africa, with the mandate of investigating and reporting back on allegations of torture and ill-treatment by the South African police (E/CN4/Res/2 (XXIII), 6 March 1967). It was only in 1980, however, that the Commission created its first thematic mechanism, the Working Group on Enforced or Voluntary Disappearances. Special Procedures then developed in the 1980s and 1990s, with little consistency across the different mandates.

Special procedures are either an individual (called 'Special Rapporteur', 'Special Representative of the Secretary-General', 'Representative of the Secretary-General' or 'Independent Expert') or a working group usually composed of five members (one from each region). The mandate-holders of the Human Rights Council are unpaid individual experts who act in their personal capacity, and who contribute both to developing the understanding of human rights norms and to protecting human rights by using the various tools at their disposal. Depending on which special procedure is concerned, these tools include the preparation of reports to the Human Rights Council or to the Third Committee of the General Assembly; addressing communications to States, in the form either of letters of allegations or urgent appeals; and carrying out country missions, with the consent of the State concerned, in order to assess the situation of human rights there. One mechanism, the Working Group on Arbitrary Detention, receives complaints and issues 'opinions' on individual cases, as well as 'deliberations' on general matters (for general studies on special procedures, see I. Nifosi, *The UN Special Procedures in the Field of Human Rights* (Antwerp-Oxford: Intersentia-Hart, 2005); J. Gutter, *Thematic*

Procedures of the United Nations Commission on Human Rights and International Law: in Search of a Sense of Community (Antwerp-Oxford: Intersentia-Hart, 2006); J. Gutter, 'Special Procedures and the Human Rights Council: Achievements and Challenges Ahead', *Human Rights Law Review*, 7, No. 1 (2007), 93; M. Lempinen, *Challenges Facing the System of Special Procedures of the United Nations Commission on Human Rights* (Turku/Abo: Institute for Human Rights, Abo Akademi University, 2001)).

In June 2009, there were thirty-one thematic and nine country mandates, working with the support of the Office of the High Commissioner for Human Rights. The thematic mandates were established on the following themes: enforced or involuntary disappearances (established in 1980), extra-judicial, summary or arbitrary executions (1982), torture (1985), freedom of religion or belief (1986), sale of children, child prostitution and child pornography (1990), arbitrary detention (1991), freedom of opinion and expression (1993), racism, racial discrimination (1993), independence of judges and lawyers (1994), violence against women (1994), toxic wastes (1995), right to education (1998), extreme poverty (1998), migrants (1999), right to food (2000), adequate housing (2000), human rights defenders (2000), effects of foreign debt and other related international financial obligations of States on the full enjoyment of human rights (2000), indigenous people (2001), people of African descent (2002), physical and mental health (2002), internally displaced persons (2004), trafficking in persons (2004), mercenaries (2005), minority issues (2005), international solidarity (2005), countering terrorism (2005), transnational corporations (2005),contemporary forms of slavery (2007), right to water (2008), and cultural rights (2009). Country-specific mandates were established on Myanmar (1992), Cambodia (1993), Palestinian Occupied Territories (1993), Somalia (1993), Haiti (1995), Liberia (2003), Burundi (2004), Democratic People's Republic of Korea (2004), Sudan (2005). When the Human Rights Council was established, it was tasked with the 'review and rationalization' of the existing mandates, and many observers expressed the fear that the Special Procedures – despite or maybe precisely because of the important role they had come to play in the UN human rights system – would be significantly cut back as a result. In fact, although two country mandates were abolished immediately after the Council was set up (these were the country rapporteurs for Cuba and Belarus), all the other special procedures were preserved.

Manual of Operations of the Human Rights Council Special Procedures (August 2008), paras. 4–5:

4. Thematic Special Procedures are mandated by the HRC to investigate the situation of human rights in all parts of the world, irrespective of whether a particular government is a party to any of the relevant human rights treaties. This requires them to take the measures necessary to monitor and respond quickly to allegations of human rights violations against individuals or groups, either globally or in a specific country or territory, and to report on their activities. In the case of country mandates, mandate-holders are called upon to take full account of all human rights (civil, cultural, economic, political and social) unless directed otherwise. In carrying out their activities, mandate holders are accountable to the Council.

