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Promotion and protection of human rights: implementation of human rights instruments

Follow-up to the outcome of the Millennium Summit

Letter dated 14 September 2006 from the Permanent Representative of Liechtenstein to the United Nations addressed to the Secretary-General

I have the honour to transmit the attached Chairperson's summary of an international meeting of experts on the theme of treaty body reform (known as "Malbun II"), held in Triesenberg, Liechtenstein, from 14 to 16 July 2006 (see annex). The meeting was organized jointly by the Office of the United Nations High Commissioner for Human Rights and the Government of Liechtenstein.

I should be grateful if the present letter and its annex could be circulated as a document of the General Assembly, under agenda items 67 (a) and 113.

(*Signed*) Christian **Wenaweser**
Ambassador
Permanent Representative

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Annex to the letter dated 14 September 2006 from the Permanent Representative of Liechtenstein to the United Nations addressed to the Secretary-General

Chairperson's summary of a brainstorming meeting on reform of the human rights treaty body system ("Malbun II")

(Triesenberg, Liechtenstein, 14-16 July 2006)

Introduction

1. A brainstorming meeting on reform of the human rights treaty bodies was organized jointly by the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the Government of Liechtenstein.[1] The "Malbun II" meeting took place in Triesenberg[2], Liechtenstein, from 14 to 16 July 2006. The meeting was attended by members of human rights treaty bodies, representatives of States, United Nations entities, independent national human rights institutions and non-governmental organizations (NGOs). A presentation on approaches to streamlined reporting using a web-based tool was provided to participants by Christoph Spenle, an expert from the Swiss Federal Department of Foreign Affairs. A briefing on the outcome of the expert workshop on reform of United Nations human rights treaty monitoring bodies held at the University of Nottingham on 11 and 12 February 2006 was given by Michael O'Flaherty, the chairperson of the workshop.

2. In addition to the concept paper on the High Commissioner's proposal for a unified standing treaty body, prepared by the Secretariat, which had already been introduced to all stakeholders in Geneva (HRI/MC/2006/2), the following papers were presented to the meeting: a preliminary non-paper on legal options; the proposals on treaty body reform put forward by the Committee on the Elimination of Racial Discrimination (CERD), the Committee on the Rights of the Child (CRC) and the Committee on the Elimination of Discrimination against Women (CEDAW); and a compilation of views on treaty body reform prepared by the Secretariat at the request of the fifth inter-committee meeting.

3. The meeting was opened by Louise Arbour, High Commissioner for Human Rights, who thanked the Government of Liechtenstein for generously hosting a brainstorming meeting for the second time. She offered introductory remarks on the issue of treaty body reform, including her proposal for a unified standing treaty body.

4. The meeting was chaired by Christian Wenaweser, Permanent Representative of Liechtenstein to the United Nations in New York.

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[1] The report of the first brainstorming meeting held from 4 to 7 May 2003 in Malbun, Liechtenstein, is contained in A/58/123, annex.

[2] For logistical reasons, the venue of the meeting was transferred from Malbun to Triesenberg, Liechtenstein. For reference purposes and to underline the follow-up character of the meeting, it is referred to as "Malbun II".

5. The format of the meeting followed the model adopted during the first meeting on treaty body reform, held in Malbun, Liechtenstein, in 2003. It was thus an informal brainstorming meeting with the sole purpose of exchanging views on ideas presented on treaty body reform and of further developing them. The goal was thus not to come to conclusions or find agreements, it being understood that such decisions should be taken by the meetings of States parties. It was underlined that the treaty bodies themselves could also take action to reform and streamline their work.

Opening statement by the High Commissioner for Human Rights

6. In her opening address, the High Commissioner for Human Rights emphasized that the human rights treaty system was the cornerstone of the United Nations framework for human rights. She noted the achievements of the system, but indicated that it was almost universally acknowledged that the system faced significant challenges. She was concerned that these challenges would deepen as the objectives of universal ratification/acceptance of all optional procedures, timely reporting by States parties and the introduction of new specific treaties were achieved.

