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The International Human Rights Treaty System: Impact at the Domestic and International Levels

INTERVIEW WITH CLAUDIO GROSSMAN, DEAN OF AMERICAN UNIVERSITY WASHINGTON COLLEGE OF LAW AND CHAIR OF THE UN COMMITTEE AGAINST TORTURE

HRB: *What do you see as the most important characteristics of the UN human rights treaty body system?*

Treaty bodies hold states accountable for the legal obligations and commitments that they have voluntarily contracted by ratifying one or more human rights treaties. The treaty bodies monitor states' implementation of human rights through several procedures, including the review of initial and periodic reports submitted by States Parties. The ten treaty bodies also provide recommendations to States Parties on how to fulfill their human rights obligations. A key element of the State Party review is the interactive dialogue during which treaty body members ask questions to the state.

One of the most important features of the treaty bodies is that they are independent. Each treaty body consists of independent experts who serve in their individual capacity in order to guarantee the protection and promotion of human rights. This type of independent scrutiny contrasts with the Universal Periodic Review by the Human Rights Council, which is a peer-review process in which states are reviewed by other states. In this type of political review, states have the opportunity to voluntarily accept or reject recommendations by other states, which is not the case when a treaty body reviews a State Party.

Another unique feature of treaty bodies is that they contribute to the progressive development of international human rights law through authoritative interpretations of treaty provisions or advice to all stakeholders on thematic matters. The Committee against Torture recently adopted General Comment No. 3, for example, on Article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, interpreting the obligation of states to provide redress and rehabilitation to victims of torture and ill-treatment.

Moreover, treaty bodies examine complaints from individuals who allege that their human rights have been violated. Such complaints are called communications or petitions. When expressing its views and recommendations on a case, the treaty body acts in a manner considered by some as quasi-judicial, and for others it goes even further as this concerns determinations about obligations assumed by states.

HRB: *What do you see as the greatest challenges to the UN human rights treaty body system?*

The treaty body system faces the triple challenge of chronic under-resourcing, an increasing backlog of reports to be reviewed, and a lack of timely reporting by States Parties. To start with the first challenge, it would be enough to say that due to the lack



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of resources and the number of states that have ratified human rights treaties, the treaty body system would break down if every state would report on time. There is also a backlog in processing periodic reports from those states that fulfill their reporting obligations as well as a backlog of individual communications. At present, there is a danger that when a state presents a report, that state may not be examined until its next reporting procedure years later, rendering the earlier report obsolete.

With the increase in the number of treaty bodies, and in the interest of efficiency and legitimacy, it has been very important to avoid overlapping of functions. It is crucial that the treaty bodies pursue harmonization. Coordination will also help promote the treaty bodies' legitimacy, coherence, and consistency. This is a matter of tremendous importance as our functions really do overlap in some cases. For example, the Committee against Torture supervises compliance with the Convention against Torture, and the Committee on the Rights of Persons with Disabilities will look at whether there is inhuman treatment involving persons with disabilities. The Committee on the Elimination of Discrimination against Women looks at women's issues in the same situation. In fact, inhuman treatment could be supervised by all treaty bodies; accordingly, it is essential to ensure homogenous interpretation of treaty obligations. Limited resources have resulted in a need to consider resource rationalization including possible limits on meeting time, translation, document length, etc., while also calling for enhanced coordination.

HRB: *How do you plan on using your year as Chairperson of the UN Human Rights Treaty Bodies to improve this mechanism for promoting and protecting human rights?*

I am focusing on the issue of coordination and communication between the Chairpersons of the treaty bodies. For example, I am working with the Office of the High Commissioner on

Human Rights to create a second opportunity for the treaty body Chairpersons to meet in January – in this case, here in Washington, D.C. – and we are finding resources to do that. The additional meeting in January is meant to create another opportunity for coordination among the Chairpersons. It will also allow treaty bodies to present a unified view to the General Assembly in New York, which is currently debating the strengthening of the treaty body system. A topic of particular importance to stress, and which I hope we will discuss in January, concerns reprisals. It is unacceptable that organizations and individuals who cooperate with the treaty bodies are persecuted in outright violation of treaty obligations. The Committee against Torture already appointed two rapporteurs on reprisals: one for communications and the other for country reports. We need a concerted effort by all of us in rejecting these outright violations.

I hope we will promote transparency. The Committee’s dialogue with a State Party is public. In today’s world, “public” does not mean that a conversation occurs in a closed room. Anyone should be able to see what is going on. All committees, including the Committee against Torture, allow for recording and webcasting of public sessions. This enables the states to present their views to the public, as well as the committees to be accountable in the performance of their obligations, contributing to the full realization of treaty obligations.

HRB: *What role can civil society play in the protection and promotion of human rights within the treaty body system?*

Civil society and non-governmental organizations play a crucial role in the activities of the committees to promote and protect human rights. They expand our sources of information. It is important to recognize, however, that information provided by civil society organizations is only one element of the committees’ decision-making process. Sometimes, I think the role of civil society information is misunderstood. Civil society reports allow independent experts to present information to state representatives, ask questions, and identify matters that require further investigation. However, treaty bodies adopt concluding observations taking into account information from all sources. As independent experts working in the legal tradition, treaty body members have the knowledge and experience required to determine reliability and arrive at objective conclusions.

NGOs can also encourage states, at the national level, to implement the recommendations from treaty bodies. In addition, they may serve as a resource for states by providing needed expertise, often on a voluntary basis. One of the important phenomena of the 21st century has been the increase in the number of human rights NGOs. Many of them devote time, effort, and

knowledge to the realization of human rights. We also promote transparency in our communications with NGOs. For example, the Committee against Torture places NGO reports and information on its website. We only limit this transparency in situations where an individual may be subject to retaliation if identified. We have seen this happen before the Committee against Torture: unfortunately, the fact that an NGO cooperates with the committee has been used as a reason to indict individuals involved.

HRB: *What challenges do the treaty bodies face specifically with the individual complaint mechanism?*

We have seen individuals who have been accused of, and sometimes proven to have committed, serious crimes. The law, needless to say, should be applied to them. But torture is unacceptable, as well as a violation of due process. There are occasions when governments criticize that a “bad person” was allowed to submit a complaint to the committee. However, the states themselves have adopted treaties that do not exclude “bad persons” from the protections afforded under human rights law. The protection of human rights depends, on many occasions, on how we treat “bad persons.” It has been said that upholding the rule of law does not make any exceptions – it applies to everyone.

Let me reiterate also that the issue of reprisals is fundamental for the Committee against Torture and for the treaty bodies more broadly. The rejection of reprisals is a legal obligation. If an individual cooperates with the committee by sending information, that person cannot be prosecuted for doing so. We have seen instances where individuals have been subject to reprisals, and we do not want to be spectators to this. The whole system depends on protecting individuals and organizations that cooperate with treaty body mechanisms of supervision. We should have and we will have zero tolerance for these outright violations.

Again, it is very important to develop a system that avoids overlapping of functions, and helps states to present an accurate picture of the human rights situation in accordance with the treaty provisions. To facilitate State Party reporting, the Committee against Torture decided to present questions to states before states submit their periodic reports to the Committee. This helps to focus the dialogue and allows states to better understand the Committee’s concerns while not limiting the states’ opportunity to report on issues. This optional procedure, known as the list of issues prior to reporting, also eliminates the submission and translation of one report and promotes efficiency in terms of resource allocation.

Megan Wakefield conducted this interview for the Human Rights Brief.

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