5. The principal functions of Special Procedures include to:

- **analyze** the relevant thematic issue or country situation, including undertaking on-site missions,;
- **advise** on the measures which should be taken by the Government(s) concerned and other relevant actors;
- **alert** United Nations organs and agencies, in particular, the HRC, and the international community in general to the need to address specific situations and issues. In this regard they have a role in providing 'early warning' and encouraging preventive measures;
- **advocate** on behalf of the victims of violations through measures such as requesting urgent action by relevant States and calling upon Governments to respond to specific allegations of human rights violations and provide redress;
- **activate** and mobilize the international and national communities, and the HRC to address particular human rights issues and to encourage cooperation among Governments, civil society and inter-governmental organizations.
- **Follow-up to recommendations**

The only powers of the special procedures are of a persuasive nature: while they may put pressure on governments by making public statements or in their submissions to the Human Rights Council or the Third Committee of the General Assembly, they are ultimately dependent on the willingness of States to co-operate with them. The Commission on Human Rights did refer to a State obligation in this regard:

Commission on Human Rights, Resolution 2004/76, Human Rights and Special Procedures (21 April 2004):

The Commission on Human Rights, ...
Considering that special procedures duly established by the Commission with regard to the consideration of questions relating to the promotion and protection of economic, social and cultural and civil and political rights represent a major achievement and an essential element of United Nations efforts to promote and protect internationally recognized human rights, ...

Urges all Governments to cooperate with the Commission through the pertinent Special Procedures, including by:

(*a*) Responding without undue delay to requests for information made to them through the Special Procedures, so that the procedures may carry out their mandates effectively;
(*b*) Considering Special Procedures to visit their countries and considering favourably accepting visits from Special Procedures when requested;
(*c*) Facilitating follow-up visits as appropriate in order to help to contribute to the effective implementation of recommendations by the Special Procedures concerned;

3. *Calls upon* the Governments concerned to study carefully the recommendations addressed to them by Special Procedures and to keep the relevant mechanisms informed without undue delay on the progress made towards their implementation;

4. *Calls upon* all States to protect individuals, organizations or groups of persons who provide information to, meet with, or otherwise cooperate with the Special Procedures from any type of violence, coercion, harassment, or other form of intimidation or reprisal ...

4.2 The selection of mandate-holders of special procedures of the Human Rights Council

Human Rights Council, Resolution 5/1: Institution-building, Appendix (18 June 2007):

[Selection and appointment of mandate-holders]

39. The following general criteria will be of paramount importance while nominating, selecting and appointing mandate-holders: (a) expertise; (b) experience in the field of the mandate; (c) independence; (d) impartiality; (e) personal integrity; and (f) objectivity.

40. Due consideration should be given to gender balance and equitable geographic representation, as well as to an appropriate representation of different legal systems.

41. Technical and objective requirements for eligible candidates for mandate-holders will be approved by the Council at its sixth session (first session of the second cycle), in order to ensure that eligible candidates are highly qualified individuals who possess established competence, relevant expertise and extensive professional experience in the field of human rights.

42. The following entities may nominate candidates as special procedures mandate-holders: (a) Governments; (b) Regional Groups operating within the United Nations human rights system; (c) international organizations or their offices (e.g. the Office of the High Commissioner for Human Rights); (d) non-governmental organizations; (e) other human rights bodies; (f) individual nominations.

43. The Office of the High Commissioner for Human Rights shall immediately prepare, maintain and periodically update a public list of eligible candidates in a standardized format, which shall include personal data, areas of expertise and professional experience. Upcoming vacancies of mandates shall be publicized.

44. The principle of non-accumulation of human rights functions at a time shall be respected.

45. A mandate-holder's tenure in a given function, whether a thematic or country mandate, will be no longer than six years (two terms of three years for thematic mandate-holders).

46. Individuals holding decision-making positions in Government or in any other organization or entity which may give rise to a conflict of interest with the responsibilities inherent to the mandate shall be excluded. Mandate-holders will act in their personal capacity.

47. A consultative group would be established to propose to the President, at least one month before the beginning of the session in which the Council would consider the selection of mandate-holders, a list of candidates who possess the highest qualifications for the mandates in question and meet the general criteria and particular requirements.

48. The consultative group shall also give due consideration to the exclusion of nominated candidates from the public list of eligible candidates brought to its attention.