7. The High Commissioner indicated that she had responded to the Secretary-General's invitation to address the human rights aspects of his call for reform by proposing the creation of a unified standing treaty body. She recognized that steps could be taken to improve the functioning of the treaty body system in the short and medium terms, and noted proposals put forward by some treaty bodies in this regard. She considered that more fundamental structural change would be required in the longer term.

8. The High Commissioner was aware that many important issues should be addressed during the consideration of the possible creation of a unified standing treaty body, and noted the importance of initiating a process of discussion to identify ways to enhance the system's authority and visibility, prioritize action at the country level to comply with human rights obligations, improve the use of financial and human resources, and strengthen the coherence and consistency of legal interpretation and working methods.

Chairperson's summary

9. The following constitutes the Chairperson's summary of the discussions that took place during the plenary session of the brainstorming meeting on treaty body reform on 14 and 15 July 2006, which he produced in his personal capacity. It reflects both plenary discussions, which dealt with a general consideration of treaty body reform, and plenary meetings which addressed the reports from various working groups on the content and outcomes of their discussions, although it should be noted that some proposals were discussed in the working groups only. The summary is structured along the lines of the specific topics raised during these discussions.

10. The meeting first held a general discussion on reform of the treaty body system. Thereafter, it discussed, in working groups, five specific themes reflecting the overall nature of the meeting and thus addressing the concept paper as well as other reform proposals: specificity; proposals put forward by CERD, CRC and CEDAW; harmonization of working methods; legal issues; and the High

Commissioner's proposal for a unified standing treaty body. The Chairperson's summary first reflects the general discussion and then addresses specific topics raised both in the context of the general discussion and in the framework of the five working groups dealing with specific aspects of treaty body reform. The summary distinguishes between topics raised as challenges to the existing system and issues to be considered in reform initiatives.

General discussion, including of the concept paper

11. It was understood that the discussions at the brainstorming meeting were not limited to one particular approach to treaty body reform. Rather, it was made clear that treaty body reform needed to address all challenges facing the current system and that a number of measures could be considered to meet all of those challenges.

12. With regard to the option of creating a unified standing treaty body, statements delivered on behalf of the African and Asian Groups made it clear that these two Groups were not in favour of such a proposal. This view was echoed by others, and the proposal to create a unified standing treaty body found generally little support, while some delegations took the position that they saw great merit and potential in the proposal and wanted to see it discussed further. Still others made it clear that their respective countries did not have a position on the proposal as yet and needed more time, background information and analysis before taking a position on this far-reaching proposal. In connection with the proposed unified standing treaty body, reference was made to the system of the International Labour Organization (ILO), which provided for a single body of a non-standing nature to handle States' reports, one that was able to process some 2000 reports per year. While the two systems were not comparable in all their aspects, the ILO model could nevertheless be useful in considering the possible creation of a unified standing treaty body.

13. Irrespective of the differing positions on the unified standing treaty body, the concept paper was welcomed as a valuable contribution to the further discussion of treaty body reform in that it identified these challenges. The view was expressed that the concept paper contained many elements that could greatly enhance the quality of the discussion on treaty body reform. Participants called the proposal of the High Commissioner aspirational and ambitious. However, some pointed out that it was unclear how the proposed body would effectively address the problem of reporting burden, and the concern was expressed that such a body would be of a quasi-judicial character. It was also pointed out that the different ratification patterns of human rights treaties could pose difficulties in the creation of a unified standing treaty body. Some participants argued that the concept paper did not contain the level of analysis needed to reach its conclusion that the creation of a unified standing treaty body was the best way to address the manifold challenges. Rather, a more in-depth discussion of those challenges was needed before a conclusion could be reached on which would be the best way forward. It was also noted that the concept paper did not address all challenges facing the system or challenges resulting from reform. The point was made that empirical information on how a unified standing treaty body could address these challenges was required, and it was suggested that if the decision were made to move in the direction of a unified standing treaty body, States might pilot the examination of reports or communications by members of several treaty bodies.

14. Participants showed a keen interest in discussing short-term practical measures which, especially if combined, could help to address the challenges to the system outlined in the concept paper. The view was expressed that preference should be given to short-term practical measures which did not require any legal action. After the adoption and implementation of such measures, and the completion of a testing phase of the changes in place, other reform proposals could still be discussed if further, and possibly more far-reaching, measures were needed. Others held the view that structural and institutional streamlining of the current system was in the long term desirable, and that short-term practical measures should be implemented with such a vision in mind.

15. Many participants were reluctant to engage in discussions of the six options for a unified standing treaty body contained in the concept paper, due to their opposition in principle to this approach. Those who saw potential future merit in the proposal to create a unified standing treaty body favoured further discussion of the proposal. Several participants made it clear that the current level of debate did not allow them to take a final position on the proposal to create a unified standing treaty body. However, there was recognition that the concept paper had made a valuable contribution by identifying the challenges, that it contained many useful elements for the reform discussion and that it was particularly helpful in galvanizing the required debate on treaty body reform. Concern was voiced that its useful elements might be lost in a focus on its conclusion.

16. In the course of a hypothetical discussion of the options contained in the concept paper, the view was expressed that organizing a unified standing treaty body in regional chambers was undesirable, as this would replicate the regional human rights systems and might result in normative fragmentation. Some were attracted to the idea of organizing the body in chambers along treaty lines, since this would preserve the specificity of the current system, but others considered that this would merely recreate the current system. Several participants indicated that the six options presented in the concept paper for the organization of the unified standing treaty body were not exhaustive, and that there might be several ways of combining them. The view was expressed that none of the options outlined would address all the challenges, while others indicated that no approach could address all challenges. It was questioned whether a unified treaty body should necessarily be a standing body, and it was recommended that there be further discussion on this, including on whether it should be a part-time body, as in the case of the ILO supervisory system. There were also reservations expressed with respect to permanent membership, in particular that permanent members might lose their connection with constituencies outside the United Nations system, and divergent views were expressed as to whether it would be desirable for such a body to have full-time, fully remunerated experts. The point was also made that OHCHR could play a more active role in addressing a number of the challenges confronting the treaty body system, especially in streamlining reporting procedures and scheduling examination of reports.

Harmonization of Working Methods

17. Participants emphasized the need for harmonizing working methods in order to make the treaty body system more accessible and transparent to States parties and other stakeholders, including United Nations entities, NGOs and national human rights institutions. Several participants welcomed the guidelines on reporting, including on the common core document, and some felt that they needed

some fine-tuning and some discussion with States. It was noted that the fifth inter-committee meeting of the human rights treaty bodies, in accepting the guidelines, had recommended that they be applied flexibly, and resolved to review their implementation in 2008, taking into account the experience of the treaty bodies.

18. The point was made that focused reporting could be useful, especially if combined with the common core document. It was noted that reporting guidelines across treaty bodies were diverse and that there should be harmonization of reporting requirements. It could therefore be beneficial for treaty bodies to assist States in preparing focused reports, in particular by submitting lists of issues which could guide the preparation and content of the report. The point was made that previous concluding observations could assist in this regard. Several participants invited the treaty bodies to proceed expeditiously to elaborate harmonized guidelines for focused reports.

19. There was recognition that the treaty body system would benefit from a consistent approach, which would both facilitate the production of reports to be submitted by States and ensure the equal treatment of all human rights.

20. Several proposals for further improvements were made. It was suggested that treaty bodies could adopt a more consistent, concrete, strategic, and focused approach in preparing their dialogues with States parties and elaborating their concluding observations and recommendations, which would assist both States in their work on implementation and United Nations entities in their programming and delivery. A more consistent, harmonized and transparent approach to follow-up procedures would also be useful. All treaty bodies should make documents relating to follow-up widely available, including through the Internet. Better coordination among the treaty bodies would also help to avoid duplication. It was noted that the appointment of focal points in treaty bodies was useful in that it improved the work of the treaty bodies on specificity, and that it should be made more consistent. The important role of independent national human rights institutions for systematic follow-up/implementation was underlined. It was suggested that harmonization among the treaty bodies should extend to all areas of their work, including individual communications. It was mentioned that consistency in the jurisprudence of the treaty bodies would be beneficial and that this could be achieved through the creation of a unified individual communications mechanism. A number of participants encouraged the use of joint general comments and joint general recommendations by the treaty bodies, as well as joint working groups and task forces, while others expressed reservations at such a proposal.

Backlogs

21. It was noted that there had been progress in addressing the problem of backlog in the consideration of reports and that a majority of treaty bodies were not currently facing this particular challenge. With regard to the backlogs that still exist, the view was expressed that additional meeting time, possibly allocated by a bureau of the seven chairpersons as suggested by CRC, was required in order to enable the respective treaty bodies to deal with this problem. Others expressed the view that solutions to this problem should be found by those treaty bodies which did not require any additional resources, for example by securing a more focused dialogue between treaty bodies and States parties'

delegations and by identifying priority issues and concerns. The chamber system established by two treaty bodies on a temporary basis was favourably commented on in connection with the issue of backlogs.

Non–reporting

22. It was noted that non-reporting by States parties was a recurrent fundamental problem which undermined the effectiveness of the treaty body system as well as reform initiatives. In this context, the view was expressed by some that institutional change might not be able to address this issue and that other measures would be needed. Technical assistance could be essential in this respect, although it would not be useful in cases where non-reporting was due to lack of political will. The view was expressed that the review procedures for non-reporting States should be reconsidered.

Visibility

23. The view was expressed that the visibility of treaty bodies should be increased in order to enhance their standing and accessibility, including with regard to the individual communications procedures. It was suggested that better dissemination was needed of concluding observations and recommendations, including through Secretariat initiatives and better use of the Internet, as well as radio broadcasts and live webcasts of treaty body meetings. It was suggested that treaty body sessions could be convened in States parties, although the view was also expressed that such meetings would entail additional costs. The creation of a single system for individual communications procedures was also mentioned in the context of the discussions on visibility. The role of OHCHR, United Nations field presences and independent national human rights institutions in promoting the visibility of the system was also emphasized.

Role of the Office of the United Nations High Commissioner for Human Rights

24. It was proposed that the Secretariat could take on a greater coordinating role with respect to the administrative aspects of the work of treaty bodies. In this regard, the view was expressed that the system would benefit if all treaty bodies had a shared Secretariat. It was suggested that the timing of the examination of reports for each State party could be better coordinated among the treaty bodies, with the assistance from the Secretariat, in order to allow States parties to schedule their reporting and presentations before treaty bodies. It was suggested that harmonization between the treaty bodies might be extended beyond the consideration of reports, in particular to the area of petitions.

25. Some participants expressed the view that the decision by the World Summit 2005 to double the resources of OHCHR within the next five years offered a unique opportunity to enhance the capacity of the Secretariat in the area of treaty body work. Concern was expressed that these resources might be directed to areas other than the support of the treaty body system as strengthening other areas might be perceived as more urgent than the technical treaty body work. It was essential to enhance the capacity of OHCHR to support the treaty bodies and provide technical assistance to States parties in regard to reporting and follow-up. Current and past technical assistance activities should be evaluated and further improved. The view was expressed that a more unified Secretariat

was important in the area of treaty body work and that more specific expertise should be available within the Secretariat. It was suggested that a high-level policy post should be created within the Secretariat to ensure coherence, including with regard to the jurisprudence of treaty bodies in the individual complaints procedure and the identification of priorities and coordination of resources for treaty body work.

Criteria for membership

26. Questions were raised as to whether the current selection process for treaty body members ensured the election of members with appropriate expertise and independence. The view was expressed that the selection process prior to nomination could be improved. In this context, the importance of transparent national nomination and selection procedures was emphasized, and it was also suggested that the information on candidates available to States parties should go beyond circulation of curricula vitae and that holding open discussions with candidates for treaty bodies might assist States parties in making decisions when electing treaty body experts. It was also stated that the practice of casting votes in exchange for votes in connection with other elections could have a negative impact on the quality of membership. Reference was made to the elections of judges for the International Criminal Court, which were conducted on the basis of firm criteria for expertise, gender and geographical distribution. It was noted that these criteria were contained in the relevant provision of the Rome Statute of the International Criminal Court and could therefore not as such be transferred to the treaty body system, unless amendments to the treaties were proposed. It was understood, however, that such elements could also be considered, particularly at the national level, as candidates were identified, without incorporating them in the treaties. The view was expressed that there should be enhanced accountability of treaty bodies or treaty body members to States parties and that this issue would be of particular relevance if treaty body members were to be remunerated. Another opinion held that accountability was limited to the time of election, and possibly re-election, of a treaty body expert.

Issues to be considered in reform initiatives

Specificity

27. It was understood that the term “specificity” referred in the first instance to the protection through the treaty body system of certain categories of rights and rights-holders. However, it was also noted that specificity was a larger notion than the subjects of specialist treaties. This included issues of the displaced and of disability (on which a specific treaty was currently being elaborated). Some participants noted that a unified standing treaty body could not preserve the same level of specificity as the current system of treaty bodies. It was also highlighted that addressing specificity properly had implications for stakeholders, including States parties, treaty bodies, United Nations entities, NGOs and the Secretariat.

28. It was noted that the current treaty body system had made significant achievements with regard to the protection and promotion of certain categories of rights and rights-holders, including women, children, migrant workers, and victims of racial discrimination and torture, and that

specificity overall constituted one of the strengths of the current system. However, it was felt that there was much room for improvement, including in the area of working methods.

29. The view was expressed that the treaty bodies which monitor the implementation of the two Covenants needed to be more responsive to certain specific issues or groups addressed by other specific treaty bodies, e.g. women and children. It was questioned how a unified standing treaty body, if established, would address the issue of specificity. In this connection, it was stated that a unified standing treaty body meeting in plenary or a "general committee" would be unlikely to address specificity adequately. It was suggested that the one way to ensure specificity would be for the unified standing treaty body to meet in chambers along treaty lines. Nevertheless, it was pointed out that this would largely re-create the current system, as noted in the concept paper itself. Whatever system was created, it needed to be accompanied by the creation of mandatory guidelines for States parties and treaty bodies in order to ensure that appropriate attention was paid to specific issues or groups. Careful attention to the membership of a unified standing treaty body, including with respect to the possible role and relationship of members, was also regarded as critical in ensuring attention to specificity.

Relationship between existing human rights machinery and Universal Periodic Review

30. The view was expressed that the relationship between the Human Rights Council and the treaty bodies in the context of working out the modalities of the universal periodic review mechanism should be addressed and that there should be complementarity between the universal periodic review mechanism and treaty body outputs, as set out in paragraph 5 of General Assembly resolution 60/251, and that efforts should be made to avoid duplication. The view was expressed that the work of treaty bodies, in particular their concluding observations and comments as well as recommendations, could serve as a basis for the intergovernmental work carried out by the universal periodic review. It was understood that the topic required further discussion and needed to be taken into account in future reform efforts of the treaty body system. Some participants suggested that distribution of work among the treaty bodies and any special mechanisms of the Council should also be addressed to ensure complementarity and to avoid overlap.

Legal issues

31. There was recognition that the preliminary non-paper on legal options prepared by the Secretariat was helpful and comprehensive, and that it spelled out legal options that would hypothetically be available in the creation of a unified standing treaty body. Irrespective of whether or not the creation of a unified standing treaty body was considered desirable, it could not be argued that the creation of such a body was legally impossible.

32. However, the point was made that for each of the options suggested, unanimity would be required (or, possibly, consensus) to replace the existing treaty bodies without creating a parallel treaty body system which might result in a possible protection gap for rights-holders in some States parties. The establishment of a parallel regime for a considerable amount of time, as a result of lack of unanimity on one or another of the possible options, was seen as a risk in terms of divergent

jurisprudence. The status of reservations and declarations made by States parties to the existing treaties in the event of treaty amendments to create the unified standing treaty body had not been addressed.

33. While the advantages and drawbacks of the normal treaty amendment procedures or of a new procedural treaty were discussed, no views were expressed on the viability of options, since the existence of political will, which took into account the views of civil society, was essential prior to any debate about the legal options available to establish a unified standing treaty body. The point was made, however, that the non-paper contained innovative legal approaches and that the rights of third States and the constitutional role of parliaments should be taken into account in adopting such approaches, especially given the reluctance of some States to join all human rights treaties. It was also considered that the legal parameters for, and legal implications of, other possible reform options should also be examined in more detail.

Proposals submitted by CERD, CRC and CEDAW

34. Proposals focusing on the harmonization of working methods were put forward by CERD, CRC and CEDAW. There was a preliminary discussion of the CERD proposal to create a single body dealing with individual communications, the CRC proposal to create a permanent bureau of the chairpersons of the treaty bodies and the CEDAW proposal to work towards a harmonized and integrated human rights treaty body system. It was understood that these proposals warranted further discussion, possibly in the framework of inter-committee meetings or of a meeting of all treaty body members.

Harmonized treaty body system

35. Several participants supported the CEDAW proposal that there should be a harmonized and integrated treaty body system, but not a unified treaty body at the present time. There were different, while not mutually exclusive, opinions as to how this objective could best be achieved. Work to harmonize the working methods of the treaty bodies should intensify. There should be coordination and improvement of the follow-up procedures of the treaty bodies, both on concluding observations and on individual complaints, and efforts should be made to maintain the consistency of the jurisprudence of treaty bodies on individual complaints.

Unified individual complaints mechanism

36. It was recognized that the CERD proposal to create a unified body to handle individual complaints was legally feasible, including by way of an optional protocol. It was argued that this might enhance coherence of jurisprudence, taking into account the various provisions of the treaties, and create long-term better visibility and accessibility of the system. However, it was also stated that this might dissuade non-States parties from joining the system and adhering to optional complaints procedures. It was also cautioned that the establishment of a unified body examining individual complaints could create possible divergence between the legal experts in the unified body and those in the other treaty bodies. It was also said that there was no clarity as to how the experts on the unified

complaints body would rely on the contents of general comments and general recommendations adopted by the other treaty bodies, and how experts on the unified body might be able to contribute to the elaboration of general comments and general recommendations.

Permanent bureau of chairpersons

37. There was some interest in the CRC proposal that a permanent, remunerated bureau of the chairpersons of treaty bodies should be established and mandated to coordinate all the activities of the treaty bodies, including consideration of reports, general comments and follow-up activities. However, more details on the proposal, including its financial implications, mandate and relationship with the committees, would be required.

Mechanisms for future consideration of treaty body reform

38. It was understood that States parties had ownership of the treaty body system and that changes in the treaty body system therefore were within their competence. It was also pointed out that the treaty bodies themselves should be at the forefront of treaty body reform and that some reform measures could be implemented by the treaty bodies themselves, including in consultation with States parties. Input from treaty bodies was regarded as valuable for States parties as it would help them in making informed decisions on treaty body reform. In this context, open-ended inclusive consultations on treaty body reform, involving all stakeholders, should be convened, focusing also on technical issues. Participants noted the need for more consultation with national stakeholders through organization of regionally-based consultations. The following mechanisms were suggested as possible fora for further discussion on treaty body reform.

Inter-committee meetings

39. The CRC proposal to establish a permanent bureau of the seven chairpersons was welcomed by some, while others held the view that the role of proposed bureau could be fulfilled by an institutionalized and enhanced inter-committee Meeting mechanism which could meet for longer periods of time (one longer annual session or two annual sessions). It was noted that participants in the inter-committee meeting should be mandated to take decisions by their respective committees. It was suggested that enhanced use could be made of inter-committee meetings, which were an underutilized tool. The inter-committee meetings would benefit, in particular, from prior consultation with the treaty body members.

Joint meeting of all treaty body members

40. It was suggested that the discussions of treaty body reform could greatly benefit from information from all treaty bodies on their perspectives on possible reform measures. It might therefore be useful to have a joint meeting of all treaty body members in order to reach such an agreement. It was also suggested that such a meeting could be held in a smaller format.

Meetings of States parties

41. The point was made that States parties should not only meet in order to elect members to treaty bodies or to consider suggested amendments to treaties. Rather, these meetings could also be used in order to discuss issues of substance, including suggested reform measures. Such substantive discussions could also be used to enhance accountability of the treaty bodies to the States parties.

Intergovernmental meeting on the proposal to create a unified standing treaty body

42. With regard to the proposed intergovernmental meeting to consider options the view was expressed that the timing of such a meeting needed to be considered carefully, and in the light of further discussions.